

DATED 12 June 2013

- (1) SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL
- (2) CHARTWING DEVELOPMENTS LIMITED
- (3) HERON LAND DEVELOPMENTS LIMITED
- (4) TAYLOR WIMPEY UK LIMITED
- (5) REDLAND ESTATES LLP
- (6) EMERSONS GREEN URBAN VILLAGE LIMITED
- (7) THE HOMES AND COMMUNITIES AGENCY
- (8) NATIONAL WESTMINSTER BANK PLC
- (9) STUART ROY HUSSEY
- (10) CHRISTOPHER JOHN HUSSEY
- (11) ARQIVA SERVICES LIMITED

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**AGREEMENT**

under Section 106 of the Town and Country Planning Act 1990,  
Sections 38 and 278 of the Highways Act 1980, Sections 111 and  
120 of the Local Government Act 1972, Section 2 of the Local  
Government Act 2000 and other statutory provisions relating to  
land at Emersons Green East to the East of Avon Ring Road South  
of M4 Motorway

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Pinsent Masons

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THIS AGREEMENT is made on 12 June

2013

**BETWEEN:-**

- (1) **SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL** of The Council Offices, Castle Street, Thornbury, South Gloucestershire, BS35 1HF (the "**Council**");
- (2) **CHARTWING DEVELOPMENTS LIMITED** (Company Number 02076306) whose registered office is at 15 Hockley Court Stratford Road Hockley Heath Solihull West Midlands B94 6NW (the "**First Owner**");
- (3) **HERON LAND DEVELOPMENTS LIMITED** (Company Number 00644366) whose registered office is at Heron House 4 Bentinck Street London United Kingdom W1U 2EF (the "**Second Owner**");
- (4) **TAYLOR WIMPEY UK LIMITED** (Company Number 01392762) whose registered office is at Gate House Turnpike Road High Wycombe Buckinghamshire United Kingdom HP12 3NR (the "**Third Owner**");
- (5) **REDLAND ESTATES LLP** (Company Number OC358279) whose registered office is at 58 Alma Road Redland Bristol BS8 2DG (the "**Fourth Owner**");
- (6) **EMERSONS GREEN URBAN VILLAGE LIMITED** (Company Number 07883104) whose registered office is at 135 Aztec West Almondsbury Bristol BS32 4UB (the "**Fifth Owner**");
- (7) **THE HOMES AND COMMUNITIES AGENCY** of Central Business Exchange II 406-412 Midsummer Boulevard Central Milton Keynes MK9 2EA (the "**Sixth Owner**");
- (8) **NATIONAL WESTMINSTER BANK PLC** whose registered office is at 135 Bishopsgate, London EC2M 3UR and whose address for service is Credit Documentation, PO Box 339, Manchester M60 2AH (the "**First Mortgagee**");
- (9) **STUART ROY HUSSEY** of The Chalet, Howsmoor Lane, Mangotsfield, Bristol BS16 7AH (the "**Second Mortgagee**");
- (10) **CHRISTOPHER JOHN HUSSEY** of Valley Farm, Doddington Lane, Chipping Sodbury, Bristol BS37 6SB (the "**Third Mortgagee**");
- (11) **ARQIVA SERVICES LIMITED** (Company Number 3196207) whose registered office is at Crawley Court, Winchester, Hampshire SO21 2QA (the "**Lessee**").

**WHEREAS:-**

- (A) The First Owner is registered at The Land Registry as joint proprietor of part of the Land held under freehold title number GR277892 (held jointly with the Second Owner) subject only to a registered charge in favour of the Second Mortgagee and the Third Mortgagee.
- (B) The Second Owner is registered at The Land Registry as joint proprietor of part of the Land held under freehold title number GR277892 (held jointly with the First Owner) subject only to a registered charge in favour of the Second Mortgagee and the Third Mortgagee.
- (C) The Third Owner is registered at The Land Registry as sole proprietor of part of the Land held under the following title numbers:
  - a. Freehold title number AV215487
  - b. Freehold title number AV137708 subject only to a registered charge in favour of the Second Owner and part of which is subject to a lease separately registered with Title Number AV253245

- c. Freehold title number GR349672 subject only to a lease in favour of the Lessee
  - d. Freehold title number AV174062
  - e. Freehold title number GR240791
  - f. Freehold title number AV152758 subject only to a registered charge in favour of the Second Owner
  - g. Freehold title number AV253992
- (D) The Fourth Owner is registered at The Land Registry as sole proprietor of part of the Land held under the following title numbers:
- a. freehold title number GR266078 subject to a registered charge in favour of the First Mortgagee and an Option dated 16 February 2001 in favour of the Second Owner and Gallagher Estates Limited but now vested in the Third Owner
  - b. freehold title number GR265288 subject only to a registered charge in favour of the First Mortgagee and an Option dated 16 February 2001 in favour of the Second Owner and Gallagher Estates Limited but now vested in the Third Owner
  - c. freehold title number GR266080 subject only to a registered charge in favour of the First Mortgagee and an Option dated 16 February 2001 in favour of the Second Owner and Gallagher Estates Limited but now vested in the Third Owner
- (E) The Third Owner is registered at The Land Registry as sole proprietor of part of the Land held under freehold title number AV33660.
- (F) The Fifth Owner is registered at The Land Registry as sole proprietor of part of the Land held under leasehold title number AV253245.
- (G) The Sixth Owner is registered at The Land Registry as sole proprietor of part of the Land held under freehold title number AV33660
- (H) The Lessee has a lease in respect of part of the Land held under freehold title number GR349672.
- (I) The Council is the local planning authority and the local highway authority for the area in which the Land is situated.
- (J) The Council has resolved to grant Planning Permission for the Development subject to the parties entering into this Agreement in order to secure the planning obligations contained in this Agreement.

**IT IS AGREED** as follows:-

**1. INTERPRETATION**

1.1 In this Agreement unless the context indicates otherwise:-

**"2000 Agreement"** means the Section 106 Agreement dated 22 March 2000 and a supplemental Section 106 Agreement dated 14 May 2008 and made between the Council (1) South West of England Regional Development Agency (2) and Quantum Property Partnership (3) relating to Area C West at Emersons Green

**"Act"** means the Town and Country Planning Act 1990 and that and any other reference to the Act shall include any amending or replacing legislation for the time being in force

<b>"Adequate Security"</b>	means the Bond(s) and/or Charge(s) (as appropriate) to be provided by the Developer pursuant to Schedule 22
<b>"Affordable Dwelling"</b>	has the meaning ascribed to it in Schedule 12 of this Agreement
<b>"AHP"</b>	has the meaning ascribed to it in Schedule 12 of this Agreement
<b>"Balancing Contribution Calculation"</b>	means a statement setting out the Roof Tax Contributions paid and any balancing payment required as a result of the calculations made in accordance with clause 13.5 of this Agreement
<b>"Building Regulations"</b>	means the Building Regulations 2010 as amended or replaced from time to time
<b>"Certificate No 2"</b>	has the meaning ascribed to it in Schedule 1 of this Agreement
<b>"Charging Schedule"</b>	has the meaning given in the Community Infrastructure Levy Regulations 2010
<b>"Chief Financial Officer"</b>	means the Council's Chief Financial Officer for the time being or his duly appointed agent
<b>"Commencement of Development"</b>	<p>means the date upon which a material operation as defined in Section 56(4) of the Act is undertaken pursuant to the Planning Permission PROVIDED THAT the following shall not be taken to be a material operation:-</p> <ul style="list-style-type: none"> <li>(a) works of demolition or site clearance</li> <li>(b) ground investigation or site survey works (including archaeological works)</li> <li>(c) construction of boundary fencing or hoarding</li> <li>(d) marking-out or pegging-out operations</li> <li>(e) landscape clearance works and planning</li> <li>(f) remediation works</li> <li>(g) excavation works to adjust ground levels on the Land</li> <li>(h) works of an ecological nature</li> <li>(i) establishment of site offices and work compounds</li> <li>(j) Exempt Infrastructure Works</li> </ul> <p>and <b>"Commence Development"</b> and <b>"Commenced Development"</b> shall be construed accordingly</p>
<b>"Completion Notice"</b>	means a notice to be served by the Developer upon the Director and stating that (i) the Development has been substantially completed and (ii) how many Dwellings have been constructed on the Land and (iii) the Final Dwelling Mix
<b>"Contributions"</b>	means the financial contributions payable by the Developer to the Council pursuant to this Agreement but excluding the Council's legal costs and monitoring costs payable pursuant to clause 14

<b>"David Lloyd Land"</b>	means the land shown edged blue and marked David Lloyd on Plan 12 which depicts the area of land which forms part of the application site to which the Planning Application relates and is registered at Land Registry under Title Number GR320264 but which land shall not be bound by the terms of this Agreement.
<b>"Detailed Masterplan"</b>	means the masterplan to be submitted to the Council for approval in accordance with condition 5 of the Planning Permission
<b>"Developer"</b>	means together the First Owner the Second Owner and the Third Owner
<b>"Developer Highway Works"</b>	has the meaning ascribed to it in Schedule 1 of this Agreement
<b>"Development"</b>	means the development of the Land and all other operations and/or works authorised by the Planning Permission
<b>"Development Framework Plan"</b>	means Plan 7 dated 1 August 2011 bearing reference number 19306/9402 Rev P or such revision as may later be agreed as between the Developer and the Council
<b>"Director"</b>	means the Council's Director of Environment and Community Services for the time being or his duly appointed agent
<b>"Director for Children and Young People"</b>	means the Council's Director for Children and Young People for the time being or his duly appointed agent
<b>"Director of Community Care and Housing"</b>	means the Council's Director of Community Care and Housing for the time being or his duly appointed agent
<b>"Directors"</b>	means the Director, the Director for Children and Young People and the Director of Community Care and Housing (or any one of them)
<b>"Dispute Notice"</b>	means notice in writing which shall set out the matters which the Party giving the Dispute Notice disagrees with and the detailed reasons for that disagreement
<b>"Dwelling"</b>	means a residential unit authorised to be constructed on the Land as part of the Development
<b>"EGE Dwelling"</b>	means a residential unit authorised to be constructed in the Emersons Green East Development Area pursuant to the Planning Permission or the Related Planning Permission
<b>"Emersons Green East Development Area"</b>	means together the areas shown edged red and edged green on Plan 1
<b>"Exempt Infrastructure Works"</b>	includes:- <ul style="list-style-type: none"> <li>(a) internal circulation routes and other principal streets and associated lighting/safety apparatus, drainage, public utilities apparatus and works connections to the Folly Roundabout</li> <li>(b) connections to the Rosary Roundabout</li> <li>(c) works in accordance with the scheme for Strategic Surface Water Drainage: Emersons Green East Folly Brook Catchment Surface Water Drainage Strategy</li> </ul>



- (d) works in accordance with the scheme for Strategic Foul Water Drainage
- (e) strategic footways and cycleways which extend over more than one Development Zone or are located outside a Development Zone
- (f) M4 noise fence as shown on Cooper Partnership drawing numbers 972-135B and 072/132B
- (g) undergrounding of electricity pylons
- (h) pedestrian bridge over Avon Ring Road

or such other operations as may be agreed in writing by the Council

<b>"Expert"</b>	means a member of a suitably experienced and appropriate professional body who is appointed pursuant to clause 21 of this Agreement
<b>"Final Dwelling Mix"</b>	means a statement setting out the size and type of Dwellings actually constructed on the Land to include details as to flat or house numbers and bedroom numbers
<b>"HCA Retained Land"</b>	means that area shaded yellow on Plan 10 which depicts the area of land which forms part of the application site to which the Planning Application relates which is in the ownership of the Sixth Owner but which land shall be bound only by the terms of Schedule 23 to this Agreement.
<b>"Independent Valuer"</b>	means a member of the Royal Institution of Chartered Surveyors agreed between the Developer and the Council or in default of such agreement appointed pursuant to clause 21 of this Agreement
<b>"Infrastructure"</b>	has the meaning given in the Community Infrastructure Levy Regulations 2010 and/or as amended by an applicable Charging Schedule
<b>"Infrastructure Levy"</b>	means any tariff, charge, levy or tax (including any surcharges, debts, interest or other payment payable in relation to land which is payable in relation to Infrastructure due to and following the implementation of the Planning Permission (including the Community Infrastructure Levy as defined in the Planning Act 2008 and further defined in the subsequent Community Infrastructure Regulations 2010) save for any payments or obligations made pursuant to the Town and Country Planning Act 1990
<b>"Initial Completion Notice"</b>	means a notice to be served by the Developer upon the Director stating that the Non-School Site Dwellings have been substantially completed and such notice shall not be served until after the issue of the final certificate under Building Regulations for the final Non-School Site Dwelling
<b>"Interest Bearing Account"</b>	means an account to which interest will be added equivalent to that which the Council obtains on its investments
<b>"Interest Rate"</b>	means interest at 3% above the base rate for the time being of Barclays Bank Plc

<b>"Land"</b>	means the land being the subject of the Planning Application shown edged red on Plan 1 save that for the avoidance of doubt the David Lloyd Land shall not be deemed to be included within the Land bound by the terms of this Agreement and the HCA Retained Land shall be bound only by the provisions of Schedule 23 notwithstanding that the HCA Retained Land and the David Lloyd Land forms part of the land which was the subject of the Planning Application.
<b>"Letter of Release"</b>	means a letter similar in form to the draft attached at Appendix 9
<b>"Local Plan"</b>	means the South Gloucestershire Local Plan adopted 6 January 2006
<b>"Mortgagees"</b>	means the First Mortgagee the Second Mortgagee the Third Mortgagee or any one of them
<b>"Non-School Site Dwellings"</b>	means the Dwellings comprised in the Development save for any further Dwellings that could be constructed on the Second Primary School Site and/or the Secondary School Land in the event that one or both of those sites was no longer reserved for education purposes
<b>"Occupation"</b>	<p>means:-</p> <p>(a) in relation to a Dwelling the earlier of:-</p> <p style="margin-left: 40px;">(i) the date upon which a Dwelling is occupied as a residential unit for the first time; and</p> <p style="margin-left: 40px;">(ii) the date of legal completion of the initial sale by the Developer of a freehold interest or a long leasehold interest in a Dwelling</p> <p>(b) in relation to a building other than a Dwelling the date on which that building is physically occupied for the first time</p> <p>and for the avoidance of doubt this shall exclude any occupation of the relevant Dwelling or other building for the purposes of marketing construction fit out or site clearance and "Occupied" and "Occupy" shall be construed accordingly</p>
<b>"Owners"</b>	means the First Owner the Second Owner the Third Owner the Fourth Owner the Fifth Owner or any one of them
<b>"Party"</b>	means any party to this Agreement and "Parties" shall be construed accordingly
<b>"Plan 1"</b>	means the plan annexed to this Agreement and numbered 1
<b>"Plan 2"</b>	means the plan annexed to this Agreement and numbered 2
<b>"Plan 3"</b>	means the plan annexed to this Agreement and numbered 3
<b>"Plan 4"</b>	means the plan annexed to this Agreement and numbered 4
<b>"Plan 5"</b>	means the plan annexed to this Agreement and numbered 5
<b>"Plan 6"</b>	means the plan annexed to this Agreement and numbered 6

<b>"Plan 7"</b>	means the plan annexed to this Agreement and numbered 7
<b>"Plan 8"</b>	means the plan annexed to this Agreement and numbered 8
<b>"Plan 9"</b>	means the plan annexed to this Agreement and numbered 9
<b>"Plan 10"</b>	means the plan annexed to this Agreement and numbered 10
<b>"Plan 11"</b>	means the plan annexed to this Agreement and numbered 11
<b>"Plan 12"</b>	means the plan annexed to this Agreement and numbered 12
<b>"Planning Application"</b>	means the outline planning application reference number PK04/1965/O for an urban extension on 99 hectares of land comprising residential development of up to 2550 dwellings; up to 100,000m <sup>2</sup> of B1, B2, B8 and C1 employment floorspace; up to 2,450 m <sup>2</sup> of small scale A1, A2, A3, A4 and A5 uses; one two-form entry primary school; land reservation for a second two-form entry primary school; land reservation for a secondary school; community facilities including a community hall and cricket pavilion (Class D1) and health centre; transportation infrastructure comprising connections to the Folly Roundabout on Westerleigh Road and the Rosary Roundabout on the Ring Road and the construction of the internal road network; a network of footways and cycleways; structural landscaping; formal and informal open space; and surface water attenuation areas
<b>"Planning Permission"</b>	means any permission granted in respect of the Planning Application for the Development in substantially the same form as attached at Appendix 10
<b>"Reasonable Endeavours"</b>	<p>means that it is agreed by the Parties hereto that the Party under such an obligation will not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject thereto and to all other terms of this Agreement such party will demonstrate that it has given serious and detailed consideration to its contractual commitments pursuant to this Agreement and to the fact that the Planning Permission would not have been granted without there being a planning obligation of that nature included within this Agreement AND will be bound to:</p> <p>(1) utilise such methods as are likely to achieve the desired result recognising that it is of material importance that the result is achieved; and</p> <p>(2) attempt to fulfil the obligation by the expenditure of such effort and/or sums of money and/or the engagement of such professional or other advisers</p> <p>in each case as in all the circumstances (including the importance to the other parties of the fulfilment of the relevant obligation) it may be reasonable to expect: in the case of the Owners of a competent commercial developer acting reasonably in the context of the Development; in the case of the Council of a competent local planning authority acting reasonably in the context of its statutory duties and functions and recognising that it is a public authority and not commercial organisation and it is required to work within the financial constraints which that status imposes on it</p>

<b>"Related Planning Agreements"</b>	means one or both of the section 106 agreements entered into in connection with planning application PK10/0473/F and/or PK05/1009/O including any variation or supplemental agreements thereto
<b>"Related Planning Permission"</b>	means any planning permission granted pursuant to planning application PK05/1009/O
<b>"Reserved Matters Application"</b>	means an application for discharge of reserved matters pursuant to the Planning Permission
<b>"Reserved Matters Permission"</b>	means any permission given in respect of a Reserved Matters Application
<b>"Roof Tax Contributions"</b>	means together Sustainable Transport Contributions, the Highways Contribution, the Local Library Contribution, the Public Transport Contribution, the Art Funding and the Community Forest Contribution payable under Schedule 2, Schedule 3, Schedule 6, Schedule 14, Schedule 16 and Schedule 17 of this Agreement
<b>"Second Primary School Site"</b>	has the meaning ascribed to it in Schedule 9 of this Agreement
<b>"Secondary School Land"</b>	has the meaning ascribed to it in Schedule 10 of this Agreement
<b>"Service Media"</b>	means all pipes sewers mains ducts conduits gutters watercourses wires cables channels flues and any other apparatus related to the Services
<b>"Services"</b>	means the supply of water electricity gas telecommunications and the disposal of foul and surface water
<b>"Shared Ownership Unit"</b>	has the meaning ascribed to it in Schedule 12 of this Agreement
<b>"WAA Release Land"</b>	means the area of land shown edged red on Plan 10 which depicts the area of land forming part of the Water Attenuation Area which shall be released from the terms of the 2000 Agreement
<b>"Working Day"</b>	means any day apart from Saturday and Sunday and any statutory bank holiday or public holiday

- 1.2 Any reference to the Parties or any other legal or natural person shall include his her its or their heirs assigns and successors in title and in the case of any local authority shall also include any successor in function.
- 1.3 Any covenants obligations or other commitments given by more than one Party shall be joint and several.
- 1.4 Where a Party is not a body corporate then neuter words shall include the masculine or feminine gender (as the case may be) and singular words shall include their plural numbers.
- 1.5 The headings throughout this Agreement are for convenience only and shall not be taken into account in the construction and interpretation of this Agreement.
- 1.6 References to clauses, sub-clauses, paragraph numbers, recitals, Schedules, Appendices and Plans are unless otherwise stated references to clauses, sub-clauses, paragraph numbers, recitals, Schedules and Appendices to this Agreement.

2. **STATUTORY POWERS**

This Agreement will be registered as a Local Land Charge and is entered into pursuant to Section 106 of the Act Section 278 of the Highways Act 1980 Section 2 of the Local Government Act 2000 Sections 111 and 120 of the Local Government Act 1972 and all other statutory and other enabling powers and shall be enforceable accordingly but without prejudice to all and any other means of enforcing them at law or in equity or by statute.

3. **ENFORCEMENT**

3.1 The covenants and obligations created by this Agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable as such by the Council.

3.2 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to Commencement of Development.

4. **THIRD PARTIES**

In accordance with Sections 1(2) and 2(3)(a) of the Contracts (Rights of Third Parties) Act 1999 no term of this Agreement shall be enforceable by a third party and any term may be rescinded or varied without the consent of any third party.

5. **OWNERS' SUBSTANTIVE COVENANTS**

5.1 Subject to clause 20 of this Agreement:

5.1.1 the First Owner the Second Owner the Third Owner and the Fourth Owner for and on behalf of themselves and their heirs assigns and successors in title with the intention that the following provisions shall bind their respective interests in the Land and every part of it into whosoever's hands it may come covenants with the Council that they will comply with the covenants on the part of the Developer contained in all of the Schedules annexed to this Agreement;

5.1.2 the Fifth Owner for and on behalf of itself and its heirs assigns and successors in title covenants with the Council that it will comply with the covenants on the part of the Developer contained in Schedule 19 of this Agreement with the intent that it will bind its interest in the Land and for the avoidance of doubt and subject always to clause 20.1 the term "Developer" in Schedule 19 shall be taken to include the Fifth Owner

5.1.3 the Sixth Owner on behalf of itself and its heirs and assigns and successors in title covenants with the Council that it will comply with the covenants contained in Schedule 23 of this Agreement with the intention that they will bind its interest in the HCA Retained Land

5.2 The Owners covenant not to Commence the Development until

5.2.1 the Fifth Owner has been registered at The Land Registry as sole proprietor of part of the Land held under leasehold title number AV253245 and satisfactory evidence of the completion of the registration has been provided to the Council and

5.2.2 the registration at the Land Registry of the transfer of the Water Attenuation Area Release Land by the Sixth Owner to the Third Owner has been completed and satisfactory evidence has been provided to the Council

6. **COUNCIL'S SUBSTANTIVE COVENANTS**

6.1 The Council covenants with the Developer as follows:-

- 6.1.1 to grant the Planning Permission for the Development upon completion of this Agreement in the form of the specimen annexed at Appendix 10 unless otherwise amended with the agreement of the Council and the Developer;
- 6.1.2 subject to clause 6.1.6 to deposit all Contributions paid by the Developer to the Council pursuant to the provisions of this Agreement into an Interest Bearing Account;
- 6.1.3 to expend all Contributions in the manner and solely for the purpose for which the Contributions are paid;
- 6.1.4 subject to clause 6.1.6 from time to time upon reasonable request by the Developer (but no more frequently than once every four (4) months) to provide the Developer with a breakdown of expenditure from the Contributions until such time as they have been committed and/or expended;
- 6.1.5 subject to clause 6.1.6, in the event that any all or any part of the Contributions have not been committed or expended for the said purposes:

- (a) in the case of the Footbridge Contribution within ten (10) years of the date of receipt by the Council;
- (b) in the case of the First Primary School Contribution within ten (10) years of the date of receipt by the Council of the first 10% instalment pursuant to paragraph 1.1 of Part 3 of Schedule 8;
- (c) in the case of the Second Primary School Contribution within ten (10) years of the date of receipt by the Council of the first 10% instalment pursuant to paragraph 1.1 of Part 3 of Schedule 9;
- (d) in the case of the Secondary School Contribution within ten (10) years of either:
  - (i) the date of receipt by the Council of the first 10% instalment pursuant to paragraph 1.2.1 of Part 3 of Schedule 10; or
  - (ii) the date of receipt by the Council of the Secondary School Contribution pursuant to paragraph 2 of Part 3 of Schedule 10
- (e) in the case of all other Contributions within five (5) years from the date of payment of such sums or amounts,

to repay such sums or amounts (or such part thereof) to the Developer together with interest accrued from the date of payment to the date of repayment.

6.1.6 Clauses 6.1.2, 6.1.4 and 6.1.5 shall not apply to the following Contributions:

- (a) the Commuted Sum payable pursuant to Schedule 4 for the MMI;
- (b) the Open Space Maintenance Contribution payable pursuant to Schedule 13;
- (c) the Core Area Maintenance Contribution payable pursuant to Schedule 13;
- (d) the Informal Open Space Maintenance Contribution payable pursuant to Schedule 19; and
- (e) the Pond C3 Maintenance Contribution payable pursuant to Schedule 19.

6.1.7 upon written request from the Developer at any time after any obligation(s) pursuant to this Agreement has been fulfilled and upon being supplied by the Developer with appropriate evidence thereof to issue a Letter of Release in respect of that obligation within twenty one (21) Working Days after the date on which it receives the request PROVIDED THAT such request(s) shall not be made more than once in any period of three (3) months.

## **7. CONSENTS IN RELATION TO THIS AGREEMENT**

It is hereby agreed and declared that any approval authorisation agreement or consent required from any Party under the terms of this Agreement shall not be unreasonably withheld or delayed PROVIDED THAT this clause 7 shall not apply to any approval that may be sought from the HCA for the erection of structures or the carrying out of excavations as referred to in the definition of "Rights" in Schedule 23.

## **8. CHANGE OF OWNERSHIP**

8.1 Subject to clause 8.2 until such time as the provisions of this Agreement have been fully complied with the Parties to this Agreement will in relation to any freehold or leasehold transfer of all or any part of their respective interests in the Land deliver to the Council (by Royal Mail recorded signed for service) notice in writing of the transfer including the following information namely:-

8.1.1 the name and address of the transferee;

8.1.2 a description of the land subject of the transfer including a plan; and

8.1.3 the nature of the interest transferred.

8.2 Clause 8.1 shall not apply to a disposition of any individual Dwelling or other unit of occupation comprised in the Development or to a disposition to any statutory undertaker or other person who acquires any part of the Land or of any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport services.

8.3 Where notice pursuant to clause 8.1 has been given and subsequently it is identified that the details provided require change (whether due to an error or to a change in the terms of the transfer or otherwise) the Party shall serve a further notice in accordance with clause 8.1 save that in the case of a non material change the Council may in writing and in its absolute discretion waive the need for such further notice.

## **9. NOTICES**

Any notices to be served on or document to be submitted on or to any Party to this Agreement shall be delivered or posted to that Party at the address specified as theirs at the head of this Agreement and in the case of the Council addressed to the Council's Head of Legal and Democratic Services and quoting the planning reference number.

## **10. LOCAL AUTHORITY'S STATUTORY POSITION**

Nothing herein contained or implied shall limit prejudice or affect the rights duties and obligations of the Council under all statutes byelaws statutory instruments orders and regulations in the exercise of its function as a local authority.

## **11. OPERATIVE DATE**

Save in respect of obligations requiring compliance prior to Commencement of Development this Agreement shall not become operative until the Commencement of Development.

## **12. COMMENCEMENT OF DEVELOPMENT**

The Developer shall give to the Council five (5) Working Days written notice of its intention to Commence Development and shall confirm in writing within five (5) Working Days following

Commencement that Development has Commenced PROVIDED THAT failure to provide either of the said notifications shall not render this Agreement inoperative.

### **13. BALANCING CONTRIBUTION CALCULATION**

- 13.1 Within fifteen (15) Working Days of the approval of the Detailed Masterplan the Developer shall provide for the written approval of the Director a schedule which shall set out the Roof Tax Contributions adjusted to take account of the number of Dwellings proposed on the Land as agreed in the Detailed Masterplan.
- 13.2 Upon each anniversary of the approval of the Detailed Masterplan the Developer shall provide for the approval of the Director a revised schedule setting out the Roof Tax Contributions adjusted to take account of the number of Dwellings proposed on the Land as agreed in the Detailed Masterplan as varied by subsequent Reserved Matters Permissions.
- 13.3 The sums due in respect of each of the Roof Tax Contributions shall be adjusted in accordance with the schedules approved pursuant to clauses 13.1 and 13.2.
- 13.4 On substantial completion of the Development the Developer shall serve the Completion Notice on the Director.
- 13.5 Following service of the Completion Notice the Developer will calculate the Balancing Contribution Calculation by reference to the formulae set out in Schedule 2, Schedule 3, Schedule 6, Schedule 14, Schedule 16 and Schedule 17 and communicate this in writing to the Director within fifteen (15) Working Days of service of the Completion Notice.
- 13.6 Within fifteen (15) Working Days of receipt of the Balancing Contribution Calculation, the Director shall provide notice in writing to the Developer of his acceptance or otherwise of the Balancing Contribution Calculation.
- 13.7 If the Director does not agree with the Balancing Contribution Calculation the Developer and the Director will enter discussions with a view to agreeing the Balancing Contribution Calculation, and failing agreement after thirty (30) Working Days either party may refer the matter to the Expert for determination.
- 13.8 If the Balancing Contribution Calculation shows that a sum of money is owed to one Party by the other, the Party owing the sum shall pay that sum to the other party within thirty (30) Working Days of the Developer and the Director agreeing the Balancing Contribution Calculation (or in the absence of agreement within thirty (30) Working Days of the sum being determined by the Expert).

### **14. COSTS**

- 14.1 The Developer shall pay to the Council on the date hereof its reasonable legal costs incurred in connection with this Agreement.
- 14.2 The Developer shall pay to the Council on the date hereof the sum of Forty Thousand Pounds (£40,000) as a reasonable contribution towards the Council's costs of monitoring the implementation of this Agreement.



15. **INDEMNITIES**

15.1 The Developer will without prejudice to the Council's statutory and common law powers and rights hold the Council harmless and keep the Council indemnified from and against:-

15.1.1 any claim for compensation charge expense or other demand arising at any time prior to the issue of Certificate No 2 in connection with or incidental to the carrying out or use of the Developer Highway Works or the Development;

15.1.2 any charge expense claim for compensation or other demand arising under or in connection with Part I or Section 20 of the Land Compensation Act 1973 resulting from the carrying out or use of the Developer Highway Works or the Development and any charge or expense incurred by the Council arising out of any such claim;

15.1.3 any claim in connection with or incidental to the carrying out of any works by the Developer pursuant to this Agreement

PROVIDED THAT the Developer is notified as soon as reasonably practicable following receipt of any such claim and shall thereafter be kept informed by the Council of the progress of such claims and be given the reasonable opportunity to make representations in writing to the Council before such claim is settled AND PROVIDED FURTHER THAT the Developer shall not be liable for any charge expense claim for compensation or other demand under this clause 15 if the same is due to the negligence of the Council, a contractor or an agent of the Council or a Council officer.

15.2 The Council will hold the Developer harmless and keep the Developer indemnified from and against any claim in connection with or incidental to the carrying out of any works by the Council pursuant to this Agreement.

15.3 The Developer shall further indemnify and keep indemnified the Fourth Owner and the Fifth Owner against all costs liabilities and losses whatsoever arising from or in connection with the obligations under this Agreement.

16. **OBLIGATIONS SATISFY ANY INFRASTRUCTURE LEVY**

The Parties agree that the obligations in this Agreement which directly or indirectly relate to the provision of or payment in relation to Infrastructure (including the provision of any land or property for the purposes of Infrastructure provision) shall be in full and final settlement of any Infrastructure Levy which may apply to the Land or to the Development due to, and following, the grant of the Planning Permission in respect of the Development.

17. **INTEREST**

If any sum payable under this Agreement is not paid within fifteen (15) Working Days of the date when it is due then save in the case of a manifest error by the Directors in calculating the due sum the Developer shall in addition to any payment in respect of the sum due pay interest on the sum from the due date until actual payment at the Interest Rate.

18. **POSITION OF THE MORTGAGEES, THE LESSEE AND OPTION HOLDERS**

18.1 The First Mortgagee consents to the Fourth Owner entering into this Agreement and hereby acknowledges that from the date of this Agreement that part of the Land held under title numbers GR266078, GR265288 and GR266080 shall be bound by this Agreement.

