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**Dated:** 2021

- (1) DORSET COUNCIL
- (2) WELBECK STRATEGIC LAND LLP
- (3) NEIL JOHN OVERTON and MARK WOODWARD
- (4) RICHARD CHARLES PIKE, SARAH ELIZABETH ANNE SHIELDS and CATHERINE PATRICIA MITCHELL
- (5) JEREMY DOUGLAS HINE and RUSSELL HINE and GRAHAM WILLIAM HINE

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**Section 106 Agreement**

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relating to Development at Ham Farm and Newhouse Farm, Gillingham, Dorset

**BETWEEN**

- (1) Dorset Council of County Hall, Colliton Park, Dorchester, Dorset DT1 1XJ (the "**Council**");
- (2) Welbeck Strategic Land LLP of 13 Woodstock St, Mayfair, London W1C 2AG (the "**Developer**")
- (3) Neil John Overton of Oaktree House, Limpers Hill, Mere, Warminster BA12 6BB and Mark Woodward care of Bond Dickinson LLP, 3 Temple Quay, Bristol BS1 6DZ (the "**First Owner**")
- (4) Sarah Elizabeth Anne Shields of Longmead, Barrow Street, Mere, Warminster BA12 6AB and Catherine Patricia Mitchell of Creek Farm, Mattingley Green, Mattingley, Hook RG27 8LA and Richard Charles Pike of Dairy House, Cole Street Lane, Gillingham, Dorset SP8 5JQ (the "**Second Owner**")
- (5) Jeremy Douglas Hine of The Old Workshop, 1A Parsons Pool, Shaftesbury SP7 8AL and Russell Hine of Mortier House, New Road, Shaftesbury SP7 8QL and Graham William Hine of 3 Old Stack Gardens, Ringwood, Hants BH24 3EP (the "**Third Owner**")

**BACKGROUND**

- (A) The Developer submitted the Planning Application.
- (B) The First Owner is the freehold owner of that part of the Application Land registered at the Land Registry under title number DT372171.
- (C) The Second Owner is the freehold owner that part of the Application Land registered at the Land Registry under title number DT437488.
- (D) The Third Owner is the freehold owner that part of the Application Land registered at the Land Registry under title number DT382793.
- (E) The Developer has the benefit of a promotion agreement to acquire that part of the Application Land owned by the First Owner pursuant to an option agreement entered into with the First Owner on 22 May 2009 as supplemented by a promotion agreement dated 23 December 2014
- (F) The Developer has the benefit of a promotion agreement to acquire that part of the Application Land owned by the Second Owner pursuant to a promotion agreement entered into with the Second Owner on 9 January 2017.
- (G) The Developer entered into an option agreement with the Third Owner on 23 May 2014 to acquire that part of the Application Land owned by the Third Owner.
- (H) The Council is the unitary authority for the area in which the Application Land is situated and is the successor to North Dorset District Council and Dorset County Council as of 1 April 2019 and is the Local Planning Authority for the purposes of the Act and is the local education authority and the local highway authority for the area in which the Application Land is situated.
- (I) The Planning Application has been submitted to the Council and the parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement without which the Planning Permission would not be granted.
- (J) The Council is minded to grant the Planning Permission, subject to the prior completion of this Agreement.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following words and expressions have the following meanings:

<b>"the Act"</b>	the Town and Country Planning Act 1990;
<b>"Affordable Housing"</b>	means affordable housing within the meaning of National Planning Policy Framework or any other statement or circular which may supersede or amend it;
<b>"Application Land"</b>	the land shown edged red on Plan 1;
<b>"BCIS"</b>	the data published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors;
<b>"Commencement of Development"</b>	the date on which any material operation as defined in section 56(4) of the Act forming part of the Development begins to be carried out with the exception of operations consisting of ecology mitigation works, strategic planting, site clearance, laying out or pegging out operations, investigation of ground conditions, remedial work, archaeological work, demolition and erection of hoardings, the diversion and laying of services and Commence and Commenced shall be construed accordingly;
<b>"Development"</b>	means the development of the Application Land pursuant to the Planning Permission;
<b>"District"</b>	means the administrative area of the Council;
<b>"Dwelling"</b>	means each Dwelling forming part of the Development including Market Housing Units and Affordable Housing Units;
<b>"Expert"</b>	means a person independent of either the Council, , the First Owner, the Second Owner the Third Owner or the Developer who shall have been qualified in respect of the general subject matter of the dispute or difference for not less than ten (10) years and who shall be a specialist in relation to such subject matter in accordance with clause 12;
<b>"First Phase"</b>	means the area of the Development contained within the Phase 1A Land and within the Phase 1B Land which shall have a cumulative total of 315 (three hundred and fifteen) Dwellings;
<b>"Highway Improvements"</b>	<p>all of the following:</p> <p>a) the improvements to the B3081 Shaftesbury Road/B3092 New Road junction including Old Manse as shown on Drawing ITB4057-GA-027 Rev G (or such alternative scheme as may be agreed in writing between the Owner and the Council)</p> <p>b) the improvements to the mini-roundabout at the B3081 Le Neuboug Way/ Newbury (High Street)</p>

junction as shown on the Council's Drawing HI206/307/01/D (or such alternative scheme as may be agreed in writing between the Owner and the Council); and

SCOOT installation at the following junctions:

- B3081 Le Neubourg Way/Station Road
- B3081 Le Neubourg Way/Newbury (High Street)
- B3081 Shaftesbury Road/B3092 New Road
- B3081 Shaftesbury Road/King John Road
- B3081 Le Neubourg Way/B3081 Wyke Road

**"Index"**

means the All In Tender Price Index published by the BCIS of the Royal Institution of Chartered Surveyors or any successor organisation on or most recently preceding the date when any payment falls due and shall include any future equivalent system which may replace the All-In Tender Price Index;

**"Interest"**

means interest at four (4) per cent above the based lending rate of the Lloyds Bank Plc from time to time;

**"Later Phases"**

means all the Phases excluding the First Phase and which for the avoidance of doubt includes Residual Phase 1A and Residual Phase 1B and Phase 2 and Phase 3. **"Later Phase"** shall mean each or any of them;

