

DATED

2025

(1) **MICHAEL ENSOR CATON** and **ANDREW NORMAN CATON**

- and -

(2) **RICHBOROUGH ESTATES PARTNERSHIP LLP**

- and -

(3) **NORTH WARWICKSHIRE BOROUGH COUNCIL**

- and -

(4) **WARWICKSHIRE COUNTY COUNCIL**

DEED

**under Section 106 of the Town and Country Planning Act 1990
relating to land south of Warton recreation ground, Orton Road, Warton**

THIS DEED is made the

day of

2025

BETWEEN

- (1) **MICHAEL ENSOR CATON** and **ANDREW NORMAN CATON** of Glebe Farm, Sibson, Nuneaton, Warwickshire CV13 6LD ("**the Owner**")
- (4) **RICHBOROUGH ESTATES PARTNERSHIP LLP** (registered number OC375183) whose registered office is at Waterloo House, 20 Waterloo Street, Birmingham, B2 5TB ("**the Promoter**")
- (5) **NORTH WARWICKSHIRE BOROUGH COUNCIL** of Council Offices, South Street, Atherstone, CV9 1DE ("**the Council**")
- (6) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall Warwick CV34 4RR ("**the County Council**")

WHEREAS

- A) The Council is the local planning authority for the purposes of the Act and is a Principal Council for the purposes of the Local Government Act for the area in which the Site is situated.
- B) The County Council is a local planning authority and the education authority and highways authority for the purposes of the Act for the area in which the Site is situated.
- C) The Owner is the freehold owners of the Site registered under title number WK484494.
- D) The Promoter has the benefit of a planning promotion agreement entered into with the Owner dated 14 September 2017.
- E) The [Promoter] submitted the Application and following the Council's non-determination of the Application the [Promoter] has submitted the Appeal in respect of the Application.

OPERATIVE PROVISIONS

1. Interpretation
- 1.1 In this Deed (including for the avoidance of doubt the Recitals above) the following words and expressions shall have the following meaning:

"3G Pitch Contribution"	the sum of [£24,495] ([twenty four thousand four hundred and ninety five pounds]) towards the funding of [DRAFTING NOTE: Council to confirm purpose to demonstrate CIL compliance] [DRAFTING NOTE: Amend to formula basis]
"Affordable Housing"	has the meaning given to it in Annex 2 of the "National Planning Policy Framework"

	December 2024" or any successor policy thereto issued by the government and which are provided to eligible households whose needs are not met by the market unless otherwise agreed in writing with the Council
"Affordable Housing Level"	the number of Dwellings to be allocated as Affordable Housing Units being a maximum of 40% of the total number of Dwellings constructed on the Site (unless otherwise agreed in writing with the Council)
"Affordable Housing Provider"	Either: - the Council; or - a registered provider (as defined in section 80 of the Housing and Regeneration Act 2008); or - any other body whose objects include the provision, operation and/or management of affordable housing or the transfer of Affordable Housing to an associated company whose objects include the provision, operation and/or management of Affordable Housing; or - such other provider of Affordable Housing as may be proposed by the Owner and approved by the Council;
"Affordable Housing Scheme"	a scheme in accordance with the Affordable Housing Tenure Mix providing details of the tenure, mix and location of the Affordable Housing Units of the Development such scheme to be submitted by the Owner to the Council or such other scheme as may be proposed by the Owner and approved by the Council
"Affordable Housing Tenure Mix"	the mix of tenures of the Affordable Housing Units which shall be: 1. 85% of the Affordable Housing Units (rounded down to the nearest whole Affordable Housing Unit) will be Affordable Rented Units; and

	2. 15% of the Affordable Housing Units (rounded up to the nearest whole Affordable Housing Unit) will be Discount Market Units and/or Intermediate Units (at the Owner's absolute discretion) or as otherwise proposed by the Owner and agreed in writing by the Council
"Affordable Housing Unit(s)"	those Dwellings within an Affordable Housing Scheme complying with the definition of Affordable Housing
"Affordable Rented Unit"	those Affordable Rented Units to be let by the Affordable Housing Provider to households who are eligible for social rented housing and subject to rent controls that require a rent of no more than 80% of local market rent (including service charges, where applicable)
"Appeal"	the appeal submitted to the Planning Inspectorate in respect of the Council's non-determination of the Application
"Application"	the outline planning application for the construction of up to 110 dwellings, with access, landscaping, sustainable drainage features, and associated infrastructure (all matters are reserved except for primary vehicular access from Church Road) and submitted to the Council for the Development and allocated reference number PAP/2025/0155
"Bus Service Contribution"	the sum of [£238,608] ([two hundred and thirty eight thousand six hundred and eight pounds]) towards the [DRAFTING NOTE: Detail to be added as to the purpose of this contribution to ensure CIL compliance] [DRAFTING NOTE: Formula basis to be included]
"Changing Facilities Contribution"	the sum of [£51,195] ([fifty one thousand one hundred and ninety five pounds]) towards the funding of [DRAFTING NOTE: Council to

	confirm purpose to demonstrate CIL compliance] [DRAFTING NOTE: Amend to formula basis]
"Commencement of Development"	the earliest date on which any of the material operations (as defined by Section 56(4) of the Act) pursuant to the implementation of the Development is begun on the Site save that irrespective of the provisions of Section 56(4) of the Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development (a) trial holes or other operations to establish the ground conditions of the Site, site survey work, or works of remediation (b) archaeological or ecological investigations on the Site (c) any works of demolition or site clearance (d) any structural or landscaping works ecological or nature conservation works and surveys associated with the Development (e) construction of boundary fencing or hoardings or any temporary means of enclosure site compounds or cabins (f) construction of access or highway works and any associated diversion or laying of services (g) temporary display of site notices or advertisements (h) any other preparatory works agreed in writing with the Council and "Commence" and "Commenced" shall be construed accordingly
"Completion Certificate"	a certificate(s) issued by the Council confirming that the On Site Open Space has been completed in accordance with the approved On Site Open Space Scheme