18.2 Notwithstanding clause 18.1 the First Mortgagee will not incur any liability for any breach of obligations contained in this Agreement unless and until and except to the extent that such breach is committed or continuing at a time when it becomes a mortgagee in possession of that part of the Land held under title numbers GR266078, GR265288 and GR266080 (or any part thereof) or exercises its power of sale under its security or has appointed a receiver or has foreclosed in respect of all or any part of it.

- 18.3 The Second Mortgagee and the Third Mortgage consent to the First Owner and the Second Owner entering into this Agreement and hereby acknowledge that from the date of this Agreement that part of the Land held under title number GR277892 shall be bound by this Agreement.
- 18.4 Notwithstanding clause 18.3 the Second Mortgagee and the Third Mortgage will not incur any liability for any breach of obligations contained in this Agreement unless and until and except to the extent that such breach is committed or continuing at a time when it becomes a mortgagee in possession of that part of the Land held under title number GR277892 (or any part thereof).
- 18.5 The Lessee consents to the Third Owner entering into this Agreement and acknowledges that its interest in the Land is bound by and takes effect subject to this Agreement PROVIDED THAT the Lessee shall not be personally liable for any breach of the obligations in this Agreement and the Council agrees that the Lessee shall not be responsible for any of the obligations contained within this Agreement.
- 18.6 The Third Owner consents to the Fourth Owner entering into this Agreement and hereby acknowledges that from the date of this Agreement that part of the Land held under title numbers GR266078, GR265288 and GR266080 shall be bound by this Agreement.

**19. OCCUPATION OF DWELLINGS**

- 19.1 The Developer shall give written notice to the Council's Chief Financial Officer of the first legal transfer of:
  - 19.1.1 the 1st, 100th, 149th, 200th, 400th, 499th, 600th, 750th, 999th, 1,499th and 1600th Dwelling; and
  - 19.1.2 the 300th EGE Dwelling.

**20. RELEASE**

- 20.1 This Agreement shall not bind nor be enforceable against the following:-
  - 20.1.1 any Party to this Agreement after they have disposed of all of their interest in the Land to the Owners or in the event of a disposal of part, against the part disposed of, but without prejudice to the liability of any such Party for any subsisting breach of this Agreement prior to parting with such interest;
  - 20.1.2 individual owners, tenants and/or occupiers of individual Dwellings and their successors in title except in respect of the restrictions on the use of Affordable Housing Units in Schedule 12 which shall remain enforceable against individual owners, tenants and/or occupiers of Affordable Housing Units to the extent permitted by the terms of this Agreement and subject to clauses 20.1.7 and 20.1.8;
  - 20.1.3 individual owners, tenants and/or occupiers of individual non residential units comprised in the Development and their successors in title;
  - 20.1.4 any statutory undertaker or other person who acquires any part of the Land or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport services nor any mortgagee or chargee of any such persons;
  - 20.1.5 any Management Entity (as the same is separately defined in Schedules 13, 19 and 20) except in respect of the restrictions and obligations relating to the part or parts of the Land which are transferred to the relevant Management Entity pursuant to the relevant aforementioned Schedule
  - 20.1.6 a mortgagee of any Affordable Dwelling and their successors in title PROVIDED THAT in the event of any mortgagee or charge of any Affordable Dwelling wishing to enforce its security by way of sale shall first comply with the requirements contained in paragraph 11 of Part 2 of Schedule 12;

- 20.1.7 a tenant of an Affordable Dwelling exercising a right to buy, right to acquire or similar statutory right to purchase and its successors in title; and
- 20.1.8 any occupier of a Shared Ownership Unit who purchases from the AHP the entire freehold or long leasehold interest of the said Shared Ownership Unit pursuant to an equity share arrangement and its successors in title.
- 20.2 Where a Party to this Agreement (other than the Sixth Owner to whom this clause 20.2 and clauses 20.3 to 20.5 inclusive shall not apply) intends to dispose of the whole or any part of the Land or ceases to be an owner of the same other than in the circumstances set out in clause 20.1.1 it may by notice to the Council request a formal release either as to the whole or part as the case may be of any of the provisions of this Agreement and shall in such notice specify:-
- 20.2.1 precisely the part of the Land the subject of the request;
- 20.2.2 the name and address of the relevant Party's successor; and
- 20.2.3 the provisions of the Deed from which the relevant Party desires to be released.
- 20.3 Upon receipt of any such request pursuant to clause 20.2 the Council shall be entitled to require the relevant Party making the request to procure that such proposed purchaser or new owner shall enter into a deed of substitution (including any bonding/charging arrangements which may be required by the Council in respect of the then cost of carrying out all relevant outstanding obligations) confirming its acceptance of all relevant outstanding obligations under this Agreement of the relevant Party making the request.
- 20.4 Subject to the matters set out in clause 20.3 the Council shall not unreasonably withhold or delay its consent to the request under clause 20.2 except that the Council may in its sole discretion refuse such consent if the Party making the request has committed and not remedied any breach of this Agreement and on:-
- 20.4.1 the disposal of the interest or cessation of ownership (as the case may be) notified in writing to the Council;
- 20.4.2 on receipt of such consent from the Council pursuant to clause 20.2
- 20.4.3 (if required) on the execution of such deed of substitution; and
- 20.4.4 (if required) the provision of Adequate Security arrangements as the case may require
- the Party as appropriate making such request shall forthwith be released from all of the provisions of this Agreement to which the consent relates (which in the case of a transfer of part of the Party's interest in the Land shall be taken to mean in relation to that part of the Land only) without prejudice however to any antecedent breach by the Party making such request of any such provisions whether or not the same are apparent at the date of such deed of substitution PROVIDED THAT in any event all liability on the part of the Party shall in any event cease in respect of each relevant clause on the completion of the obligation contained or referred to in that clause.
- 20.5 The Party (on behalf of the Party and their successors in title and all persons deriving title under them) covenants to pay the reasonable and proper costs of the Council incurred in dealing with a request under clause 20.2.
- 20.6 This Agreement shall not bind nor be enforceable against the Sixth Owner after it has disposed of all of its interest in the HCA Retained Land or in the event of a disposal of part, against the part disposed of, but without prejudice to the liability of the Sixth Owner for any subsisting breach of this Agreement prior to parting with such interest

## 21. DISPUTE RESOLUTION

- 21.1 In the event of a dispute or difference arising between the Parties (or any of them) touching or concerning any matter or thing arising out of this Agreement (other than a dispute or difference touching or concerning the meaning or construction of this Agreement) any Party may serve on another a Dispute Notice and such dispute or difference may be referred to an Expert being an independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the president (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications.
- 21.2 In the absence of agreement between the relevant Parties to the dispute or difference (the "Relevant Parties") as to the professional qualifications of the Expert to be appointed pursuant to clause 21.1 or as to the appropriate professional body within ten (10) Working Days after any one of the Relevant Parties has given to the other Relevant Party or Parties a written request to concur in the professional qualifications of the Expert to be appointed pursuant to clause 21.1 then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the president for the time being of the Law Society for England and Wales on the application of a Relevant Party and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the Relevant Parties and his costs shall be payable by the Relevant Parties in such proportion as he shall determine and failing such determination shall be borne by the Relevant Parties in equal shares.
- 21.3 The Expert shall act as an expert and not an arbitrator and his reasonable costs shall be at his discretion.
- 21.4 The Expert shall be required to give notice to the Relevant Parties inviting each of them to submit to him within fifteen (15) Working Days of his appointment written submissions and supporting material and shall afford to the Relevant Parties an opportunity to make counter submissions within a further fifteen (15) Working Days in respect of any such submission and supporting material and the Expert's decision shall be given in writing within fifteen (15) Working Days from receipt of any counter submissions or in the event that there are no counter submissions within fifteen (15) Working Days of receipt of the written submissions and supporting material with reasons unless such time periods are varied by agreement between the Relevant Parties.
- 21.5 The Expert's decision shall be final and binding on the Relevant Parties unless one or more of them has notified the other(s) in writing of its dissatisfaction with it in accordance with clause 21.6 of this Agreement.
- 21.6 If after the Expert has made a decision pursuant to clause 21.5 any one of the Relevant Parties is dissatisfied with it and such Party has notified the other Relevant Parties in writing of his dissatisfaction within ten (10) Working Days of the date of receipt of the Expert's decision, the Relevant Parties shall be entitled to commence legal proceedings in the court.

## 22. RELATED PLANNING AGREEMENTS

- 22.1 It is acknowledged by all Parties that:
- 22.1.1 the obligations in Schedules 1 and 4 of this Agreement are replicated in the Related Planning Agreements and nothing in this Agreement shall require the Developer to perform or otherwise comply with the obligations contained in the aforementioned schedules to the extent that they have been performed or otherwise complied with pursuant to one of the Related Planning Agreements; and
- 22.1.2 provided that notice has been given to the Council of the commencement of development under a Related Planning Agreement there shall be no Commencement of Development for the purposes of this Agreement where works are undertaken expressly in reliance on any planning permission granted pursuant to the planning applications with reference PK10/0473/F and/or PK05/1009/O even if such works would constitute Commencement of Development under this Agreement if undertaken pursuant to the Planning Permission

and the Council acknowledges that no obligations under this Agreement shall be enforceable due to the carrying out of such works

22.2 The Council by contemporaneous deed of release has agreed with the Parties to release the WAA Release Land from the provisions covenants obligations restrictions and terms of the 2000 Agreement which release shall be effective from the date of this Agreement and the Council shall annotate the Local Land Charges Register accordingly.

**23. DIRECTORS' SATISFACTION ETC.**

23.1 Where in this Agreement there is a reference to:

23.1.1 the Directors' satisfaction, acceptance, agreement, approval;

23.1.2 the opinion or view of the Directors;

23.1.3 a requirement, direction or instruction of the Directors;

23.1.4 certification by the Directors

such reference shall be construed to mean that the Directors will at all times act reasonably and without delay in expressing, giving, withhold or refusing (as the case may be) such satisfaction, acceptance, agreement, approval, opinion, view, requirement, direction or instruction.

**EXECUTED** as a deed by the parties and delivered the day and year first before written

## SCHEDULE 1

### HIGHWAY IMPROVEMENTS

#### PART 1

#### DEFINITIONS RELATING TO HIGHWAY WORKS

1. The words below shall mean as follows:-

<b>"Certificate No 1"</b>	means a certificate issued by the Director when a phase of the Developer Highway Works has been substantially completed to the Director's satisfaction
<b>"Certificate No 2"</b>	means a certificate issued by the Director at the end of a Highways Maintenance Period when the Director is satisfied that a phase of the Developer Highway Works has been properly maintained and repaired and that all defects (if any) have been remedied
<b>"Developer Highway Works"</b>	means together the Phase 1 Works and the Phase 2 Works
<b>"Final Audit"</b>	means Stage 3 audit of the safety aspects of the design of the Developer Highway Works which shall be carried out in accordance with the approved procedures of the Institute of Highways and Transportation
<b>"Green Road"</b>	means the section of road to be constructed which will extend from the fourth arm of the Rosary Roundabout northwards up to and including the entrance to the MMI
<b>"Highway Dedication Land"</b>	means the land shown for indicative purposes shaded pink on drawing number PJF089-200-P26 annexed as Plan 2 to this Agreement and to be definitively shown on the Highway Dedication Plan
<b>"Highway Dedication Plan"</b>	means a plan identifying the precise boundaries of the Highway Dedication Land to be submitted to and approved by the Director pursuant to paragraph 3.1.1 of Part 2 of this Schedule
<b>"Highway Works"</b>	means together the Phase 1 Works and the Phase 2 Works and the Phase 3 Works and the Toucan Crossing (Ring Road)
<b>"Highways Maintenance Period"</b>	means a period of twelve (12) months from the date of the issue of a Certificate No 1 but if at the end of that period the Director acting reasonably forms the view that he cannot issue Certificate No 2 in respect of the relevant phase of Developer Highway Works the Highways Maintenance Period shall include such further period as shall elapse until the issue of a Certificate No 2
<b>"HMSO Specification"</b>	means the "Specification for Highway Works" in force at the time of the execution of the Developer Highway Works published by The Stationery Office and shall where appropriate include any standard specifications or requirements identified by referred to in or incorporated into those specifications
<b>"Index"</b>	means the indices based on the Retail Price Index (all items) compiled and published by The Office for National Statistics or any other such index that substitutes the Retail Price Index

- "Phase 1 Highways Bond"** means a bond in the sum of Eight Hundred and Ninety Seven Thousand Three Hundred and Eight Pounds (£897,308) substantially in the form set out at Appendix 2 or such other form as shall be agreed between the Developer and the Council from time to time
- Phase 2 Highways Bond** means a bond in the sum of Three Hundred and Seventy Thousand Six Hundred and Twenty Nine Pounds (£370,629) substantially in the form set out at Appendix 2 or such other form as shall be agreed between the Developer and the Council from time to time
- "Phase 1 Works"** means the construction of a fourth arm off the Rosary Roundabout into the Development to a point just to the north of the culvert crossing of the Folly Brook tributary including:
- 1.1 formation of a splitter island and a toucan crossing on the Green Road
  - 1.2 extension of Ring Road cycleway from the Rosary Roundabout to a point just to the north of the culvert crossing of the Folly Brook tributary
  - 1.3 ancillary works including surfacing, drainage, street lighting, white-lining and signage
- shown on drawing number PJF089-100-P1 Rev B annexed as Plan 3 to this Agreement or any later revision thereof as may be approved by the Director
- "Phase 2 Works"** means the partial signalling of the Rosary Roundabout with MOVA control comprising the following works:
- 1.1 signalling both of the Ring Road arms off the Rosary Roundabout and the entry arm from Emersons Way
  - 1.2 the circulatory carriageway will be signal controlled at the Ring Road splitter island and at the Emersons Way splitter island
  - 1.3 the kerbs lines of the Rosary Roundabout will be adjusted to ensure that there is full width for the running lanes.
  - 1.4 ancillary works including surfacing, drainage, street lighting, white-lining and signage
- shown on drawing number PJF089-100-P2 Rev A annexed as Plan 4 to this Agreement or any later revision thereof as may be approved by the Director
- "Phase 3 Works"** means the installation by the Council of signals on the Green Road entry to the Rosary Roundabout including any necessary modifications to the toucan crossing shown on drawing number PJF089-100-P3 annexed as Plan 5 to this Agreement or any later revision thereof as may be approved by the Director
- "Phase 3 Works Contribution"** means the sum of Sixty Six Thousand Nine Hundred and Ninety Five Pounds and Twenty One Pence (£66,995.21) to be applied by the Council to the cost of the Phase 3 Works to include any cost of obtaining any orders, appeals and any Safety Audit required

<b>"Programme"</b>	means the programme agreed in writing by the Developer with the Council for carrying out the Developer Highway Works
<b>"Ring Road"</b>	means the A4174 Ring Road
<b>"Rosary Roundabout"</b>	means the Rosary Roundabout on the Ring Road
<b>"Safety Audit"</b>	means an audit of the safety aspects of the design of the Developer Highway Works which shall be carried out in accordance with the approved procedures of the Institute of Highways and Transportation (it is acknowledged by the Parties that Stage 1 and Stage 2 audits have already been undertaken (ref: DMRB HD 19/03)) and the <b>"Auditor"</b> shall mean the auditor approved under paragraph 1.2 of Part 3 of this Schedule
<b>"Toucan Contribution"</b>	means the sum of Ninety Five Thousand Five Hundred and Eighty Pounds (£95,580) to be applied by the Council to the cost of building the Toucan Crossing (Ring Road) to include any cost of obtaining any orders, appeals and any Safety Audit required
<b>"Toucan Crossing (Ring Road)"</b>	means the toucan crossing to be provided on the A4174 Ring Road at Rosary Roundabout in accordance with the details shown drawing number PJF089-100-P1 Rev B annexed as Plan 3 to this Agreement or any later revision thereof as may be approved by the Director

## PART 2

### COVENANTS RELATING TO THE HIGHWAY WORKS

#### 1. BONDS AND PHASING

##### 1.1 The Developer covenants:-

- 1.1.1 before commencing any part of the Phase 1 Works to enter into the Phase 1 Highways Bond with a reputable surety approved beforehand by the Council; and
- 1.1.2 before commencing any part of the Phase 2 Works to enter into the Phase 2 Highways Bond with a reputable surety approved beforehand by the Council

and it is hereby agreed between the Developer and the Council that paragraphs 1.3 and 3 of Schedule 22 of this Agreement shall apply in respect of the Phase 1 Highways Bond and the Phase 2 Highways Bond as if the Phase 1 Works and the Phase 2 Works were Secured Items under Schedule 22 save in the case of emergencies or when the Director considers that the default gives rise to issues of public safety when paragraph 10.4 of Part 3 shall apply instead.

##### 1.2 The Developer covenants:-

- 1.2.1 not to permit the Occupation of the first Dwelling until the Phase 1 Works have been substantially completed (to the stage when a Certificate No 1 may be issued); and
- 1.2.2 not to permit the Occupation of the 750th Dwelling until the Phase 2 Works have been substantially completed (to the stage when Certificate No 1 may be issued)

in each case at the Developer's expense and to the satisfaction of the Director and in doing so the Developer will observe the terms and requirements set out in Part 3 of this Schedule.



**2. TOUCAN CROSSING (RING ROAD) AND PHASE 3 WORKS**

**2.1 The Council covenants:-**

- 2.1.1 to seek all necessary approvals, orders and permissions to include obtaining a Safety Audit (if required) to authorise the Toucan Crossing (Ring Road) to be constructed prior to commencement of any part of the Highway Works;
- 2.1.2 to complete the construction of the Toucan Crossing (Ring Road) within twelve (12) months following payment of the Toucan Contribution; and
- 2.1.3 to complete the construction of the Phase 3 Works within twelve (12) months following payment of the Phase 3 Works Contribution.

**3. DOCUMENTATION AND COMPLIANCE**

**3.1 The Developer covenants:-**

- 3.1.1 before commencing any part of the Developer Highway Works and without prejudice to the Developer's responsibilities as set out in this Agreement to submit to the Director for his approval (which will not be unreasonably withheld or delayed) the Highway Dedication Plan, the Programme and details of the contractor the Developer proposes to use for the Developer Highway Works;
- 3.1.2 to effect and maintain such insurance as the Council may reasonably require with reputable insurers approved beforehand by the Council in respect of any claims arising from the carrying out of the Developer Highway Works and before commencing the Developer Highway Works furnish the Council with certification of the insurance cover in such manner as the Council shall reasonably require and if called upon at any time by the Council supply the Council with a copy of the insurance policy and proof that it is in force and such other information relating to the policy as the Council shall reasonably require;
- 3.1.3 without prejudice to the Council's right to take action under Section 59 of the Highways Act 1980 (or otherwise) either reimburse to the Council the cost of repairing any damage caused to any highway maintainable at the public expense by any traffic arising from the carrying out of the the Developer Highway Works or of the Development or alternatively (at the option of the Council) effect such remedial works as may be reasonably required by the Director;
- 3.1.4 before commencing any part of the Developer Highway Works or the Development obtain at the Developer's expense any temporary or permanent orders closing or altering any roads bridleways or footpaths which cross the Land or which will be affected by the Development or which may otherwise be required to enable it to be implemented;
- 3.1.5 if the Developer Highway Works or any part of them fall within the scope of the Construction (Design and Management) Regulations 2007 (SI 2007 No: 320) to comply at all times with those Regulations and with any request by the Director for him to inspect the health and safety file and prior to the issue of Certificate No 2 supply the Director with a copy of the sections of the health and safety file which relate to the Developer Highway Works.

**4. PAYMENTS**

**4.1 The Developer covenants:-**

- 4.1.1 to pay to the Council its reasonable costs in connection with any traffic regulation orders or highway consultation procedures required for the Development or the Developer Highway Works and carry out forthwith any consequent physical works including associated works;

- 4.1.2 save where the Council has confirmed in writing that it has already received a sum equivalent to the Toucan Contribution towards the funding of the Toucan Crossing (Ring Road), to pay to the Council the Toucan Contribution prior to first Occupation of any Dwelling;
- 4.1.3 on substantial completion of the Phase 2 Works (to the stage when Certificate No 1 may be issued) to pay to the Council Sixty Six Thousand Nine Hundred and Ninety Five Pounds (£66,995) as a commuted sum in respect of the traffic signals and signalized pedestrian crossings comprised in the Developer Highway Works and thereafter the responsibility of the Developer for such traffic signals and signalized pedestrian crossings shall cease and for the avoidance of doubt the terms "traffic signals" and "signalized pedestrian crossings" shall refer only to the specialist electrical equipment and street furniture associated with the signals and pelican crossings and not to paving kerbing ducting or works of a civil engineering nature (which shall remain the responsibility of the Developer as part of the Developer Highway Works) until the issue of Certificate No 2 PROVIDED THAT if at the date when the commuted sum falls due any payment towards the cost of the maintaining the traffic signals and signalized pedestrian crossings has been paid to the Council under the terms of a Related Planning Agreement the amount of the commuted sum shall be reduced by the amount already paid;
- 4.1.4 subject to paragraph 4.3 of this Part 2 to pay to the Council the Phase 3 Works Contribution within three (3) months of receipt of written demand from the Council together with any additional sum calculated in accordance with paragraph 4.2 of this Part 2;
- 4.1.5 before commencing any part of the Phase 1 Works to pay to the Council the sum of Fifty Eight Thousand Three Hundred and Twenty Five Pounds (£58,325) towards the expenses to be incurred by the Council in supervising the execution of the Phase 1 Highway Works;
- 4.1.6 before commencing any part of the Phase 2 Works to pay to the Council the sum of Twenty Nine Thousand Four Hundred and Eighty Seven Pounds (£29,487) towards the expenses to be incurred by the Council in supervising the execution of the Phase 2 Highway Works.
- 4.2 The Phase 3 Works Contribution due and payable (having been calculated at October 2011 prices) shall be increased in accordance with any increases in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained.
- 4.3 The Council shall only be entitled to serve a written demand on the Developer for payment of the Phase 3 Works Contribution during the period which is following Occupation of the 1000th Dwelling and prior to Occupation of the 1250th Dwelling.

### **PART 3**

#### **TERMS AND CONDITIONS FOR THE EXECUTION OF THE HIGHWAY WORKS**

##### **1. SPECIFICATION**

- 1.1 The Highway Works shall be designed and executed in accordance with the current HMSO Specification together with any modifications thereto which in the opinion of the Director are appropriate and applicable to the Highway Works on the day upon which execution of the Highway Works begins.

- 1.2 Before commencing any part of the Developer Highway Works the Developer shall submit the completed design to a reputable auditor approved beforehand by the Council for a Safety Audit. The Safety Audit and any report on the recommendations shall be submitted to the Director for final approval. The Developer shall amend the design in accordance with any direction given by the Director pursuant to such audit.

2. **ACCESS**

The Developer shall during the progress of the Developer Highway Works upon two (2) Working Days written notice save in respect of emergencies give the Director and anyone duly authorised by him free access to every part of the Developer Highway Works and the site thereof and permit him or them to inspect the same as the Developer Highway Works proceed and all materials used or intended to be used in the Developer Highway Works and shall give effect to any requirements made or direction given by the Director to conform to the approved plans of the Developer Highway Works.

3. **TESTING OF MATERIALS**

- 3.1 Acting reasonably, the Director shall have full power without any obligation to do so to test all materials plant and workmanship at the Developer's expense to ensure that they comply with the terms of the HMSO Specification or the publications referred to therein.

- 3.2 The Developer shall forthwith replace or repair any materials plant or works which have been found by the Director to be unsatisfactory.

- 3.3 To the extent that such places are within the occupation or control of the Developer the Director shall for the purposes of this Agreement be allowed access to the places where materials or plant for the Developer Highway Works may be stored or are in the course of preparation manufacture or use and in doing so the Director shall comply with the reasonable health and safety requirements of the Developer its agents contractors and sub-contractors.

4. **OPENING OF DEVELOPER HIGHWAY WORKS**

- 4.1 The Director may issue instructions to the Developer to open up or expose any part of the Developer Highway Works which has been covered up without previously being inspected by the Director.

- 4.2 Should the Developer fail to comply with any instructions for the taking up or exposing of any work the Council may take up or expose the work in question.

- 4.3 The Developer shall reimburse to the Council the full cost of any work done by the Council under this paragraph 4 unless the Developer has first requested the Council to carry out an inspection which the Council has not carried out within two (2) Working Days of receiving such request and on the Council subsequently taking up or exposing the work in question no defects have been discovered

5. **EXISTING STREET FURNITURE**

The Developer shall remove all existing street furniture affected by the Developer Highway Works and any materials of a conservation nature and either relocate it/them or deliver it/them for storage as directed by the Director.

6. **PREVENTION OF MUD BEING CARRIED ONTO THE HIGHWAY**

The Developer shall make provision to the Director's satisfaction for facilities at the site of the Developer Highway Works to prevent mud and other materials from being carried on to adjacent highways by vehicles and plant leaving the Land or the site of the Developer Highway Works (including the provision and use of on-site wheel washing facilities if required by the Director) and shall sweep the highway in the vicinity of the Land and the Developer Highway Works at the end of each working day.

7. **FACILITIES**

The Developer shall provide or make available for the Director the use of a weatherproof shelter (which may be on a shared basis) at the site of the Developer Highway Works with (if practicable) the use of a telephone.

8. **DIVERSION OF STATUTORY UNDERTAKERS' APPARATUS**

Should any statutory undertakers require all or any part of their underground or overhead plant or apparatus to be removed or diverted as a consequence of the Development or the Developer Highway Works such removal or diversion shall be carried out in accordance with the provisions of the New Roads and Street Works Act 1991 and the costs of any such removal or diversion (as certified by the statutory undertaker affected) shall be borne by the Developer.

9. **TRAFFIC CONTROL**

During the period when the Developer Highway Works are being executed the Developer shall institute at its own expense measures required or approved by the Director to maintain the best possible traffic flows on the highways in the vicinity of the Land.

10. **ROAD SAFETY**

- 10.1 Before commencing any work on the Land the Developer will agree with the Director the number and location of access points to the Development from existing highways in order to reduce so far as possible road safety hazards and will use only the accesses approved by the Director.
- 10.2 During the period when the Developer Highway Works and the Development are being carried out the Developer will comply with the provisions of Chapter Eight of the Road Signs Traffic Manual (published by the Department of Transport) for lighting and signing the Developer Highway Works and the Development.
- 10.3 During the period when the Developer Highway Works and the Development are being carried out and also during the Highways Maintenance Period the Developer will comply with any reasonable directions that the Director gives it with regard to measures to control traffic parking storage of materials and any matter relating to the preservation of public safety.
- 10.4 If the Developer fails to comply with a direction given by the Director under paragraph 10.3 of this Part 3 within a reasonable period of time or in the case of an emergency the Director may forthwith arrange for the taking of any necessary steps and recover the cost of doing so from the Developer and/or the surety under the Phase 1 Highways Bond or the Phase 2 Highways Bond (as appropriate).

11. **DEDICATION AND ADOPTION**

- 11.1 The Developer covenants:-
- 11.1.1 with effect from the Commencement of the Development or the relevant phase of the Developer Highway Works whichever is the earlier to dedicate the Highway Dedication Land to the public for use as a highway for all traffic;
- 11.1.2 if the title to the Highway Dedication Land is registered at HM Land Registry forthwith upon Commencement of the Development at its own expense procure that a notice of this Agreement including a reference to this dedication is recorded on that title and that a copy of the Land Registry entries is produced to the Council demonstrating that this has been done;
- 11.1.3 if title to the Highway Dedication Land is not registered at HM Land Registry forthwith procure at its own expense that this Agreement is registered in HM Land Charges Registry and that proof of this is produced to the Council forthwith upon Commencement of the Development;

- 11.1.4 immediately prior to the issue of Certificate No 1 for each phase of the Developer Highway Works to provide the Council with a plan showing the agreed highway boundaries.

## **12. SUBSTANTIAL COMPLETION OF THE DEVELOPER HIGHWAY WORKS**

- 12.1 When each phase of the Developer Highway Works has been substantially completed the Developer shall give notice to the Auditor requesting the Auditor to carry out a Final Audit of all safety aspects of that phase of the Developer Highway Works and shall carry out any amendments to the Developer Highway Works pursuant to such audit and shall procure a certificate from the Auditor certifying that he is satisfied that all the requirements of the Final Audit have been satisfactorily complied with.
- 12.2 If any phase of the Developer Highway Works or any part thereof to be carried out by the Developer under this Agreement is not carried out or not completed to the satisfaction of the Director in accordance with the terms of this Agreement and the Programme the Council after giving fourteen (14) Working Days' notice of its intention to the Developer (except in cases of emergency) may execute or complete the Developer Highway Works (or relevant part thereof) by its own employees or by contractors or in such manner as it thinks fit and recover the proper cost as certified by the Director from the Developer and no completion certificate shall be issued in respect of the relevant phase of Developer Highway Works until all such works have been executed and the reasonable cost of any such works carried out by or on behalf of the Council has been paid by or on behalf of the Developer.

## **13. CERTIFICATE OF SUBSTANTIAL COMPLETION**

- 13.1 When each phase of the Developer Highway Works has been substantially completed to the satisfaction of the Director he shall issue Certificate No 1 to that effect on behalf of the Council in respect of that phase and thereafter that relevant phase of Developer Highway Works shall be available for use by the public.
- 13.2 Upon issue of the Certificate No 1 for a phase of the Developer Highway Works the Director will authorise the reduction of the Phase 1 Highways Bond or Phase 2 Highways Bond (as applicable to that phase) by ninety (90) per centum in relation to the Developer Highway Works within that phase.

## **14. HIGHWAYS MAINTENANCE PERIOD**

- 14.1 During the Highways Maintenance Period the Developer shall remain responsible at its own expense for remedying to the Director's satisfaction any defect or damage arising from faulty workmanship design or materials and the Developer shall on being given notice in writing specifying such defect or damage at its own expense and within one month from the date of the notice (unless a longer period is agreed with the Director) make good the same to the Director's satisfaction.
- 14.2 During the Highways Maintenance Period and until a Certificate No 2 is issued for the relevant phase the Developer shall maintain the Developer Highway Works for the relevant phase to the Director's satisfaction.
- 14.3 After the expiration of the Highways Maintenance Period and after the Developer has made good any defect or damage following any notice received pursuant to paragraph 14.1 of this Part 3 the Director shall issue Certificate No 2 for the relevant phase and from the issue of the Certificate No 2 the Developer Highway Works shall become highways maintainable at the public expense and the Phase 1 Highways Bond or Phase 2 Highways Bond (as applicable to that phase) shall cease to be required.

15. **MINOR ALTERATIONS**

- 15.1 If at any time during the progress of the Developer Highway Works the Director considers it necessary and reasonable he may require the Developer to incorporate minor alterations or additions to the design or construction of the Developer Highway Works.
- 15.2 The Developer may request the Director to agree minor alterations or additions to the Developer Highway Works and PROVIDED THAT the Director is satisfied (a) that the benefit to the public will not substantially be decreased by the alteration and (b) (where appropriate) that the Developer's request is reasonable the Director will comply with such a request.
- 15.3 The terms and provisions of this Agreement shall apply to the altered Developer Highway Works as they apply to the Developer Highway Works as originally planned.

16. **AS-BUILT DRAWINGS**

Upon completion of the Developer Highway Works (including remedial works) the Developer will provide the Council with an electronic copy of the as-built drawings of the Developer Highway Works.