**"Market Housing Units"**

the Dwellings constructed and identified as part of the Development as general housing for sale or rent on the open market and which are not Affordable Housing Units

**"Notice of Availability"**

means a notice in writing informing the Council that the Affordable Housing Unit is available for Occupation;

**"Occupation"**

means beneficial occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, security, fitting out or decoration or occupation for marketing or display and **"Occupy"** and **"Occupied"** shall be similarly construed;

**"Owner"**

means the First Owner and the Second Owner and the Third Owner together;

**"Original Viability Appraisal"**

means the viability assessment by Alder King dated 4th March 2019;

**"Part of a Phase"**

means part of a Phase for which a single Reserved Matters Approval has been issued;

<b>"Phase"</b>	means each of the phases of the Development being Phase 1A Land the Phase 1B Land the Second Phase and the Third Phase (as shown on the Phasing Plan (and collectively known as the <b>"Phases"</b> );
<b>"Phase 1A Land"</b>	the part of the Application Land marked as such on the Phasing Plan and shall include Residual Phase 1A;
<b>"Phase 1B Land"</b>	the part of the Application Land marked as such on the Phasing Plan and shall include Residual Phase 1B;
<b>"Phase 2 Land"</b>	the part of the Application Land marked as such on the Phasing Plan;
<b>"Phase 3 Land"</b>	the part of the Application Land marked as such on the Phasing Plan;
<b>"Phasing Plan"</b>	the Phasing Plan attached to this Agreement as Plan 2;
<b>"Plan 1"</b>	the plan attached hereto and marked as 'Plan 1' (identifying the Application Land) and numbered [01050_PP_01 Rev P3];
<b>"Plan 2"</b>	the plan attached hereto and marked as 'Plan 2' (the Phasing Plan) and numbered 01050_SK16 Rev D1;
<b>"Plan 3"</b>	the plan attached hereto and marked 'Plan 3' (identifying the Principle Street) and numbered HI1177/50/1/A;
<b>"Plan 4"</b>	the plan attached hereto and marked as 'Plan 4' (identifying the Allotments and the School Site) and numbered 01050_PP_02 Rev P4;
<b>"Plan 5"</b>	the plan attached hereto and marked as 'Plan 5' (identifying the Flood Compensation Land and the Planting Mitigation Land) and numbered HI1177/62/1/B;
<b>"Plan 6"</b>	the plan attached hereto and marked as 'Plan 6' (identifying the Flood Compensation Land levels) with drawing number HI1177/82/02 Orig;
<b>"Plan 7"</b>	the plan attached hereto and marked as 'Plan 7' (identifying Enmore Green Link Road) and numbered HI1161/3/1/Orig;
<b>"Plan 8"</b>	the plan attached hereto and marked as 'Plan 8' (identifying the Gillingham Rail Station Improvements) and numbered ITB13010;
<b>"Plan 9"</b>	the plan attached hereto and marked as 'Plan 9' (identifying the Off-site Pedestrian and Cycle Improvements) and numbered ITB13010-GA-019;

<b>"Plan 10"</b>	the plan attached hereto and marked as 'Plan 10' (the topographical survey) and numbered 01050_S01 Rev P1;
<b>"Planning Application"</b>	means the planning application (reference number 2/2018/0036/OUT) for outline planning permission validated on 9 January 2018 for the erection of up to 961 dwellings (use class C3), up to 2,642sq.m in a new local centre providing retail, community, health, and leisure uses, new and enhanced pedestrian/cycle routes, car parking and vehicular access and associated groundworks/infrastructure;
<b>"Planning Permission"</b>	means the planning permission for the Development granted pursuant to the Planning Application;
<b>"Principal Street"</b>	a road link between the B3082 Shaftesbury Road and the B3092 New Road as shown for identification purposes only shaded orange on Plan 3 to be constructed to an adoptable standard;
<b>"Reserved Matters Approval"</b>	an approval of matters reserved for later determination pursuant to the Planning Permission;
<b>"Residual Phase 1A"</b>	means no more than 64 (sixty four) Dwellings contained within the Phase 1A Land but not contained within the First Phase and thus are not subject to the Original Viability Assessment's Affordable Housing provision of providing 10% (ten percent) of the Dwellings as Affordable Housing Units;
<b>"Residual Phase 1B"</b>	means no more than 150 (one hundred and fifty ) 150 Dwellings contained within the Phase 1B Land but not contained within the First Phase and thus are not subject to the Original Viability Assessment's Affordable Housing provision of providing of 10% (ten percent) of the Dwellings as Affordable Housing Units;
<b>"S73 Permission"</b>	means a planning permission granted by the Council pursuant to an application made under section 73 of the Act to vary the Planning Permission;
<b>"S73A Permission"</b>	means a planning permission granted by the Council pursuant to an application made under section 73A of the Act to vary the Planning Permission;
<b>"Second Phase"</b>	means the development of the Phase 2 Land;
<b>"Third Phase"</b>	means the development of the Phase 3 Land;
<b>"Working Day(s)"</b>	days on which clearing banks in the City of London are open to the public and for the avoidance of doubt such days shall not include any Saturday or Sunday, New Year's Day, Good Friday, Easter Monday, May Day, Christmas Day and Boxing Day.

1.2 Words importing the masculine include the feminine and neuter gender and vice versa.

1.3 Words importing the singular include the plural and vice versa.

- 1.4 Words importing persons include companies corporations and vice versa and all such words shall be construed interchangeable in that manner.
- 1.5 Any reference to a clause paragraph schedule or plan is to one in to or attached to this Agreement and any reference to this Agreement includes any schedule, plan, annexure or other attachment to this Agreement.
- 1.6 In the absence of contrary provision any reference to a statute or statutory instrument includes any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and reference to a statute includes any statutory instrument direction or specification made or issued under the statute or deriving validity from it.
- 1.7 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and successors to any statutory functions of the Council.
- 1.8 Covenants to do or not to do an action shall include respectively a covenant to permit or not to permit that action to be done.

## **2. STATUTORY PROVISIONS**

- 2.1 This Agreement is made pursuant to the following:

- 2.1.1 Section 106 of the Act;
- 2.1.2 Section 111 of the Local Government Act 1972; and
- 2.1.3 Section 1 Localism Act 2011 and all other enabling powers

and has been entered into by the Council pursuant to those and all other enabling powers.