"Council Monitoring Costs Contribution"	the sum of £[TBC] ([TBC] pounds) towards the Council's costs of monitoring compliance with the obligations contained in this Deed [DRAFTING NOTE: Council to confirm its proposed monitoring contribution]
"County Council Monitoring Costs Contribution"	the sum of £[TBC] ([TBC] pounds) towards the County Council's costs of monitoring compliance with the obligations contained in this Deed [DRAFTING NOTE: £700 + (5 hours x £40 officer time x number of triggers) for the monitoring and administration of County Council obligations]
"Deed"	means this deed;
"Discount Market Price"	a sum which is the Market Value of the relevant Dwelling discounted by at least 30% and which shall apply Discount Market Units as provided for in the Third Schedule
"Discount Market Unit"	a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a Qualifying Person at a Discount Market Price and to which the provisions of the Third Schedule shall apply
"Dwelling(s)"	dwelling(s) to be constructed on the Site pursuant to the Planning Permission
["Education Contributions"]	[DRAFTING NOTE: Discussions ongoing between Promoter and County as to the make up and amount of the education contributions] [DRAFTING NOTE: Contributions to be based on a formula basis using "Relevant Dwellings" (i.e. excluding those with only one bedroom)]
"Gym / Fitness Contribution"	the sum of [£16,796] ([sixteen thousand seven hundred and ninety six pounds]) towards the funding of [DRAFTING NOTE: Council to confirm purpose to demonstrate CIL compliance]

	[DRAFTING NOTE: Amend to formula basis?]
"Health Bodies"	[George Eliot NHS Trust] [DRAFTING NOTE: LPA to confirm Health Body]
"Healthcare Contribution"	the sum of [£123,095] ([one hundred and twenty three thousand and ninety five pounds]) towards the funding of expansion/refurbishment/adaption of existing healthcare premises within the areas covered by the Health Bodies [DRAFTING NOTE: Formula basis to be included]
"Index"	(i) in respect of the [] the All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation; (ii) in respect of [] the BCIS All-In Tender Price Index issued by the Royal Institution of Chartered Surveyors or any successor; and (iii) in respect of [] the Department of Transport Local Government and the Regions Monthly Bulletin of Indices-Civil Engineering Formula 1990 Series to be weighed in the proportions Labour and Supervision 25% Plan and Road Vehicles 25% Aggregate 30% and Coated Macadam and Bitumen Products 20% and the term "Indexed" shall be construed accordingly
"Interest"	interest at 4% above the base lending rate of Barclays Bank Plc from time to time
"Intermediate Units"	means: - a Dwelling disposed of under a shared ownership lease (part rent part buy) or other such shared equity purchase arrangement by an Affordable Housing Provider where such lease is in accordance with a form of model lease approved or published by the regulator of social housing for the purposes of Part 2 of the Housing and Regeneration Act 2008 or in default of

	such approval or publication in accordance with a form of lease approved by the Council; or - a Dwelling in such other form of intermediate tenure as may be agreed in writing with the Council
"Library Contribution"	the sum of £[] per Dwelling approved via a Reserved Matters Approval up to a maximum of £2,408 (two thousand four hundred and eight pounds) towards the funding of provision improvement enhancement and/or extension of library facilities and/or services [DRAFTING NOTE: County to confirm location] at Dordon and Polesworth] serving the residents of the Development [DRAFTING NOTE: Formula basis to be included]
"Management Company"	means a limited company registered at Companies House which may already be in existence or which may be formed by the Owner for the purpose of carrying out future maintenance of the On Site Open Space and:- 1) which is incorporated in England, Wales or Scotland 2) which has its registered office in England; and whose primary objects permit it to maintain and renew the On Site Open Space
"Management Company Scheme"	a written scheme prepared by the Owner for setting up of the Management Company or Companies expressing the name of the proposed company and how it is intended to carry out the functions of the Management Company
"Market Dwelling(s)"	a dwelling to be erected on the Site other than an Affordable Housing Unit(s) constructed pursuant to the Planning Permission