## SCHEDULE 2

### SUSTAINABLE TRANSPORT CONTRIBUTIONS

#### PART 1

#### DEFINITIONS

1. The words below shall mean as follows:-

<b>"Car Club Performance Schedule"</b>	means the specification to be agreed between the Developer and the Council which sets out the service level including vehicle provision required for the Car Club in relation to phasing of the Development
<b>"Car Club"</b>	means a club for the purpose of providing cars for communal use by the residents of the Development who are enrolled as members of the club
<b>"Car Club Subsidy"</b>	means the sum of Ninety Seven Thousand One Hundred and Seventy Two Pounds (£97,172) to be applied to the cost of managing and operating the Car Club
<b>"Index"</b>	means the indices based on the Retail Price Index (all items) compiled and published by The Office for National Statistics or any other such index that substitutes the Retail Price Index
<b>"Miscellaneous Sustainable Transport Contribution"</b>	means the sum of Forty Five Thousand Eight Hundred and Eighty Seven Pounds (£45,887) to be applied to a car sharing scheme, a bike users group and travel information booklet such sum to be allocated in the absolute discretion of the Director
<b>"Occupier Travel Plan"</b>	means the occupier travel plan(s) to be approved by the Council in accordance with the condition 20 of the Planning Permission
<b>"Sustainable Transport Contributions"</b>	means together the Travel Plan Coordinator Contribution, the Travel Plan Monitoring Contribution, the Car Club Subsidy and the Miscellaneous Sustainable Transport Contribution
<b>"Travel Plan Coordinator"</b>	means the officer of the Council whose responsibilities include the coordination of the actions as set out in the Occupier Travel Plan
<b>"Travel Plan Coordinator Contribution"</b>	means the sum of Forty Five Thousand Eight Hundred and Forty Three Pounds (£45,843) to be applied to the cost of the Travel Plan Coordinator
<b>"Travel Plan Monitoring Contribution"</b>	means the sum of Sixteen Thousand One Hundred and Ninety Five Pounds (£16,195) to be applied to the cost of monitoring and reviewing the Occupier Travel Plan

#### PART 2

#### COVENANTS RELATING TO THE SUSTAINABLE TRANSPORT CONTRIBUTIONS

1. The Developer covenants:-

1.1 before the first Occupation of the 400th Dwelling to pay the Sustainable Transport Contributions to the Council PROVIDED THAT the Car Club Subsidy shall not be payable if prior to the first Occupation of the 400th Dwelling the Developer serves notice in writing on the Director of its

intention to manage the operation of the Car Club in accordance with the Car Club Performance Schedule;

- 1.2 following the service of a notice under paragraph 1.1 of this Part 2 to manage and operate the Car Club in accordance with the Car Club Performance Schedule to the Council's satisfaction PROVIDED THAT the Developer shall not be obliged to expend in excess of the Car Club Subsidy in complying with this obligation.
  
2. The Sustainable Transport Contributions due and payable (having been calculated at October 2011 prices) shall be increased in accordance with any increases in the Index between that date and actual payment (or where paragraph 1.2 of this Part 2 applies in respect of the Car Club Subsidy the date of notice served under paragraph 1.1 of this Part 2) PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained.
  
3. The Sustainable Transport Contributions have been calculated on the basis that 2,000 Dwellings will be constructed on the Land and in the event it is proposed that more or less than 2,000 Dwellings will be constructed on the Land then either:
  - 3.1 the Developer will pay to the Council an amended Sustainable Transport Contribution, or
  - 3.2 the Council will pay to the Developer a balancing sum

in accordance with the timing set out clause 13 of this Agreement and in accordance with the following formula:-

$$(A \div B) \times C$$

Where:-

A = number of properties to be actually constructed

B = 2,000

C = £205,097 (index linked in accordance with paragraph 2 of this Part 2) PROVIDED THAT if a notice has been served under paragraph 1.1 of this Part 2 C shall equal £107,925 (index linked in accordance with paragraph 2 of this Part 2).



### SCHEDULE 3

#### FINANCIAL CONTRIBUTION TOWARDS HIGHWAY IMPROVEMENTS

##### PART 1

#### DEFINITIONS RELATING TO THE FINANCIAL CONTRIBUTION TOWARDS HIGHWAY IMPROVEMENTS

1. The words below shall mean as follows:-

- "Highways Contribution"** means the sum of Two Million Eight Hundred and Ninety Six Thousand Six Hundred and Fifty Two Pounds (£2,896,652) as a contribution to the cost of the North Fringe Development Major Scheme
- "Index"** means the indices based on the Retail Price Index (all items) compiled and published by The Office for National Statistics or any other such index that substitutes the Retail Price Index
- "North Fringe Development Major Scheme"** means the transport proposals identified in the South Gloucestershire Local Plan (adopted January 2006) for the benefit of the North Fringe and East Fringe (Emersons Green and Downend) areas (as described in the Council's emerging Core Strategy as at the date of this Agreement) or such other transport measures as may subsequently be adopted by the Council to provide a contemporary response to travel demand in those areas

##### PART 2

#### COVENANTS RELATING TO THE FINANCIAL CONTRIBUTION TOWARDS HIGHWAY IMPROVEMENTS

1. The Developer will pay to the Council the Highways Contribution in the following instalments:-
- 1.1 Five Hundred and Thirty One Thousand Pounds (£531,000) upon the first anniversary of Occupation of the first Dwelling;
- 1.2 Eight Hundred and Forty Nine Thousand Six Hundred Pounds (£849,600) upon the second anniversary of Occupation of the first Dwelling;
- 1.3 One Million and Sixty Two Thousand Pounds (£1,062,000) upon the third anniversary of Occupation of the first Dwelling; and
- 1.4 Four Hundred and Fifty Four Thousand and Fifty Two Pounds (£454,052) upon the fourth anniversary of Occupation of the first Dwelling.

TOGETHER WITH any additional sum calculated in accordance with paragraph 2 of this Part 2 PROVIDED THAT such additional sum shall take into account any and all instalments previously made.

2. The Highways Contribution due and payable (having been calculated at October 2011 prices) shall be increased in accordance with any increases in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained.
3. The Highways Contribution has been calculated on the basis that 2,000 Dwellings will be constructed on the Land and in the event it is proposed that more or less than 2,000 Dwellings will be constructed on the Land then either:

3.1 the Developer will pay to the Council an amended Highways Contribution, or

3.2 the Council will pay to the Developer a balancing sum

in accordance with the timing set out clause 13 of this Agreement and in accordance with the following formula:-

$$(A \div B) \times C$$

Where:-

A = number of properties to be actually constructed

B = 2,000

C = £2,896,652 (index linked in accordance with paragraph 2 of this Part 2)

## SCHEDULE 4

### MULTI MODAL INTERCHANGE

#### PART 1

#### DEFINITIONS RELATING TO THE MULTI MODAL INTERCHANGE

1. The words below shall mean as follows:-

<b>"Bond"</b>	has the meaning ascribed to it in Schedule 22
<b>"Certificate A"</b>	means a certificate issued by the Director when the MMI Works have been substantially completed to the Director's reasonable satisfaction
<b>"Certificate B"</b>	means a certificate issued by the Director at the end of the MMI Maintenance Period when the Director is satisfied that the MMI Works have been properly maintained and that all defects (if any) have been remedied
<b>"Charge"</b>	has the meaning ascribed to it in Schedule 22
<b>"Developer's Completion Notice"</b>	means written notice to be served by the Developer on the Council of the Developer's completion of the MMI Works
<b>"Commuted Sum"</b>	means the sum of One Hundred and Sixty One Thousand Nine Hundred and Twenty One Pounds (£161,921) to be applied to the management and maintenance of the MMI
<b>"Construction Election Notice"</b>	means written notice to be served by the Developer electing to directly procure construction of the MMI
<b>"Contribution Election Notice"</b>	means written notice to be served by the Developer electing to pay the Cost of Construction to the Council
<b>"Cost of Construction"</b>	means Nine Hundred and Thirty Nine Thousand Eight Hundred and Seventy Pounds (£939,870) which sum shall be increased in accordance with paragraph 7 of Part 2 of this Schedule
<b>"Council's Completion Notice"</b>	means written notice to be served by the Council on the Developer of the Council's completion of the MMI Works
<b>"Council's Construction Notice"</b>	means written notice to be served by the Council on the Developer of the Council's intention to commence the MMI Works, such notice to specify the anticipated commencement date which shall be no less than fourteen (14) Working Days from the date of the notice
<b>"EGE Development Brief"</b>	means the Emersons Green East Development Brief dated 30 October 2006
<b>"Index"</b>	means the indices based on The Retail Price Index (all items) compiled and published by The Office for National Statistics or any other such index that substitutes the Retail Price Index
<b>"MMI"</b>	means a multi modal interchange to comprise a minimum of 240 car parking spaces and to be constructed in accordance with the EGE Development Brief, the MMI Scheme and the provisions of this Schedule

<b>"MMI Application"</b>	means planning application reference PK10/0473/F
<b>"MMI Maintenance Period"</b>	means a period of twelve (12) months from the date of issue of Certificate A but if at the end of that period the Director reasonably forms the view that he cannot issue Certificate B the MMI Maintenance Period shall include such further reasonable period as shall elapse until the issue of Certificate B
<b>"MMI Permission"</b>	means any permission granted in respect of the MMI Application
<b>"MMI Plan"</b>	means Plan 6 together with such revisions and amendments as may be agreed between the Developer and the Council from time to time
<b>"MMI Scheme"</b>	means the scheme of works to be prepared by the Developer and approved by the Council in accordance with paragraph 1 of Part 2 of this Schedule for the provision of the MMI which shall identify the precise location and boundaries of the MMI which shall be located and provided in all respects in accordance with the requirements set out in the EGE Development Brief and the MMI Plan unless otherwise approved by the Council in writing
<b>"MMI Site"</b>	means the land on which the MMI is constructed the precise location and boundaries of which shall be identified in the MMI Scheme
<b>"MMI Works"</b>	means the works specified in the MMI Scheme
<b>"Scheme of Co-ordination"</b>	means a scheme to ensure the coordination of construction interfaces (including access to the Green Road) between the MMI Works and the Development
<b>"Services Infrastructure Works"</b>	means any works required in connection with the Development for the installation, use of or maintenance of any Service Media in on over or under the MMI Site to include (but not limited to) gas, electricity, water, foul sewerage and telecommunications infrastructure (including without limitation any surveys or ground investigations)
<b>"Service Media"</b>	means all pipes sewers mains ducts conduits gutters watercourses wires cables channels flues and any other apparatus

## PART 2

### COVENANTS RELATING TO THE MULTI MODAL INTERCHANGE

#### 1. MMI SCHEME

The Developer shall not Commence the Development without having first obtained the written approval of the Director to the MMI Scheme.

#### 2. ELECTION

The Developer covenants with the Council not to permit the Occupation of the two hundredth (200th) Dwelling unless it has served the Council with either the Construction Election Notice or the Contribution Election Notice.

3. **DEVELOPER TO CONSTRUCT THE MMI**

3.1 **MMI Works**

3.1.1 If the Developer serves the Construction Election Notice pursuant to paragraph 2 of this Part 2 the Developer covenants:

- (a) not to permit the Occupation of the four hundredth (400th) Dwelling until it has completed the MMI Works to the satisfaction of the Director; and
- (b) to maintain the MMI in accordance with paragraph 3.3 of this Part 2.

3.2 **Issue of Certificate of Completion of the MMI Works**

3.2.1 Upon completion of the MMI Works the Developer shall serve the Developer's Completion Notice and upon the Director confirming on inspection that the MMI Works have been satisfactorily completed he shall issue Certificate A to that effect and the Bond or Charge relating to the MMI Works shall be reduced by ninety (90) per centum.

3.3 **MMI Maintenance Period**

3.3.1 Following the issue of Certificate A the Developer shall maintain the MMI for the MMI Maintenance Period and make good any defects arising within the MMI Maintenance Period to the satisfaction of the Director.

3.3.2 At the end of the MMI Maintenance Period the Developer shall give to the Director written notification that the MMI Maintenance Period has expired and subject to the Director being satisfied on inspection that the MMI has been satisfactorily maintained the Director shall issue Certificate B and the Council shall take over the maintenance of the MMI.

3.3.3 For the avoidance of doubt if the Director does not issue Certificate B the Developer shall remain responsible for and hereby covenants to ensure the proper maintenance of the MMI and the MMI Maintenance Period shall be extended until such time as Certificate B has been issued and the legal transfer has been completed.

3.3.4 The Developer covenants upon the issue of Certificate B to deliver a duly executed transfer or transfers of the MMI Site to the Council for the sum of One Pound (£1.00) per transfer incorporating the terms of transfer at Part 3 of this Schedule and using substantially the form of transfer at Appendix 1 of this Agreement.

3.3.5 Upon the issue of Certificate B:

- (a) the Bond or Charge relating to the MMI Works shall cease to be required;
- (b) the Developer shall pay the Commuted Sum to the Council; and
- (c) the Council shall thereafter:
  - (i) keep and maintain the MMI Site to an appropriate standard commensurate with its use as an MMI; and
  - (ii) be responsible for the maintenance of the boundaries of the MMI Site except where those form the boundary of a Dwelling.

4. **COUNCIL TO CONSTRUCT THE MMI**

4.1 If the Developer serves the Contribution Election Notice pursuant to paragraph 2 of this Part 2:

4.1.1 the Developer covenants:

- (a) not to Occupy more than three hundred (300) Dwellings until:
  - (i) the Cost of Construction has been paid to the Council; and
  - (ii) a duly executed transfer or transfers of the MMI Site for the sum of One Pound (£1.00) per transfer incorporating the terms of transfer at Part 3 of this Schedule and using substantially the form of transfer at Appendix 1 of this Agreement has been delivered to the Council
- (b) to pay the Commuted Sum within fourteen (14) Working Days of service of the Council's Completion Notice; and
- (c) when requested to do so by the Council to use Reasonable Endeavours to agree the Scheme of Coordination with the Council.

4.1.2 the Council covenants:

- (a) following the transfer of the MMI Site to the Council to:
  - (i) keep and maintain the MMI Site to an appropriate standard commensurate with its use as an MMI; and
  - (ii) be responsible for the maintenance of the boundaries of the MMI Site except where those form the boundary of a Dwelling
- (b) not to commence the MMI Works until it has:
  - (i) served the Council's Construction Notice on the Developer; and
  - (ii) agreed the Scheme of Co-ordination with the Developer
- (c) to construct the MMI in accordance with:
  - (i) the MMI Scheme;
  - (ii) the MMI Plan;
  - (iii) the MMI Permission; and
  - (iv) the Scheme of Co-ordination
- (d) following the transfer of the MMI Site to allow the Developer access to the MMI Site for the purposes of carrying out any Services Infrastructure Works, the Highway Works or the Development as is reasonably necessary at reasonable times at nil cost and upon reasonable prior written notice of at least seven (7) Working Days except in the case of an emergency and the Council shall use Reasonable Endeavours to secure the same access from any third party interests in, on, under, over or related to the MMI Site;
- (e) upon completion of the MMI Works to serve the Council's Completion Notice as soon as reasonably practicable and to open the MMI to the public for their use within twenty eight (28) Working Days of such notice;
- (f) to apply the Cost of Construction solely to the provision of the MMI in accordance with the MMI Scheme;

- (g) to apply the Commuted Sum solely to the maintenance in perpetuity of the MMI;
- (h) to provide to the Developer such evidence as they shall reasonably require in order to confirm the expenditure of the Cost of Construction on the MMI Scheme;
- (i) in the event that it has not expended the whole or any part of the Cost of Construction at the expiry of the period of five (5) years commencing with the date of receipt of the Cost of Construction or the transfer of the MMI Site to the Council whichever is the later then any unexpended balance shall be repaid to the Developer together with interest accrued at the Interest Rate from the date of payment to the date of repayment; and
- (j) in the event that any part of the MMI Site is not used for the MMI at the expiry of the period of five (5) years commencing with the date of receipt of the Cost of Construction or the transfer of the MMI Site to the Council whichever is the later ("**Residual Land**"), to transfer the Residual Land at nil cost back to the Developer transferred the Residual Land to the Council pursuant to paragraph 4.1.1(a)(ii) of this Part 2 and following the date of such transfer the Residual Land shall be free from any restrictions in this Schedule.

## 5. **RELEASE FROM OBLIGATION TO PROVIDE MMI**

- 5.1 The Developer shall be released from the obligations contained in this Schedule if prior to the Occupation of the three hundredth (300th) Dwelling the Council has either:
- 5.1.1 received payment of the Cost of Construction together with the transfer of the MMI Site; or
  - 5.1.2 secured funds and land upon which to construct a Multi Modal Interchange in an alternative location which in all other respects meets the requirements of the EGE Development Brief; or
  - 5.1.3 the MMI has been provided pursuant to a separate agreement entered into under section 106 of the Act.

## 6. **FUTURE CLOSURE OF MMI**

- 6.1 In the event that the MMI is subsequently closed to the public for a continuous period exceeding twelve (12) months, the Council shall transfer the MMI Site at nil cost back to the Developer and following the date of such transfer the Land shall be free from any restrictions in this Schedule

## 7. **INDEX LINKING**

- 7.1 The Commuted Sum and the Cost of Construction both due and payable (having been calculated at October 2011 prices) shall if not paid on the date hereof be increased in accordance with any increase in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained.

## 8. **CREATION OF RIGHTS**

The Developer shall not following the date of this Agreement create or grant any rights easements quasi-easements or privileges over the MMI Site which might in any way affect the use of or the access to the MMI Site as envisaged under this Agreement.

## PART 3

### TERMS AND CONDITIONS OF TRANSFER OF THE MULTI MODAL INTERCHANGE

#### 1. TRANSFER OF THE MMI SITE

- 1.1 The Developer covenants to transfer the MMI Site to the Council and the Council covenants to accept the transfer upon the terms and conditions set out in this Schedule.

#### 2. PRICE

- 2.1 The price shall be One Pound (£1.00) per transfer payable on completion.

#### 3. TITLE

- 3.1 The Developer shall at their own expense:

- 3.1.1 deduce a good and marketable title free from any financial or other charge; and  
3.1.2 provide adequate plans showing the MMI Site for use in connection with the transfer.

#### 4. COVENANT FOR TITLE

- 4.1 The Developer shall convey with full title guarantee.

#### 5. MATTERS SUBJECT TO WHICH MMI SITE SOLD

- 5.1 The MMI Site is sold subject to and with the benefit of (as the case may be):

- 5.1.1 all matters registered as local land charges;  
5.1.2 all notices orders proposals or requirements affecting or relating to the MMI Site given or made by any government department statutory undertaking or other public or local authority of which notice is given; and  
5.1.3 all rights easements quasi-easements and privileges in the nature of light air drainage way and passage and other like rights used or enjoyed over the MMI Site and of which notice has been given.

- 5.2 The MMI Site is sold subject to all matters disclosed in writing to the Council prior to the date hereof by the relevant Owners' solicitors.

- 5.3 The Council may elect to nominate an alternative transferee in respect of the MMI Site or any part thereof and such transfer shall likewise be in accordance with the terms and conditions contained in this Schedule.

- 5.4 In such transfer the Council (or such other person or body nominated as aforesaid) shall undertake with the Developer (in their personal capacity only) to hold the MMI Site for use as a multi modal interchange as envisaged in the EGE Development Brief (and appropriate restrictions shall be included in the Proprietorship and Charges Register at the Land Registry to secure covenants to be entered into for compliance with the provisions of this Schedule) and in the event that the Council or other nominated transferee wishes to use the MMI Site for any purpose other than for use as a multi-modal interchange then they may only do so with the written approval of the relevant Owners and in the absence of such approval the MMI Site shall be transferred back to the Developer



**6. INCORPORATING STANDARD CONDITIONS OF SALE**

6.1 The Standard Conditions of Sale (Fifth Edition) shall apply to this transfer insofar as the same are applicable to a sale of the MMI by private treaty and are not otherwise inconsistent with the terms of this Agreement or excluded hereby.

6.2 The following provisions of the said Standard Conditions of Sale shall not apply:-

2.2 2.3 3.1.4 3.2.2 3.3 4.4 4.6.2 5.1.2 to 5.1.6 5.2.2(b) to (f) inclusive 6.1 and 8

**7. BOUNDARIES**

7.1 The precise boundaries of the MMI Site to be transferred are to be agreed in writing between the parties in the MMI Scheme and this will include confirmation of the legal ownership of any abutting ponds watercourses and ditches.

7.2 The Council shall be responsible for the ongoing maintenance of the boundary treatments.

**8. VACANT POSSESSION**

8.1 Vacant possession shall be given on completion.

**9. DATE OF COMPLETION**

9.1 Completion shall take place at the Council Offices as soon as reasonably practicable following the issue of Certificate B or otherwise as agreed in writing between the parties.

## SCHEDULE 5

### CONTRIBUTION TO THE PROVISION OF A FOOTBRIDGE

#### PART 1

#### DEFINITIONS RELATING TO THE FINANCIAL CONTRIBUTION TOWARDS THE FOOTBRIDGE

1. The words below shall mean as follows:-

<b>"Footbridge"</b>	means a 5 metre wide footbridge to be constructed by the Council as shown on the Footbridge Drawings
<b>"Footbridge Contribution"</b>	means Nine Hundred and Forty Six Thousand, Six Hundred and Forty Seven Pounds (£946,647)
<b>"Footbridge Drawing"</b>	means drawing number 6198-036 Revision A annexed as Plan 11 of this Agreement or such other drawings as may be agreed between the Developer and the Council
<b>"Index"</b>	means the indices based on the Royal Institute of Chartered Surveyors Building Cost Index

#### PART 2

#### COVENANTS RELATING TO THE FINANCIAL CONTRIBUTION TOWARDS THE FOOTBRIDGE

1. The Developer will before the first Occupation of the 300th EGE Dwelling pay to the Council the Footbridge Contribution (together with any additional sum calculated in accordance with paragraph 3 of this Part 2) as a contribution towards the cost of construction of a new 5 metre wide footbridge PROVIDED THAT in the event that prior to Occupation of the 300th EGE Dwelling the Council confirms in writing that it has received a sum equivalent to the Footbridge Contribution (increased in accordance with the Index) for the funding of the Footbridge the Developer shall be released from the obligation to pay the Footbridge Contribution and no restriction upon the number of Dwellings that may be Occupied shall apply under this Schedule.
2. Upon receipt of the Footbridge Contribution the Council shall as soon as reasonably practicable procure the construction of the Footbridge.
3. The Footbridge Contribution due and payable (having been calculated at October 2011 prices) shall be increased in accordance with any increase in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained.
4. The Council will repay to the Developer any balance of the Footbridge Contribution which has not been expended (or contracted to be spent) together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always that no such request will be made prior to the expiry of ten (10) years of the date of receipt by the Council of such payment. Any part of the contribution which the Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the Council prior to that date.

## SCHEDULE 6

### FINANCIAL CONTRIBUTION TO PUBLIC TRANSPORT PROVISION

#### PART 1

#### DEFINITIONS RELATING TO THE FINANCIAL CONTRIBUTION TOWARDS PUBLIC TRANSPORT PROVISION

1. The words below shall mean as follows:-

<b>"Index"</b>	means the indices based on the Retail Price Index (all items) compiled and published by The Office for National Statistics or any other such index that substitutes the Retail Price Index
<b>"Key Services"</b>	means new 'express' bus services to serve the Development details of which are set out in Table 1 of Appendix 11 or as otherwise agreed in writing between the Developer and the Council
<b>"Local Services"</b>	means the extension of the existing '48' and '49' bus services (or any other replacement or revised service in the event of these services being withdrawn, amended or replaced) to provide convenient and frequent local bus services linking the Development with key catchment areas and transport interchanges details of which are set out in Table 2 of Appendix 11 or as otherwise agreed between the Developer and the Council in writing
<b>"Public Transport Contribution"</b>	means the sum of One Million Seven Hundred and Fifty Eight Thousand and Seventy Five Pounds (£1,758,075) to be applied by the Council towards the provision, enhancement and/or improvement of the Key Services and the Local Services

#### PART 2

#### COVENANTS RELATING TO THE FINANCIAL CONTRIBUTION TOWARDS PUBLIC TRANSPORT

1. The Developer will pay the Public Transport Contribution to the Council in the following instalments:-
- 1.1 **Local Services**
- 1.1.1 One Hundred and Fifty Nine Thousand Three Hundred Pounds (£159,300) on the first Occupancy of the 200th Dwelling (the "**First Local Services Payment**");
  - 1.1.2 One Hundred and Fifty Nine Thousand Three Hundred Pounds (£159,300) on the first anniversary of the First Local Services Payment;
  - 1.1.3 One Hundred and Fifty Nine Thousand Three Hundred Pounds (£159,300) on the second anniversary of the First Local Services Payment; and
  - 1.1.4 Forty Nine Thousand Five Hundred and Twenty Two Pounds (£49,522) on the third anniversary of the First Local Services Payment;

1.2 **Key Services**

- 1.2.1 Three Hundred and Eighteen Thousand Six Hundred Pounds (£318,600) on the second anniversary of the First Local Services Payment;
- 1.2.2 Three Hundred and Eighteen Thousand Six Hundred Pounds (£318,600) on the third anniversary of the First Local Services Payment;
- 1.2.3 Three Hundred and Eighteen Thousand Six Hundred Pounds (£318,600) on the fourth anniversary of the First Local Services Payment; and
- 1.2.4 Two Hundred and Seventy Four Thousand Eight Hundred and Fifty Three Pounds (£274,853) on the fifth anniversary of the First Local Services Payment.

TOGETHER WITH any additional sum calculated in accordance with paragraph 2 of this Part 2 PROVIDED THAT such additional sum shall take into account any and all instalments previously made

- 2. The Public Transport Contribution due and payable (having been calculated at October 2011 prices) shall be increased in accordance with any increases in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the Deed had been retained
- 3. The Public Transport Contribution has been calculated on the basis that 2,000 Dwellings will be constructed on the Land and in the event it is proposed that more or less than 2,000 Dwellings will be constructed on the Land then either:
  - 3.1 the Developer will pay to the Council an amended Public Transport Contribution (together with the additional sum calculated in accordance with paragraph 2 of this Part 2) or
  - 3.2 the Council will pay to the Developer a balancing sum

in accordance with the timing set out clause 13 of this Agreement and in accordance with the following formula:-

$$(A + B) \times C$$

Where:-

A = number of properties to be actually constructed

B = 2,000

C = £1,758,075 (index linked in accordance with paragraph 2 of this Part 2)

## SCHEDULE 7

### NURSERY FACILITY

#### PART 1

#### DEFINITIONS RELATING TO THE NURSERY FACILITY

1. The words below shall mean as follows:-

<b>"Index"</b>	means the indices based on the Royal Institute of Chartered Surveyors Building Cost Index
<b>"Indicative Nursery Specification"</b>	means a specification for the Nursery Facility which shall include the following:-  (a) the provision of 60 nursery places  (b) to meet OfSTED registration standards the play rooms will offer 2.3 square metres per child with additional space for storage  (c) a ratio of 1:10 toilet/wash hand basins for the children with at least one accessible toilet facility  (d) a staff room/office  (e) changing area for children with special needs  (f) accessible staff toilet  (g) kitchen for food and drink preparation  (h) coat hanging provision  (i) enclosed and secure outdoor play area  (j) buggy storage area  or such revision thereto as shall be agreed by the Developer and the Council (such approval not to be unreasonably withheld or delayed)
<b>"Marketing"</b>	means the marketing of the Nursery Facility which shall include placing the Nursery Facility Site with a reputable agent operating in the district who is experienced in the disposal of similar properties and using Reasonable Endeavours to enter into an agreement for sale or lease of the Nursery Facility Site at Market Value and <b>"Market"</b> shall be construed accordingly
<b>"Market Value"</b>	means the value as assessed by a Valuer of the Nursery Facility Site with the Nursery Facility constructed thereon as confirmed to the Council by the Developer (such value being calculated in accordance with the RICS Valuation Standards (Fifth Edition))
<b>"Nursery Facility"</b>	means a 60 place children's nursery facility to be provided to the Nursery Facility Specification on the Nursery Facility Site
<b>"Nursery Facility Contribution"</b>	means the sum of Five Hundred and Twenty Four Thousand Two Hundred And Eighty Four Pounds (£524,284)

<b>"Nursery Facility Site"</b>	means an area of 0.2 hectares to accommodate the Nursery Facility in the location to be determined and agreed as part of the Detailed Masterplan
<b>"Nursery Facility Specification"</b>	means the specification to be submitted to and approved by the Council to be based on the Indicative Nursery Specification and to include details as to the design and specification of the Nursery Facility
<b>"Nursery Operator"</b>	means a party with whom an agreement for sale or lease (as appropriate) of the Nursery Facility Site is entered into pursuant to paragraph 3.1 of Part 2 of this Schedule
<b>"Reasonable Offer"</b>	means an offer based on Market Value and subject to a condition that the Nursery Facility will be operated as a 60 place children's nursery and not for any other purpose unless otherwise agreed in writing by the Director for Children and Young People such offer having been made by a prospective purchaser or tenant who is able to proceed to complete the purchase or enter into the tenancy (as applicable)
<b>"Unlet or Unsold"</b>	means that no agreement for sale or lease has been entered into in respect of the Nursery Facility
<b>"Valuer"</b>	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a chartered valuation surveyor acting in an independent capacity

## PART 2

### COVENANTS RELATING TO THE NURSERY FACILITY

#### 1. NURSERY FACILITY SPECIFICATION

- 1.1 The Developer covenants not to commence the construction of the Nursery Facility unless and until the Council has first approved the Nursery Facility Specification, such approval not to be unreasonably withheld or delayed and in any event to be provided to the Developer within thirty (30) Working Days of the Council's receipt of the proposed Nursery Facility Specification.
- 1.2 If the Council does not approve or reject the Nursery Facility Specification pursuant to paragraph 1.1 of this Part 2 within thirty (30) Working Days of its receipt such failure to do so shall be treated as the Council's deemed approval to the Nursery Facility Specification.

#### 2. MARKETING

- 2.1 The Developer shall:
  - 2.1.1 commence the Marketing of the Nursery Facility Site prior to Occupation of the one hundred and fiftieth (150th) Dwelling and thereafter Market continuously for a period of one (1) calendar year or if earlier until a Reasonable Offer is made; and
  - 2.1.2 produce to the Council within twenty eight (28) days of written demand (such demands not to be made more frequently than once every twenty eight (28) days) full details of the Marketing that has been undertaken and all offers that have been made, but subject to any limitations on disclosure of details as may result from any confidentiality agreements in place from time to time with prospective buyers and/or tenants.

2.2 In the event that a Reasonable Offer is made within the marketing period referred to in paragraph 2.1.1 of this Part 2 then notwithstanding the expiry of such marketing period the Developer shall use Reasonable Endeavours for a period of not less than three (3) months from the date of such offer to enter into an agreement for the sale or lease (as appropriate) of the Nursery Facility Site on the terms of the Reasonable Offer PROVIDED THAT if more than one Reasonable Offer is received the decision as to which offer to accept shall be in the sole discretion of the Developer.

### 3. DELIVERY

3.1 In the event that an agreement for sale or lease (as appropriate) of the Nursery Facility Site is entered into with a Nursery Operator pursuant to paragraph 2.2 of this Part 2, the Developer shall:

3.1.1 provide written evidence of the same to the Council;

3.1.2 complete the construction of the Nursery Facility to the Nursery Facility Specification prior to first Occupation of the seven hundred and fifty first (751st) Dwelling; and

3.1.3 transfer or lease (as appropriate) the Nursery Facility to the Nursery Operator prior to first Occupation of the 751st Dwelling and provide written evidence of the same to the Council PROVIDED THAT if the Nursery Operator refuses or is unable to accept the transfer or lease (as appropriate) the Developer shall be entitled to deliver a duly executed transfer of the Nursery Facility Site to the Council and paragraph 3.4 of this Part 2 shall apply.

3.2 If despite the Marketing in accordance with paragraph 2 of this Part 2 the Nursery Facility Site remains Unsold or Unlet then the Developer shall at the Developer's election either:-

3.2.1 construct the Nursery Facility to the Nursery Facility Specification and deliver a duly executed transfer of the Nursery Facility Site to the Council prior to first Occupation of the seven hundred and fifty first (751st) Dwelling; or

3.2.2 pay the Council the Nursery Facility Contribution and deliver a duly executed transfer of the Nursery Facility Site to the Council prior to Occupation of the 600th Dwelling.