- 2.2 The covenants restrictions and requirements created by this Agreement are planning obligations for the purposes of Section 106 of the Act to the intent that it shall bind the Owner and their respective successors in title to each Owner's respective interest in the Application Land and are enforceable by the Council as the local planning authority.

## **3. COMMENCEMENT**

This Agreement shall come into force on the date hereof save for the obligations contained in the Schedules hereto which shall come into force as follows:

- 3.1 Paragraphs 2.14, 2.15, 2.20, 2.21 and 2.22 of Schedule 5 and those obligations which expressly require something to be done prior to the Commencement of Development or prohibit the Commencement of Development before something has been done shall come into effect on the date of the Planning Permission;
- 3.2 all remaining obligations and provisions shall come into effect on the Commencement of Development.

## **4. THE OWNER'S COVENANTS**

- 4.1 The Owner covenants with the Council to observe and perform the obligations and covenants on their part set out in this Agreement and Schedules 1 to 8 (inclusive).

## **5. THE DEVELOPER'S CONSENT**

- 5.1 The Developer acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Application Land shall be bound by the obligations contained in this Agreement and that its interests in the Application Land shall take effect subject to this Agreement and for the avoidance of doubt the Developer shall be bound by the Owners' covenants and obligations in this Agreement if the Developer becomes a

freehold or leasehold owner of any part of the Application Land or is carrying out the Development.

**6. THE COUNCIL'S COVENANTS**

- 6.1 The Council covenants with the Owner to observe and perform the obligations on its part set out in this Agreement and Schedules 2 to 9 (inclusive).

**7. GENERAL**

The parties agree that:

- 7.1 this Agreement does not and is not intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999 (other than any replacement body of the Council);
- 7.2 no person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Application Land or that part of the Application Land in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest; and to the extent that such breach relates to a part of the Application Land in which that person has no interest: provided that where such breach relates to a failure to comply with an obligation in this Agreement prior to the Occupation of a specified number of Dwellings nothing in this clause shall prevent the Council enforcing against a breach of this Agreement by way of restraining Occupation of Dwellings in excess of the said specified number on any part of the Application Land but where an obligation requires the payment of a sum of money on or prior to the Occupation of a specified number of Dwellings, the requirement to make payment of the relevant sum of money shall only be enforceable against persons with an interest in a Phase or Part of a Phase of the Application Land for which Reserved Matters Approval has been granted and on which Development has been Commenced and further provided that prior to Commencement on each Phase or Part of a Phase the person with an interest in the Phase or Part of a Phase shall provide the Council with written evidence (which shall include but not be limited to a parent company guarantee, or independent financial verification at the discretion of the person with the relevant interest in the Phase or Part of a Phase) of sufficient financial resources to pay the financial contributions for the relevant Phase or Part of a Phase;
- 7.3 The liability of the First Owners in respect of any breach of any of the Owners' covenants contained in this Deed is to be limited in amount to the realisable value of the Trust Fund (as defined in the Trusts) of each of the Trusts from time to time, and nothing contained in this Deed entitles the Council to any right or remedy against the personal estate property effects or assets of any of the First Owners or against assets from time to time being vested in the First Owners that are not comprised in the Trust Fund of either of the Trusts and in this Clause 7.3 only the word "First Owners" does not include successors in title but does include the trustees from time to time of the Trusts, provided always that on the death or retirement of any of the First Owners as a trustee of the Trusts, such trustee shall be discharged from all liability under the covenants contained in this Deed, and on the winding-up of both the Trusts, the First Owners shall be released from all liability under such covenant and for the avoidance of doubt the First Owners declare that the Trust Funds include the First Owners' interest in the Application Land;
- Trusts means (i) the settlement dated 7 December 1997 and made between John Overton (1) and John Overton, Elsie Elizabeth Overton, Neil John Overton and Timothy Paul Overton (2) known as the John Overton 1997 Settlement and (ii) the settlement dated 4 April 2003 and made between John Overton (1) and John Overton, Neil John Overton, Timothy Paul Overton and Osborne Clarke Trustees Limited (2) known as the Liz Overton Settlement.
- 7.4 Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purposes of this clause;
- 7.5 insofar as any clause or clauses or any part thereof of this Agreement 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 Agreement;

- 7.6 if before the Commencement of Development the Planning Permission expires within the meaning of Sections 91 92 or 93 of the Act or is revoked, quashed or modified without the consent of the Owner this Agreement shall cease to have effect;
- 7.7 the Developer shall pay to the Council its proper and reasonable legal costs incurred in negotiating preparing and entering into this Agreement upon completion of this Agreement;
- 7.8 this Agreement shall be registerable as a local land charge;
- 7.9 where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of this Agreement such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed;
- 7.10 subject to clause 7.14 nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement;
- 7.11 nothing contained or implied in this Agreement shall prejudice affect fetter or restrict the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority or any other statutory function rights duties powers and obligations under all public and private statutes byelaws and regulations;
- 7.12 this Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the Courts of England and Wales;
- 7.13 the covenants and obligations in this Agreement shall not be binding on or enforceable against:
  - 7.13.1 individual owners lessees or Occupiers of the Market Housing Units; nor
  - 7.13.2 individual owners lessees or Occupiers of the Affordable Housing Units (save for the affordable housing obligations contained in Schedule 2); nor
  - 7.13.3 any statutory undertakers which only have an interest in the Application Land consisting of statutory apparatus and Application Land upon or in which statutory apparatus are situated; and
  - 7.13.4 the purchaser of an individual Shared Ownership Unit who has Staircased up to acquire 100% (one hundred percent) of the equity in such property at which point the provisions of this Agreement shall no longer apply to such Shared Ownership Unit; nor
  - 7.13.5 any person who acquires an Affordable Housing Unit pursuant to the right to buy or the right to acquire any similar scheme operated by the Affordable Housing Provider;
  - 7.13.6 the freeholders or leaseholders or occupiers of any non-residential Units comprised within the Development who do not hold a freehold interest in the remainder of the Land.
- 7.14 This Agreement shall apply to any S73 Permission or S73A Permission in the same way as it applies to the Planning Permission provided that for the avoidance of doubt where the Council deems it appropriate the Council may require a further agreement under sections 106 and 106A of the 1990 Act to secure obligations concerning the S73 Permission or S73A Permission.