"Market Value"	open market value as assessed by a valuer of a Dwelling as confirmed to the Council by the Owner in relation to Discount Market Units and for the avoidance of doubt shall not take into account the 30% discount in the valuation
"Occupation"	the first occupation of a Dwelling or the relevant part of the Development for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or security purposes and "Occupy" "Occupied" and "Occupant" shall be construed accordingly
"On Site Open Space"	the areas within the Site to be provided as formal and informal open space as part of the Development being shown generally coloured green on the Parameters Plan with the precise location boundaries and extent to be determined by the relevant Reserved Matters Approvals and which without prejudice to the generality of the foregoing includes the Play Area PROVIDED THAT it excludes any areas which are within the curtilage of a building within the Development or which are adopted as highway by the County Council
"On Site Open Space Scheme"	a scheme for the laying out and planting and maintenance of the relevant part of the On Site Open Space as agreed with the Council
"Open Space, Sport & Recreation Contribution"	together the Swimming Contribution, the Gym / Fitness Contribution, the Studio Contribution, the 3G Pitch Contribution, the Sports Pitches Contribution, the Changing Facilities Contribution, the Youth Provision (Capital) Contribution and the Youth Provision (Revenue) Contribution
"Parameters Plan"	means the plan marked as such and attached to this Deed at Appendix 2 being drawing number [INSERT] or such amended alternative parameters plan which may be

	approved under an application made pursuant to section 73 or section 96A of the Act
["Pedestrian / Cycle Improvements Contribution"]	[the sum of £[UNDER DISCUSSION] (UNDER DISCUSSION) towards improved walking, cycling and wheeling provision towards Polesworth taking the route of P12 as identified in the County Council's LCWIP] [DRAFTING NOTE: Discussions ongoing between Promoter and County about this contribution]
"Plan"	means the plan marked as such and attached to this Deed at Appendix 1 showing for identification purposes the Site edged red
"Planning Inspectorate"	[]
"Planning Permission"	means the planning permission issued pursuant to the determination of the Application at the Appeal
"Play Area"	the play area to be provided as part of the On Site Open Space and which shall comprise 1 (one) local area for play
"Police Contribution"	The sum of [£28,532.90] ([twenty eight thousand five hundred and thirty two pounds and ninety pence]) towards recruitment and equipping of officers and staff, police vehicles and office accommodation serving the Development [DRAFTING NOTE: Amend to formula basis?]
"Practical Completion"	the issue of a certificate of practical completion in respect of the relevant facility by the Owner's architect surveyor engineer or other relevant professional advisor (as applicable in the relevant circumstances) and in the case of a Dwelling the issue of a new homes build warranty provided by the NHBC or an alternative warranty provider and the expression "Practically Completed" shall be construed accordingly

"Public Rights of Way Contribution"	means the sum of £6,303.83 (six thousand three hundred and three pounds and eighty three pence) to maintain public rights of way which fall fully or partly within a 1.5m radius of the Site
"Qualifying Persons"	persons who have demonstrated that they are in need of Affordable Housing and will Occupy Affordable Housing as a sole or main residence and who have a local connection and "Qualifying Person" shall be construed accordingly
"Relevant Dwelling"	a Dwelling other than a property having only one bedroom and "Relevant Dwellings" shall be construed accordingly
"Resale Covenant Scheme"	a scheme approved in writing by the Council which restricts the sale price of the Discount Market Units to the Discount Market Price and restricts owner-occupation to Qualifying Persons and the terms upon which such occupation and /or sale or transfer of such Dwellings may take place within the parameters set out in the Third Schedule and such scheme to accord with the provisions of paragraph [1.2] of the Third Schedule
"Reserved Matters"	means those matters falling within the definition of reserved matters in the Development Management Procedure Order 2015 and being reserved for later approval by the Council in respect of the Development and the term "Reserved Matters Approval" shall be construed accordingly
"Road Safety Contribution"	the sum of £50 (fifty) pounds per Dwelling approved via a Reserved Matters Approval to be used by the County Council to promote road safety and specifically to fund training and education for vulnerable road users within the vicinity of the Development
"Secretary of State"	the Secretary of State for Ministry of Housing Communities and Local Government from

	time to time appointed and includes any successor in function
"Site"	means the land against which this Deed may be enforced as shown edged red on Plan 1
"Sports Pitches Contribution"	the sum of [£27,181] ([twenty seven thousand one hundred and eighty one pounds]) towards the funding of [DRAFTING NOTE: Council to confirm purpose to demonstrate CIL compliance] [DRAFTING NOTE: Amend to formula basis]
"Studio Contribution"	the sum of [£10,467] ([ten thousand four hundred and sixty seven pounds]) towards the funding of [DRAFTING NOTE: Council to confirm purpose to demonstrate CIL compliance] [DRAFTING NOTE: Amend to formula basis]
["Sustainable Travel Packs"]	[means sustainable travel welcome packs provided by the Owner to the first occupier of each Dwelling and which include information on sustainable modes of transport and on sustainable travel in the local area with the content of such sustainable travel welcome packs to be approved by the County Council] [DRAFTING NOTE: County to please provide proposed obligation drafting]
"Swimming Contribution"	the sum of [£58,378] ([fifty eight thousand three hundred and seventy eight pounds]) towards the funding of [DRAFTING NOTE: Council to confirm purpose to demonstrate CIL compliance] [DRAFTING NOTE: Amend to formula basis]
"the Act"	the Town and Country Planning Act 1990 (as amended)
"the Development"	the development carried out pursuant to the Planning Permission

"TRO Contribution"	the sum of £6,000 (six thousand pounds) towards the cost of preparing and making the following traffic regulation order: (i) a 30 mph reduction on Church Road;
"Working Days"	any day which is not a Saturday or Sunday, nor a bank holiday or other public holiday in all or part of England and Wales
"Youth Provision (Capital) Contribution"	the sum of [£105,099.53] ([one hundred and five thousand ninety pounds and fifty three pence]) towards the funding of [DRAFTING NOTE: Council to confirm purpose to demonstrate CIL compliance]
"Youth Provision (Revenue) Contribution"	the sum of [£80,801.75] ([eighty thousand eight hundred and one pounds and seventy five pence]) towards the funding of [DRAFTING NOTE: Council to confirm purpose to demonstrate CIL compliance] [DRAFTING NOTE: Amend to formula basis]