3.3 Where paragraph 3.2.2 of this Part 2 applies the Council covenants to complete the construction of the Nursery Facility to the Nursery Facility Specification within two (2) years of the transfer of the Nursery Facility Site to the Council or receipt of the Nursery Facility Contribution (whichever is the later).

3.4 Any transfer of the Nursery Facility Site to the Council pursuant to paragraphs 3.2.1 or 3.2.2 of this Part 2 shall be for the sum of One Pound (£1.00) using substantially the form of transfer set out at Appendix 1 and the Council covenants to accept a transfer of the Nursery Facility Site in the circumstances set out in the said paragraphs 3.1 or 3.2 of this Part 2.

### 4. INDEX-LINKING

The Nursery Facility Contribution due and payable (having been calculated at October 2011 prices) shall be increased in accordance with any increase in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the Deed had been retained.

## SCHEDULE 8

### FIRST PRIMARY SCHOOL SITE AND FIRST PRIMARY SCHOOL CONTRIBUTION

#### PART 1

#### DEFINITIONS RELATING TO THE FIRST PRIMARY SCHOOL

1. The words below shall mean as follows:-

<b>"First Primary School Contribution"</b>	means Five Million Four Hundred and Fifteen Thousand Three Hundred and Fifty Nine Pounds (£5,415,359)
<b>"First Primary School Site"</b>	means a site of 1.8 hectares for a primary school within the Land in the approximate position identified as "Primary School" on the Development Framework Plan adjacent to the land marked "Community Hall" (or as otherwise agreed in writing between the Developer and the Director of Children and Young People)
<b>"First Primary School"</b>	means a two form entry primary school to be constructed on the First Primary School Site
<b>"Index"</b>	means the indices based on the Royal Institute of Chartered Surveyors Building Cost Index
<b>"Service Media"</b>	means all pipes sewers mains ducts conduits gutters watercourses wires cables channels flues and any other apparatus
<b>"Statutory Process"</b>	means the process in accordance with the School Standards and Framework Act 1998 the Education Act 2005 and the Education Inspections Act 2006 or subsequent enactment in force from time to time

#### PART 2

#### COVENANTS RELATING TO THE FIRST PRIMARY SCHOOL SITE

1. Prior to the Commencement of the Development the Developer shall:
  - 1.1 agree with the Council the precise boundaries of the First Primary School Site which shall be:-
    - 1.1.1 an accessible site suitable for a primary school;
    - 1.1.2 of appropriate dimension to accord with the Department for Education and Skills (DfES) Area Guidelines (BB99) for a 2 form entry/420 place primary school;
    - 1.1.3 located in broad accordance with the Development Framework Plan or as otherwise agreed in writing between the Developer and the Director of Children and Young People and the Director; and
    - 1.1.4 provide at the Developer's expense an independent ground condition survey (carried out by a surveyor approved beforehand by the Council) of the part of the Land identified under this paragraph 1.1.1 of this Part 2 to establish its suitability and viability for use as the First Primary School Site PROVIDED THAT if the survey does not confirm the suitability and viability of the site a further site shall be agreed in accordance with the provisions of this paragraph 1.1.



- 1.2 deliver a duly executed transfer of the First Primary School Site to the Council for the sum of One Pound (£1.00) on the terms and conditions set out in paragraphs 2 and 3 of this Part 2 and using substantially the form of transfer (and on terms no more onerous) set out at Appendix 1 to this Agreement PROVIDED THAT until the First Primary School Site is transferred to the Council the Developer will (at the risk of the Council) allow access to the First Primary School Site to the Council for the purposes of site investigations and sinking trial boreholes upon forty eight (48) hours written notice save in respect of emergency.
2. The Developer will covenant that there are no service media on under or over the First Primary School Site that would prohibit, prevent or restrict its use as a primary school.
3. The First Primary School Site shall be transferred to the Council subject to a requirement that if the contract for the construction of the First Primary School has not been let within ten (10) years of the date of the transfer the First Primary School Site shall be offered back to the Developer for a nominal value and in such instance the First Primary School Site shall be free of any restrictions in this Schedule.

### **PART 3**

#### **COVENANTS RELATING TO THE FINANCIAL CONTRIBUTION TOWARDS FIRST PRIMARY SCHOOL PROVISION**

1. The Developer will pay to the Council the First Primary School Contribution (such sum to be calculated in accordance with paragraph 2 of this Part 3) in accordance with the following timetable:-
  - 1.1 10% of the First Primary School Contribution on the Commencement of Development;
  - 1.2 40% of the First Primary School Contribution upon commencement of construction of the First Primary School which shall be payable by the Developer within thirty (30) Working Days of receipt of written demand from the Council; and
  - 1.3 50% after 12 weeks of the opening of the First Primary School which shall be payable by the Developer within thirty (30) Working Days of receipt of written demand from the Council.and the Council shall apply such sums solely for the purpose of providing the First Primary School on the First Primary School Site.
2. The First Primary School Contribution due and payable shall:
  - 2.1 be increased in accordance with any increase in the Index between October 2011 and the date of actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the Deed had been retained; UNLESS
  - 2.2 the Department for Education publishes a new cost calculator for the provision of additional school places, in which case the First Primary School Contribution shall be recalculated based on the then prevailing cost calculator.

## SCHEDULE 9

### SECOND PRIMARY SCHOOL SITE AND SECOND PRIMARY SCHOOL CONTRIBUTION

#### PART 1

##### DEFINITIONS RELATING TO THE SECOND PRIMARY SCHOOL SITE

1. The words below shall mean as follows:-

<b>"Index"</b>	means the indices based on the Royal Institute of Chartered Surveyors Building Cost Index
<b>"Second Primary School Contribution"</b>	means One Million Five Hundred and Ninety Eight Thousand Eight Hundred and Twenty Pounds (£1,598,820)
<b>"Second Primary School Notice"</b>	means a written notice served by the Council on the Developer requiring the transfer of the Second Primary School Site to the Council in accordance with the provisions of this Schedule and such notice may only be validly served:  (a) following the grant of all necessary statutory regulatory or other consents or approvals and authorisations for the construction and opening of the Second Primary School; and  (b) on or before a date three (3) years after the service of the Initial Completion Notice
<b>"Second Primary School Site"</b>	means a site of 1.8 hectares for a primary school within the Land in the approximate position identified "Primary School" on the Development Framework Plan to the south of the land marked "Secondary School" (or as otherwise agreed in writing between the Developer and the Director of Children and Young People)
<b>"Service Media"</b>	means all pipes sewers mains ducts conduits gutters watercourses wires cables channels flues and any other apparatus
<b>"Statutory Process"</b>	means the process in accordance with the School Standards and Framework Act 1998 the Education Act 2005 and the Education Inspections Act 2006 or subsequent enactment in force from time to time

#### PART 2

##### COVENANTS RELATING TO THE SECOND PRIMARY SCHOOL SITE

1. The Developer will prior to first Occupation of the seven hundred and fiftieth (750th) Dwelling agree with the Council the precise boundaries of the Second Primary School Site which shall be:-
  - 1.1 an accessible site suitable for a primary school;
  - 1.2 of appropriate dimension to accord with the Department for Education and Skills (DfES) Area Guidelines (BB99) for a 2 form entry/420 place primary school;
  - 1.3 located in broad accordance with the Detailed Masterplan or as otherwise agreed in writing between the Developer and the Director of Children and Young People and the Director; and

- 1.4 the Developer shall provide at its own expense an independent ground condition survey (carried out by a surveyor approved beforehand by the Council) of the part of the Land identified under this paragraph 1 to establish its suitability and viability for use as the Second Primary School Site PROVIDED THAT if the survey does not confirm the suitability and viability of the site a further site shall be agreed in accordance with the provisions of this paragraph 1.
2. Following expiry of sixty (60) Working Days from the later of:
  - 2.1 receipt of the Second Primary School Notice; and
  - 2.2 agreement of the precise boundaries of the Second Primary School Site

the Developer shall not transfer any further Dwellings until it has delivered a duly executed transfer of the Second Primary School Site to the Council for the sum of One Pound (£1.00) on the terms and conditions set out in paragraphs 3 and 4 of this Part 2 and using substantially the form of transfer (and on terms no more onerous) set out in Appendix 1 to this Agreement PROVIDED THAT from the Commencement of Development until the date the Second Primary School Site is transferred to the Council the Developer will (at the risk of the Council) allow free access to the Second Primary School Site to the Council for the purposes of site investigations and sinking trial boreholes upon forty eight (48) hours written notice save in respect of emergency.

3. The Developer will covenant that there are no Service Media on under or over the Second Primary School Site that would prohibit, prevent or restrict its use as a primary school.
4. The Second Primary School Site shall be transferred to the Council subject to a requirement that if the contract for the construction of the Second Primary School has not been let within ten (10) years of the date of the transfer the Second Primary School Site shall be offered back to the Developer for a nominal value and in such instance the Second Primary School Site shall be free of any restrictions in this Schedule.
5. In the event that:
  - 5.1 the Council can no longer serve a valid Second Primary School Notice; or
  - 5.2 a valid Second Primary School Notice is served but the Council subsequently serves notice in writing that it has resolved not to construct the school on the Second Primary School Site

the Second Primary School Site shall cease to be reserved for educational purposes and shall be free from any restrictions in this Schedule.

### **PART 3**

#### **COVENANTS RELATING TO THE FINANCIAL CONTRIBUTION TOWARDS SECOND PRIMARY SCHOOL**

1. The Developer will pay to the Council the Second Primary School Contribution (such sum to be calculated in accordance with paragraph 2 of this Part 3) in accordance with the following timetable but only in circumstances where a valid Second Primary School Notice has been served:-
  - 1.1 10% of the Second Primary School Contribution on completion of the Statutory Process to establish the Second Primary School or on the Occupation of the 1000th Dwelling whichever is later which shall be payable by the Developer within twenty five (25) Working Days of receipt of written demand from the Council;
  - 1.2 40% of the Second Primary School Contribution upon commencement of construction of the Second Primary School or on the Occupation of the 1000th Dwelling whichever is later which shall be payable by the Developer within twenty five (25) Working Days of receipt of written demand from the Council; and

- 1.3 50% of the Second Primary School Contribution 12 weeks after the opening of the Second Primary School or on the Occupation of the 1000th Dwelling whichever is the later which shall be payable by the Developer within twenty five (25) Working Days of receipt of written demand from the Council.

and the Council shall apply such sums solely for the purpose of providing the Second Primary School on the Second Primary School Site.

2. The Second Primary School Contribution due and payable shall:
  - 2.1 be increased in accordance with any increase in the Index between October 2011 and the date of actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the Deed had been retained; UNLESS
  - 2.2 the Department for Education publishes a new cost calculator for the provision of additional school places, in which case the Second Primary School Contribution shall be recalculated based on the then prevailing cost calculator.

## SCHEDULE 10

### SECONDARY SCHOOL SITE AND SECONDARY SCHOOL CONTRIBUTION

#### PART 1

#### DEFINITIONS RELATING TO THE SECONDARY SCHOOL SITE

1. The words below shall mean as follows:-

<b>"Academy Trust"</b>	means a charitable body set up under the Education Act 1996 as amended by the Education Act 2002 which may be selected by the Secretary of State to develop and operate the Secondary School and to take a transfer of the Secondary School Land (whether including the Reserve Land or not) and the Core Area following the service of the Secondary School On Site Election Notice
<b>"Core Area"</b>	shall have the meaning given to it in Schedule 13 (Open Spaces)
<b>"Index"</b>	means the indices based on the Royal Institute of Chartered Surveyors Building Cost Index
<b>"Market Value"</b>	means the value as assessed by the Independent Valuer of the Reserve Land based on residential value (such value being calculated in accordance with the RICS Valuation Standards (Fifth Edition))
<b>"Reserve Land"</b>	means such area (if any) of the Secondary School Land which is in addition to the 1.03 hectares minimum size described in the definition of Secondary School Land up to a maximum of 0.65 hectares the size of which is to be agreed pursuant to paragraph 1 of Part 2 of this Schedule
<b>"Secondary School"</b>	means a secondary school to be constructed on the Secondary School Land
<b>"Secondary School Contribution"</b>	means the sum of Five Million Four Hundred and Eighty Thousand One Hundred and Fifty Nine Pounds (£5,480,159) as may be increased in accordance with paragraph 3 of Part 3 of this Schedule and/or reduced pursuant to paragraph 4 of Part 2 of this Schedule
<b>"Secondary School Land"</b>	means a site within the Land of a minimum size of 1.03 hectares up to a maximum size of 1.68 hectares being land required solely for the provision of the Secondary School (but excluding the Core Area)
<b>"Secondary School Off Site Election Notice"</b>	means a written notice served by the Council on the Developer requiring additional capacity be provided at specified neighbouring secondary schools to cater for children resident (or anticipated to be resident) on the Land and such notice may only be validly served:  (a) following the grant of all necessary statutory regulatory or other consents or approvals and authorisations for the construction of such additional capacity; and  (b) on or before a date three (3) years after the service of the Initial Completion Notice

<b>"Secondary School On Site Election Notice"</b>	means a written notice served by the Council on the Developer specifying those parts of the Secondary School Land it requires to be transferred in accordance with the provisions of this Schedule and such notice may only be validly served:  (a) following the grant of all necessary statutory regulatory or other consents or approvals and authorisations for the construction and opening of the Secondary School; and  (b) on or before a date three (3) years after the service of the Initial Completion Notice
<b>"Statutory Process"</b>	means the process in accordance with the School Standards and Framework Act 1998 the Education Act 2005 and the Education Inspections Act 2006 or subsequent Enactment in force from time to time
<b>"Transfer of Control Agreement"</b>	shall have the meaning given to it in Schedule 13 (Open Spaces)

## PART 2

### COVENANTS RELATING TO THE SECONDARY SCHOOL SITE

1. The Developer will after approval of the Detailed Masterplan but prior to the Occupation of the 750th Dwelling agree with the Council the required size of the Secondary School Land (including the amount of any Reserve Land) and the boundaries of the Secondary School Land which shall be:-
  - 1.1 a generally level and accessible site suitable for a secondary school;
  - 1.2 of appropriate dimension to accord with the Department for Education ("DfE") Area Guidelines (BB98 for a secondary school); and
  - 1.3 located in accordance with the Detailed Masterplan or as otherwise agreed in writing between the Developer and the Director for Children and Young People and the Director.
2. The Developer shall provide at its own expense an independent survey (carried out by a surveyor approved beforehand by the Council) of the part of the Land identified under paragraph 1 of this Part 2 to establish its suitability and viability for use as the site of a Secondary School PROVIDED THAT if the survey does not confirm the suitability and viability of the site a further site within the Land shall be agreed in accordance with the provisions of paragraph 1 of this Part 2.

3. Following expiry of sixty (60) Working Days from the later of:

3.1 receipt of the Secondary School On Site Election Notice; and

3.2 agreement of the precise boundaries of the Secondary School Land to be transferred

the Developer shall not transfer any further Dwellings until it has delivered a duly executed transfer of the part of the Secondary School Land to which the notice relates to the Council (or at the election of the Council to the Academy Trust) on the terms and conditions set out in paragraphs 4 to 6 inclusive of this Part 2 and using substantially the form of transfer (and on terms no more onerous) set out at Appendix 1 to this Agreement PROVIDED THAT until the Secondary School Land is transferred to the Council (or the Academy Trust) the Developer will (at the risk of the Council) allow access to the Secondary School Land to the Council or its nominee for the purpose of site investigations and sinking trial boreholes upon forty eight (48) hours written notice save in respect of emergency.

4. The purchase price of the Secondary School Land shall be One Pound (£1.00) PROVIDED THAT there shall be deducted from the Secondary School Contribution payable by the Developer to the Council pursuant to paragraph 1.2 of Part 3 of this Schedule a sum equal to the Market Value of the Reserve Land (if any part of the Reserve Land is required pursuant to paragraph 1 of this Part 2) such value to be assessed at the date of the transfer PROVIDED FURTHER THAT in the event that the Secondary School Contribution becomes repayable pursuant to clause 6.1.5 of this Agreement then the whole of the Secondary School Contribution will be repayable to the Developer notwithstanding any deductions made in respect of the Reserve Land.

5. The Developer will covenant that there are no Service Media on under or over the Secondary School Land that would prohibit, prevent or restrict its use as a secondary school or sports facilities associated therewith.

6. The Secondary School Land shall be transferred subject to a requirement that if the contract for the construction of the Secondary School has not been let within ten (10) years of the date of the transfer the Council shall offer to transfer 1.03 hectares of the Secondary School Land back to the Developer for a nominal value and to transfer the Reserve Land (if any) back to the Developer at sum equal to the Market Value of the Reserve Land such value to be assessed at the date of the transfer to the Developer. In such instance the Secondary School Land shall cease to be reserved for educational purposes and shall be free from any restrictions in this Schedule.

7. The Council covenants that the Secondary School shall so far as reasonably practicable be designed and constructed such that any changing facilities and storage areas for shared sports equipment and apparatus associated with the Core Area are accessible to the public outside of normal school operating hours so as to facilitate the use of the Core Area by the public pursuant to the Transfer of Control Agreement.

8. Any part of the Secondary School Land not specified in the Secondary School On Site Election Notice shall from the date of that notice cease to be reserved for educational purposes and shall be free from any restrictions in this Schedule.

### PART 3

#### COVENANTS RELATING TO THE FINANCIAL CONTRIBUTION TOWARDS SECONDARY SCHOOL PROVISION

1. The following provisions shall apply where a valid Secondary School On Site Election Notice has been served:
  - 1.1 The Council shall give the Developer notice in writing as soon as reasonably practicable following:-
    - 1.1.1 the date on which the Statutory Process has been completed;
    - 1.1.2 the date on which construction of the Secondary School is commenced; and
    - 1.1.3 the date which is 12 weeks after the opening of the Secondary School.
  - 1.2 The Developer will pay to the Council the Secondary School Contribution, together with any additional sum calculated as set out in paragraph 3 of this Part 3, in accordance with the following timetable:-
    - 1.2.1 10% of the Secondary School Contribution on completion of the Statutory Process to establish the school or Occupation of the 1000th Dwelling whichever is later which shall be payable by the Developer within twenty five (25) Working Days of receipt of written demand from the Council;
    - 1.2.2 40% of the Secondary School Contribution less any sum to be deducted pursuant to paragraph 4 of Part 2 of this Schedule upon commencement of construction of the Secondary School or Occupation of the 1000th Dwelling whichever is later which shall be payable by the Developer within twenty five (25) Working Days of receipt of written demand from the Council; and
    - 1.2.3 50% of the Secondary School Contribution no later than 12 weeks after the opening of the Secondary School or Occupation of the 1000th Dwelling whichever is later which shall be payable by the Developer within twenty five (25) Working Days of receipt of written demand from the Council

and the Council shall apply such sums solely for the purpose of providing the Secondary School on the Secondary School Land.
2. Where a valid Secondary School Offsite Site Election Notice has been served the Developer will pay to the Council the Secondary School Contribution, together with any additional sum calculated as set out in paragraph 3 of this Part 3, within twenty five (25) Working Days of receipt of written demand from the Council PROVIDED THAT the Council shall not be entitled to serve a written demand prior to Occupation of the 1000th Dwelling and the Council shall apply such sum solely for the purpose of extending the capacity of other neighbouring secondary schools to cater for the number of children resident (or anticipated to be resident) on the Land and/or for any associated site acquisition costs.
3. The Secondary School Contribution due and payable shall:
  - 3.1 be increased in accordance with any increase in the Index between October 2011 and the date of actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the Deed had been retained; **UNLESS**
  - 3.2 the Department for Education publishes a new cost calculator for the provision of additional school places, in which case the Secondary School Contribution shall be recalculated based on the then prevailing cost calculator.



## PART 4

### SERVICE OF THE SECONDARY SCHOOL ON SITE NOTICE OR SECONDARY SCHOOL OFF SITE NOTICE

1. The Council may only serve either a single Secondary School On Site Election Notice or a single Secondary School Off Site Election Notice (but not both).
2. Once a Secondary School On Site Election Notice or a Secondary School Off Site Election Notice shall have been served then that notice shall be final and binding as to:
  - 2.1 the location of the new school to which the Secondary School Contribution as set out in this Schedule may be applied or the location of additional class rooms to be provided at an existing school or schools to which the Secondary School Contribution may be applied; and
  - 2.2 whether a contribution is payable towards construction of a new school on the Secondary School Land or towards the provision of additional classrooms at an existing school or schools.
3. In the event that:
  - 3.1 a valid Secondary School Off Site Election Notice is served;
  - 3.2 the Council can no longer serve a valid Secondary School On Site Election Notice; or
  - 3.3 a valid Secondary School On Site Election Notice is served but the Council subsequently serves notice in writing that it has resolved not to construct the school on the Secondary School Site

the Secondary School Site shall cease to be reserved for educational purposes and shall be free from any restrictions in this Schedule.

## SCHEDULE 11

### EXTRA CARE HOUSING

#### PART 1

#### DEFINITIONS

1. The words below shall mean as follows:-

<b>"Extra Care Housing Facility"</b>	means a building or buildings providing a minimum of 50 beds built in accordance with the Extra Care Housing Specification
<b>"Extra Care Housing Land"</b>	means a serviced site which shall be set aside for the Extra Care Housing Facility and such land shall have main utilities and road access installed to its boundary upon the date of any transfer or lease to an Older People's Accommodation Specialist
<b>"Extra Care Housing Specification"</b>	means the brief to be submitted to and approved by the Council to include the design and specification of the Extra Care Housing Facility subject to guidelines as they appear in the South Gloucestershire Extra Care Housing Briefing Guide at Appendix 13 to this Agreement
<b>"Marketing"</b>	means the marketing of the Extra Care Housing Land which shall include:  (a) placing the Extra Care Housing Land with a reputable agent operating in the district who is experienced in the disposal of similar properties;  (b) requesting the agent to directly market the Extra Care Housing Land to Extra Care Lot Members of the Housing Delivery Panel (the current list being in the South Gloucestershire Extra Care Housing Briefing Guide at Appendix 13 to this Agreement) and to any other relevant Older People's Accommodation Specialists; and  (c) using Reasonable Endeavours to enter into an agreement for sale or lease of the Extra Care Housing Land at Market Value and " <b>Market</b> " shall be construed accordingly
<b>"Market Value"</b>	means the value as assessed by a Valuer of the Extra Care Housing Land as confirmed to the Council by the Developer (such value being calculated in accordance with the RICS Valuation Standards (Fifth Edition))
<b>"Older People's Accommodation Specialist"</b>	means either a development and or management specialist in older people's accommodation

- "Reasonable Offer"** means an offer based on Market Value and subject to the following conditions:
- (a) that the Older People's Accommodation Specialist completes the construction of the Extra Care Housing Facility in accordance with the Extra Care Housing Specification at its own cost prior to the date when first Occupation of the one thousandth (1000th) Dwelling is projected to occur; and
  - (b) that the Extra Care Housing Land is used for the provision and operation of an Extra Care Housing Facility in line with the Extra Care Housing Specification and not for any other purpose unless otherwise agreed in writing by the Director for Community Care and Housing
- such offer having been made by a prospective purchaser or tenant who is able to proceed to complete the purchase or enter into the tenancy (as applicable)
- "Unlet or Unsold"** means that no agreement for sale or lease has been entered into with an Older People's Accommodation Specialist in respect of the Extra Care Housing Land
- "Valuer"** means a Member or Fellow of the Royal Institution of Chartered Surveyors being a chartered valuation surveyor acting in an independent capacity

## PART 2

### COVENANTS RELATING TO THE EXTRA CARE HOUSING LAND

#### 1. EXTRA CARE HOUSING SPECIFICATION

- 1.1 Prior to the submission of any Reserved Matters Application for that part of the Land which contains the Extra Care Housing Land, the Developer shall submit the Extra Care Housing Specification to the Council for approval such approval not to be unreasonably withheld or delayed and in any event approval or rejection is to be provided to the Developer within thirty (30) Working Days of the Council's receipt of the proposed Extra Care Housing Specification.
- 1.2 If the Council does not approve or reject the Extra Care Housing Specification pursuant to paragraph 1.1 of this Part 2 within thirty (30) Working Days of its receipt such failure to do so shall be treated as the Council's deemed approval to the Extra Care Housing Specification.

#### 2. MARKETING OF THE EXTRA CARE HOUSING LAND

- 2.1 The Developer shall:
  - 2.1.1 commence the Marketing of the Extra Care Housing Land prior to Occupation of the two hundred and fiftieth (250th) Dwelling and thereafter Market continuously for a period of one (1) calendar year or if earlier until a Reasonable Offer is made; and
  - 2.1.2 produce to the Council within twenty eight (28) days of written demand (such demands not to be made more frequently than once every twenty eight (28) days) full details of the Marketing that has been undertaken and all offers that have been made, but subject to any limitations on disclosure of details as may result from any confidentiality agreements in place from time to time with prospective buyers and/or tenants.

2.2 In the event that a Reasonable Offer is made within the marketing period referred to in paragraph 2.1.1 of this Part 2 then notwithstanding the expiry of such marketing period the Developer shall use Reasonable Endeavours for a period of not less than three (3) months from the date of such offer to enter into an agreement for the sale or lease (as appropriate) of the Extra Care Housing Land on the terms of the Reasonable Offer PROVIDED THAT if more than one Reasonable Offer is received the decision as to which offer to accept shall be in the sole discretion of the Developer.

**3. DISPOSAL OF THE EXTRA CARE HOUSING LAND**

3.1 In the event that an agreement for sale or lease (as appropriate) of the Extra Care Housing Land is entered into with an Older People's Accommodation Specialist pursuant to paragraph 2.2 of this Part 2, the Developer shall:

3.1.1 provide written evidence of the same to the Council;

3.1.2 transfer or lease (as appropriate) the Extra Care Housing Land to the Older People's Accommodation Specialist and provide written evidence of the same to the Council; and

3.1.3 use Reasonable Endeavours to procure the construction of the Extra Care Housing Facility by the Older People's Accommodation Specialist in accordance with the Extra Care Housing Specification under the terms of the agreement for sale or lease prior to first Occupation of the one thousandth (1000th) Dwelling.

**4. OFFER TO TRANSFER EXTRA CARE HOUSING LAND TO COUNCIL**

4.1 If despite the Marketing in accordance with paragraph 2 of this Part 2 the Extra Care Housing Land remains Unsold or Unlet then the Developer shall:

4.1.1 serve a written notice on the Council to that effect; and

4.1.2 offer to sell the Extra Care Housing Land to the Council at Market Value which offer shall remain valid and available for acceptance for a period of not less than six (6) months following the date of the offer.

4.2 If the Council accepts the offer made pursuant to paragraph 4.1.2 of this Part 2 the Developer will deliver a duly executed transfer of the Extra Care Housing Land to the Council or its nominee using substantially the form of transfer set out at Appendix 1 to this Agreement incorporating such terms to ensure that the Extra Care Housing Land shall be used only for an Extra Care Housing Facility and for no other purpose and subject to a requirement that if the contract for the construction of the Extra Care Housing Facility has not been let within five (5) years of the date of the transfer the Extra Care Housing Land shall be offered back to the Developer at the same value as that transferred to the Council and in such instance the Extra Care Housing Land shall be free of any restrictions in this Schedule.

5. If the Council rejects the offer made pursuant to paragraph 4.1.2 of this Part 2 or does not accept the offer in writing on or before expiry of the period set out in the said paragraph 4.1.2 then the obligations in this Schedule shall cease to apply and the Developer shall be entitled to develop the Extra Care Housing Land free of any restrictions in this Schedule.