8. **DELIVERY**

The provisions of this Agreement shall be of no effect until this Agreement has been dated.

9. **INDEXATION**

Any sum referred to in the Fourth, Fifth, Sixth and Seventh Schedules shall be increased by the amount equivalent to the increase in the Index from the date of this Agreement until the date on which such sum is payable by increasing the said sum in accordance with the formula:

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

Where

A is the value of the BCIS last published before the date of this Agreement

B is the value of the BCIS last published before the contribution or commuted sum (referred to in this Agreement) is paid;

C is the amount of the sum specified in this Agreement; and

Y is the amount of the payment to be paid after adjustment.

10. **NOTICES**

- 10.1 Any notice consent or approval required to be given under this Agreement to any party to this Agreement shall be in writing and shall be delivered personally or sent by pre-paid first class post to the address of the party as aforesaid or such other address for service as shall have been previously notified by the party to the other parties.

11. **INTEREST**

- 11.1 If any sum due under this Agreement remains unpaid at the time specified herein the party responsible for making the payment shall pay to the party entitled to the payment Interest on such sum calculated on a daily basis and compounded quarterly from the due date until payment and such amount shall be recoverable by action as a liquidated sum.

12. **DISPUTE PROVISIONS**

- 12.1 In the event of any dispute or difference arising between any of the parties to this Agreement in respect of any matter contained in this Agreement such dispute or difference may be referred to an Expert to be appointed (in the absence of an agreement) by or on behalf of the president 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 in the absence of manifest error 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 in equal shares.
- 12.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 12.1 above or as to the appropriateness of the professional body then such question may be referred by either party 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.
- 12.3 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 (28) Working Days after the conclusion of any hearing that takes place or twenty eight (28) Working Days after he has received any file or written representation.

- 12.4 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within fifteen (15) Working Days of notification of his appointment written submissions and supporting material and each party will be entitled to make a counter written submission within fifteen (15) Working Days of receipt of the other party's written submission.

13. **WAIVER**

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

14. **PHASING**

- 14.1 It is agreed between the Owner the Developer and the Council that the number of Dwellings that shall be comprised within Phase 1A Land Phase 1B Land Phase 2 Land and Phase 3 Land of the Development shall be capped as follows:

- 14.1.1 The Dwellings constructed on the Phase 1A Land shall not exceed 306 (three hundred and six) Dwellings in number;
- 14.1.2 The Dwellings constructed on the Phase 1B Land shall not exceed 223 (two hundred and twenty three) Dwellings in number;
- 14.1.3 The Dwellings constructed on the Phase 2 Land shall not exceed 209 (two hundred and nine) Dwellings in number; and
- 14.1.4 The Dwellings constructed on the Phase 3 Land shall not exceed 223 (two hundred and twenty three) Dwellings in number.

15. **CHARGEES CONSENT**

- 15.1 Any mortgage or charge over the Application Land or any part of it created following completion of this Agreement shall take effect subject to this Agreement PROVIDED THAT any such mortgagee or chargee with an interest in the Application Land from time to time shall have no liability under this Agreement unless it takes possession of the Application Land or any part of it in which case it too will be bound by the obligations as if it were a person deriving title from the Owners or any of them.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## **SCHEDULE 1**

### **1. Notifications**

The Owner shall notify the Council in writing of the following stages in the Development and each subsequent Phase of the Development:

- 1.1 the date of Commencement of Development;
- 1.2 Commencement of Development of each Phase;
- 1.3 first Occupation of any Dwelling in each Phase or Part of a Phase;
- 1.4 the Occupation of 30% of the Dwellings in each Phase or Part of a Phase;
- 1.5 the Occupation of 70% of the Dwellings in each Phase or Part of a Phase;
- 1.6 the Occupation of 75% of the Dwellings in each Phase or Part of a Phase;
- 1.7 the Occupation of 80% of the Dwellings in each Phase or Part of a Phase;
- 1.8 the Occupation of 50% of the Open Market Units in each Phase or Part of a Phase;
- 1.9 the Occupation of 85% of the Open Market Units in each Phase or Part of a Phase.

## SCHEDULE 2

### AFFORDABLE HOUSING

1. In this Schedule (and in this Agreement) the following terms shall have the following meanings:

**"Affordable Housing Land"** means the part of the Application Land shown on the Affordable Housing Plan upon which the Affordable Housing Units are to be constructed;

**"Affordable Housing Plan"** means the plan to be submitted by the relevant Owner(s) of the Phase 1A Land the Phase 1B Land the Phase 2 Land the Phase 3 Land respectively to the Council indicating the location, size and tenure allocated to each of the Affordable Housing Units together with any other part of the Application Land proposed to be owned and/or managed by an Approved Provider for which a service charge may be levied and the term **"Affordable Housing Plan"** shall also include any revisions to the Affordable Housing Plan which may be agreed in writing between the Council and the relevant Owner(s);

**"Affordable Housing Scheme"** means a scheme for each Phase or Part of a Phase (including the Affordable Housing Plan) showing the physical location (including integration), layout, size, design, typical occupancy and specification (including that of any common parts serving the Affordable Housing Units) and whether the Affordable Housing Units have a parking space or a garage as well as the type and tenure of the individual Affordable Housing Units and shall also include the following:

- (a) a as map or maps illustrating the distribution of Affordable Housing Units across the Phase 1A Land the Phase 1B Land the Phase 2 Land and the Phase 3 respectively
- (b) a schedule of accommodation including the floor space of each Affordable Housing Unit (m2) and number of bedrooms;
- (c) additional information (for example in relation to a scheme of prioritisation for the allocation of the Affordable Housing) as may be reasonably required by the Council; and
- (d) full details of proposed Affordable Housing Units which are neither Affordable Rented Units nor Shared Ownership Units so as to ensure their provision Occupation and retention as Affordable Housing,

and the term "Affordable Housing Scheme" shall also include any revisions to the Scheme which may be agreed in writing between the Council and the Owners;