2. Construction of this Deed

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed
- 2.2 In the event of any conflict between the provisions of this Deed and any document annexed hereto as referred to herein the terms and conditions of this Deed will prevail
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner
- 2.5 A person includes a natural person corporate or unincorporated body (whether or not having separate legal personality) and reference to a company shall include any company corporation
- 2.6 Any reference to an Act of Parliament shall include any modification, extension, re-enactment of that Act for the time being in force and shall include all instruments, orders, plans,

regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it

- 2.7 References to the Council, the County Council or the Owner shall include their successors in title and assigns and to any person deriving title through or under or the successors to their respective statutory functions
- 2.8 The headings and contents list are for reference only and shall not affect construction
- 2.9 Any covenant or obligation by any party not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done

3. **Legal Basis**

- 3.1 The Deed is made pursuant to Section 106 of the Act and the covenants and obligations in this Deed are planning obligations for the purposes of Section 106 of the Act so as to bind the Site as set out in this Deed and are enforceable by the Council or County Council as applicable against the Owner its successors in title and assigns and the other parties to this Deed
- 3.2 To the extent that any of the obligations covenants restrictions and requirements contained herein are not planning obligations within the meaning of Section 106 of the Act they are entered into pursuant to Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations hereto

4. **Commencement**

This Deed is conditional upon:

- 4.1 the grant of Planning Permission; and
- 4.2 the Commencement of Development

SAVE THAT this clause [4], and clauses [1] shall take effect from the date on which this Deed is completed

5. **Covenants by the Owner**

- 5.1 The Owner covenants with the Council as set out in the [1] Schedules
- 5.2 The Owner covenants with the County Council as set out in the [1] Schedules

6. **Further Covenants**

- 6.1 The Promoter shall pay to the Council and the County Council on execution of this Deed the reasonable legal costs and disbursements incurred in the negotiation, preparation and execution of this Deed

- 6.2 The Owner shall pay to the Council the Council Monitoring Costs Contribution on or before the Commencement of Development
- 6.3 The Owner shall pay to the County Council the County Council Monitoring Costs Contribution on or before the Commencement of Development
7. **Promoter's Consent**
- 7.1 The Promoter consents to the completion of this Deed and acknowledges that the obligations in this Deed shall bind the Site and declares that it will be bound by the provisions in this Deed in the event that it acquires the Site or part thereof
8. **The Council and County Council's Covenants**
- 8.1 The Council covenants with the Owner as set out in the [] Schedule
- 8.2 The County Council covenants with the Owner as set out in the [] Schedule
9. **Miscellaneous**
- 9.1 Unless expressly stated no provisions of this Deed confer any rights in favour of any person under the Contracts (Rights of Third Parties) Act 1999
- 9.2 This Deed shall be registrable as a local land charge by the Council
- 9.3 Where the agreement, approval, consent or expression of satisfaction is required by the parties hereto under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction required to be given on behalf of:
- 9.3.1 the Council shall be in writing by the Head of Development Control and
- 9.3.2 the County Council shall be in writing to the Developer Contribution Officer following the performance and satisfaction of all the obligations contained in this Deed the Council shall on written request from the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 9.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 9.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 9.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed nor shall any sum be payable to the Council or the County

Council pursuant to this Deed in respect of any development carried out pursuant to such further planning permission

9.7 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council under all statutes by laws statutory instruments orders and regulations in the exercise of their functions as a local authority and such rights discretions powers duties and obligations may be as fully and effectively exercised as if the Council were not a party to this Deed

9.8 Where for the purposes of this Deed any person with an interest in the Site or any part thereof requires a statement that any event has or has not occurred or that any thing is or is not the case in the Council's opinion for the purposes of this Deed or of the effect of any action or proposed action the Council shall immediately following any written request from such person certify such consent or approval or give such clarification in such written form as the person requesting the same (acting reasonably) shall require

10. **Enforceability and Liability**

10.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or the part of the Site to which such breach relates (or whilst the liability arises by actions on land that it does not own or by breaches of this Deed which relate to land that it does not own or whilst it shall have no interest in the Site or any part of it) but without prejudice to liability for any subsisting breach arising prior to parting with such interest AND a person having only the benefit of any licence easement or covenant over or in respect of the Site or any part of it shall be deemed to have parted with its interest in the entire Site (or to have no interest in the Site or any part of it) for the purposes of this clause

10.2 This Deed shall not be enforceable against owners occupiers or tenants (or their mortgagees or chargees) of Dwellings nor against those deriving title from them

10.3 A statutory undertaker who acquires any part of the Site or any interest in it for the purposes of the supply of electricity gas water drainage or telecommunication services is not to be treated as a person deriving title from the Owner for the purposes of Section 106 (3) of the Act

10.4 The covenants contained in this Deed shall not be enforceable against any Affordable Housing Provider acquiring an interest in the Site pursuant to the **[1]** Schedule save that such Affordable Housing Provider shall be bound by the provisions of the said **[1]** Schedule.