**SCHEDULE 12**  
**AFFORDABLE HOUSING**  
**PART 1**

1. Definitions relating to Affordable Housing

The words and expressions below shall mean as follows:-

<b>"1996 Act"</b>	means the Housing Act 1996
<b>"2008 Act"</b>	means the Housing and Regeneration Act 2008
<b>"Actual Market Value"</b>	means the market value of an Affordable Dwelling assessed in a Staircasing Event
<b>"Additional Affordable Housing"</b>	means any new replacement or additional Affordable Housing provided within the Council area in a scheme that shall first have been agreed with the Director of Community Care and Housing (such agreement not to be unreasonably withheld or delayed) to meet identified housing need at the time of the provision which for the avoidance of doubt excludes any Affordable Housing provided pursuant to Part 2 of this Schedule of this Agreement or any other Affordable Housing brought forward as part of the Council's prevailing adopted development plan Affordable Housing requirement in pursuance of Section 106 of the Act or subsequent legislation
<b>"Affordable Dwelling"</b>	a Dwelling identified and agreed as forming part of the Affordable Housing in accordance with this Schedule and with the benefit of such rights and easements over the Land as are reasonably necessary to provide access to the Dwelling (including any including entrance ways, corridors, parking and other ancillary areas)
<b>"Affordable Housing"</b>	means affordable housing as described and defined in Annex 2 of the National Planning Policy Framework
<b>"Affordable Housing Contract"</b>	means a binding contract with an Approved AHP or RP or AHP for the sale (which shall be by way of freehold or leasehold) and construction of the Affordable Dwellings on the Affordable Housing Land and such contract shall include terms that require:-  (a) the Approved AHP or RP or AHP to offer to the Council the opportunity to refer potential occupants for the Social Rented Units and to the HomeBuy Agent in respect of the Shared Ownership Units;  (b) full and free rights of access both pedestrian and vehicular from a public highway to the relevant part of each Affordable Dwelling subject to any

standard conveyancing requirements in respect of pro rata payments relating to the repair and maintenance of such accessways pending adoption;

- (c) full and free rights for the passage of water soil electricity gas and other services through the pipes drains channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the relevant part serving each Affordable Dwelling subject to any standard conveyancing requirements in respect of pro rata payments relating to the repair and maintenance of such service media pending adoption and
- (d) such other commercial terms and conditions as may be reasonably required by the Developer and the Approved AHP or RP or AHP

**"Affordable Housing Land"** means those parts of the Land identified in the Affordable Housing Plan and Schedule on which Affordable Dwellings are provided

**"Affordable Housing Plan and Schedule"** means the site wide affordable housing plan and schedule required to be submitted to and approved by the Council prior to the submission of the first Reserved Matters Application pursuant to condition 9 of the Planning Permission identifying:

- (a) 25% of Dwellings as Base Affordable Dwellings; and
- (b) 8.3% of Dwellings to be provided as Target Affordable Dwellings in addition to the Base Affordable Dwellings if the Pre-Conditions in paragraph 1.5 of Part 2 of this Schedule are satisfied

including any amendments to the said plan and schedule as may be agreed with the Council from time to time

**"Affordable Rent"** means the rent charged for an Affordable Rented Unit which is no more than 80% of the local market rent including Service Charges for a similar type of property and shall be increased annually by no more than RPI plus 0.5% and reset at the start of each new tenancy

**"Affordable Rented Unit"** means rented housing provided by registered providers of Affordable Housing let at Affordable Rent and which complies with the definition in Annex 2 of the National Planning Policy Framework

<b>"AHP"</b>	<p>means an affordable housing provider which is:</p> <ul style="list-style-type: none"> <li>a) a housing association as defined in the Housing Associations Act 1985; or</li> <li>b) a social landlord as defined in Section 2 of the Housing Act 1996; or</li> <li>c) an accredited partner of the HCA for the provision of Affordable Housing; or</li> <li>d) an RP</li> </ul> <p>and is capable of delivering the Affordable Housing in line with this Agreement and complies with the Management Standards</p>
<b>"AHP Contribution"</b>	<p>means the sum to be paid to the Developer for the Target Affordable Dwellings by the Approved AHP or RP or AHP</p>
<b>"Approved AHP"</b>	<p>means any RP which at the date of exchange of contracts to acquire the Affordable Housing Land is on the Council's approved list which may be obtained from the Director of Community Care and Housing the current list being that attached as Appendix 4 which may be replaced by the Council from time to time in any updated approved list</p>
<b>"Base Affordable Dwelling"</b>	<p>means an Affordable Dwelling identified as a Base Affordable Dwelling in the Affordable Housing Plan and Schedule</p>
<b>"Cluster"</b>	<p>means a group of Affordable Dwellings which does not have contiguous boundaries with another group of Affordable Dwellings</p>
<b>"Development Standard"</b>	<p>means a standard to meet or exceed the standards specified for the Market Dwellings and to fully comply with the standard specified by the HCA or other such funding body as a condition of any Grant as agreed in writing by the Council as applicable at the date of this Agreement and which shall require the Affordable Housing to achieve no less than Code Level 3 of the Code for Sustainable Homes, Lifetime Homes Standard and Secured By Design Standards</p>
<b>"Grant"</b>	<p>means any capital funding (excluding the AHP Contribution) provided by the HCA, Approved AHP or RP or AHP or any other public body for the delivery of the Target Affordable Dwellings</p>
<b>"HomeBuy Agent"</b>	<p>means a body appointed or approved by the HCA to act as agents for the allocation of the Shared Ownership Units</p>

<b>"HCA"</b>	means Homes and Communities Agency which is the Government's agency for the administration of affordable housing subsidy and reference to the HCA shall include reference to any successor body or agency
<b>"Index Linked"</b>	means the indices based on the annual change in the RPI
<b>"Intermediate Housing"</b>	means Affordable Housing which is within the definition of intermediate housing contained in Annex 2 of the National Planning Policy Framework
<b>"Management Standards"</b>	means the standards set out in Appendix 5 (Housing Management Standards) of the Council's Affordable Housing Supplementary Planning Document adopted September 2008 or such document that supersedes it
<b>"Market Dwelling"</b>	means any Dwelling other than an Affordable Dwelling
<b>"Market Value"</b>	<p>means the value as assessed by a Valuer of a Dwelling as confirmed to the Council by the Developer (such value being calculated in accordance with the RICS Appraisal and Valuation Standards (Fifth Edition)) and being the estimated amount for which in the absence of this Agreement residential units of equivalent location specification size state of repair and condition and which are not restricted to use as Affordable Housing should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably prudently and without compulsion and on the following assumptions:-</p> <p>(a) no discount is to be allowed for bulk sales or on the basis that more than one property is being sold to the same purchaser</p> <p>(b) it is sold with vacant possession and with good and marketable title</p> <p>(c) the title is free from encumbrances</p> <p>(d) the valuation is for the unrestricted freehold or leasehold (as appropriate) with vacant possession which for the avoidance of doubt ignores any use as Affordable Housing</p> <p>(e) that the property is newly built decorated fully equipped for sale and serviced and fit for immediate Occupation</p> <p>(f) that the valuation is for sale of an individual unit and not part of a larger sale</p>



<b>"Nomination Rights"</b>	<p>means</p> <p>(a) in respect of Social Rented Units and Affordable Rented Units for the Council the opportunity to refer potential occupiers of the Social Rented Units to the Approved AHP or RP or AHP pursuant to a Service Level Agreement</p> <p>(b) in respect of Shared Ownership Units for the Homebuy Agent the opportunity to refer potential occupiers of the Shared Ownership Units to the Approved AHP or RP or APH pursuant to a Service Level Agreement</p>
<b>"On Costs"</b>	<p>means any reasonable costs incurred by an Approved AHP or RP or AHP in relation to any transaction regarding Staircasing Receipts which are not to be reimbursed by any other person</p>
<b>"Phase"</b>	<p>means a phase of the Development indicated in the Affordable Housing Plan and Schedule</p>
<b>"Practical Completion"</b>	<p>means the issue of a certificate of practical completion by the the Developer's architect or in the event that the Development is constructed by a party other than the Developer the issue of a certificate of practical completion by that other party's architect</p>
<b>"RP"</b>	<p>means a registered provider being a social landlord as defined in the 2008 Act which is registered with the HCA</p>
<b>"RPI"</b>	<p>means the General Index of Retail Prices compiled and published by the Office of National Statistics or any other such index that substitutes the General Index of Retail Prices which for the avoidance of doubt shall be used as the baseline index for each annual change where relevant</p>
<b>"Reserved Matters Affordable Housing Plan and Schedule"</b>	<p>means the affordable housing plan required to be submitted to and approved by the Council as a part of each Reserved Matters Application which identifies the locations of the Base Affordable Dwellings and the Target Affordable Dwellings (if any) to be provided within the land the subject of the Reserved Matters Application, and shall be submitted together with a schedule identifying the number, type and tenure of the Base Affordable Dwellings and Target Affordable Dwellings (if any) and shall be substantially in accordance with the Affordable Housing Plan and Schedule.</p>

<b>"Rental Agreement"</b>	means a tenancy under which the relevant Social Rented Unit is let on a starter tenancy or an assured tenancy and in the case of a Social Rented Unit which is a Base Affordable Dwelling the rental payments are in accordance with the Target Rent
<b>"Right to Acquire"</b>	means a scheme giving eligible tenants of RPs a statutory right to buy the home they currently rent at a discount and only applies to an Affordable Dwelling built with Grant after 1st April 1997
<b>"Service Charge"</b>	means the amount payable by the occupant of any Affordable Dwelling for communal services repairs maintenance improvements insurance or management costs to the extent that the costs have been reasonably incurred
<b>"Service Level Agreement"</b>	means the service level agreement then in force made between the Approved AHP or RP or AHP and either the HomeBuy Agent for Shared Ownership Units or the Council for Social Rented Units which complies with the Council's HomeChoice Lettings Policy and Procedure
<b>"Shared Ownership"</b>	means a form of Affordable Housing provided by an Approved RP, an RP, or an AHP in which the occupier initially owns a percentage share of the property with the remainder owned by the Approved RP, an RP, or an AHP on which the occupier pays a rent and can purchase further shares in the property
<b>"Shared Ownership Unit"</b>	means an Affordable Dwelling which is Intermediate Housing and which is disposed of by way of a Shared Ownership Lease to persons who cannot afford to meet their housing needs in the open market
<b>"Shared Ownership Lease"</b>	means a lease in accordance with the guidance on model leases issued by the HCA in September 2011 on page 155 of the Affordable Housing Capital Funding Guide or any superseding guidance under which a Shared Ownership Unit may be disposed of by way of shared ownership lease granted at a premium to be paid by the shared ownership lessee upon completion or raised by way of mortgage or charge and an annual rental element which is a percentage of the Market Value of the unsold equity as at the date of the grant of the lease and under which the provisions of the lease enable the shared ownership lessee to acquire the balance of the equity interest in the relevant Shared Ownership Unit via a Staircasing Event

<b>"Social Rented Unit"</b>	means an Affordable Dwelling which is to be reserved and set aside for initial and future letting on an assured tenancy at Target Rent to people in housing need who cannot afford to meet that need in the open market
<b>"Staircasing Event"</b>	means any occasion on which a Shared Ownership lessee acquires additional equity in an Affordable Dwelling pursuant to a Shared Ownership Lease or a tenant of a Social Rented Unit acquires equity in that Affordable Dwelling and includes the statutory right to acquire
<b>"Staircasing Receipts"</b>	means payments made to the Approved AHP or RP or AHP (minus reasonable On Costs) by a Shared Ownership lessee tenant or any other person for the acquisition of equity in an Affordable Dwelling pursuant to a Staircasing Event
<b>"Sub-Phase"</b>	means any discreet parcel of land forming part of a Phase identified as such by the Developer from time to time by reference to and substantially in accordance with the Affordable Housing Plan and Schedule and/or Reserved Matters Affordable Housing Plan and Schedule
<b>"Subsidy"</b>	means the notional subsidy provided for the Base Affordable Dwellings by the Developer being the difference between:- <ul style="list-style-type: none"> <li>(a) the price paid by an Approved AHP or RP or AHP to the Developer for the Affordable Dwelling pursuant to an Affordable Housing Contract and for the avoidance of doubt the price is as agreed between the Developer and the Approved AHP or RP or AHP at the date of exchange of contracts for the sale; and</li> <li>(b) the Market Value of the Affordable Dwelling at the date of exchange of contracts for the sale of the Affordable Dwelling</li> </ul>
<b>"Target Affordable Dwelling"</b>	means an Affordable Dwelling delivered with Grant and identified in the Affordable Housing Plan and Schedule and in a Reserved Matters Affordable Housing Plan and Schedule as a Target Affordable Dwelling the actual delivery of which as an Affordable Dwelling is subject to the provisions of Part 2 of this Schedule

**"Target Rent"**

means either:

- (a) rent charged in accordance with guideline target rents determined through the national rent regime administered by the HCA and if such regime shall cease to operate or shall not have been revised in the year of the date of grant of any assured tenancy then the last published Target Rent index linked to the increase (if any) in the Retail Prices Index plus 0.5% shall apply instead; or
- (b) such other measure of rental affordability as may be submitted by the Developer and approved by the Council which retains the Affordable Housing at affordable prices

**"Valuer"**

means a Member or Fellow of the Royal Institution of Chartered Surveyors being a chartered valuation surveyor appointed by the Approved AHP or RP or AHP and acting in an independent capacity

**"Wheelchair Units"**

means an Affordable Dwelling which is self-contained accommodation designed for independent living by disabled people or wheelchair users to meet the minimum standards set out in Appendix 4 (Development Standards) of the Council's Affordable Housing Supplementary Planning Document adopted September 2008 or such document that supersedes it

**PART 2**

**AFFORDABLE HOUSING OBLIGATIONS**

Unless otherwise agreed in writing by the Council and the Developer, the Developer covenants with the Council that:-

**1. QUANTUM**

- 1.1 25% of the total number of Dwellings shall be provided as Base Affordable Dwellings.
- 1.2 Up to 8.3% of the total number of Dwellings shall be provided as Target Affordable Dwellings if the Pre-Conditions in paragraph 1.5 of Part 2 of this Schedule are satisfied and the number of Target Affordable Dwellings to be provided shall be determined in accordance with the said paragraph 1.5

- 1.3 The Developer shall not Commence Development in any Sub-Phase containing Target Affordable Dwellings until it has:
- 1.3.1 over a period of not less than four (4) months used Reasonable Endeavours in consultation with the Director of Community Care and Housing to secure Grant sufficient to deliver the Target Affordable Dwellings within that Sub-Phase;
  - 1.3.2 offered the Target Affordable Dwellings within that Sub-Phase to an Approved AHP or RP or AHP which may or may not be the same AHP contracted to deliver the Base Affordable Dwellings and used Reasonable Endeavours to enter into Affordable Housing Contract(s) in respect of the same for a period of not less than four (4) months; and
  - 1.3.3 submitted to the Council a report identifying:
    - (a) the steps it has taken to comply with its obligations in paragraph 1.3.1 and 1.3.2 of this Part 2;
    - (b) the amount of Grant, if any, that has been secured towards the delivery of the Target Affordable Dwellings within that Sub-Phase; and
    - (c) whether the Developer has entered into Affordable Housing Contract(s) in respect of the Target Affordable Dwellings within that Sub-Phase

PROVIDED THAT for the purposes of this paragraph 1.3 Reasonable Endeavours shall not require the making of multiple applications for Grant to the same body in respect of any Target Affordable Dwelling.

- 1.4 The four month period referred to in paragraph 1.3.1 of this Part 2 shall begin no later than the submission of the Reserved Matters Application for the relevant Sub-Phase containing Target Affordable Dwellings.
- 1.5 In the event that any report submitted pursuant to paragraph 1.3.3 of this Part 2 identifies that:
- 1.5.1 Grant has been secured towards the delivery of the Target Affordable Dwellings within a Sub-Phase; and
  - 1.5.2 the Developer has entered into Affordable Housing Contract(s) in respect of the Target Affordable Dwellings within that Sub-Phase (together the "**Pre-Conditions**")

the Developer shall use such Grant as is available to increase the number of Affordable Dwellings in that Sub-Phase by providing Target Affordable Dwellings and for the avoidance of doubt shall only be required to deliver Target Affordable Dwellings to the extent directly commensurate with the amount of Grant available PROVIDED THAT the amount of Grant used to replace Market Dwellings with Affordable Dwellings does not adversely affect or improve the financial viability of any Phase or Sub-Phase that would pertain if the Market Dwellings were not replaced and there shall be no financial benefit or detriment to the Developer and the overall number of Target Affordable Dwellings shall never exceed 8.3% of the total number of Dwellings.

- 1.6 For the purposes of paragraph 1.5 of this Part 2 the amount of Grant required to increase the percentage of Affordable Housing shall be determined as the difference between the Market Value of the Market Dwellings to be replaced by Target Affordable Dwellings (to be assessed by the Valuer in the event of dispute) minus the AHP Contribution and any associated costs which would otherwise be incurred by the Developer if the Dwellings were disposed of as Market Dwellings.
- 1.7 The tenure and type of any Target Affordable Dwellings identified in a Reserved Matters Application to be provided pursuant to paragraph 1.5 of this Part 2 shall be agreed in writing with the Director of Community Care and Housing in consultation with the Developer, the relevant Approved AHP or RP or AHP and the provider of Grant for the relevant Target Affordable Dwellings and for the avoidance of doubt the Target Affordable Dwellings may include Affordable Rented Units.

- 1.8 In the event that any report submitted pursuant to paragraph 1.3.3 of this Part 2 identifies that:
- 1.8.1 Grant has not been secured towards the delivery of the Target Affordable Dwellings within a Sub-Phase (or has only been secured in respect of some of those Target Affordable Dwellings); and/or
  - 1.8.2 the Developer has not entered into Affordable Housing Contract(s) in respect of the Target Affordable Dwellings within that Sub-Phase (or has only entered into Affordable Housing Contract(s) in respect of some of those Target Affordable Dwellings)

the Target Affordable Dwellings in respect of which Grant has not be secured and/or Affordable Housing Contract(s) have not been entered into shall be provided as Market Dwellings to which the obligations in this Schedule shall no longer apply.

**2. APPOINTMENT OF RP/APPROVED AHP/AHP**

Prior to Occupation of 30% of the Market Dwellings within any Phase or Sub-Phase containing Affordable Dwellings the Developer shall enter into Affordable Housing Contract(s) with an Approved AHP or RP or AHP in relation to the Affordable Dwellings to be provided within that Phase or Sub-Phase of the Development.

**3. DISTRIBUTION**

The distribution of the Base Affordable Dwellings and any Target Affordable Dwellings shall be in substantial accordance with the Affordable Housing Plan and Schedule

**4. CLUSTERING**

Unless otherwise agreed in writing between the Developer and the Council the following design principles shall apply in respect of the Affordable Dwellings:-

- 4.1 no more than twelve (12) Affordable Dwellings shall be provided in each Cluster;
- 4.2 no more than six (6) of any house type (excluding flats) shall be provided in each Cluster;
- 4.3 no more than six (6) flats may be accessed off the same communal entrance save that this may be increased to no more than nine (9) flats where both 1 and 2 bedroom flats are accessed off the same communal entrance; and
- 4.4 all flats sharing a communal entrance shall be of a single tenure.

**5. TENURE**

- 5.1 Eighty per centum (80%) of the Base Affordable Dwellings shall be Social Rented Units.
- 5.2 Twenty per centum (20%) of the Base Affordable Dwellings shall be Shared Ownership Units.

6. **TYPE**

6.1 The mix of Base Affordable Dwellings shall be based on the following mix:-

6.1.1 Social Rented Units consisting of:

Percentage	Type	Min Size m2
24%	1 bed flat	45
4%	2 bed flat	67
40%	2 bed house	76
22%	3 bed house	85
7%	4 bed house	100
3%	5 bed house	110

6.1.2 Shared Ownership Units consisting of:

Percentage	Type	Min Size m2
20%	1 bed flat	45
30%	2 bed flat	67
31%	2 bed house	76
19%	3 bed house	85

6.1.3 five per centum (5%) of the Social Rented Units comprised in the Base Affordable Dwellings as Wheelchair Units.

7. **IDENTIFICATION OF AFFORDABLE DWELLINGS IN EACH PHASE/SUB-PHASE**

With each Reserved Matters Application for any Phase or Sub-Phase which includes Affordable Housing Land the Developer shall provide a Reserved Matters Affordable Housing Plan and Schedule identifying the Affordable Dwellings in that Phase or Sub-Phase (and identifying the make up of the balance of the Affordable Dwellings contained in the remainder of that Phase) in substantial accordance with the details contained in the approved Affordable Housing Plan and Schedule unless otherwise agreed in writing with the Council.

8. **DELIVERY**

8.1 The Developer covenants not to permit the Occupation of more than forty per centum (40%) of the Market Dwellings within any Phase or Sub-Phase containing Affordable Dwellings until fifty per centum (50%) of the Base Affordable Dwellings and any Target Affordable Dwellings within that Phase or Sub-Phase as set out in the Affordable Housing Plan and Schedule:-

8.1.1 have achieved Practical Completion; and

8.1.2 have been offered to be transferred to an Approved AHP or RP or AHP.

8.2 The Developer covenants not to permit the Occupation of more than ninety per centum (90%) of the Market Dwellings within any Phase or Sub-Phase containing Affordable Dwellings until one hundred per centum (100%) of the Base Affordable Dwellings and any Target Affordable Dwellings within that Phase or Sub-Phase as set out in the Affordable Housing Plan and Schedule:-

8.2.1 have achieved Practical Completion; and

8.2.2 have been offered to be transferred to an Approved AHP or RP or AHP.

## 9. **MONITORING**

The Developer shall inform the Chief Financial Officer in writing upon:-

9.1 Occupation of thirty per centum (30%) of the Market Dwellings within any Phase and Sub-Phase;

9.2 Occupation of forty per centum (40%) of the total number of Market Dwellings within any Phase or Sub-Phase; and

9.3 completion of the legal transfer of ninety per centum (90%) of the total number of Market Dwellings within any Phase or Sub-Phase.

## 10. **AFFORDABLE HOUSING CONTRACT(S)**

10.1 The Developer covenants with the Council that it will use Reasonable Endeavours to procure the following under the Affordable Housing Contract(s):-

### 10.1.1 **Affordability Levels**

- (a) the rent payable by the occupant of any Social Rented Unit comprised in the Base Affordable Dwellings shall be the Target Rent at the date of first occupation and shall be increased annually by no more than the annual change in the RPI plus 0.5%;
- (b) the rent payable by the occupant of any Shared Ownership Unit shall meet local affordability levels and shall be increased or decreased annually by no more than the annual change in the RPI;
- (c) half of the Shared Ownership Units are to be sold with a market value payable by a purchaser of no more than forty per centum (40%) of the Market Value;
- (d) half of the Shared Ownership Units are to be sold with a market value payable by a purchaser of no more than fifty per centum (50%) of the Market Value; and
- (e) the annual rent on the equity retained by the Approved AHP or RP or AHP for the Shared Ownership Units shall be no more than one per centum (1%) of the unsold equity.

### 10.1.2 **Disposal of Shared Ownership Units**

Shared Ownership Units shall not be disposed of on their initial sale other than by way of Shared Ownership Lease unless otherwise agreed in writing by the Council.



### **10.1.3 Disposal of Social Rented Units**

The Social Rented Units shall not be disposed of other than by way of Rental Agreement unless otherwise agreed in writing by the Council and each Affordable Housing Unit shall be excluded (so far as legally possible) from:-

- (a) the Right to Acquire as referred to in the 1996 Act;
- (b) any right to buy introduced in favour of the occupants of the Affordable Housing Units; and/or
- (c) any other mechanism that could result in any of the Social Rented Units becoming available for sale in the private housing market.

### **10.1.4 Nomination Rights**

The terms of any transfer of an interest in an Affordable Dwelling to an Approved AHP or RP or AHP shall provide that:

- (a) in respect of all first lettings of all Social Rented Units and Affordable Rented Units and seventy five per centum (75%) of all time voids in terms of subsequent lettings of Social Rented Units the Council shall be given Nomination Rights; and
- (b) in respect of all first lettings of all Shared Ownership Units the Homebuy Agent shall be given Nomination Rights.

### **10.1.5 Occupation**

The Affordable Dwellings shall be occupied only by persons in need of Affordable Housing to buy or to rent (at the point of sale or letting) in accordance with the Council's HomeChoice Lettings Policy and Procedure and Policy H6 of the Local Plan.

### **10.1.6 Development Standard**

All Affordable Dwellings shall be constructed to the Development Standard applicable at the date of the relevant Reserved Matters Permission and shall be no less than the standard applied to the Market Dwellings.

### **10.1.7 Managements Standards**

The Approved AHP or RP or AHP to which the Affordable Dwellings are transferred shall obtain written approval from the Council that it complies with the Management Standards before entering into an Affordable Housing Contract.

### **10.1.8 Additional Charges**

- (a) service charges for communal services payable by the occupants of any Affordable Dwelling limited to no more than Five Hundred and Fifty Pounds (£550) per annum (December 2010 base) and Index Linked thereafter; and
- (b) ground rents for the Affordable Housing shall be at a peppercorn rent.

#### 10.1.9 **Transfer**

Under the terms of the legal transfer of the Affordable Housing Land to an Approved AHP or RP or AHP that:

- (a) by the 1st February and 1st August in each calendar year the Approved AHP or RP or AHP shall make a written return (if requested) to the Chief Financial Officer for the preceding six (6) months detailing:
  - (i) the number of Affordable Dwellings practically completed with a breakdown specifying the number of Affordable Dwellings built and occupied with details of their tenure unit type size location rent and service charge;
  - (ii) details of Actual Market Value and equity sold to the occupants under a Shared Ownership Lease; and
  - (iii) the amount of Staircasing Receipts following a Staircasing Event;
- (b) in the event that a mortgage or charge is secured on the Affordable Housing Land and in the event that the Affordable Housing Land or part thereof is transferred to an Approved AHP or RP or AHP that in such transfer the transferee shall covenant with the Developer or its successors in title not to construct or permit to be constructed on the Affordable Housing Land any Dwellings other than Affordable Dwellings but shall not be required to accept any other restriction or condition regarding the future use of the Affordable Housing Land PROVIDED ALWAYS THAT this covenant shall not apply to any mortgagee or chargee holding a legal charge on the Affordable Housing Land or part thereof nor to any receiver appointed by such mortgagee or chargee to the intent that any such mortgagee or chargee or receiver may deal with or dispose of the Affordable Housing Land or any part thereof free from the said covenant and that any person deriving title through or under such mortgagee chargee or receiver shall not be bound by them.

#### 11. **MORTGAGEE IN POSSESSION**

Notwithstanding any other provision of this Agreement the covenants and obligations on the part of the Developer contained in this Agreement shall not be binding upon:-

- 11.1 any mortgagee or chargee in possession of the Affordable Housing Land or any part thereof or any Affordable Dwelling or any receiver appointed by any such mortgagee to the intent that any such mortgagee or chargee or receiver may deal with or dispose of the Affordable Dwelling or any part thereof and/or the Affordable Dwelling free from the covenants and obligations set out in this Agreement and that any successors in title shall not be bound by it; and
- 11.2 any Affordable Dwelling in respect of which a tenant exercises any statutory Right to Acquire or Right to Buy or any Shared Ownership Unit in respect of which the lessee shall have staircased to 100% equity share and (in either case) the tenant or lessee (as the case may be) acquires a freehold or long leasehold interest in the same so that such tenant or lessee shall be entitled to dispose of such Affordable Dwelling thereafter free from the covenants and obligations set out in this Agreement and that any person deriving title through or under such tenant or lessee shall not be bound by it.

## PART 3

### APPLICATION OF STAIRCASING RECEIPTS

1. On the occurrence of any Staircasing Event relating to an Affordable Dwelling and subject always to the application of paragraphs 2, 3 and 4 of this Part 3 the Approved AHP or RP or AHP (as successor in title to the Developer ) shall (having first deducted an amount equal to X% of the initial outstanding net loan debt attributable to that Affordable Dwelling at the point of first disposal as assessed by the Approved AHP or RP or AHP) (where X equals the additional proportion of the equity in the Affordable Dwelling sold as a percentage of the unsold equity immediately prior to the Staircasing Event) reserve and set aside the remaining balance of any Staircasing Receipts received in relation to that Affordable Dwelling for the provision of Additional Affordable Housing until an aggregate amount equal to the Subsidy relating to that Affordable Dwelling (as recalculated and carried forward from time to time under paragraph 3 of this Part 3) shall have been reserved and set aside for such purposes.
2. The provisions of paragraph 1 of this Part 3 shall not apply where there is a statutory or regulatory requirement to account for Staircasing Receipts to any other body.
3. On the occasion of the first and any subsequent Staircasing Event the Subsidy shall be recalculated (but only for the purposes of identifying the amount of any Staircasing Receipt to be reserved and set aside for the provision of Additional Affordable Housing) as follows:-
  - 3.1 On the date of the first Staircasing Event the Subsidy shall be increased or decreased by the percentage increase or decrease (if any) in the Market Value of the relevant Affordable Dwelling from the date as originally notified to the Council by comparing the Market Value so notified by the Approved AHP or RP or AHP at the point of calculating the Subsidy with its Actual Market Value as notified to the Council by the Approved AHP or RP or AHP at the date of the Staircasing Event

**AND** for the avoidance of doubt the Subsidy as increased or decreased under this paragraph shall be the result of the following calculation in respect of any relevant Affordable Dwelling

$$\frac{AMV \times S}{MV}$$

Where:

- AMV** equals the Actual Market Value of the Affordable Dwelling at the date of the first Staircasing Event
- MV** equals the Market Value of the Affordable Dwelling as originally notified to the Council at the point of calculating the Subsidy
- S** equals the Subsidy attributed to that Affordable Dwelling as originally notified to the Council at the point of calculating the Subsidy

- 3.2 The increased or decreased Subsidy shall then be reduced by the amount of any Staircasing Receipts and the balance carried forward
- 3.3 On the date of any subsequent Staircasing Event relating to an Affordable Dwelling the Subsidy balance carried forward under paragraph 3.2 of this Part 3 shall be increased or decreased by the percentage increase or decrease in the Actual Market Value from the date of the previous Staircasing Event and its Actual Market Value as notified to the Council by the Approved AHP or RP or AHP at the date of the subsequent Staircasing Event and the provisions of paragraphs 1, 2, 3.1 and 3.2 of this Part 3 shall be applied (mutatis mutandis) to such balances and any remaining Subsidy balance carried forward.

4. This obligation shall be deemed satisfied and there shall be no requirement to reserve and set aside any further Staircasing Receipts (or part thereof) under paragraphs 1 and 3 of this Part 3 when:-

4.1.1 an amount equal to the Subsidy as re calculated and carried forward from time to time in accordance with paragraph 3 of this Part 3 shall have been set aside for the provision of Additional Affordable Housing as set out in paragraph 1 of this Part 3; or

4.1.2 the final Staircasing Event (leaving the lessee of the Shared Ownership Unit owning a one hundred per centum (100%) freehold or leasehold share) has occurred and the Subsidy is recalculated in accordance with paragraphs 1 and 3 of this Part 3 if the final Subsidy balance as recalculated in accordance with paragraphs 3.1 to 3.3 of this Part 3 is greater than the balance of the Staircasing Receipt to be used reserved and set aside for Additional Affordable Housing identified in paragraph 1 of this Part 3 there will be no requirement to carry forward the Subsidy balances following this final Staircasing Event.