<b>"Affordable Housing Unit"</b>	means each of the Dwellings to be provided as Affordable Housing on the Affordable Housing Land;
<b>"Affordable Rent"</b>	means a weekly rent (inclusive of any service charges an Approved Provider seeks to charge in respect of an Affordable Rented Unit) which does not exceed 80% (eighty percent) of Open Market Rent for a similar dwelling in the locality and with the level of rent to be approved by the Council PROVIDED THAT if the Council does not respond to confirm whether the rent is approved within five (5) Working Days of receipt of written notification by the Approved Provider, the rent shall be deemed to have been approved;
<b>"Affordable Rent Tenancy"</b>	means a tenancy for Affordable Housing for rent only and subject to such terms as permitted by Homes England;
<b>"Affordable Rented Housing"</b>	means a rent at commencement of a tenancy which does not exceed 80% (eighty percent) of the local Open Market Rent (inclusive of any service charges) for the relevant property type;
<b>"Affordable Rented Unit(s)"</b>	an Affordable Housing Unit which is only available to be used and Occupied as Affordable Rented Housing to be let by an Approved Provider at an Affordable Rent on an Affordable Rent Tenancy;
<b>"Allocation Policy"</b>	the Council's policy for allocating Affordable Housing Units for all tenures (for the avoidance of doubt including Shared Ownership Units) in the District (as amended from time to time) and any other policy, plan or guidance that the Council may from time to time adopt for the purpose of making such allocations;
<b>'Approved Provider'</b>	means: <ul style="list-style-type: none"> <li>(a) a registered provider of social housing as defined in the Housing and Regeneration Act 2008 and approved by the Council; or</li> <li>(b) a provider of housing approved by the Council for the purpose of owning, maintaining and managing Affordable Housing.</li> </ul>
<b>"Chargee"</b>	means any 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) of the whole or any part of the Affordable Housing Units;
<b>"Council's Housing Register"</b>	means the common housing register held by the Council or such other list or register that the Council may in future hold identifying Local Needs Persons or register provided by the Help to Buy Agent and

approved of by the Council for the purposes of low cost home ownership;

**"Discount"**

means a 30% (thirty percent) discount to the Open Market Value to be applied in respect of each Discount Market Unit (therefore the sale price being at 70% (seventy percent) of Market Value);

**"Discount Market Units"**

means the Affordable Housing Units to be sold at a Discount pursuant to paragraphs 2.13 and 2.14 of Schedule 2 and reference to '**Discount Markets Unit**' shall be to one of the units and reference to '**Discount Market**' to the tenure;

**"Discount Value"**

means the average of 2 (two) Market Values assessed by Estate Agents less the relevant Discount;

**"Disposal"**

means the transfer of a freehold interest or the grant of a leasehold interest for a fixed term exceeding seven (7) years and '**Dispose**' shall be construed accordingly;

**"Estate Agent"**

means an independent estate agent who is either a member of the Royal Institution of Chartered Surveyors or the National Association of Estate Agents;

**"Help to Buy Agent"**

means a person or body appointed by Homes England to administer a register and access eligibility for that register for shared ownership schemes available within the District (or successor in function) or the Council (if the Help to Buy Agent no longer administer such scheme either generally or in the District);

**"Homes England"**

means Homes England, the non-departmental public body which commenced operations on 11 January 2018, or such other replacement public body established to oversee Affordable Housing provision and policy;

**"Housing Need"**

means the circumstances where a household is currently occupying accommodation that is substandard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the open market (and for the avoidance of doubt this may include circumstances where a household is currently accommodated but requires a form of low cost home ownership such as a Shared Ownership Unit);

**"Household"**

a person together with:

- (a) any other individual who normally resides with that person as a member of the family; and
- (b) any other individual who might reasonably be expected to reside with that person

**"Intermediate Unit"**

means Affordable Housing provided by way of Shared Ownership Units, Discount Market Units or such other

forms of Affordable Housing as may be agreed in writing with the Council;

**"Local Connection"**

means a connection (calculated from the Start Date) with the District, as follows:

- (a) being permanently resident therein for at least 2 (two) years;
- (b) in permanent full-time or part-time (minimum 16 (sixteen) hour contract per week) work therein for 6 (six) months. This may include the need to move to the District in connection with permanent employment (minimum 16 (sixteen) hour contract per week) where commuting from the person's existing home is accepted by the Council as unreasonable. In all cases there should be no break in the period of employment for more than three (3) months over the relevant period;
- (c) having immediate relatives (i.e. parents, non-dependent children, brother or sister) who have lived therein for at least five (5) years and with whom there has been shown to have been frequent contact, commitment or dependency;
- (d) other categories or relationships may be considered by the Council including foster relationships where clear evidence of frequent contact, commitment dependency is shown;
- (e) other special circumstances which create a link to the District (not including residence in a hospitable armed forces accommodation holiday let or rehabilitation facility) and having been first verified in writing by the Council as having such special circumstances and this may include the need to reside in the District to give or receive medical support or (with the approval of the Council) some other form of special support,

and in the event that no one satisfying the above requirements can be found within the District within two weeks from the date of first marketing the Affordable Housing Units then the process shall be repeated considering persons from the County of Dorset (with priority being given to people from the District) and in each case with priority given in accordance with any scheme of prioritisation approved as part of the Affordable Housing Scheme;

**"Local Needs Person"**

means a person or persons in Housing Need (together with immediate family and dependents of such a person) who are registered on the Council's Housing Register and have a Local Connection as confirmed in writing by the Council or such other person as may



be approved in writing by the Council (acting reasonably);

**"Market Value"**

means the estimated sum for which a Dwelling 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 disregarding the provisions of this Agreement;

**"Notice of Availability"**

means a notice in writing informing the Council that the Affordable Housing Unit is or will soon become available for Occupation;

**"Offer to Dispose"**

means a formal written offer to Dispose of a Shared Ownership Lease in terms and at a value (to be determined by the Valuer in the event of a dispute) consistent with the provisions of this Agreement;

**"Open Market Rent"**

means the estimated amount for which an Affordable Rented Unit should be let on the date of valuation between a willing lessor and willing lessee (disregarding the obligations in this Agreement) in an arm's length transaction after proper marketing where the parties have acted knowledgeably, prudently and without compulsion such estimated amount to be agreed between the Council and the Approved Provider or in the absence of such agreement to be determined by the Expert pursuant to clause 12;

**"Open Market Value"**

means the best price that might reasonably be obtained for a parcel of land by an unconnected third party on a certain date assuming the said parcel of land is being sold:

- (a) on the open market assuming a residential planning permission has been granted which permission is assumed to have been granted more than six (6) weeks prior to the relevant date and in respect of which all pre-commencement conditions are assumed to have been discharged and reserved matters approvals obtained and which is in all other respects assumed to be capable of being implemented immediately;
- (b) at the relevant date;
- (c) by a willing vendor to a willing purchaser;
- (d) as a whole;
- (e) with vacant possession and subject only to those matters set out in the Charges Register of the relevant title (disregarding any mortgage or legal charge);
- (f) with no additional restrictions as to use; and

(g) disregarding the provisions of this Agreement.