11. **Council's Discretion**

11.1 FOR THE AVOIDANCE OF DOUBT nothing herein contained shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council and County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority

12. **Waiver**

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

13. Change in Ownership

- 13.1 The Owner agrees to give the Council and County Council written notice of any change in ownership of any of its interests in the Site occurring before or all the obligations under this Deed has been discharged within 10 Working Days of such a change (save that the Owner shall not be required to give notice of the change in ownership in relation to any of the persons against whom the obligations herein are not enforceable as identified in clause 10) such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan
- 13.2 Any notice, consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid recorded delivery post
- 13.3 The address for service of any such notice, consent or approval as aforesaid shall be:
- 13.3.1 in the case of service upon the Council addressed to Head of Development Control and
 - 13.3.2 in the case of the County Council addressed to the Service Manager, Developer Negotiations and Contributions at the address above or such other address for service as shall have been previously notified by the County Council to the Owner; and
 - 13.3.3 in the case of the Owner to the addresses stated at the beginning of this Deed or such other address for service as shall have been previously notified by the Owner to the Council and County Council
- 13.4 A notice, consent or approval required or authorised to be given under this Deed shall be deemed to be served as follows:
- 13.4.1 if personally served at the time of delivery and if posted at the time when it would be received in the ordinary course of business
 - 13.4.2 to prove such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice, consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded delivery envelope

14. Dispute Resolution

- 14.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an

independent and suitable 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 with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties to the dispute or difference and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares

14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares

14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation

14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days

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

15. **Indexation**

Any sum payable pursuant to the [1] Schedules shall be increased in accordance with any proportional increase in the Index from the date of Commencement of Development to the date upon which payment is made

16. **Interest**

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

17. **VAT**

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

18. **Jurisdiction**

18.1 This Deed is governed by and interpreted in accordance with the laws of England and Wales

19. **Section 73 Variations**

19.1 In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the Act in respect of the conditions relating to the Planning Permission (and for no other purpose whatsoever) references in this Deed to the Application and the Development (where agreed in writing by the parties) shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly

20. **Delivery**

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

21. **Compliance with regulation 122**

22. In the event that the inspector appointed to determine the Appeal concludes within their decision that any of the planning obligation(s) set out in this Deed are incompatible with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended substituted extended or replaced from time to time) and/ or Paragraph 57 of the National Planning Policy Framework (or any successor policy or replacement thereto) and accordingly attaches little or no weight to that obligation in determining the Appeal then the relevant obligation(s) shall from the date of the Planning Permission immediately cease to have effect and the Owner shall be under no obligation to comply with them.

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

FIRST SCHEDULE

AFFORDABLE HOUSING

The Owner covenants with the Council as follows:

1. RESTRICTION

- 1.1 The delivery of Affordable Housing as part of the Development shall be strictly in accordance with the following restrictions and covenants and obligations and delivery mechanisms described in accordance with the provisions of this First Schedule.
- 1.2 No Affordable Housing Unit constructed on the Site as part of the Development shall be Occupied other than in accordance with the provisions of this Deed, subject to the exemptions and exclusions herein.

2. AFFORDABLE HOUSING SCHEME

- 2.1 The Owner shall submit the Affordable Housing Scheme to the Council as part of the Reserved Matters Approval process and obtain the Council's approval of the Affordable Housing Scheme prior to the Commencement of Development of any Dwellings and the Affordable Housing Scheme shall be deemed to have been approved by the Council if the Council shall not have made a substantive written response in respect of the same within 21 days of receipt of the Affordable Housing Scheme being submitted.
- 2.2 The Owner shall ensure that the Affordable Housing Scheme submitted to the Council in accordance with paragraph 2.1 above shall deliver Affordable Housing Units in accordance with the Affordable Housing Level (unless otherwise agreed in writing with the Council).
- 2.3 The Affordable Housing Units to be included within the Affordable Housing Scheme shall be in accordance with the Affordable Housing Tenure Mix unless otherwise agreed with the Council.
- 2.4 In carrying out the Development the Owner shall ensure that the Affordable Housing Units shall be provided and constructed in accordance with the approved Affordable Housing Scheme.
- 2.5 The Affordable Rented Units and Intermediate Units shall be provided in accordance with the provisions at paragraphs 3 to 5 of this Schedule.
- 2.6 The Discount Market Units shall be provided in accordance with the provisions of the Third Schedule.

3. COMPLETION AND TRANSFER OF AFFORDABLE HOUSING UNITS

Cascade Level 1: Attempted Sale to Affordable Housing Provider

- 3.1 Upon the approval or deemed approval of the Affordable Housing Scheme the Owner shall make bona fides offers on an arms' length basis to enter into a contract to sell the Affordable

Housing Units, on commercially acceptable terms to the Owner, to Affordable Housing Providers who may be interested in acquiring Affordable Housing Units or to the Council and shall give the Council a summary of those Affordable Housing Providers to whom such offers have been made PROVIDED THAT paragraph 3 of this Schedule (including sub-paragraphs 3.1, 3.2 and 3.3) for the avoidance of doubt) shall not apply to any Affordable Housing Units which are to be delivered as part of the Affordable Housing Scheme and do not require transfer to an Affordable Housing Provider by virtue of the tenure of such Affordable Housing Units.

- 3.2 The Owner shall use reasonable endeavours to complete a contract with an Affordable Housing Provider or the Council to dispose of all of the Affordable Housing Units within three months of the Commencement of Development in accordance with paragraph 3.1 of this Schedule.