## SCHEDULE 13

### OPEN SPACES

#### PART 1

#### DEFINITIONS RELATING TO THE OPEN SPACES

1. The words and expressions below shall mean as follows:-

<b>"Academy Trust"</b>	shall have the meaning given to it in Schedule 10 (Secondary School)
<b>"All-weather Pitch"</b>	means a flood-lit, all-weather third generation rubber crumb pitch having a fall of no greater than 1.25% along the length and 2.5% across the width with any necessary drainage and attenuation and orientation of the pitch in accordance with Sport England best practice current at the date of commencement of works on the Core Area
<b>"BMX/Skateboard Facility"</b>	means a track built for use by BMX bicycles and skateboards of no more than 0.2 hectares with hard bound mounds and beams designed as a challenging track and in accordance with RoSPA guidance as described in paragraph 4.7 and shown in the "Proposed Public Open Space Provision" table of the Revisions to the Development Framework Plan and Open Space Provision Note
<b>"Category 1 Open Space"</b>	means youth and adult use pitches, courts and greens as defined in the Local Plan and referred to in the Open Space Strategy all facilities being appropriately drained and constructed to Sport England and/or the Football Association match standard specifications (as appropriate) and to be constructed so as to exclude horses
<b>"Category 2 Open Space"</b>	means equipped children's play space as defined in the Local Plan and referred to in the Open Space Strategy
<b>"Category 3 Open Space"</b>	means unequipped children's play space as defined in the Local Plan and referred to in the Open Space Strategy
<b>"Certificate A"</b>	means the certificate of substantial completion referred to in paragraph 5 of Part 3 of this Schedule
<b>"Certificate B"</b>	means a certificate issued by the Director at the end of the Open Space Maintenance Period when the Director is satisfied that the relevant Open Space Phase has been properly maintained
<b>"Core Area"</b>	means the area of 5.14 hectares identified on the plan annexed as Plan 8 to this Agreement and on the Open Space Plan as 1C and reserved for sports facilities including the Cricket Pitch the MUGA 3 x 90mx60m football pitches and an all weather pitch to be used by the public as Category 1 Open Space but which in the event of the opening of the Secondary School shall be subject to a Transfer of Control Agreement providing for the exclusive use of the Core Area by the Secondary School in term time during normal school operating hours and for use by the public as Category 1 Open Space outside term time and outside normal school operating hours
<b>"Core Area Maintenance Contribution"</b>	means that part of the Open Space Maintenance Contribution which relates to the Core Area being the sum of One Million Three Hundred and Thirty Nine Thousand Four Hundred and Eighty Four Pounds (£1,339,484) payable towards the adoption and maintenance of the Core Area (calculated at October 2011 prices) which sum shall be increased in accordance with paragraph 6.2 of Part 4 of this Schedule

<b>"Council's Play Policy"</b>	means the Council's Play Policy 2006 or the latest published version at the date of the relevant Reserved Matters Application
<b>"Cricket Pitch"</b>	means the cricket pitch to be provided in the Core Area to be located on the land which will also be laid out as football pitches as indicatively shown on the Open Space Plan
<b>"Index"</b>	means the indices based on the Updating Percentages published by the Building Cost Information Service for the Schedule of Rates for Grounds Maintenance 1987
<b>"Informal Open Space"</b>	means the areas of land totalling 5.42 hectares to be provided in the approximate positions shown on the Open Space Plan each such area to be a minimum size of 500 square metres and connected by a footpath route to other Open Spaces (and for the avoidance of doubt excludes the Water Attenuation Area Informal Open Space being 2.48 hectares in area which is subject to the provisions of Schedule 19 of this Agreement)
<b>"Incidental Open Spaces"</b>	means those areas of land not forming part of the defined Open Spaces but which the Developer and the Council may agree after the date of this Agreement should be laid out as open spaces and such open spaces are to be provided in large or linear spaces where each space is a minimum size of 500 square metres and connected by a footpath route to Open Spaces and may include water attenuation areas
<b>"Landscaping Scheme"</b>	means the details of hard and soft landscape works required to be submitted and approved under condition 10 of the Planning Permission insofar as they relate to Open Spaces and any Incidental Open Spaces
<b>"LEAP"</b>	means a Local Equipped Area for Play of not less than 0.34 hectares which is designated and equipped for children of school age, meets FIT and RoSPA guidelines and the Council's Play Policy and includes seating bins and play area signage
<b>"Management Entity"</b>	means a company elected by the Developer under paragraph 1.2 of Part 2 of this Schedule to be responsible for the management and maintenance of the Open Spaces the Incidental Open Spaces and the Outdoor Changing Facilities in perpetuity on behalf of the residents of the Development which is approved in writing by the Director or determined by the Expert pursuant to paragraph 2.4 of Part 2 of this Schedule
<b>"Management Regime"</b>	means a framework for the Management Entity setting out its purpose, powers, responsibilities and internal procedures as regards the management and maintenance of the Open Spaces the Incidental Open Spaces and the Outdoor Changing Facilities and shall include the details set out in Appendix 12
<b>"MUGA"</b>	means a multi-use games area of not less than 0.25 hectares located in the Core Area as set out in the "Proposed Public Open Space Provision" table of the Revisions to the Development Framework Plan and Open Space Provision Note which meets the Sport England specification and is designed to accommodate a variety of sports including football, hockey, netball and tennis
<b>"NEAP"</b>	means a Neighbourhood Equipped Area of Play of not less than 0.62 hectares which is designated and equipped mainly for older children but with opportunities for play for younger children, meets FIT and RoSPA guidelines and the Council's Play Policy, and includes seating bins and play area signage

<b>"Open Spaces"</b>	means 16.27 hectares of public open space (comprising 7.1 hectares of Category 1 Open Space, 1.16 hectares of Category 2 Open Space, 2.59 hectares of Category 3 Open Space and 5.42 hectares of Informal Open Space or in the case of Informal Open Space such size as may otherwise be agreed with the Council (which for the avoidance of doubt excludes the Water Attenuation Area Informal Open Space which is subject to the provisions of Schedule 19 of this Agreement) to include all the facilities as set out in the "Proposed Open Space Provision" table of the Revisions to the Development Framework Plan and Open Space Provision Note which land is to be set aside for public open space and/or recreational and/or other related purposes and <b>"Open Space"</b> shall mean any one of them
<b>"Open Space Maintenance Contribution"</b>	means a sum or sums payable to the Council towards the adoption and maintenance of the Open Spaces and any Incidental Open Spaces pursuant to paragraph 5.1.2 of Part 4 of this Schedule to be calculated in accordance with paragraph 6.1 of Part 4 of this Schedule which sum shall be increased in accordance with paragraph 6.2 of Part 4 of this Schedule
<b>"Open Space Maintenance Period"</b>	means a period of twelve (12) months from the date of issue of Certificate A but if at the end of that period the Director forms the view that he cannot issue Certificate B the Open Space Maintenance Period shall include such further period as shall elapse until the issue of Certificate B for the Open Space Phase to which the Certificate A relates
<b>"Open Space Phase"</b>	means a phase of one or more Open Spaces or Incidental Open Spaces to be identified as part of the Reserved Matters Application(s)
<b>"Open Space Plan"</b>	means drawing number 19306/9602 Rev F annexed as Plan 9 to this Agreement or such revision as may later be agreed as between the Developer and the Council
<b>"Open Space Strategy"</b>	means the Emersons Green East Public Open Space Strategy dated July 2008 prepared by David Lock Associates except for the associated plan and Table 4 of this document which is superseded by the "Proposed Public Open Space Provision" table of the Revisions to the Development Framework Plan and Open Space Provision Note and as indicated on the Open Space Plan
<b>"Outdoor Changing Facility"</b>	shall have the meaning given to it in Schedule 15 (Community Infrastructure)
<b>"Rentcharge"</b>	means the perpetual yearly variable estate rentcharge imposed on each Dwelling to be paid to the Management Entity to cover the annual costs of complying with its obligations under the Management Regime PROVIDED ALWAYS THAT the rentcharge on each individual Dwelling shall be a fair and proportionate share of the total annual costs incurred by the Management Entity in relation to the Open Spaces, any Incidental Open Spaces and the Outdoor Changing Facilities PROVIDED FURTHER THAT nothing in this Schedule shall require the payment of such rentcharge by the occupier of any Affordable Dwelling and such rentcharge shall instead be payable by the relevant Approved AHP or RP or AHP
<b>"Revisions to the Development Framework Plan and Open Space Provision Note"</b>	means the Revisions to the Development Framework Plan and Open Space Provision Note Revision E dated October 2011 and prepared by Barton Willmore
<b>"Secondary School"</b>	shall have the meaning given to it in Schedule 10 (Secondary School)

- "Secondary School Off Site Notice"** shall have the meaning given to it in Schedule 10 (Secondary School)
- "Secondary School On Site Election Notice"** shall have the meaning given to it in Schedule 10 (Secondary School)
- "Site Compound"** means any area used for siting offices toilets fuel tanks cabins storage containers the storage of materials and the construction of temporary roads and hardstandings
- "Transfer of Control Agreement"** means an agreement substantially in the form appended to this Agreement as Appendix 8 between (1) the Developer or its nominee (2) the Secondary School (3) the Council, the purpose of which is to regulate the shared use of the Core Area (and if agreed by the parties to the Transfer of Control Agreement any changing and storage facilities for use in connection with the Core Area) as sports facilities for the exclusive use of the Secondary School during normal school operating hours and use by the public as Category 1 Open Space outside normal school operating hours and which shall provide for the maintenance costs to be apportioned between the Secondary School and the entity to whom control is transferred outside of normal school operating hours by reference to the hours during which the facilities are available for use by the Secondary School and by the entity to which control is transferred outside school hours

## PART 2

### COVENANTS RELATING TO THE ELECTION FOR FUTURE OWNERSHIP MANAGEMENT AND MAINTENANCE OF OPEN SPACE

1. The Developer shall not Commence the Development unless it has first elected to either:
  - 1.1 transfer the Open Spaces, any Incidental Open Spaces and the Outdoor Changing Facilities to the Council in accordance with the terms of Part 4 and Part 5 of this Schedule and notified the Council in writing of its election; or
  - 1.2 transfer the Open Spaces (excluding the Core Area), any Incidental Open Spaces and the Outdoor Changing Facilities to a Management Entity in accordance with Part 6 of this Schedule
2. In the event that the Developer elects to transfer the Open Spaces (excluding the Core Area) and the Incidental Open Spaces and the Outdoor Changing Facilities to a Management Entity under paragraph 1.2 of this Part 2 it shall:
  - 2.1 supply such information to the Council about the proposed Management Entity as the Council may reasonably require;
  - 2.2 submit to the Council for approval a detailed Management Regime based on and addressing the matters set out in Appendix 12;
  - 2.3 submit to the Council for approval the form of transfer for the disposal of Dwellings such approval to be limited to approval of the terms relating to the imposition and enforceability of the Rentcharge;
  - 2.4 not Commence the Development unless it has first obtained the approval of the Council to the Management Entity, the Management Regime and to the extent of the matters referred to in paragraph 2.3 of this Part 2 the form of transfer (such approvals not to be unreasonably withheld or delayed) PROVIDED THAT the Developer shall be entitled to refer any refusal to approve by the Director under this paragraph 2.4 to the Expert pursuant to clause 21 of this Agreement whose decision shall be final and binding notwithstanding clause 21.6



- 2.5 comply with the obligations on its part contained in Part 7 as to the ownership, maintenance and transfer of the Core Area.

### **PART 3**

#### **COVENANTS RELATING TO OPEN SPACES**

1. The Developer shall layout the Open Spaces and any Incidental Open Spaces in accordance with the Landscaping Scheme and paragraphs 1.1 to 1.6 below:
  - 1.1 During the first planting season following completion of the advanced engineering infrastructure site levelling and drainage works the Developer will construct and lay out the two senior pitches described as 1A in the Open Space Strategy and identified on the Open Space Plan to enable them to establish ready for use by the trigger set out in paragraph 1.5.1 of this Part 3
  - 1.2 During the first planting season following the Occupation of the 1000<sup>th</sup> Dwelling the Developer will construct and lay out the Cricket Pitch and the 3 no. football pitches on the Core Area to enable them to establish ready for use by the trigger set out in paragraph 1.6.1 of this Part 3
  - 1.3 The Developer will construct and layout the following Open Spaces so that each shall be provided ready and available for use and equipped in accordance with the Landscaping Scheme or as otherwise approved by the Director prior to the Occupation of 70% of the Dwellings approved by the Reserved Matters Permission within which the relevant Open Space is included:
    - 1.3.1 0.38 hectares of Category 3 Open Space described as 3A in the Open Space Strategy and identified on the Open Space Plan
    - 1.3.2 0.3 hectares of Category 3 Open Space described as 3B in the Open Space Strategy and identified on the Open Space Plan
    - 1.3.3 0.29 hectares of Category 3 Open Space described as 3D in the Open Space Strategy and identified on the Open Space Plan
    - 1.3.4 0.2 hectares of Category 3 Open Space described as 3E in the Open Space Strategy and identified on the Open Space Plan
  - 1.4 Prior to the first Occupation of the 100<sup>th</sup> Dwelling the following Open Spaces shall be provided ready and available for use and equipped in accordance with the Landscaping Scheme or as otherwise approved by the Director:
    - 1.4.1 BMX/Skateboard Facility
    - 1.4.2 0.34 hectares of Category 2 Open Space in the form of the LEAP described as 2B in the Open Space Strategy and identified on the Open Space Plan
  - 1.5 Prior to the first Occupation of the 751<sup>st</sup> Dwelling the following Open Space shall be provided ready and available for use and equipped in accordance with the Landscaping Scheme or as otherwise approved by the Director:
    - 1.5.1 1.96 hectares of Category 1 Open Space in the form of two senior pitches described as 1A in the Open Space Strategy and identified on the Open Space Plan
  - 1.6 Prior to the first Occupation of the 1,500<sup>th</sup> Dwelling the following Open Spaces shall be provided ready and available for use and equipped in accordance with the Landscaping Scheme or as otherwise approved by the Director:
    - 1.6.1 the Core Area
    - 1.6.2 0.62 hectares of Category 2 Open Space in the form of the NEAP described as 2D in the Open Space Strategy and identified on the Open Space Plan

- 1.6.3 unless it has been provided earlier to comply with condition 40 of the Planning Permission, 1.31 hectares of Category 3 Open Space described as 3F in the Open Space Strategy and identified on the Open Space Plan
- 1.6.4 0.11 hectares of Category 3 Open Space described as 3G in the Open Space Strategy and identified on the Open Space Plan
- 1.6.1 the Developer shall provide and make available for public use the Informal Open Space with the surrounding development in accordance with phasing to be agreed in the relevant Landscaping Scheme

**2. SITE COMPOUND**

The Developer shall not at any time use any part of the Open Spaces as a Site Compound.

**3. EXISTING HEDGES AND TREES**

The Developer shall not remove any existing hedges or fell any existing trees without the prior approval of the Council other than in accordance with the Landscaping Scheme.

**4. CREATION OF RIGHTS**

The Developer shall not following the date of this Agreement create or grant any rights easements quasi easements or privileges over the Open Spaces which might in any way affect the use of or the access to the Open Spaces as envisaged under this Agreement.

**5. ISSUE OF CERTIFICATE OF COMPLETION OF THE OPEN SPACE**

5.1 Upon completion of each Open Space Phase the Developer shall give to the Director written notification to that effect and the Director shall inspect the relevant Open Space Phase within twenty (20) Working Days. Any failure to inspect within this period shall be treated as the Director's deemed approval to the completion and Certificate A shall be deemed to have been issued.

5.2 Upon the Director confirming on inspection that the relevant Open Space Phase has been satisfactorily completed he shall issue Certificate A to that effect and the Bond or Charge relating to that Open Space Phase provided pursuant to Schedule 22 shall be reduced as follows:

5.2.1 by an amount equal to ninety (90%) per centum of the value of the relevant works to construct the Open Space Phase where Part 4 and Part 5 of this Schedule apply to the Open Space Phase;

5.2.2 by an amount equal to one hundred (100%) per centum of the value of the relevant works to construct the Open Space Phase where Part 6 and/or Part 7 of this Schedule apply to the Open Space Phase.

5.3 If the Director on inspection does not issue Certificate A in respect of any Open Space Phase the Director shall:

5.3.1 give his reasons for not doing so; and

5.3.2 re-inspect the relevant Open Space Phase within twenty (20) Working Days of the Developer giving notice that his reasons have been addressed and the provisions of this paragraph 5 shall apply with the necessary modifications to the re-inspection.

## PART 4

### COVENANTS RELATING TO TRANSFER OF OPEN SPACES TO THE COUNCIL

1. The provisions of this Part 4 and Part 5 of this Schedule shall apply to all of the Open Spaces Incidental Open Spaces and the Outdoor Changing Facilities where an election has been made under paragraph 1.1 of Part 2 of this Schedule

2. **OPEN SPACE MAINTENANCE PERIOD**

Following the issue of Certificate A the Developer shall maintain the relevant Open Space Phase to which the Certificate relates for the Open Space Maintenance Period and make good any defects arising within the Open Space Maintenance Period to the satisfaction of the Director.

3. **REPLACEMENT OF TREES AND SHRUBS**

Without prejudice to paragraph 3 of Part 3 of this Schedule if during a period of two (2) years after the planting of any tree or shrub forming part of the Landscaping Scheme such tree or shrub should for any reason die or be removed or felled the Developer shall to the satisfaction of the Director replace that tree or shrub with another of the same or similar species and size during the next planting season.

4. **ISSUE OF CERTIFICATE OF COMPLETION OF OPEN SPACE MAINTENANCE PERIOD**

- 4.1 At the end of each Open Space Maintenance Period the Developer shall give to the Director twenty (20) Working Days written notification that the relevant Open Space Maintenance Period is due to expire.

- 4.2 Within twenty (20) Working Days of the expiry of the relevant Open Space Maintenance Period the Director shall inspect the relevant Open Space Phase and any failure to inspect within this period shall be treated as the Director's deemed approval to the maintenance of the relevant Open Space Phase and Certificate B shall be deemed to have been issued.

- 4.3 Upon the Director being satisfied on inspection that the relevant Open Space Phase has been satisfactorily maintained the Director shall issue Certificate B to that effect and the ten (10%) per centum remaining following the reduction of the relevant Bond or Charge pursuant to paragraph 5.2.1 of Part 3 of this Schedule shall cease to be required PROVIDED ALWAYS THAT no Certificate B shall be issued in respect of the Open Space described as 3F in the Open Space Strategy unless condition 40 of the Planning Permission has been discharged by the Council in respect of that area.

- 4.4 If the Director on inspection does not issue Certificate B in respect of any Open Space Phase:

- 4.4.1 the Director shall give his reasons for not doing so;

- 4.4.2 the Director shall re-inspect the relevant Open Space Phase within twenty (20) Working Days of the Developer giving notice that his reasons have been addressed and the provisions of this paragraph 4 shall apply mutatis mutandis to the re-inspection; and

- 4.4.3 the Developer shall remain responsible for and hereby covenants to ensure the proper maintenance of the relevant Open Space Phase and the Open Space Maintenance Period shall be extended until such time as Certificate B has been issued and the legal transfer completed.

5. **TRANSFER OF OPEN SPACE**

5.1 Upon the issue of Certificate B by the Director for any Open Space Phase the Developer shall:

5.1.1 offer to transfer to the Council in consideration of the sum One Pound (£1.00) the Open Space Phase to which the Certificate B relates using substantially the form of transfer set out at Appendix 1; and

5.1.2 pay to the Council a proportionate amount of the Open Space Maintenance Contribution attributable to the Open Space Phase to which the Certificate B relates simultaneously with the transfer

PROVIDED THAT no Open Space Maintenance Contribution shall be payable in respect of the Core Area if the Council has served the Secondary School On Site Election Notice pursuant to Schedule 10 of this Agreement and PROVIDED FURTHER THAT if following payment of the Core Area Maintenance Contribution the Council subsequently serves the Secondary School On Site Election Notice the Core Area Maintenance Contribution shall be repaid to the Developer after having deducted therefrom an amount representing the cost of maintenance of the Core Area for the period from the date of Certificate B until the date of the Secondary School On Site Election Notice which sum shall be calculated as follows:

$(A \div \text{fifteen (15) years} + \text{twelve (12) months}) \times \text{number of months that have elapsed between the issue of Certificate B and the date of the Secondary School On Site Election Notice}$

Where A = the Core Area Maintenance Contribution

5.2 Upon the completion of the legal transfer of any Open Space Phase the Council shall take over the maintenance of that Open Space Phase.

5.3 Within one month of the issue of Certificate B in respect of the relevant Open Space Phase the Developer shall have:

5.3.1 provided a good and proper title to the Open Space Phase deduced at the expense of the Developer;

5.3.2 offered to transfer to the Council in consideration of the sum of One Pound (£1.00) all the land comprising the Open Space Phase upon the terms and conditions set out in Part 5 of this Schedule;

5.3.3 paid the Council's reasonable and proper legal costs and expenses associated with the transfer; and

5.3.4 paid the relevant proportion of Open Space Maintenance Contribution attributable to that Open Space Phase simultaneously with the transfer.

5.4 The Council may nominate an alternative body to take a transfer of any Open Space Phase and such transfer shall likewise be in accordance with the terms and conditions contained in Part 6 of this Schedule PROVIDED THAT such nomination must be received by the Developer within 14 days of the Council issuing Certificate B for the Open Space Phase and must be approved in writing by the Developer.

6. **CALCULATION OF OPEN SPACE MAINTENANCE CONTRIBUTION**

6.1 The Open Space Maintenance Contribution shall be calculated by using the following formula:

$$A \times B = C$$

Where:-

A = area in square metres of the Open Space Phase to be transferred to the Council

B = £26.06 per square metre

C = Open Space Maintenance Contribution payable in respect of the relevant Open Space Phase

6.2 The Open Space Maintenance Contribution due and payable (having been calculated at October 2011 prices) shall if not paid on the date hereof be increased in accordance with any increase in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the Agreement had been retained

**PART 5**

**CONDITIONS OF TRANSFER TO COUNCIL**

1. **Price**

The price shall be One Pound (£1.00) payable on completion.

2. **Title**

2.1 The Developer shall at its own expense:

2.1.1 deduce a good and marketable title free from any financial or other charge;

2.1.2 provide adequate plans showing the Open Space Phase to which the transfer relates for use in connection with the transfer.

3. **Covenant for Title**

The Developer shall convey with full title guarantee.

4. **Matters Subject to which Land Sold**

4.1 The land is sold subject to and with the benefit of (as the case may be):

4.1.1 all matters registered as local land charges;

4.1.2 all notices orders proposals or requirements affecting or relating to the land given or made by any government department statutory undertaking or other public or local authority of which notice is given;

4.1.3 all rights easements quasi-easements and privileges in the nature of light air drainage way and passage and other like rights used or enjoyed over the land and of which notice has been given;

4.2 The land is sold subject to all matters disclosed in writing to the Council prior to the date hereof by the Developer's solicitors.

4.3 Where the Developer has given its approval pursuant to paragraph 5.4 of Part 4 of this Schedule the Council may nominate an alternative transferee in respect of the Open Space Phase or any part thereof and such transfer shall likewise be in accordance with the terms and conditions contained in this Part of this Schedule.

4.4 In each transfer the Council (or such other person or body nominated as aforesaid) shall undertake with the Developer to hold the Open Space Phase for public open space sporting leisure recreational or community purposes or a combination of these purposes in perpetuity but shall not be required to accept any other restriction or condition regarding the future use of the Open Spaces.

4.5 There shall be excluded from each transfer (unless previously agreed in writing with the Council or such other person or body nominated as aforesaid) all boundary structures or other boundary features together with any responsibility or liability therefor.

#### 5. **Incorporating Standard Conditions of Sale**

5.1 The Standard Conditions of Sale (Fifth Edition) shall apply to this transfer insofar as the same are applicable to a sale by private treaty and are not otherwise inconsistent with the terms of this Agreement or excluded hereby.

5.2 The following provisions of the said Standard Conditions of Sale shall not apply:-

2.2 2.3 3.1.4 3.2.2 3.3 4.4 4.6.2 5.1.2 to 5.1.6 5.2.2(b) to (f) inclusive 6.1 and 8

#### 6. **Boundaries**

The precise boundaries of the land to be transferred are to be agreed in writing between the parties and this will include confirmation of the legal ownership of any abutting trees hedges bunds ponds watercourses and ditches.

#### 7. **Vacant Possession**

Vacant possession shall be given on completion.

#### 8. **Date of Completion**

Completion shall take place at the Council Offices as soon as reasonably practicable following the issue of Certificate B or otherwise as agreed in writing between the parties.

#### 9. **Registration**

9.1 If title to the Open Spaces or any part of them is registered at HM Land Registry, forthwith upon commencement of Development at its own expense procure that a notice of this Agreement including a reference to the agreement to transfer the Open Spaces is recorded on that Title and that a copy of the Land Registry entries is produced to the Council demonstrating that this has been done.

9.2 If title to the Open Spaces is not registered at HM Land Registry forthwith upon commencement of Development procure at its own expense that this Agreement is registered in HM Land Charges Registry and that evidence of the same is produced to the Council.

## PART 6

### COVENANTS RELATING TO TRANSFER OF OPEN SPACES TO MANAGEMENT ENTITY

1. The provisions of this Part 6 shall apply to all of the Open Spaces (excluding the Core Area) Incidental Open Spaces and the Outdoor Changing Facilities where an election has been made under paragraph 1.2 of Part 2 of this Schedule
2. The Developer covenants with the Council:
  - 2.1 not to dispose of or allow the Occupation or use of any Dwellings until the Management Entity has first been appointed to:
    - 2.1.1 fulfil the functions described in the approved Management Regime;
    - 2.1.2 ensure that the Open Spaces shall remain available for use by the general public in perpetuity;
    - 2.1.3 manage and maintain in perpetuity the Open Spaces in accordance with the Management Regime;
    - 2.1.4 hold the Open Spaces for public open space sport leisure recreational or community purposes or a combination of these purposes.
  - 2.2 to ensure that the Management Entity will be responsible for the management and maintenance of the Open Spaces in perpetuity in accordance with the Management Regime;
  - 2.3 to ensure that at all times the Management Entity shall be sufficiently financed and resourced to enable it to comply with its obligations herein PROVIDED THAT if after service of the Initial Completion Notice the Management Entity is self-financing the Developer may apply to the Council for a release from its obligations hereunder in accordance with clause 20 of this Agreement (without prejudice to any outstanding claim by reason of any breach by the Developer of its requirements under this Schedule occurring prior to such release)
  - 2.4 not to permit the first legal transfer or lease of each Dwelling unless the Rentcharge is created in respect of that Dwelling.
3. **Replacement of trees and shrubs**
  - 3.1 If during a period of 5 years after the planting of any tree or shrub forming part of the Landscaping Scheme such tree or shrub should for any reason die or be removed or felled the Developer shall to the satisfaction of the Director replace that tree or shrub with another of the same or similar species and size during the next planting season.
4. **Transfer to the Management Entity**
  - 4.1 The Developer shall transfer the Open Spaces to the Management Entity in consideration of the sum of One Pound (£1.00) upon the issue of Certificate A for each Open Space Phase upon the terms and conditions set out in this Schedule

## PART 7

### COVENANTS RELATING TO CORE AREA WHERE ELECTION MADE UNDER PARAGRAPH 1.2 OF PART 2 OF THIS SCHEDULE

1. The following provisions of this Part 7 shall apply to the Core Area where an election has been made under paragraph 1.2 of Part 2 of this Schedule:
  - 1.1 Following the issue of Certificate A in respect of the Core Area the Developer shall retain ownership of the Core Area until such time as the Core Area is either transferred to the Council pursuant to paragraph 1.3 of this Part 7 or transferred to the Management Entity pursuant to paragraph 1.5 of this Part 7 and during this period the Developer shall:
    - 1.1.1 fulfil the functions described in the Management Regime insofar as they relate to the Core Area;
    - 1.1.2 ensure that the Core Area is available for use by the general public for sport leisure recreational or community purposes or a combination of such uses; and
    - 1.1.3 manage and maintain the Core Area in accordance with the Management Regime
  - 1.2 Where the Council has served a valid Secondary School On Site Election Notice, the Council shall be entitled to serve written notice on the Developer requiring the transfer of the Core Area to the Council or to the Academy Trust (as appropriate) (a "**Core Area Transfer Notice**") in consideration of the sum of One Pound (£1.00) on the conditions set out in Part 5 and the Developer shall comply with such notice PROVIDED THAT:
    - 1.2.1 a Core Area Transfer Notice shall only be validly served if the anticipated opening of the Secondary School is three (3) months or less from the date of the notice;
    - 1.2.2 the Transfer of Control Agreement shall be entered into simultaneously with the transfer of the Core Area;
    - 1.2.3 the Core Area Maintenance Contribution shall not be payable
  - 1.3 Following the service of a Core Area Transfer Notice pursuant to paragraph 1.2 of this Part 7, the Developer shall offer to transfer to the Council or to the Academy Trust (as appropriate) in consideration of the sum One Pound (£1.00) the Core Area using substantially the form of transfer set out at Appendix 1.
  - 1.4 The Council and the Developer agree that when finalising the terms of the Transfer of Control Agreement with the governing body (or other representative) of the Secondary School consideration shall be given to the inclusion of any changing and storage facilities for use in connection with the Core Area as part of the arrangements under the Transfer of Control Agreement in order to facilitate the use of the Core Area by the public outside of school hours
  - 1.5 Where either:
    - 1.5.1 the time for service of a Secondary School On Site Notice has expired and no such notice has been served; or
    - 1.5.2 a Secondary School Off Site Notice has been served

the Developer shall following the issue of Certificate A in relation to the Core Area transfer the Core Area to the Management Entity in accordance with the provisions of Part 6 of this Schedule.



## SCHEDULE 14

### CONTRIBUTION TO THE LOCAL LIBRARY

#### PART 1

#### DEFINITIONS RELATING TO THE FINANCIAL CONTRIBUTION TO THE LOCAL LIBRARY

1. The words below shall mean as follows:-

**"Local Library Contribution"** means the Two Hundred and Thirty Three Thousand Three Hundred and Forty Three Pounds (£233,343) as a contribution towards the cost of enhancement of facilities at Emersons Green Library

**"Index"** means the indices based on the Royal Institute of Chartered Surveyors Building Cost Index

#### PART 2

#### COVENANTS RELATING TO THE FINANCIAL CONTRIBUTION TOWARDS THE LOCAL LIBRARY

1. The Developer will before the Occupation of the 1000th Dwelling pay to the Council the Local Library Contribution (together with any additional sum calculated as set out in paragraph 3 of this Part 2).
2. If at the end of a period of five (5) years from the date of payment by the Developer of the Local Library Contribution to the Council all or any part of the Local Library Contribution (including accrued interest) remains unspent by the Council the Council shall forthwith return such sum as remains to the Developer together with interest thereon.
3. The Local Library Contribution due and payable (having been calculated at October 2011 prices) shall be increased in accordance with any increases in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the Deed had been retained.
4. The Local Library Contribution has been calculated on the basis that 2,000 Dwellings will be constructed on the Land and in the event it is proposed that more or less than 2,000 Dwellings will be constructed on the Land either:
- 4.1 the Developer will pay to the Council an amended Local Library Contribution, or
- 4.2 the Council will pay to the Developer a balancing sum

in accordance with the timing set out clause 13 of this Agreement and in accordance with the following formula:-

$$(A + B) \times C$$

Where:-

A = number of properties to be actually constructed

B = 2,000

C = £233,343 (index linked in accordance with paragraph 3 of this Part 2)

## SCHEDULE 15

### COMMUNITY INFRASTRUCTURE

#### PART 1

#### DEFINITIONS RELATING TO THE PROVISION OF COMMUNITY INFRASTRUCTURE

1. The words below shall mean as follows:-

<b>"Community Hall"</b>	means the building to be constructed to the Community Hall Specification on the Community Hall Land which shall comprise 880 square metres gross internal floor area to be used for community purposes
<b>"Community Hall Headline Specification"</b>	means the specification set out at Appendix 5 together with the detailed specification required thereunder for the construction and fitting out of the Community Hall to be prepared at the expense of the Developer and to be agreed
<b>"Community Hall Land"</b>	means the part of the Land upon which the Community Hall is to be built with space for parking on a site of 0.24 hectares (or such other size site as may be agreed between the Developer and the Council) in the Local Centre adjacent to the First Primary School (as defined in Schedule 8) to the north of Hallen Farm
<b>"Cricket Pavilion"</b>	means the building to be constructed on the Cricket Pavilion Land which shall comprise a minimum of 280 square metres gross internal floor area to be used for cricket sport and community uses to include a club room suitable for use as a social space for the wider community together with associated car parking and which shall be constructed in accordance with the Cricket Pavilion Specification
<b>"Cricket Pavilion Headline Specification"</b>	means the Specification set out in Appendix 7 together with the detailed specification required thereunder for the construction and fitting out of the Cricket Pavilion to be prepared at the expense of the Developer and to be agreed with the Council
<b>"Cricket Pavilion Land"</b>	means the part of the Land upon which the Cricket Pavilion is to be built on a site of 0.2 hectares the approximate position of which is identified on the Development Framework Plan
<b>"Outdoor Changing Facility"</b>	means the outdoor changing facility to be constructed to the Outdoor Changing Facility Specification and located in the approximate location shown on the Development Framework Plan adjacent to the two senior pitches described as 1A in the Open Space Strategy and identified on the Open Space Plan (both as defined in Schedule 13) which shall comprise a minimum of 210 square metres gross internal floor area
<b>"Outdoor Changing Facility Headline Specification"</b>	means the specification set out at Appendix 6 together with the detailed specification required thereunder for the construction and fitting out of the Outdoor Changing Facility to be prepared at the expense of the Developer and to be agreed with the Council
<b>"Site Compound"</b>	means any area used for siting offices toilets fuel tanks cabins storage containers the storage of materials and the construction of temporary roads and hardstandings

## PART 2

### 1. THE COMMUNITY HALL

- 1.1 Prior the submission of the first Reserved Matters Application for that part of the Land which includes the Community Hall Land the Developer and the Council shall agree the boundaries of the Community Hall Land which shall be a generally level and accessible site
- 1.2 The Developer covenants not to commence the construction of the Community Hall unless and until the Council has first approved the detailed specification required under the Community Hall Headline Specification and the car parking provision.
- 1.3 Prior to the first Occupation of the 751st Dwelling the Developer shall complete the construction of the Community Hall fully in accordance with the relevant Reserved Matters Permission and the Community Hall Headline Specification and shall offer to transfer the freehold interest in the Community Hall Land together with the Community Hall thereon to the Council or its nominee and shall on the acceptance of the offer by the Council transfer the same on the terms and conditions set out at paragraph 1.1 of Part 3 of this Schedule.

### 2. THE OUTDOOR CHANGING FACILITY

- 2.1 The Developer covenants not to commence the construction of the Outdoor Changing Facility unless and until the Council has first approved the detailed specification required under the Outdoor Changing Facility Headline Specification.
- 2.2 Prior to the first Occupation of the 751st Dwelling the Developer shall complete the construction of the Outdoor Changing Facility fully in accordance with the relevant Reserved Matters Permission and the Outdoor Changing Facility Headline Specification and made the same available for use by the public.
- 2.3 In the event that the Developer elects to transfer the Open Spaces (as defined in Schedule 13) to the Council under paragraph 1.1 of Part 2 of Schedule 13 the Outdoor Changing Facility shall be transferred to the Council in accordance with the provisions of Part 4 and Part 5 of Schedule 13.
- 2.4 In the event that the Developer elects to transfer the Open Spaces to a Management Entity under the provisions of paragraph 1.2 of Part 2 of Schedule 13 the Outdoor Changing Facility shall be transferred to the Management Entity in accordance with the provisions of Part 6 of Schedule 13.

### 3. THE CRICKET PAVILION

- 3.1 Prior the submission of the first Reserved Matters Application for that part of the Land which includes the Cricket Pavilion Land the Developer and the Council shall agree the boundaries of the Cricket Pavilion Land which shall be a generally level and accessible site.
- 3.2 The Developer shall not at any time use any part of the Cricket Pavilion Land as a Site Compound without obtaining the prior written approval of the Director.
- 3.3 The Developer covenants not to commence the construction of the Cricket Pavilion unless and until the Council has first approved the detailed specification required under the Cricket Pavilion Headline Specification and the car parking provision.
- 3.4 Prior to the first Occupation of the 1500th Dwelling the Developer shall complete the construction of the Cricket Pavilion fully in accordance with the relevant Reserved Matters Permission and the Cricket Pavilion Headline Specification and shall offer to transfer the freehold interest in the Cricket Pavilion Land together with the Cricket Pavilion thereon to the Council or its nominee and shall on the acceptance of the offer by the Council transfer the same on the terms and conditions set out in paragraph 2.1 of Part 3 of this Schedule.