**"Shared Owner"**

the leaseholder of a Shared Ownership Unit;

**"Shared Ownership Lease"**

means a lease for the rent and sale of an Affordable Housing Unit provided on terms which accord with the requirements of Homes England for shared ownership tenure and **"Shared Ownership"** shall be similarly construed;

**"Shared Ownership Units"**

means the Affordable Housing Units to be constructed as shared ownership housing pursuant to a Shared Ownership Lease (and the **"Shared Ownership Units"** means all of them);

**"Staircasing Payment"**

means payments made to an Approved Provider by a leaseholder of a Shared Ownership Unit as a result of the leaseholder exercising a right to increase their share of equity less the amount of any outstanding loan amount secured on the Shared Ownership Unit and the reasonable costs of administration or legal or other expenses (and any part of such monies) and **"Staircasing"** and **"Staircased"** shall be similarly construed;

**"Start Date"**

means the date immediately preceding the date on which the Affordable Housing Unit is proposed to be Occupied by a Local Needs Person;

**"Valuer"**

means an independent expert who is a member or fellow of the Royal Institution of Chartered Surveyors and approved in writing by the Council or in the absence of agreement (after a period of ten (10) Working Days) as nominated by the President (or other appropriate person) of the RICS on the application of either party.

2. **Affordable Housing**

The Owners covenant with the Council as follows (unless otherwise agreed in writing):

**General Provisions**

- 2.1 That a minimum of 10% (ten percent) of the Dwellings comprised on the First Phase (which for the avoidance of doubt excludes Residual Phase 1A and Residual Phase 1B) shall be Affordable Housing Units in accordance with the Original Viability Assessment.
- 2.2 The Dwellings on the First Phase shall total no more than 242 (two hundred and forty two) Dwellings on the Phase 1A Land and 73 (seventy three) Dwellings on the Phase 1B Land.
- 2.3 That the percentage of Dwellings comprised in the Later Phases which shall be Affordable Housing Units shall be determined in accordance with the Revised Viability Appraisal in accordance with the provisions of Part 2 of this Schedule.
- 2.4 The Affordable Housing Units shall be Affordable Housing and shall not be Occupied other than as Affordable Housing subject to the provisions of this Agreement save where expressly specified otherwise herein.

- 2.5 Not to Commence the Development of a Phase or Part of a Phase or any Later Phase until the Affordable Housing Scheme (including the Affordable Housing Plan) for the relevant Phase or Part of a Phase or any Later Phase has been submitted to and approved of in writing by the Council and thereafter to comply with the Affordable Housing Scheme (including the Affordable Housing Plan).
- 2.6 Not less than 50% (fifty percent) of the Affordable Housing Units shall be Affordable Rented Units with the remaining 50% (fifty percent) being Intermediate Units (or such other tenure mix as approved pursuant to the Affordable Housing Scheme).
- 2.7 Not to cause or permit the Occupation of more than 50% (fifty percent) of the Market Housing Units comprised in a Phase or Part of a Phase until such time as 50% (fifty percent) of the Affordable Housing Units comprised in the relevant Phase or Part of a Phase have been constructed and substantially completed and (save for any Discount Market Units) transferred to an Approved Provider.
- 2.8 No more 30% (thirty percent) of the Intermediate Units shall be Discount Market Units.
- 2.9 Not to cause or permit the Occupation of more than 85% (eighty five percent) of the Market Housing Units comprised in a Phase or Part of a Phase until such time as 100% (one hundred percent) of the Affordable Housing Units comprised in the relevant Phase or Part of a Phase have been constructed and substantially completed and (save for any Discount Market Units) transferred to an Approved Provider.
- 2.10 Save as provided for in clauses 7.13.4 and 7.13.5 and in Paragraphs 2.12.2.1 and 2.12.2.2 below, not to Occupy or permit Occupation of any of the Affordable Housing Units other than by Local Needs Persons and in the manner specified in the approved Affordable Housing Scheme.

#### **Affordable Rented Units**

- 2.11 Save as provided for in clauses 7.13.4 and 7.13.5 and in Paragraph 2.25 below (and unless otherwise agreed in writing with the Council), not to Occupy or permit Occupation of the Affordable Rented Units at any time otherwise than by Local Needs Persons and by way of an Affordable Rent Tenancy at an Affordable Rent.

#### **Shared Ownership Units**

- 2.12 Save as provided in Paragraph 2.12.2.1 and 2.12.2.2 or paragraph 2.25 below:
- 2.12.1 On the initial letting of a Shared Ownership Unit by an Approved Provider to a tenant not to Occupy or permit Occupation of the Shared Ownership Units otherwise than by a Local Needs Person (unless otherwise agreed in writing with the Council).
- 2.12.2 at any other time not to cause or permit the Occupation of the Shared Ownership Units otherwise than by Local Needs Persons and by way of a Shared Ownership Lease unless the Shared Ownership Unit is for sale and the criteria set out in either Paragraph 2.12.2.1 or 2.12.2.2 below have been fulfilled:-
- 2.12.2.1 Such of the following four steps as are relevant have been taken:-
- (a) the Owners have served a Notice of Availability on the Council that the relevant Shared Ownership Unit is or will soon become available for Occupation; and
- (b) a period of not less than eight (8) weeks has elapsed since the service of that Notice of Availability and during that period a sale of the Shared Ownership Lease to a Local Needs Person or an Approved Provider has not been completed despite all reasonable endeavours by the Owners (and for the avoidance of doubt the Owners shall not have used all reasonable endeavours if unable to

offer vacant possession to the buyer on the completion of the said sale); and

- (c) (if the Shared Ownership Unit has not by been sold by the end of the period specified in subparagraph (b) above) the Owners have made an Offer to Dispose of the Shared Ownership Lease to the Council or its nominee (such offer to remain open for a period of not less than eight (8) weeks and not to be served until the eight (8) week (minimum) period referred to in subparagraph (b) above has elapsed); and
- (d) during the period of the Offer to Dispose a sale of the Shared Ownership Lease to the Council or its nominee has not been completed despite reasonable endeavours by the Owners (and for the avoidance of doubt the Owners shall not have used reasonable endeavours if unable to offer vacant possession to the buyer on completion of the sale).