Cascade Level 2: Delivery as Discount Market Units

- 3.3 If in accordance with paragraph 3.2 no such contract shall have been entered into by the end of the said period of three months or if such contract is terminated notwithstanding the Owner having used its reasonable endeavours to complete a disposal with one or more Affordable Housing Providers or the Council the tenure of those Affordable Housing Units shall be amended to Discount Market Units and those units shall be governed by the Third Schedule to this Deed.

4. FORM OF TRANSFER

- 4.1 The Owner covenants that any transfer to an Affordable Housing Provider shall contain the following provisions:
- 4.1.1 the grant by the Owner of all rights of access and passage of services and other rights reasonable necessary to the beneficial enjoyment of the Affordable Housing Units to be constructed on the Site;
 - 4.1.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the benefit of the remainder of the Dwellings on the Site;
 - 4.1.3 the imposition of such covenants as the Owner shall reasonably require.

5. RESTRICTIONS AND OCCUPATION

- 5.1 The Owner covenants with the Council to the intent that following completion of a transfer of Affordable Housing Units to an Affordable Housing Provider the obligations in this paragraph shall (subject to paragraph 5.3) be binding on the Affordable Housing Provider to whom the Affordable Housing Units are transferred and all future successors in title the Affordable Rented Units and/or Intermediate Units shall not be let other than to those applicants waiting for housing and who are on either the Council's housing waiting list or at the Council's

nomination a person on a neighbouring authority's housing waiting list and where so required have been nominated in accordance with a nomination agreement;

- 5.2 The Owner and the Council agree and declare that the provisions of paragraph 5.1 of this Schedule shall not be binding upon a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

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

5.2.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the relevant Affordable Housing Units free from the affordable housing provisions in this Deed which provisions shall determine absolutely

- 5.3 The provisions of this Deed shall not bind individual owners and/or occupiers of Affordable Housing Units who have exercised any statutory right to buy or acquire any of the Affordable Housing Units (or any similar contractual right to acquire 100% of the equity in the same) or who have staircased to 100% ownership or any successor in title or person deriving title from them and for the avoidance of doubt any Dwelling and the land or other building owned/occupied therewith in respect of which such statutory right to buy or equivalent contractual right or staircasing shall have been exercised shall unconditionally and irrevocably cease to be an Affordable Housing Unit with immediate effect.

6. **DECLARATION: AFFORDABLE HOUSING LEVEL**

- 6.1 For the purpose of calculating the number of Affordable Housing Units delivered on the Site for the purposes of assessing compliance with the Affordable Housing Level in this Deed each Dwelling which has been an Affordable Housing Unit shall still be counted notwithstanding that it may subsequently have lost that status by operation of this Schedule.

SECOND SCHEDULE ON SITE OPEN SPACE

The Owner covenants with the Council as follows:

1. The Owner shall submit the On Site Open Space Scheme to the Council for its written approval prior to the Commencement of Development
2. The Owner covenants to implement the On Site Open Space Scheme as approved and ensure that the On Site Open Space is provided and available for use prior to the first Occupation of 90% of the Dwellings
3. Following completion of the On Site Open Space:
 - 3.1 the Owner covenants to serve notice on the Council inviting them to inspect the On Site Open Space and issue a Completion Certificate confirming that such works have been completed in accordance with the approved On Site Open Space Scheme;
 - 3.2 the Council will inspect the On Site Open Space within thirty days and may identify remedial works necessary to comply with the approved On Site Open Space Scheme and shall serve notice of any remedial works on the Owner, to complete such notified remedial works in accordance with the approved On Site Open Space Scheme ("**the Defects Notice**");
 - 3.3 upon completion of any such remedial works, the Owner covenants to serve notice on the Council inviting them to inspect those remedial works and issue a Completion Certificate confirming that such works have been completed in accordance with the approved On Site Open Space Scheme PROVIDED THAT if the Council fails to inspect the On Site Open Space within one month of receipt of the notice of invitation from the Owner or fails to issue a Completion Certificate within thirty days of the inspection where no remedial works have been identified by written notice served on the Owner then the Completion Certificate shall be deemed to have been issued at the end of those specified periods.
4. Following issue or deemed issue of the Completion Certificate in respect of the On Site Open Space the Owner covenants to maintain the On Site Open Space in accordance with the approved On Site Open Space Scheme
- 5.1 The Owner shall:
 - 5.1.1 prior to the Occupation of the first Dwelling submit to and obtain the Council's approval to a Management Company Scheme (if not already obtained) in respect of the On Site Open Space; and
 - 5.1.2 following the Council's approval of the Management Company Scheme (or such amended scheme as the Council may approve in writing from time to time) the Owner shall implement the approved Management Company Scheme for the purposes of thereafter maintaining the On Site Open Space.