## **PART 3**

### **TERMS AND CONDITIONS OF TRANSFER**

#### **1. THE COMMUNITY HALL AND COMMUNITY HALL LAND**

- 1.1 The Developer shall as soon as reasonably practicable following completion of the Community Hall to the satisfaction of the Director deliver a duly executed transfer of the Community Hall Land to the Council for the sum of One Pound (£1.00) using substantially the form of transfer set out at Appendix 1 and the Council covenants to complete the transfer of the Community Hall Land and register the same at the Land Registry.

#### **2. THE CRICKET PAVILION**

- 2.1 The Developer shall as soon as reasonably practicable following completion of the Cricket Pavilion to the satisfaction of the Director deliver a duly executed transfer of the Cricket Pavilion to the Council for the sum of One Pound (£1.00) using substantially the form of transfer set out at Appendix 1 and the Council covenants to complete the transfer of the Cricket Pavilion and register the same at the Land Registry.

## SCHEDULE 16

### PUBLIC ART FUNDING

#### PART 1

##### DEFINITIONS RELATING TO ART

1. The words below shall mean as follows:-

<b>"Art Funding"</b>	means the funding of public art to a value of Seventy Eight Thousand Five Hundred and Twenty Two Pounds (£78,522) in accordance with the Public Art Plan
<b>"Index"</b>	means the indices based on the Retail Prices Index (all items) compiled and published by the Office of National Statistics or any other such index that substitutes the Retail Prices Index
<b>"Public Art Plan"</b>	means the scheme or schemes to be submitted in accordance with paragraph 1 of Part 2 to this Schedule

#### PART 2

##### COVENANTS RELATING TO ART

###### 1. SUBMISSION OF PUBLIC ART PLAN

- 1.1 Prior to the Commencement of the Development the Developer shall at its expense and at the earliest opportunity submit for the approval of the Director a Public Art Plan which shall set out a strategy and the principles for the provision of public art for the whole of the Emersons Green East Development Area and shall identify the projects to which all or part of the Art Funding is to be applied within the Development and the timing of delivery of the art within the Development.
- 1.2 The Public Art Plan shall be produced by a recognised public art consultant or lead artist appointed in agreement with the Director or his representative.

###### 2. APPROVAL OF PUBLIC ART PLAN

The Developer shall not Commence the Development without first obtaining the written approval of the Director to the Public Art Plan (such approval not to be unreasonably withheld or delayed).

###### 3. COMPLIANCE WITH PUBLIC ART PLAN

The Developer shall implement the Public Art Plan in relation to the Development (unless otherwise agreed with the Director) but nothing in this Schedule shall oblige the Developer to expend more than the Art Funding on implementing the Public Art Plan

###### 4. CONTRIBUTION TO ART

- 4.1 The Developer shall use its Reasonable Endeavours to expend the Art Funding prior to the first Occupation of the sixteen hundredth (1600th) Dwelling in accordance with the Public Art Plan.
- 4.2 The Developer shall provide an account to the Director at the expiry of one (1) year after the first Occupation of the sixteen hundredth Dwelling of all the sums expended in connection with the Public Art Plan and any part of the Art Funding not so expended shall be paid to the Council to be applied to projects identified in the Public Art Plan
- 4.3 The Developer shall use Reasonable Endeavours to obtain any planning permission or any other consents necessary for the carrying out of any works pursuant to the Public Art Plan.

4.4 In the event of any projects identified in the Public Art Plan being located on public open space which is to be adopted and maintained by the Council a sum is to be identified and agreed as part of the Art Funding to be paid to the Council to cover future maintenance of the projects following adoption of the public open space by the Council AND FOR THE AVOIDANCE OF DOUBT no such maintenance sum is to be so identified and agreed if the maintenance of the public open space is to remain the responsibility of the Developer or a Management Entity.

5. **INDEXATION**

The Art Funding due and payable (having been calculated at October 2011 prices) shall be increased in accordance with any increases in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained.

6. **CALCULATION OF ART FUNDING**

The Art Funding has been calculated on the basis that 2,000 Dwellings will be constructed on the Land and in the event it is proposed that more or less than 2,000 Dwellings will be constructed on the Land the Developer shall amend the Art Funding to be expended in the Public Art Plan in accordance with the following formula:-

$$A \div B \times C$$

Where:-

A = number of properties to be actually constructed

B = 2,000

C = £78,522 (index linked in accordance with paragraph 5 of this Part 2)

7. **ACCOUNT**

The Developer shall maintain a schedule of expenditure in relation to the Art Funding and shall make that schedule available to the Director upon receipt of a request in writing PROVIDED THAT such requests shall not be made at less than twelve (12) monthly intervals.

## SCHEDULE 17

### CONTRIBUTION TO THE COMMUNITY FOREST

#### PART 1

#### DEFINITIONS RELATING TO THE FINANCIAL CONTRIBUTION TO THE COMMUNITY FOREST

1. The words below shall mean as follows:-

<b>"Community Forest Contribution"</b>	means the sum of Thirty Five Thousand Three Hundred and Forty Five Pounds (£35,345) to be applied by the Council towards access improvement works, including signage and small scale landscape improvements, at Overscourt Wood and the vicinity thereof
<b>"Index"</b>	means the indices based on the Retail Prices Index (all items) compiled and published by the Office of National Statistics or any other such index that substitutes the Retail Prices Index

#### PART 2

#### COVENANTS RELATING TO THE FINANCIAL CONTRIBUTION TOWARDS THE COMMUNITY FOREST

1. The Developer will before the first Occupation of the 1,000th Dwelling pay to the Council the Community Forest Contribution.
2. The Community Forest Contribution due and payable (having been calculated at October 2011 prices) shall be increased in accordance with any increases in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained
3. The Community Forest Contribution has been calculated on the basis that 2,000 Dwellings will be constructed on the Land and in the event it is proposed that more or less than 2,000 Dwellings will be constructed on the Land either
- 3.1 the Developer will pay to the Council an amended Community Forest Contribution OR
- 3.2 the Council will pay to the Developer a balancing sum

in accordance with clause 13 of this Agreement and in accordance the following formula:-

$$(A \div B) \times C$$

Where:-

A = number of properties to be actually constructed

B = 2,000

C = £35,345 (index linked in accordance with paragraph 2 of this Part 2)

## SCHEDULE 18

### HEALTH CARE SPACE

#### PART 1

#### DEFINITIONS

1. The words below shall mean as follows:-

<b>"Health Care Building"</b>	means a building having an area of 709 square metres of gross internal floor space to be provided in accordance with the Health Care Building Specification for use as a doctors' surgery suitable for a 5 doctor practice and a pharmacy together with the availability of car parking for staff and visitors to be provided on the Health Care Land
<b>"Health Care Building Specification"</b>	means the brief to be submitted to and approved by the Council to include the design and specification of the Health Care Building
<b>"Health Care Land"</b>	means a serviced site set aside for the provision of the Health Care Building at a location to be agreed as part of the Detailed Masterplan and such land shall have main utilities and road access installed to its boundary upon the date of any transfer or lease to the Health Care Provider
<b>"Health Care Provider"</b>	means either the PCT or an alternative provider within the National Health Service of healthcare services that are or will be available to the residents of the Development
<b>"Index"</b>	means the indices based on the Royal Institute of Chartered Surveyors Building Cost Index
<b>"Marketing"</b>	means the marketing of the Health Care Land which shall include:  (a) placing the Health Care Land with a reputable agent operating in the district who is experienced in the disposal of similar properties;  (b) requesting the agent to directly market the Health Care Land to Health Care Providers; and  (c) using Reasonable Endeavours to enter into an agreement for sale or lease of the Health Care Land at Market Value and <b>"Market"</b> shall be construed accordingly
<b>"Market Value"</b>	means the value as assessed by a Valuer of the Health Care Land as confirmed to the Council by the Developer (such value being calculated in accordance with the RICS Valuation Standards (Fifth Edition))
<b>"Medical Centre Contribution"</b>	means the sum of Two Hundred and Twelve Thousand Four Hundred Pounds (£212,400) to be applied towards the extension of the Emersons Green Medical Centre located at Emersons Green District Centre which sum shall be increased in accordance with paragraph 4.2 of Part 2 of this Schedule
<b>"PCT"</b>	means the South Gloucestershire Primary Care Trust or any successor in function



- "Reasonable Offer"** means an offer based on Market Value and subject to the following conditions:
- (a) that the Health Care Provider completes the construction of the Health Care Building in accordance with the Health Care Building Specification at its own cost prior to the date when first Occupation of the seven hundred and fiftieth (750th) Dwelling is projected to occur; and
  - (b) that the Health Care Land is used for the provision and operation of a Health Care Building in line with the Health Care Building Specification and not for any other purpose unless otherwise agreed in writing by the Director
- such offer having been made by a prospective purchaser or tenant who is a Health Care Provider that is able to proceed to complete the purchase or enter into the tenancy (as applicable)
- "Unlet or Unsold"** means that no agreement for sale or lease has been entered into with a Health Care Provider in respect of the Health Care Land
- "Valuer"** means a Member or Fellow of the Royal Institution of Chartered Surveyors being a chartered valuation surveyor acting in an independent capacity

## **PART 2**

### **HEALTH CARE**

#### **1. HEALTH CARE BUILDING SPECIFICATION**

- 1.1 The following provisions in this paragraph 1 shall apply except where the Health Care Provider submits a Reserved Matters Application for the Health Care Building.
- 1.2 Prior to the submission of any Reserved Matters Application for that part of the Land which contains the Health Care Building Land the Developer shall submit the Health Care Building Specification to the Council who shall as soon as reasonably practicable forward the Health Care Building Specification to the PCT for comment.
- 1.3 The Council shall inform the Developer when the Health Care Building Specification has been submitted to the PCT.
- 1.4 If within twenty (20) Working Days of submission of the Health Care Building Specification to the PCT under paragraph 1.2 of this Part 2 the PCT have made comments then the Developer shall use Reasonable Endeavours to accommodate the PCT's comments into the design proposals as part of the Reserved Matters Application for the Health Care Building Space.
- 1.5 If the PCT does not comment on the Health Care Building Specification within twenty (20) Working Days of submission to the PCT under paragraph 1.2 of this Part 2 such failure to comment shall be treated as the PCT's deemed approval to the Health Care Building Specification.

## **2. MARKETING OF HEALTH CARE LAND**

### **2.1 The Developer shall:**

- 2.1.1 commence the Marketing of the Health Care Land prior to Occupation of the one hundred and fiftieth (150th) Dwelling and thereafter Market continuously for a period of one (1) calendar year or if earlier until a Reasonable Offer is made; and
- 2.1.2 produce to the Council within twenty eight (28) days of written demand (such demands not to be made more frequently than once every twenty eight (28) days) full details of the Marketing that has been undertaken and all offers that have been made, but subject to any limitations on disclosure of details as may result from any confidentiality agreements in place from time to time with prospective buyers and/or tenants.

### **2.2 In the event that a Reasonable Offer is made within the marketing period referred to in paragraph 2.1.1 of this Part 2 then notwithstanding the expiry of such marketing period the Developer shall use Reasonable Endeavours for a period of not less than three (3) months from the date of such offer to enter into an agreement for the sale or lease (as appropriate) of the Health Care Land on the terms of the Reasonable Offer PROVIDED THAT if more than one Reasonable Offer is received the decision as to which offer to accept shall be in the sole discretion of the Developer.**

## **3. DISPOSAL OF HEALTH CARE LAND**

### **3.1 In the event that an agreement for sale or lease (as appropriate) of the Health Care Land is entered into with a Health Care Provider pursuant to paragraph 2.2 of this Part 2, the Developer shall:**

- 3.1.1 provide written evidence of the same to the Council;
- 3.1.2 transfer or lease (as appropriate) the Health Care Land to the Health Care Provider and provide written evidence of the same to the Council; and
- 3.1.3 use Reasonable Endeavours to procure the construction of the Health Care Building by the Health Care Provider in accordance with the Health Care Building Specification under the terms of the agreement for sale or lease prior to first Occupation of the seven hundred and fiftieth (750th) Dwelling.

## **4. MEDICAL CENTRE CONTRIBUTION**

### **4.1 If despite the Marketing in accordance with paragraph 2 of this Part 2 the Health Care Land remains Unsold or Unlet then the Developer shall:**

- 4.1.1 serve a written notice on the Council to that effect; and
- 4.1.2 pay to the Council the Medical Centre Contribution prior to Occupation of the 500th Dwelling and the Health Care Land shall be free of any restrictions in this Schedule.

### **4.2 The Medical Centre Contribution due and payable (having been calculated at October 2011 prices) shall be increased in accordance with any increase in the Index between that date and the date of actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compiled the Index the figure taken to be shown in the index after such change shall be the figure which would have been shown in the Index if the reference base current at the date of execution of the Agreement had been retained.**

## SCHEDULE 19

### WATER ATTENUATION

#### PART 1

#### DEFINITIONS

1. The words below shall mean as follows:-

<b>"Benefitting Development"</b>	means that part of the Development designed to drain into Pond C3 as prescribed by the Emersons Green East Development Folly Brook Catchment Drainage Strategy
<b>"Benefitting Development Completion Notice"</b>	means a notice to be served by the Developer upon the Director stating that the Dwellings located on the Benefitting Development have been substantially completed and such notice shall not be served until after the issue of the final certificate under Buildings Regulations for the final Dwelling located on the Benefitting Development
<b>"Emersons Green East Development Folly Brook Catchment Drainage Strategy"</b>	means the Emersons Green East Development Folly Brook Catchment Drainage Strategy – May 2006 by Halcrow Group Ltd that is the approved surface water drainage document for this development area or the latest revised version approved by the Environment Agency and the Director which for the avoidance of doubt will include details of the HCA Access Route
<b>"Certificate A"</b>	means the certificate of substantial completion in respect of the Water Attenuation Area Informal Open Space referred to in paragraph 6.2 of Part 2 of this Schedule
<b>"HCA Access Route"</b>	Means a surfaced access to be constructed by the Developer in accordance with the details set out in the Emersons Green East Development Folly Brook Catchment Drainage Strategy the route of which has previously been approved in writing by the HCA
<b>"Index"</b>	means the indices based on the Updating Percentages published by the Building Cost Information Service for the Schedule of Rates for Grounds Maintenance 1987
<b>"Informal Open Space Maintenance Contribution"</b>	means the sum of Six Hundred and Forty Six Thousand Two Hundred and Eighty Eight Pounds (£646,288) which sum shall be increased in accordance with paragraph 4 of Part 4 of this Schedule
<b>"Interim Water Attenuation Area Maintenance Schedule"</b>	Means the schedule annexed to this Agreement as Appendix 14
<b>"Landscaping Scheme"</b>	shall have the meaning given to it in Schedule 13 (Open Spaces)
<b>"Management Entity"</b>	means the Management Entity to be approved by the Director or determined by the Expert pursuant to paragraph 2 of Part 3 of this Schedule

<b>"Management Regime"</b>	means a framework for the Management Entity setting out its purpose, powers, responsibilities and internal procedures as regards the management and maintenance of the Water Attenuation Area and shall include the details set out in Appendix 12 to the extent applicable to the Water Attenuation Area
<b>"Pond C3"</b>	means the area variously referred to in the Emersons Green East Development Folly Brook Catchment Drainage Strategy as 'Reservoir Pond C3' and the 'Replacement Attenuation Facility' being the existing pond enlarged in accordance with the Planning Permission
<b>"Pond C3 Maintenance Contribution"</b>	means the sum of Nine Hundred and Eighty Nine Thousand Five Hundred and Eighty Pounds and Ten Pence (£989,580.10) which sum shall be increased in accordance with paragraph 4 of Part 4 of this Schedule
<b>"Water Attenuation Area"</b>	Means the area comprising Pond C3 together with the Water Attenuation Area Informal Open Space shown shaded green on Plan 10 and totalling approximately 3.883 hectares or such size and position as may be agreed as between the Developer and the Council in writing
<b>"Water Attenuation Area Informal Open Space"</b>	means the informal open space to be provided within the Water Attenuation Area whose approximate position shown on the Open Space Plan or such size as may be otherwise agreed with the Council
<b>"Water Attenuation Area Maintenance Strategy Document"</b>	means the scheme for the management and maintenance of the Water Attenuation Area to be submitted and approved pursuant to condition 42 of the Planning Permission
<b>"Water Attenuation Area Rentcharge"</b>	means the perpetual yearly variable estate rentcharge imposed on each Dwelling within the Benefitting Development to be paid to the Management Entity to cover the annual costs of complying with its obligations under the Management Regime and the Water Attenuation Area Maintenance Strategy Document PROVIDED ALWAYS THAT the rent charge on each individual Dwelling shall be a fair and proportionate share of the total annual costs incurred by the Management Entity in relation to the Water Attenuation Area PROVIDED FURTHER THAT nothing in this Schedule shall require the payment of such rentcharge by the occupier of any Affordable Dwelling and such rentcharge shall instead be payable by the relevant Approved AHP or RP or AHP

## PART 2

### COVENANTS RELATING TO THE CONSTRUCTION OF THE WATER ATTENUATION AREA

1. From the date of this Agreement until the Water Attenuation Area Maintenance Strategy Document is approved pursuant to condition 42 the Developer shall maintain the Water Attenuation Area to the satisfaction of the Director in accordance with the Interim Water Attenuation Area Maintenance Schedule
2. The Developer shall construct Pond C3 including the provision of the HCA Access Route in accordance with the programme and details to be submitted and approved pursuant to condition 41 of the Planning Permission.

3. The Developer shall complete the laying out of the Water Attenuation Area Informal Open Space in accordance with the Landscaping Scheme to the Director's satisfaction in the first planting season following the completion of construction of Pond C3 under paragraph 1 of this Part 2.
4. The Developer shall not at any time use any part of the Water Attenuation Area Informal Open Space as a Site Compound.
5. The Developer shall not without the prior approval of the Council remove any existing hedges or fell any existing trees in the Water Attenuation Area Informal Open Space other than in accordance with the Landscaping Scheme and the scheme to be submitted and approved pursuant to condition 41 of the Planning Permission.
6. The Developer shall not following the date of this Agreement create or grant any rights easements quasi easements or privileges over the Water Attenuation Area Informal Open Space which might in any way affect the use of or the access to the Water Attenuation Area Informal Open Space as envisaged under this Agreement.
7. Upon completion of the laying out of the Water Attenuation Area Informal Open Space in accordance with paragraph 2 of this Part 2:
  - 7.1 the Developer shall give to the Director written notification to that effect and the Director shall inspect the Water Attenuation Area Informal Open Space within twenty (20) Working Days. Any failure to inspect within this period shall be treated as the Director's deemed approval to the completion and Certificate A shall be deemed to have been issued.
  - 7.2 upon the Director confirming on inspection that the Water Attenuation Area Informal Open Space has been satisfactorily completed he shall issue Certificate A to that effect and the Bond or Charge relating to the Water Attenuation Area Informal Open Space provided pursuant to Schedule 22 shall be reduced by an amount equal to ninety (90%) per centum of the value of the relevant works to construct the Water Attenuation Area Informal Open Space.
  - 7.3 if the Director on inspection does not issue Certificate A in respect of the Water Attenuation Area Informal Open Space the Director shall:
    - 7.3.1 give his reasons for not doing so; and
    - 7.3.2 re-inspect the Water Attenuation Area Informal Open Space within twenty (20) Working Days of the Developer giving notice that his reasons have been addressed and the provisions of this paragraph 6 shall apply mutatis mutandis to the re-inspection.
8. Upon completion of the construction of Pond C3 and the HCA Access Route in accordance with the details approved under condition 41:
  - 8.1 the Developer shall give to the Director written notification to that effect and shall provide an as-built survey showing that Pond C3 and the HCA Access Route comply with the approved design and the details approved under condition 41 and the Director shall inspect Pond C3 and the HCA Access Route within twenty (20) Working Days. Any failure to inspect within this period shall be treated as the Director's deemed approval to the completion and Certificate A shall be deemed to have been issued.
  - 8.2 upon the Director confirming on inspection that the Pond C3 and the HCA Access Route have been satisfactorily completed he shall issue Certificate A to that effect and the Bond or Charge relating to Pond C3 provided pursuant to Schedule 22 shall be reduced by an amount equal to ninety (90%) per centum of the value of the relevant works to construct Pond C3.

- 8.3 if the Director on inspection does not issue Certificate A in respect of Pond C3 and the HCA Access Route the Director shall:
- 8.3.1 give his reasons for not doing so; and
  - 8.3.2 re-inspect within twenty (20) Working Days of the Developer giving notice that his reasons have been addressed and the provisions of this paragraph 7 shall apply mutatis mutandis to the re-inspection.
9. If during a period of 2 years after the planting of any tree or shrub on the Water Attenuation Area such tree or shrub should for any reason die or be removed or felled the Developer shall to the satisfaction of the Director replace that tree with another of the same or similar species and size as specified by the Director during the next planting season

### PART 3

#### COVENANTS RELATING TO THE MANAGEMENT AND MAINTENANCE OF THE WATER ATTENUATION AREA

1. The Developer covenants:-
- 1.1 to manage and maintain the Water Attenuation Area or procure the management and maintenance of the Water Attenuation Area in accordance with the Water Attenuation Area Maintenance Strategy Document until either:
- 1.1.1 the Water Attenuation Area has been transferred to the Council and the Pond C3 Maintenance Contribution and the Informal Open Space Area Maintenance Contribution have been paid to the Council in accordance with the terms of Part 4 of this Schedule; or
  - 1.1.2 the Water Attenuation Area has been transferred to a Management Entity in accordance with the terms of Part 6 of this Schedule
- 1.2 prior to the first legal transfer of the first Dwelling which forms part of the Benefitting Development or the issue of Certificate A under paragraph 6.2 of Part 2 of this Schedule (whichever is the earlier) the Developer shall elect to either:
- 1.2.1 transfer the Water Attenuation Area to the Council in accordance with the terms of Part 4 of this Schedule; or
  - 1.2.2 transfer the Water Attenuation Area to a Management Entity in accordance with Part 6 of this Schedule
- and shall notify the Council in writing of its election.
2. In the event that the Developer elects to transfer the Water Attenuation Area to a Management Entity under paragraph 1.2.2 of this Part 3 the Developer shall:
- 2.1 supply such information to the Director about the proposed Management Entity as the Director may reasonably require in order to ascertain the suitability of the proposed Management Entity to assume responsibility for the management and maintenance of the Water Attenuation Area;
  - 2.2 submit to the Council for approval a detailed Management Regime;
  - 2.3 submit to the Council for approval the form of transfer for the disposal of Dwellings within the Benefitting Development such approval to be limited to approval of the terms relating to the imposition and enforceability of the Water Attenuation Area Rentcharge;

- 2.4 not transfer the Water Attenuation Area to a Management Entity unless it has first obtained the approval of the Council to the Management Entity, the Management Regime and to the extent of the matters referred to in paragraph 2.3 of this Part 3 the form of transfer (such approvals not to be unreasonably withheld or delayed) PROVIDED THAT the Developer shall be entitled to refer any refusal to approve by the Director under this paragraph 2 to the Expert pursuant to clause 21 of this Agreement whose decision shall be final and binding notwithstanding clause 21.6; and
- 2.5 comply with the obligations on its part contained in Part 6 as to the ownership, maintenance and transfer of the Water Attenuation Area.

#### **PART 4**

#### **COVENANTS RELATING TO TRANSFER OF WATER ATTENUATION AREA TO THE COUNCIL AND PAYMENT OF CONTRIBUTIONS**

1. The provisions of this Part 4 and Part 5 shall apply where an election has been made under paragraph 1.2.1 of Part 3 of this Schedule.
2. Following the issue of the final certificate under Building Regulations for the last Dwelling to be constructed within the Benefitting Development the Developer shall:
  - 2.1 deduce good and proper title to the Water Attenuation Area at the expense of the Developer;
  - 2.2 offer to transfer the Water Attenuation Area to the Council in consideration of the sum One Pound (£1.00) using substantially the form of transfer set out at Appendix 1 PROVIDED THAT nothing in this Agreement shall require the Council to take a transfer of the Water Attenuation Area unless it is satisfied that the Water Attenuation Area Informal Open Space has been maintained fully in accordance with the Landscape Scheme and Pond C3 has been maintained fully in accordance with the Water Attenuation Area Maintenance Strategy Document notwithstanding the issue of Certificates under paragraphs 6.2 and 7.2 of Part 2 of this Schedule ; and
  - 2.3 upon completion of the transfer pay to the Council the Pond C3 Maintenance Contribution and the Informal Open Space Area Maintenance Contribution and the Council's reasonable and proper legal costs and expenses associated with the transfer.
  - 2.4 Upon the completion of the legal transfer of the Water Attenuation Area the Council shall take over the maintenance of the Water Attenuation Area and the ten (10%) per centum remaining following the reduction of the relevant Bond or Charge pursuant to paragraph 6.2 of Part 2 of this Schedule shall cease to be required.
3. The Pond C3 Maintenance Contribution and the Informal Open Space Area Maintenance Contribution due and payable (having been calculated at October 2011 prices) shall if not paid on the date hereof be increased in accordance with any increase in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained.
4. The Council may elect to nominate an alternative transferee to take the transfer of the Water Attenuation Area or any part thereof and such transfer shall likewise be in accordance with the terms and conditions contained in Part 5 of this Schedule PROVIDED THAT such nomination is received by the Developer within 20 Working Days of the Council receiving the election notification pursuant to paragraph 1.2.1 of Part 3 of this Schedule and thereafter approved in writing by the Developer.

## PART 5

### CONDITIONS OF TRANSFER TO COUNCIL

1. **Price**

The price shall be One Pound (£1.00) payable on completion.

2. **Title**

- 2.1 The Developer shall at its own expense provide adequate plans showing the Water Attenuation Area to which the transfer relates for use in connection with the transfer.

3. **Covenant for Title**

The land shall be conveyed with full title guarantee.

4. **Matters Subject to which Land Sold**

- 4.1 The land is sold subject to and with the benefit of (as the case may be):

4.1.1 all matters registered as local land charges;

4.1.2 all notices orders proposals or requirements affecting or relating to the land given or made by any government department statutory undertaking or other public or local authority of which notice is given;

4.1.3 all rights easements quasi-easements and privileges in the nature of light air drainage way and passage and other like rights used or enjoyed over the land and of which notice has been given.

- 4.2 The land is sold subject to all matters disclosed in writing to the Council prior to the date hereof by the Developer's solicitors.

- 4.3 Where the Developer has given its approval pursuant to paragraph 4 of Part 4 of this Schedule the Council may nominate an alternative transferee in respect of the Water Attenuation Area or any part thereof and such transfer shall likewise be in accordance with the terms and conditions contained in this Part of this Schedule

- 4.4 In each transfer the Council (or such other person or body nominated as aforesaid) shall undertake to the party that transferred the land to the Council to hold the Water Attenuation Area for surface water drainage and public open space sporting leisure recreational or community purposes or a combination of these purposes in perpetuity but shall not be required to accept any other restriction or condition regarding the future use of the Water Attenuation Area.

- 4.5 There shall be excluded from each transfer (unless previously agreed in writing with the Council or such other person or body nominated as aforesaid) all boundary structures or other boundary features together with any responsibility or liability therefor.

5. **Incorporating Standard Conditions of Sale**

- 5.1 The Standard Conditions of Sale (Fifth Edition) shall apply to this transfer insofar as the same are applicable to a sale by private treaty and are not otherwise inconsistent with the terms of this Agreement or excluded hereby.

- 5.2 The following provisions of the said Standard Conditions of Sale shall not apply:-

2.2 2.3 3.1.4 3.2.2 3.3 4.4 4.6.2 5.1.2 to 5.1.6 5.2.2(b) to (f) inclusive 6.1 and 8



6. **Boundaries**

The precise boundaries of the land to be transferred are to be agreed in writing between the parties and this will include confirmation of the legal ownership of any abutting trees hedges bunds ponds watercourses and ditches.

7. **Vacant Possession**

Vacant possession shall be given on completion.

8. **Date of Completion**

Completion shall take place at the Council Offices as soon as reasonably practicable following the issue of the final certificate under Building Regulations for the last Dwelling to be constructed as part of the Benefitting Development or as otherwise agreed in writing between the parties.

**PART 6**

**COVENANTS RELATING TO TRANSFER OF WATER ATTENUATION AREA TO MANAGEMENT ENTITY**

1. The provisions of this Part 6 shall apply to all of the Water Attenuation Area where an election has been made under paragraph 1.2.2 of Part 3 of this Schedule.
2. The Developer shall following the issue of the final certificate under Building Regulations for the last Dwelling to be constructed within the Benefitting Development transfer the Water Attenuation Area to the Management Entity subject to terms which ensure that the Management Entity will:
  - 2.1.1 be responsible for the management and maintenance of the Water Attenuation Area in perpetuity in accordance with the Water Attenuation Area Maintenance Strategy Document the Management Regime and the Landscaping Scheme;
  - 2.1.2 fulfil the functions described in the approved Management Regime;
  - 2.1.3 ensure that the Water Attenuation Area Informal Open Space shall remain available for use by the general public in perpetuity; and
  - 2.1.4 covenant to use any financial contribution or commuted sum paid to it under paragraph 7 of this Part 6 solely for the purposes of complying with its obligations under this Part 6.
3. Upon the completion of the legal transfer of the Water Attenuation Area to the Management Entity the ten (10%) per centum remaining following the reduction of the relevant Bond or Charge pursuant to paragraphs 6.2 and 7.2 of Part 2 of this Schedule shall cease to be required.
4. The Developer covenants to ensure that at all times the Management Entity shall be sufficiently financed and resourced to enable it to comply with its obligations herein PROVIDED THAT if following the service of the Benefitting Development Completion Notice the Management Entity is self-financing the Developer may apply to the Council for a release from its obligations hereunder in accordance with clause 20 of this Agreement (without prejudice to any outstanding claim by reason of any breach by the Developer of its requirements under this Schedule occurring prior to such release).
5. The Developer shall not permit the first legal transfer or lease of any Dwelling within the Benefitting Development unless the Water Attenuation Area Rentcharge is created in respect of that Dwelling.
6. If during a period of 5 years after the planting of any tree or shrub forming part of the Landscaping Scheme in the Water Attenuation Area Informal Open Space such tree or shrub should for any reason die or be removed or felled the Developer shall to the satisfaction of the Director replace that tree or shrub with another of the same or similar species and size during the next planting season.

7. The Council shall within 20 Working Days of the later of:
  - 7.1 receipt by the Council of a financial contribution or commuted sum for the purposes of the maintenance of Pond C3 under any Related Planning Agreement; and
  - 7.2 notification of the Developer's election under paragraph 1.2.2 of Part 3 of this Schedulepay such contribution or sum to either:
  - 7.2.1 the Developer where such contribution or sum is received by the Council prior to the transfer of the Water Attenuation Area to the Management Entity and the Developer covenants to use such contribution or sum solely for the purposes of complying with its obligations under this Part 6; or
  - 7.2.2 the Management Entity where such contribution or sum is received by the Council following the transfer of the Water Attenuation Area to the Management Entity.