OR

- 2.12.2.2 The owner of a Shared Ownership Unit (in this context including the Chargee provided that the Chargee has first followed the procedure set down in paragraph 2.10 of this Second Schedule below) has acquired the freehold of that Shared Ownership Unit by virtue of Staircasing where the Shared Ownership Lease so permits

AND in the event that the criteria set out in either paragraph 2.12.2.1 or 2.12.2.2 above have been fulfilled THEN the Owners shall be entitled to dispose of the Shared Ownership Unit free from the Affordable Housing restrictions of this Agreement and all future dispositions of the Shared Ownership Unit shall likewise be free from the Affordable Housing restrictions set out herein.

#### **Mechanism for Provision of Discount Market Units**

- 2.13 The Owners shall not Dispose of any of the Discount Market Units unless and until the Owners have:
  - 2.13.1 given not less than fourteen (14) Working Days prior written notice to the Council (the "**Owner's Notice**") of their intention to market the Discount Market Unit(s) for sale; and
  - 2.13.2 provided two (2) Market Value valuations of the Discount Market Units from Estate Agents and the Owners' calculation of the Discount Value; and
  - 2.13.3 provided the name of the Estate Agents instructed
- 2.14 The Council shall respond to the Owners' Notice given pursuant to paragraph 2.13 above within ten (10) Working Days of receipt of the Owners' Notice to confirm the Discount Value PROVIDED THAT in the event that the Council does not respond to the Owners' Notice to confirm the selling price within ten (10) Working Days of receipt of the Owners' Notice the Council shall be deemed to have approved the Discount Value stated in the Owners' Notice
- 2.15 The Owners shall commence marketing the Discount Market Housing Units within twenty (20) Working Days of the date of the Owner's Notice ("**the Commencement of Marketing**")
- 2.16 The Owners shall not cause or permit the sale of a Discount Market Housing Units for more than the Discount Value
- 2.17 The Owners shall notify the Council promptly of the name and address of the proposed buyer together with full details of the sale price and shall provide such information as the

Council may reasonably require to satisfy itself that the buyer is a Local Needs Person and that the sale price including any inducements or other benefits (whether of a monetary value or not) offered by the Owners does not exceed the Discount Value of the Discount Market Unit

- 2.18 If no Local Needs Person has purchased the Discount Market Housing Unit above within three (3) months of the Commencement of Marketing the Owners of the relevant Discount Market Unit shall use reasonable endeavours to sell the Discount Market Unit(s) at no more than the Discount Value to a Registered Provider and/or the Council
- 2.19 If the Owners have not exchanged contracts for the sale of the Discount Market Unit(s) with a Registered Provider and/or the Council within six (6) months of the Commencement of Marketing the Owners shall notify the Council in writing that it has not exchanged contracts for the sale of the Discount Market Unit and shall be free to sell the Discount Market Housing Unit at no more than the Discount Value to any person PROVIDED THAT the provisions of paragraphs 2.13 and 2.14 of this Schedule shall (unless otherwise agreed in writing by the Council) apply in full in respect of any subsequent Disposals of the said Discount Market Unit
- 2.20 The transfer of each Discount Market Unit (save for any transfer made to the Council or a Registered Provider pursuant to paragraph 2.17 above) shall contain a covenant not to let the whole or part of the dwelling for a period in excess of six (6) months in any period of ownership and not without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed but for the avoidance of doubt it shall be reasonable for the Council to refuse to give consent if the proposed rent payable does not reflect the discounted sale price of the dwelling)
- 2.21 On any sale and all subsequent resales of the Discount Market Unit(s) the owner of the Discount Market Unit ("the Seller") covenants:-
- 2.21.1 Not to transfer the dwelling at a price greater than the Discount Value in perpetuity
- 2.21.2 Not to let the whole or part of the dwelling for a period of in excess of six (6) months in any period of ownership and not without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed but for the avoidance of doubt it shall be reasonable for the Council to refuse to give consent if the proposed rent payable does not reflect the discounted sale price of the dwelling)
- 2.21.3 to notify the Council in writing of the intention to sell and to provide the Council with two independent valuations from Estate Agents for the Market Value of the dwelling together with a calculation of the Discount Value
- 2.21.4 to contract to sell only to those persons and in the timescales set out in Paragraphs 2.13 to 2.21 of Schedule 2 of this Agreement and prior to exchange of contracts to supply to the Council with evidence that the purchaser satisfies the relevant provisions provided that if a person cannot be identified who satisfies the requirements of the said paragraphs within four months from first marketing the dwelling the Seller may ask the Council in writing to consent to the sale of the Discount Market Unit on such other terms as may be proposed by the Seller (such consent not to be unreasonably withheld)
- 2.22 The Council shall within ten (10) Working Days of receipt of such notification referred to in paragraph 2.19 of this Schedule 2 confirm to the Seller:
- 2.22.1 the agreed Market Value valuation for the dwelling (being the average of the two valuations referred to in paragraph [2.13 or 2.21.3] (as appropriate)) ; and
- 2.22.2 the Discount Value

- 2.23 On completion of the sale of the Discount Market Unit a fee of £50 (fifty pounds) shall be payable to the Council by the seller to cover reasonable administration costs incurred by the Council such sum to be reviewed every five years from the date of this Agreement in line with inflation

#### **Release for Chargees**

- 2.24 The Affordable Housing provisions in this Agreement shall not be binding on a Chargee PROVIDED THAT:
- 2.24.1 such Chargee 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 (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Approved 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
- 2.24.2 If such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Agreement which provisions shall determine absolutely
- 2.25 None of the covenants in this Schedule shall apply to or be binding upon any mortgagee or chargee holding a mortgage or legal charge over any individual Discount Market Unit if either a power of sale has arisen in favour of the mortgagee or such mortgagee or its receiver enters into possession

#### **Staircasing Payments**

- 2.26 The Approved Provider shall use its reasonable endeavours to apply any Staircasing Payment (excluding build costs and fees) to the provision of Affordable Housing within the District unless otherwise agreed in writing by the Council and the Approved Provider shall produce to the Council evidence to demonstrate this upon request.