6. The Owner shall within three months of the issue of the Completion Certificate in respect of the On Site Open Space transfer the On Site Open Space to the Management Company.
7. Where any part of the On Site Open Space is to be transferred to a Management Company no Dwellings shall be permitted to be Occupied until the Management Company has been constituted to ensure that the mechanism for recovery from future owners of the Dwellings of the maintenance costs for the On Site Open Space as detailed in the Management Company Scheme can be achieved for all Dwellings
8. The Owner shall secure that each transfer to the purchaser of each Dwelling or part thereof shall include provisions dealing with the following (or such other provisions as may be proposed by the Owner and agreed with the Council):
 - 8.1 an obligation on the purchaser to become a member of the Management Company, and
 - 8.2 a covenant by the purchaser to pay a contribution to the Management Company as the Management Company shall reasonably require, and
 - 8.3 each transfer of the Dwelling (or part thereof) shall contain an application to the Chief Land Registrar to place a Restriction on the Land Registry Proprietorship Register for that Dwelling (or part thereof) stating that except under an order of the Registrar any future disposal of the title interest in the dwelling (or part) shall only be registered if accompanied by a certificate from the Management Company (or its Solicitors) confirming compliance with paragraph 8 of this Schedule

THIRD SCHEDULE
DISCOUNT MARKET UNITS

1. The Owner covenants with the Council that:
 - 1.1 The Discount Market Units will only be Occupied as Affordable Housing in accordance with the terms of this Deed and the Resale Covenant Scheme
 - 1.2 The Owner will not advertise for sale or otherwise market the Discount Market Units until it has obtained the Council's written approval of a Resale Covenant Scheme which
 - 1.2.1 prevents all subsequent sales from taking place in excess of the Discount Market Price;
 - 1.2.2 restricts purchasers to Qualifying Persons;
 - 1.2.3 sets out the nomination rights (if any);
 - 1.2.4 allows for eligibility but not price restrictions to be lifted in appropriate circumstances;
 - 1.2.5 sets out a procedure governing subsequent disposals including notification of intention to sell, reasonable timescales, assessment of Market Value and any other appropriate remarketing provisions;
 - 1.2.6 sets out appropriate administrative and conveyancing arrangements for disposals which shall be tailored according to the Owner's intention to sell freehold or leasehold title and which include the model transfers or leases which will be used to bring the Resale Covenant Scheme into binding effect
 - 1.3 The first disposal of each Discount Market Unit shall be at the Discount Market Price to a Qualifying Person PROVIDED THAT if the Owner demonstrates to the Council's reasonable satisfaction that:
 - 1.3.1 the Council was given full details of the marketing arrangements 14 days before a Discount Market Unit was first advertised; and
 - 1.3.2 the Discount Market Unit were advertised at the Discount Market Price on the open market for ten weeks (and that it was Practically Completed for at least four of those weeks) or for such lesser period (or periods) as the Council may agree; and
 - 1.3.3 reasonable endeavours were used to advance a sale with any Qualifying Persons who appeared to be suitable prospective purchasers; and
 - 1.3.4 a contract for sale has not been executed and exchangedthen the Owner may dispose of the Discount Market Unit at the Discount Market Price to any person who may not necessarily be a Qualifying Person
 - 1.4 All second and subsequent disposals of a Discount Market Unit shall be at the Discount Market Price to a Qualifying Person in accordance with the Resale Covenant Scheme to the intent and effect that this shall continue to apply to all second and subsequent disposals but the word **"Owner"** shall instead read "seller of the Discount Market Unit"
 - 1.5 Upon Disposal of any Discount Market Unit the Owner shall observe and perform the obligations of the Owner and transferee within the Resale Covenant Scheme agreed by the

Council and shall procure that all future disposals of those Dwellings shall be bound by the terms of the Resale Covenant Scheme

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FOURTH SCHEDULE BOROUGH CONTRIBUTIONS

1. The Owner covenants with the Council to pay:
 - 1.1 10% of the:
 - 1.1.1 Open Space, Sport & Recreation Contribution;
 - 1.1.2 [Healthcare Contribution]; **DRAFTING NOTE**: Council have stated in their own board report that they were not satisfied evidence had been provided to show this contribution meets the CIL tests. Please provide this evidence so I can take further instructions on this contribution]
 - 1.1.3 [Police Contribution]; **DRAFTING NOTE**: Council have stated in their own board report that they were not satisfied evidence had been provided to show this contribution meets the CIL tests. Please provide this evidence so I can take further instructions on this contribution]
 - prior to the Commencement of Development; and
 - 1.2 90% of the:
 - 1.2.1 Open Space, Sport & Recreation Contribution;
 - 1.2.2 [Healthcare Contribution];
 - 1.2.3 [Police Contribution];
 - prior to the Occupation of more than 50% of the Dwellings.
2. The Owner covenants with the Council not to:
 - 2.1 Commence Development or permit or allow Commencement of Development unless and until 10% of the:
 - 2.1.1 Open Space, Sport & Recreation Contribution;
 - 2.1.2 [Healthcare Contribution];
 - 2.1.3 [Police Contribution]
 - has been paid to the Council
 - 2.2 Occupy or permit Occupation of more than 50% of the Dwellings unless and until 90% of the:
 - 2.2.1 Open Space, Sport & Recreation Contribution;
 - 2.2.2 [Healthcare Contribution];
 - 2.2.3 [Police Contribution]
 - has been paid to the Council.

**FIFTH SCHEDULE
COUNTY CONTRIBUTIONS**

3. The Owner covenants with the County Council to pay:

3.1 10% of the:

- 1.1.1 Library Contribution;
- 1.1.2 Public Rights of Way Contribution;
- 1.1.3 Road Safety Contribution;
- 1.1.4 TRO Contribution;
- 1.1.5 Bus Service Contribution;
- 1.1.6 [Pedestrian / Cycle Improvements Contribution] [**DRAFTING NOTE**: The principle of this contribution is not agreed. Discussions being held between the Promoter and County]
- 1.1.7 [Education Contributions] [**DRAFTING NOTE**: Discussions being held between the Promoter and County]

prior to the Commencement of Development; and

3.2 90% of the:

- 1.2.1 Library Contribution;
- 1.2.2 Public Rights of Way Contribution;
- 1.2.3 Road Safety Contribution;
- 1.2.4 TRO Contribution;
- 1.2.5 Bus Service Contribution;
- 1.2.6 [Pedestrian / Cycle Improvements Contribution];
- 1.2.7 [Education Contributions];

prior to the Occupation of more than 50% of the Dwellings.