**SCHEDULE 20**

**ACOUSTIC BARRIER**

**PART 1**

**DEFINITIONS**

1. In this Schedule the words below shall mean as follows:-

<b>"Acoustic Barrier"</b>		means the fence or other barrier to be erected prior to the occupation of any Dwellings falling within noise exposure C as shown on drawing CA02061/040 pursuant to condition 26 of the Planning Permission along the north eastern boundary of the Land with the M4 motorway to protect the amenities of the occupiers of Dwellings and, where the Acoustic Barrier is to be constructed in phases, the term shall also mean any phase thereof
<b>"Barrier Management Scheme"</b>		means the scheme detailing the management and maintenance regime for the Acoustic Barrier to be prepared in consultation with the design and construction team for Acoustic Barrier and to be approved by the Council pursuant to paragraph 1 of Part 2 of this Schedule together with such variations to the scheme as may be agreed with the Council from time to time
<b>"Disposal"</b>		means the sale of the freehold or lease of a Unit for a term of 3 years or more
<b>"Management Company"</b>		means a company incorporated for the purpose of administering the long term maintenance of the Acoustic Barrier
<b>"Management Entity"</b>		means the Management Entity to be approved by the Director pursuant to paragraph 2.5.1(a) of Part 2 of this Schedule
<b>"Unit"</b>		means any individual employment unit to be constructed on the land shown shaded pink to correspond with the legend colour marked "Employment" on the Development Framework Plan and "Units" shall be construed accordingly

**PART 2**

**COVENANTS RELATING TO ACOUSTIC BARRIER**

1. **BARRIER MANAGEMENT SCHEME**

The Developer shall submit the Barrier Management Scheme to the Council for approval (such approval not to be unreasonably withheld or delayed) prior to the commencement of construction of any part of the Acoustic Barrier.

## 2. MANAGEMENT AND MAINTENANCE ARRANGEMENTS

From the date of commencement of the construction of any part of the Acoustic Barrier:

- 2.1 The Developer shall not dispose of or allow the Occupation or use of any Unit until either:
  - 2.1.1 the Management Company has been established in accordance with and to fulfil the functions described in paragraph 2.4 of this Part 2; or
  - 2.1.2 the Management Entity has assumed the responsibility for the management and maintenance of the Acoustic Barrier in accordance with paragraph 2.5 of this Part 2
- 2.2 The Developer shall manage and maintain the Acoustic Barrier in accordance with the Barrier Management Scheme until such time as either:
  - 2.2.1 the Management Company is established in accordance with this Schedule; or
  - 2.2.2 the Management Entity has assumed responsibility for the Acoustic Barrier in accordance with this Schedule.
- 2.3 The Developer, the Management Company or the Management Entity (as applicable) shall provide to the Council the business name and contact address of the occupier of each Unit prior to first Occupation of the relevant Unit.
- 2.4 Where the Developer elects to establish a Management Company pursuant to paragraph 2.1.1 of this Part 2:
  - 2.4.1 the Management Company shall have a nominal capital comprising such a number of £1 shares as shall be not less than 1 share for each and every Unit of which 1 share shall be an 'A' share (with preferential voting rights) and shall be allotted to the Developer and the remainder shall be 'B' shares
  - 2.4.2 the first directors of the Management Company shall be representatives of the Developer who will be required to hold office until the first anniversary of the completion of the Disposal of all of the Units
  - 2.4.3 on each Disposal the new freehold or leasehold owners as the case may be of such Unit shall become (or shall nominate a person to become) a director of the Management Company and for the avoidance of doubt the directors shall be limited to the freehold and leasehold owners of the Units (or their duly elected nominees) and/or the Developer
  - 2.4.4 the Management Company shall have as one of its objects the long term management and maintenance of the Acoustic Barrier in accordance with the Barrier Management Scheme;
  - 2.4.5 the Developer shall provide the Management Company with a grant in the sum of Six Thousand Pounds (£6000) as an initial fund to enable the Management Company to have resources available to it as working capital and thereafter ensure that at all times the Management Company shall be sufficiently financed and resourced to enable it to comply with its obligations herein and after the Disposal of the final Unit on the Development the Management Company shall be self-financing and the Developer may apply to the Council for a release from its obligations hereunder in accordance with clause 20 of this Agreement (without prejudice to any outstanding claim by reason of any breach by the Developer of its requirements under this Schedule occurring prior to such Disposal)

- 2.4.6 The Developer shall ensure that each Disposal of a Unit is subject to terms requiring each of the purchasers or tenants:
- (a) on completion of such Disposal to become a member of the Management Company and upon completion of the Disposal the Developer shall procure the issue to the purchaser or tenant one 'B' share in the Management Company in return for £1 per share issued in receipt of £1 from the purchaser or tenant;
  - (b) as a member of the Management Company to be bound by the Memorandum and Articles of Association of the Management Company and as an owner/tenant to comply with any proper regulations made by it;
  - (c) to pay a service charge payable annually towards the running and operation of the Management Company and the Management Company shall if necessary be entitled to prepare supplementary service charges in order to fully fund the costs incurred or to be incurred by the Management Company in complying with its obligations hereunder;
  - (d) to notify the Management Company of the business name and contact address and liaison officer for the occupier of the Unit; and
  - (e) the Developer shall ensure that the assignment or grant of any underlease of the Unit by the purchaser or assignee to the occupier of the Unit shall be subject to terms requiring the underlessee/ occupier to provide the information referred to in paragraph 2.4.6(d) of this Part 2 to the purchaser or assignee prior to occupying the Unit and requiring it to comply with any regulations made by the Management Company
- 2.4.7 on or subsequent to the completion of the Disposal of the last Unit the Developer shall transfer its 'A' share in the Management Company to the purchaser/tenant of such Unit at which time such share shall be converted to a 'B' share with equal voting rights as all other shares in the Management Company or cancel such share
- 2.4.8 the Developer shall ensure that as soon as is reasonably practical after the incorporation of the Management Company (and in any event prior to first Occupation of any Unit) the Management Company shall enter into direct covenants with the Council to manage and maintain the Acoustic Barrier to the satisfaction of the Director
- 2.4.9 subsequent to the initial Disposal of each Unit by the Developer each future conveyance transfer or assignment of any Unit shall be subject to the following terms:
- (a) that the relevant seller or assignor shall transfer its share in the Management Company to the relevant purchaser or assignee which shall be obliged to accept the same;
  - (b) that each purchaser or assignee shall be required by either covenant or pursuant to the terms of their lease as the case may be to notify the Management Company of the business name and contact address and liaison officer for the occupier;
  - (c) that each purchaser or assignee of the Unit shall be required to pay a service charge payable annually towards the running and operation of the Management Company and the Management Company shall if necessary be entitled to prepare supplementary service charges in order to fully fund the costs incurred or to be incurred by the Management Company in complying with its obligations hereunder;
  - (d) that the grant of any underlease of the Unit by the purchaser or assignee to the occupier of the Unit shall be subject to terms requiring the underlessee/ occupier to provide the information referred to in paragraph 2.4.9(b) of this Part 2 to the purchaser or assignee prior to occupying the Unit.

2.5 Where the Developer elects to transfer responsibility for the Acoustic Barrier to the Management Entity pursuant to paragraph 2.1.2 of this Part 2:

2.5.1 the Developer shall not commence the construction of the Acoustic Barrier unless it has first:

- (a) supplied such information to the Director about the proposed Management Entity as the Director may reasonably require and obtained the approval of the Director to the Management Entity; and
- (b) obtained the approval of the Director to the form of transfer or lease for the Disposal of the Units such approval to be limited to approval of the terms relating to the imposition and enforceability of a requirement for the purchaser or tenant to pay a service charge to cover the annual cost of the Management Entity managing and maintaining the Acoustic Barrier in accordance with the Barrier Management Scheme

PROVIDED THAT the Developer shall be entitled to refer any refusal to approve by the Director under this paragraph 2.5.1 to the Expert pursuant to clause 21 of this Agreement whose decision shall be final and binding notwithstanding clause 21.6

2.5.2 upon completion of the Acoustic Barrier the Developer shall transfer the land on which the Acoustic Barrier is constructed to the Management Entity on terms which:

- (a) require the management and maintenance of the Acoustic Barrier by the Management Entity in accordance with the Barrier Management Scheme for the life of the Acoustic Barrier; and
- (b) require the Developer to assign any design and construction warranties relating to the Acoustic Barrier to the Management Entity.

2.5.3 the Developer shall ensure from the date of the transfer referred to in paragraph 2.5.2 of this Part 2 that the Management Entity will be responsible for the management and maintenance of the Acoustic Barrier in accordance with the Barrier Management Scheme for the life of the Acoustic Barrier.

2.5.4 the Developer shall provide the Management Entity with a grant in the sum of Six Thousand Pounds (£6000) as an initial fund to enable the Management Entity to have resources available to it as working capital and thereafter the Developer shall ensure that at all times the Management Entity shall be sufficiently financed and resourced to enable it to comply with its obligations herein and after the Disposal of the final Unit on the Development the Management Company shall be self-financing and the Developer may apply to the Council for a release from its obligations hereunder in accordance with clause 20 of this Agreement (without prejudice to any outstanding claim by reason of any breach by the Developer of its requirements under this Schedule occurring prior to such Disposal).

## SCHEDULE 21

### ACCESS FOR WORKS

#### PART 1

#### DEFINITIONS

1. The words below shall mean as follows:-

- "Facilitating Party"** means the Party permitting access to that part of his land that is within the Works Land for the purposes of carrying out, use of or maintenance of the Highway Infrastructure Works or the Services Infrastructure Works
- "Highways Infrastructure Works"** means any works required for the construction and/or maintenance of any highway related to the Development (including without limitation any surveys or ground investigations) within the Works Land
- "Requesting Party"** means the Party requesting access to the Works Land for the purposes of carrying out, use of or maintenance of the Highway Infrastructure Works or the Services Infrastructure Works
- "Services Infrastructure Works"** means any works required for the installation, use of or maintenance of any Service Media in on over or under the Works Land to include (but not limited to) gas, electricity, water, foul sewerage and telecommunications infrastructure (including without limitation any surveys or ground investigations)
- "Works Land"** means land within the Land required for Highways Infrastructure Works and/or the Services Infrastructure Works

#### PART 2

### ACCESS FOR CARRYING OUT THE WORKS

1. The Parties covenant with each other:-

- 1.1 that in the event that access is required to the Works Land for the purposes of carrying out the Highways Infrastructure Works and/or the Services Infrastructure Works the Facilitating Party shall permit such access to his land insofar as it is within the Works Land as is reasonably necessary at reasonable times at nil cost and upon reasonable prior written notice of at least seven (7) Working Days except in the case of an emergency by the Requesting Party to the Facilitating Party and its respective agents, officers, employees and invitees in order to facilitate the carrying out of the Highways Infrastructure Works and/or the Services Infrastructure Works and shall use Reasonable Endeavours to secure the same access from any third party interests in, on, under, over or related to the Works Land;

- 1.2 the Requesting Party shall agree to such reasonable requirements as the Facilitating Party may reasonably require to ensure that the Highways Infrastructure Works and/or the Services Infrastructure Works are carried out in such a way as to reduce any disruption damage or inconvenience to the Facilitating Party to a reasonable minimum including:-
- 1.2.1 providing the Facilitating Party with a copy of the specification, design and programme of the Works;
  - 1.2.2 indemnifying the Facilitating Party in respect of:-
    - (a) any reasonable legal or other professional costs reasonably incurred in connection with the carrying out of the Highways Infrastructure Works and/or the Services Infrastructure Works;
    - (b) any damage caused to that part of the Works Land owned by the Facilitating Party;
- 1.3 to allow each other to connect to use and/or to divert any Highways Infrastructure Works and/or the Services Infrastructure Works used in conjunction now or within the next eighty (80) years laid or running through under or over the Works Land within the other's ownership or control or any part of it and to enter the Works Land within the other's ownership or control or any part of it for the purpose of inspecting cleaning maintaining repairing and replacing Highways Infrastructure Works and/or the Services Infrastructure Works now or from time to time;
- 1.4 to enter into any highways agreements pursuant to either section 38 or section 278 of the Highways Act 1980 necessary to secure the Highways Infrastructure Works and/or the Services Infrastructure Works and/or the adoption of any highway created by the Highways Infrastructure Works and/or the Services Infrastructure Works on the Works Land within their ownership or control at the relevant time;
- 1.5 to enter into any agreements pursuant to section 104 of the Water Industry Act 1991 with statutory undertakers necessary to secure the adoption of the sewers and drains on or under the Works Land within their ownership or control at the relevant time;
- 1.6 to enter into any other legal agreements deeds of grant and wayleaves necessary for the construction use or adoption of the Highways Infrastructure Works and/or the Services Infrastructure Works necessary or desirable; and
- 1.7 to allow members of the public and their vehicles at all times to pass and repass over any highway constructed on the Works Land within their ownership or control from the date on which the highway is suitable for use by vehicles and/or pedestrians (as appropriate) until the date on which the highway is adopted as a highway maintainable at the public expense.



## SCHEDULE 22

### SECURITY

#### PART 1

#### DEFINITIONS

1. In this Schedule the words below shall mean as follows:-

<b>"Adequate Security"</b>	means a Bond(s) or Charge(s) (as appropriate) in accordance with Appendix 3
<b>"Bond(s)"</b>	means a bond or bonds in the form attached at Appendix 2 to this Agreement or such other form as shall be agreed between the Developer and the Council from time to time
<b>"Call Notice"</b>	means the Council's formal request to the Surety requesting payment under the Bond(s) or part thereof
<b>"Charge(s) "</b>	means a legal charge over a parcel or parcels of land within the Land that are valued by agreement between the Developer and the Council and in the case of dispute by reference to an Independent Valuer as equating to the value of a Secured Item as identified in Appendix 3 and <b>"Charged"</b> shall be construed accordingly
<b>"Relevant Payment Date"</b>	means the date by which each of the Contributions which are Secured Items must be paid as set out in the relevant Schedules of this Agreement
<b>"Relevant Works Date"</b>	means the date by which each of the Works must be completed as set out in the relevant Schedules of this Agreement
<b>"Relevant Works Specification"</b>	means the approved plans, details and/or specifications pursuant to which each of the Works must be carried out as set out in the relevant Schedules of this Agreement
<b>"Substantive Breach"</b>	means a breach by the Developer in complying with the requirements of this Agreement in relation to a Secured Item which shall be interpreted in accordance with paragraph 3 of Part 2 of this Schedule
<b>"Secured Items"</b>	means the obligations in this Agreement which are to be the subject of security pursuant to the terms of this Schedule and which are identified in the column headed "s106 item description" in the schedule at Appendix 3
<b>"Surety"</b>	means a bank or other reputable financial institution or bondsman which shall be approved in writing by the Council prior to the provision of a Bond PROVIDED THAT once the Council has approved a Surety the Developer shall be entitled to assume that such surety will continue to be acceptable to the Council unless the Council has informed them to the contrary in writing

**"Works"**

means the obligations to carry out works pursuant to this Agreement which are Secured Items being the construction of the MMI Works pursuant to Schedule 4 (where a Construction Election Notice is served), the Open Spaces (pursuant to Schedule 13), the Water Attenuation Area Informal Open Space (pursuant to Schedule 19) and the Community Hall, Outdoor Changing Facility and Cricket Pavilion (as defined in Schedule 15)

**PART 2**

**SECURITY**

**1. BOND**

1.1 Subject to paragraph 1.2 of this Part 2 and save in respect of any Secured Items (or parts thereof) which the Council and the Developer have agreed in writing may be secured by way of Charge in lieu of a Bond pursuant to paragraph 2 of this Part 2:

1.1.1 the Developer shall not permit the Commencement of the Development unless a Bond has been provided to the Council with a Surety in a sum being the aggregate of the amounts identified in the column headed "Bond 1" in the schedule at Appendix 3 as such amounts may have been increased by reference to the indexation provisions set out in the relevant Schedule (or in the case of the First Primary School Contribution by reference to paragraph 2 of Part 3 of Schedule 8) at the date the Bond is provided;

1.1.2 the Developer shall not permit the Occupation of more than 149 Dwellings unless a Bond has been provided to the Council with a Surety in a sum being the aggregate of the amounts identified in the column headed "Bond 2" in the schedule at Appendix 3 as such amounts may have been increased by reference to the indexation provisions set out in the relevant Schedule (or in the case of the First Primary School Contribution by reference to paragraph 2 of Part 3 of Schedule 8) at the date the Bond is provided;

1.1.3 the Developer shall not permit the Occupation of more than 499 Dwellings unless a Bond has been provided to the Council with a Surety in a sum being the aggregate of the amounts identified in the column headed "Bond 3" in the schedule at Appendix 3 as such amounts may have been increased by reference to the indexation provisions set out in the relevant Schedule (or in the case of the Second Primary School Contribution by reference to paragraph 2 of Part 3 of Schedule 9 or in the case of the Secondary School Contribution by reference to paragraph 3 of Part 3 of Schedule 10) at the date the Bond is provided;

1.1.4 the Developer shall not permit the Occupation of more than 999 Dwellings unless a Bond has been provided to the Council with a Surety in a sum being the aggregate of the amounts identified in the column headed "Bond 4" in the schedule at Appendix 3 as such amounts may have been increased by reference to the indexation provisions set out in the relevant Schedule (or in the case of the Second Primary School Contribution by reference to paragraph 2 of Part 3 of Schedule 9 or in the case of the Secondary School Contribution by reference to paragraph 3 of Part 3 of Schedule 10) at the date the Bond is provided; and

1.1.5 the Developer shall not permit the Occupation of more than 1499 Dwellings unless a Bond has been provided to the Council with a Surety in a sum being the aggregate of the amounts identified in the column headed "Bond 5" in the schedule at Appendix 3 as such amounts may have been increased by reference to the indexation provisions set out in the relevant Schedule at the date the Bond is provided.

- 1.2 No Bonds shall be required in respect "POS Maintenance" in the event that the Developer elects to:
- 1.2.1 transfer the Open Spaces (excluding Core Area), Incidental Open spaces and Outdoor Changing Facilities to the Management Entity pursuant to paragraph 1.2 of Part 2 of Schedule 13; and
  - 1.2.2 transfer the Water Attenuation Area Informal Open Space to the Management Entity pursuant to paragraph 1.2.2 of Part 3 of Schedule 19

PROVIDED THAT if such an election is made under only one of the aforementioned Schedules then the Bond in respect "POS Maintenance" shall be reduced proportionately.

- 1.3 In the event of a Substantive Breach by the Developer of a Secured Item secured by a Bond pursuant to paragraph 1 of this Part 2:
- 1.3.1 the Council shall to give prior written notice to the Developer of its intention to call on the Bond together with reasons and details of the steps required to rectify the Substantive Breach;
  - 1.3.2 the Council shall allow the Developer a reasonable opportunity to rectify the Substantive Breach complained of which shall (unless the Council reasonably considers that the breach is such that it requires urgent rectification) be not less than twenty (20) Working Days;
  - 1.3.3 if the Council reasonably believes there remains a Substantive Breach notwithstanding any steps taken by the Developer pursuant to paragraph 1.3.2 of this Part 2 it shall:
    - (a) in the case of financial obligations obtain the certification of the Director as to the amount necessary to make good the relevant default which sum shall include all reasonable and proper legal and administrative costs incurred by the Council in connection with Substantive Breach;
    - (b) in the case of a default in carrying out obligations to undertake Works shall obtain certification of the Director as to the works required and the cost of those works to make good the relevant default; and
    - (c) inform the Developer of the amount certified under (a) or (b) above (as applicable);
  - 1.3.4 if the Developer does not pay the amount or carry out the works necessary to make good the relevant default referred to in paragraph 1.3.3 of this Part 2 within twenty (20) Working Days of receiving notice of the same, then the Council will be entitled to serve a Call Notice on the Surety (a copy of such Call Notice to be served on the Developer) so as to call on the Bond up to the lower of:
    - (a) the costs of making good the relevant default together with the Council's reasonable and proper legal and administrative costs incurred in connection with the Substantive Breach; and
    - (b) the value of the Bond.

1.3.5 Where the Bond is called upon for the purposes of making good a default in carrying out an obligation to undertake Works, upon completion of the works required to make good the relevant default the Council shall:

- (a) obtain certification of the Director of the actual costs of undertaking those works together with the Council's reasonable and proper legal and administrative costs incurred in connection with the Substantive Breach;
- (b) inform the Developer of the amount certified under (a) above; and
- (c) where the actual costs certified under (a) above were less than the amount called upon under the Bond, pay to the Surety an amount equal to the difference between the aforementioned actual costs and the amount called upon under the Bond.

## 2. CHARGE

2.1 In the event that the Developer submits a written request to the Council to secure a Secured Item by way of a Charge in lieu of a Bond (such request to include a plan of the Land which is proposed to be Charged), the Council shall give due consideration to such request and shall in its absolute discretion either accept the request in writing or refuse the request giving reasons in writing.

2.2 Where the Council accepts a request to secure a Secured Item by way of a Charge in lieu of a Bond:

2.2.1 the Developer covenants to pay all reasonable and proper costs and expenses incurred by the Council in connection therewith including but not limited to the costs incurred in the joint appointment of the Independent Valuer, the Council's costs incurred in drafting, agreeing and registering the Charge and all costs associated with the monitoring and review of the Charge during the course of the Development;

2.2.2 the Charge must be in place no later than the relevant trigger point for the provision of the Bond within which the relevant Secured Item would otherwise be included as set out in paragraph 1.1 of this Part 2;

2.2.3 upon completion of a Charge in lieu of a Bond on terms which have been previously approved by the Council, the Developer shall be released from its obligation pursuant to paragraph 1.1 of this Part 2 to provide a Bond in respect of the relevant Secured Item;

2.2.4 in the event of a Substantive Breach by the Developer of a Secured Item secured by a Charge:

- (a) the Council shall give prior written notice to the Developer of its intention to exercise the power of sale together with reasons and details of the steps required to rectify the Substantive Breach;
- (b) the Council shall allow the Developer a reasonable opportunity to rectify the Substantive Breach complained of which shall (unless the Council reasonably considers that the breach is such that it requires urgent rectification) be not less than twenty (20) Working Days;

- (c) if the Council reasonably believes there remains a Substantive Breach notwithstanding any steps taken by the Developer pursuant to paragraph 2.2.4(b) of this Part 2 it shall:
- (i) in the case of financial obligations obtain the certification of the Director as to the amount necessary to make good the relevant default;
  - (ii) in the case of a default in carrying out obligations to undertake Works shall obtain the certification of the Director as to the works required and the cost of those works to make good the relevant default; and
  - (iii) inform the Developer of the amount certified under (i) or (ii) above (as applicable);
- (d) if the Developer does not pay the amount or carry out the works necessary to make good the relevant default as referred to in paragraph 2.2.4(c) of this Part 2 within twenty (20) Working Days of receiving notice of the same, then the Council shall be entitled to exercise the power to require sale of the Charged land and the following shall apply:
- (i) the Council shall be entitled to such part of the proceeds of sale up to or equal to the costs of making good the relevant default together with the Council's reasonable and proper legal and administrative costs incurred in connection with the Substantive Breach; and
  - (ii) the Developer shall be entitled to retain such part of the proceeds of sale (if any remaining after the discharge of any other charges over the Charged land) in excess of the costs of making good the relevant default plus the Council's reasonable and proper legal and administrative costs incurred in connection with the Substantive Breach.
- (e) Where the power to require sale of the Charged land is exercised for the purposes of making good a default in carrying out an obligation to undertake Works, upon completion of the works required to make good the relevant default the Council shall:
- (i) obtain certification of the Director of the actual costs of undertaking those works together with the Council's reasonable and proper legal and administrative costs incurred in connection with the Substantive Breach;
  - (ii) inform the Developer of the amount certified under (i) above; and
  - (iii) where the actual costs certified under (i) above were less than the proceeds of sale paid to the Council under paragraph 2.2.4(d)(i) of this Part 2, pay the Developer an amount equal to the difference between the aforementioned actual costs and the proceeds of sale paid to the Council under the said paragraph 2.2.4(d)(i).

### 3. SUBSTANTIVE BREACH

3.1 It is hereby agreed as follows:

- 3.1.1 in the context of a Secured Item which relates to the payment of a Contribution, failure to pay the Contribution by the Relevant Payment Date shall be a Substantive Breach;
- 3.1.2 in the context of a Secured Item which relates to the carrying out and completion of Works:
  - (a) failure to complete the Works (where required to the satisfaction of the Director and in accordance with the Relevant Works Specification) by the Relevant Works Date shall be a Substantive Breach PROVIDED THAT:
  - (b) where there is a dispute as to whether the Works have been completed in accordance with the Relevant Works Specification, the question of whether or not there has been a Substantive Breach shall be referred to the Expert pursuant to clause 21 of this Agreement.

### 4. DISCHARGE OF SECURITY

4.1 Save as provided in paragraph 4.2 of this Part 2:

- 4.1.1 within ten (10) Working Days of each Secured Item being discharged or partially discharged (by the payment of a Contribution or the completion of Works as appropriate) the Council shall:
  - (a) where the Secured Item is the subject of a Bond or Bonds, authorise the reduction of the Bond or Bonds by an amount equal to the value of the Secured Item so discharged; or
  - (b) where the Secured Item is the subject of a Charge, at the expense of the Developer authorise the reduction of the Charge by an amount equal to the value of the Secured Item so discharged
- 4.1.2 the obligations of the parties under a Bond or Charge (as the case may be) shall cease and determine absolutely upon the discharge of all the Secured Items to which such Bond or Charge (as the case may be) relates.

4.2 In the event that the Developer elects to:

- 4.2.1 transfer the Open Spaces Incidental Open Spaces and Outdoor Changing Facilities to the Council pursuant to paragraph 1.1 of Schedule 13 of this Agreement; and
- 4.2.2 transfer the Water Attenuation Area Informal Open Space to the Council pursuant to paragraph 1.2.1 of Part 3 of Schedule 19

"Bond 5" to be provided pursuant to paragraph 1.1.5 of this Part 2 (or any Charge in lieu provided pursuant to paragraph 2 of this Part 2) shall cease and determine absolutely upon payment of all the Open Space Maintenance Contribution pursuant to Schedule 13, payment of the Informal Open Space Maintenance Contribution pursuant to Schedule 19 and the issue of Certificate(s) A in respect of all such areas PROVIDED THAT if such an election is made under only one of the aforementioned Schedules then the Bond shall continue but only to the extent that and for so long as any "POS Maintenance" remains unpaid.

**SCHEDULE 23**

**RIGHTS OF ACCESS OVER HCA RETAINED LAND**

**PART 1**

**DEFINITIONS**

1. The words below shall mean as follows:

<b>“Adoptable Roads”</b>	roads and footpaths now or later constructed within the land now or previously vested in the Sixth Owner under title number AV33660 which are intended to become public highways and which have been constructed to base course level
<b>“HCA Access Route”</b>	Shall have the meaning ascribed to it in Schedule 19
<b>“HCA Development Land”</b>	means the land now vested in the Sixth Owner under title number AV33660
<b>“Default Works”</b>	means works required to remedy any default of the Developer in carrying out its obligations in Schedule 19 of this Agreement
<b>“Rights”</b>	means: (1) the right of way with or without workmen materials plant and machinery and equipment over the HCA Access Route for all purposes connected with any Default Works ; (2) the right of entry with or without workmen materials plant and machinery and equipment on to such part of the HCA Retained Land as is reasonably necessary for the purpose of carrying out any Default Works provided that no structures shall be erected or excavations carried out unless previously approved in writing by the Sixth Owner;

**PART 2**

**COVENANTS RELATING TO RIGHTS OF ACCESS OVER HCA RETAINED LAND**

1. The HCA shall permit the Council to exercise the Rights on not less than twenty-one days' notice such notice only to be served in the event of the Council exercising its statutory rights to carry out Default Works
  
2. The Council shall carry out any Default Works on the HCA Retained Land in accordance with the provisions of Schedule 19 of this Agreement and shall keep the Sixth Owner reasonably informed of matters arising in connection with such works and shall co-operate reasonably in relation to the provision and use of Adoptable Roads so as to avoid any delay in the development of the HCA Development Land or any unnecessary expense
  
3. The Council shall not:
  - 3.1 permit any vehicles of any description to obstruct the HCA Development Land or any Adoptable Roads nor at any time to obstruct or deposit any matter or thing of whatsoever nature thereon;

- 3.2 damage any adjoining or neighbouring roads and footpaths including verges and any landscaped areas associated with the same and not to bring upon or allow any person to bring upon such roads and footpaths any trailers or vehicles without having previously removed from the wheels thereof any mud clay or other material adhering thereto and making good any damage to or cleaning the said roads and footpaths
- 3.3 damage any part of the HCA Retained Land and shall make good any damage caused in breach of this provision to the reasonable satisfaction of the Sixth Owner.

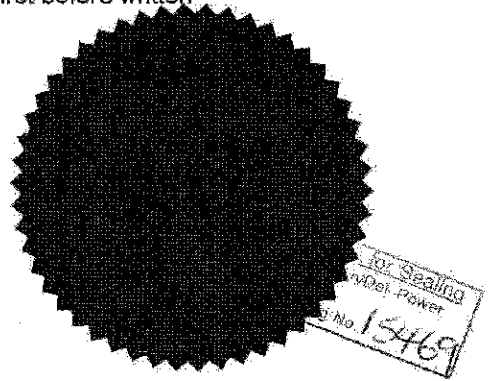


EXECUTED as a deed by the parties and delivered the day and year first before written

Executed as a Deed by affixing  
the Common Seal of  
**SOUTH GLOUCESTERSHIRE DISTRICT** )  
**COUNCIL** )  
in the presence of:-



Deputy to the  
Head of Legal & Democratic Services



Executed as a Deed by )  
**CHARTWING** )  
**DEVELOPMENTS** )  
**LIMITED** )  
acting by its duly  
authorised officers



Director

Director/Secretary

Executed as a Deed by )  
**HERON LAND** )  
**DEVELOPMENTS** )  
**LIMITED** )  
acting by its duly  
authorised officers



Director

Director/Secretary

Executed as a Deed by )  
TAYLOR WIMPEY UK )  
LIMITED )  
acting by its attorneys  
in the presence of:

[Redacted signature]

Attorney [Redacted signature] DIANA CUMMINGS  
Attorney [Redacted signature] JAMES BALL

DEBBIE FITZPATRICK  
Taylor Wimpey UK Limited  
600 Park Avenue  
Aztec West  
Bristol  
BS32 4SD

Executed as a Deed by )  
REDLAND ESTATES )  
LLP )  
acting by two members

Member [Redacted signature]

Member [Redacted signature]

Executed as a Deed by )  
EMERSONS GREEN URBAN VILLAGE )  
LIMITED )  
acting by :

Director [Redacted signature]  
Director/ Secretary [Redacted signature]

Signed and Delivered )  
as a Deed for and on )  
behalf of )  
NATIONAL  
WESTMINSTER  
BANK PLC  
by a duly authorised )  
Attorney in the )  
presence of )



DOCUMENTOR  
CREDIT DOCUMENTATION

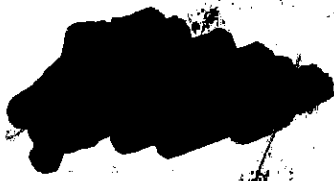
REF 1819073/M06


Signature of Witness - Bank Employee

Name Gordon Carter

Address 

Signed as a Deed by )  
STUART ROY )  
HUSSEY )  
in the presence of: - )

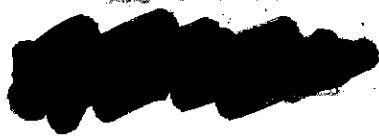



Signature of Witness 

Name SARAH SUTHERLAND

Address ONE GLASS WHARF  
AVON STREET  
BRISTOL  
BS2 0ZX

Signed as a Deed by )  
CHRISTOPHER JOHN )  
HUSSEY )  
in the presence of: - )



Signature of Witness 

Name SARAH SUTHERLAND

Address ONE GLASS WHARF  
AVON STREET  
BRISTOL  
BS2 0ZX

Executed as a Deed by )  
ARQIVA SERVICES )  
LIMITED )  
acting by its duly  
authorised officers.

Director

Director/Secretary

The Common Seal of  
HOMES AND  
COMMUNITIES  
AGENCY was  
hereunto affixed in the  
presence of

Authorised Signatory:

Print Name