4. The Owner covenants with the County Council not to:

4.1 Commence Development or permit or allow Commencement of Development unless and until 10% of the:

- 2.1.1 Library Contribution;
- 2.1.2 Public Rights of Way Contribution;
- 2.1.3 Road Safety Contribution;
- 2.1.4 TRO Contribution;

- 2.1.5 Bus Service Contribution;
- 2.1.6 [Pedestrian / Cycle Improvements Contribution];
- 2.1.7 [Education Contributions];

has been paid to the County Council

4.2 Occupy or permit Occupation of more than 50% of the Dwellings unless and until 90% of the:

- 2.2.1 Library Contribution;
- 2.2.2 Public Rights of Way Contribution;
- 2.2.3 Road Safety Contribution;
- 2.2.4 TRO Contribution;
- 2.2.5 Bus Service Contribution;
- 2.2.6 [Pedestrian / Cycle Improvements Contribution];
- 2.2.7 [Education Contributions];

has been paid to the County Council.

SIXTH SCHEDULE

THE COUNCIL'S COVENANTS WITH THE OWNER

Part 1 - Healthcare Contribution

1. To hold the Healthcare Contribution in an interest bearing account from the date of receipt until the date of payment to the Health Bodies in accordance with this Deed PROVIDED THAT the proportion of the Healthcare Contribution to be paid to each of the Health Bodies shall be at the discretion of the Council
2. To notify the Health Bodies within 14 Working Days of receipt of the Healthcare Contribution that the Council is in receipt of the Healthcare Contribution
3. To pay the Healthcare Contribution to the Health Bodies upon receipt of written confirmation from the Health Bodies that they will:
 - 3.1 apply the Healthcare Contribution for the purposes set out in this Deed;
 - 3.2 provide full details of the expenditure of the Healthcare Contribution on demand to the Council or to the Owner PROVIDED THAT no such demand shall be made before the expiry of three years from the date of receipt of the Healthcare Contribution by the Council and such demands shall not be made more frequently than once a quarter thereafter; and
 - 3.3 return any unspent or uncommitted part of the Healthcare Contribution to the Council after the expiry of five years from the date of receipt of the Healthcare Contribution by the Council regardless of when the same was paid to the Health Bodies
4. The Council covenants to repay to the party who paid the Healthcare Contribution any unspent monies received by the Council pursuant to paragraph 3.3 of this Schedule within 30 Working Days of receipt from the Health Bodies

Part 2 - On Site Open Space

5. Where the Owner has invited the Council to inspect the On Site Open Space the Council shall either:
 - 5.1 being satisfied that in their reasonable opinion the On Site Open Space has been laid out and maintained in accordance with the On Site Open Space Scheme issue the Completion Certificate; or
 - 5.2 where the Council is not so satisfied inform the Owner of such defects in writing ("**Defect Notice**") as the Council reasonably believes to exist and such process may be repeated in accordance with paragraph 3 of the Second Schedule.

Part 3 – Affordable Housing

6. The Council agrees that in considering changes or revisions to the Affordable Housing Tenure Mix and also in relation to the approval of the Affordable Housing Scheme the Council shall

have regard to emerging policy both nationally and locally with regard to new tenures of affordable housing

Part 4 – [] Contribution

7. To use the [] Contribution for the purposes specified in this Deed only (unless otherwise agreed in writing with the Owner).
8. To provide full details of the expenditure of the [] Contribution on demand to the Owner PROVIDED THAT no such demand shall be made by the Owner before the expiry of two years from the date of receipt of the final instalment of the [] Contribution by the Council and such demands shall not be made more frequently than once a quarter thereafter.
9. To return any unspent or uncommitted part of the [] Contribution to the party who paid the [] Contribution after the expiry of five years from the date of receipt of the final instalment of the [] Contribution by the Council within 28 Working Days of request from the Owner.

SEVENTH SCHEDULE
THE COUNTY COUNCIL'S COVENANTS WITH THE OWNER

1. The County Council hereby covenants with the Owner to use all contributions payable to the County Council pursuant to this Deed for the purposes specified in this Deed or for such purposes as the parties may agree in writing both parties acting reasonably.
2. In the event that any monies payable pursuant to this Deed are not applied to the purposes specified in this Deed and have not been expended within five years of the date of the payment of the final instalment of the relevant contribution the County Council shall within 28 days of demand repay to the party who paid the relevant contribution any unexpended part of the said sum(s)

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IN WITNESS WHEREOF this Deed is executed as a DEED in the manner hereinafter appearing the day and year first before written

[OTHER EXECUTION BLOCKS]

EXECUTED as a **DEED** by affixing the
COMMON SEAL of **THE COUNCIL OF**
THE BOROUGH OF NORTH WARWICKSHIRE

in the presence of:

Authorised signatory

EXECUTED as a **DEED** by affixing the
COMMON SEAL of **THE WARWICKSHIRE**
COUNTY COUNCIL in the presence of:

Authorised Signatory:

APPENDIX 1

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APPENDIX 2

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