## SCHEDULE 3

### Viability Review

#### Part 1

1. The Owners covenant with the Council as follows:
  - 1.1 Not to allow or permit the number of Dwellings to be constructed on Phase 1A Land to exceed 306 (three hundred and six) Dwellings;
  - 1.2 Not to allow or permit the number of Dwellings to be constructed on the Phase 1B Land to exceed 223 (two hundred and twenty three) Dwellings;
  - 1.3 Not to allow or permit the number of Dwellings to be constructed on the Second Phase Land to exceed 209 (two hundred and nine) Dwellings; and
  - 1.4 Not to allow or permit the number of Dwellings to be constructed on the Third Phase Land to exceed 223 (two hundred and twenty three) Dwellings.

#### Part 2

1. In this Schedule the following terms shall have the following meanings:

**"Event of Force Majeure"**

means any circumstance not within the Owners' reasonable control including:-

- (a) acts of God, flood, draught, earthquake or other natural disaster;
- (b) epidemic or pandemic (including for the avoidance of doubt the COVID-19/ coronavirus epidemic);
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo;
- (d) nuclear, chemical, or biological contamination or sonic boom;
- (e) collapse of buildings, fire, explosion or accident;
- (f) any third party (which for the avoidance of doubt can include the Council) unreasonably withholding or delaying the grant of or issue of any consent or other authorisation required to carry out the construction;

**"Extension Notice"**

means a request by the Owner to the Council to change the date for the submission of the Revised Viability Appraisal and which must include:

- (a) the proposed new date for the Revised Viability Appraisal the extension of which shall relate directly to an event of Force Majeure;

- (b) the reasons why the delay(s) has occurred and why this is directly as a result of an event of Force Majeure; and
- (c) be supported by appropriate evidence to substantiate the reasons provided for the change of date of the Revised Viability Appraisal
- (d) and for the avoidance of doubt an Extension Notice may not request an extension for any act or omission on the part of the Owner; and must relate to delays that are directly as a result of Force Majeure;

**"GDV"**

means the gross development value of the Development;

**"Revised Viability Appraisal"**

means an open book and independent assessment and review of the viability of the Development of the Second Phase the Third Phase Residual Phase 1A and Residual Phase 1B on an individual Phase basis to determine whether each of these Later Phases can viably support the provision of Affordable Housing Units within the proposed Later Phase undertaken following the procedure set out in this Schedule using the same model as the Original Viability Appraisal (subject to any variations which may be agreed between the Owners and the Council) and applying the same assumptions as the Viability Inputs but using actual costs rather than assumptions (where available and applicable) and taking into account any sharing of liability for planning obligations required under this Agreement with Owners of the other Phases but in any event there shall be no double counting of such planning obligations between Owners of the relevant Phases;

**"Schedule of Accommodation"**

means the number of Dwellings, the number of bedrooms of each Dwelling and the indicative size of each Dwelling contained within that Phase subject to the Revised Viability Appraisal;

**"Second Phase"**

means the area of Development as shown on the Phase 2 Land on the Phasing Plan;

**"Third Phase"**

means the area of Development as shown on the Phase 3 Land on the Phasing Plan;

**"Target Level"**

means the provision of 25% (twenty five percent) of the Dwellings as Affordable Housing across the Development;

**"Viability Inputs"**

means the following inputs:

**"BLV"** - £140,000 (one hundred and forty thousand pounds) per gross acre All Items RPI Index Linked to the date of the Original Viability Appraisal

**"Build Costs"** means:

- (a) for the parts of the Development which have not yet been constructed means BICS median



build costs or where actual build costs are available for part(s) of the Development estimated build costs based on those actual costs; and

- (b) for those parts of the Development which have been constructed, actual build costs

**"Contingency on build"** means 3% (three percent);

**"Dwelling Numbers"** means the total number of Dwellings within the Phase inputted into the Revised Viability Appraisal including a Schedule of Accommodation

**"Sales Values"** means actual sales values (less any incentives) for parts of the Development which have been sold and estimated sales values for any unsold parts of the Development

**"Infrastructure Costs"** means actual or estimated (as appropriate) attributable to that Phase

The element of HIF funding attributable to that Phase subject to the Revised Viability Appraisal of the Development

The element of Growth Deal funding attributable to that Phase subject to the Revised Viability Appraisal of the Development

**"S106 agreement costs"** means the cost of any financial contributions and the cost of laying out/constructing any public open space or other infrastructure required by this Agreement PROVIDED THAT any such costs have not already been included in the Infrastructure Costs attributable to that Phase

**"Stamp duty"** means the prevailing rate;

**"Land agents fees"** means 1.5% (one point five percent);

**"Legal fees on open market sales"** means £700 (seven hundred pounds) per Open Market Dwelling (All Item RPI Index Linked to the date of the Original Viability Appraisal);

**"Legal fees on Affordable Housing"** means 0.25% (zero point twenty five percent) GDV of Affordable Housing Units;

**"Professional Fees"** means 6% (six percent) of GDV;

**"Sales cost marketing"** means 1% (one percent) of GDV;

**"Finance cost"** means the prevailing rate 6% (six percent) used in the Original Viability Appraisal;

**"Credit Interest rate"** means the prevailing rate 0.5% (zero point five percent) used in the Original Viability Appraisal;

**"Developers Profit"** means 20% (twenty percent)

2. The Owners covenant with the Council as follows:

**Affordable Housing Viability Reassessment**

- 2.1 Prior to the Commencement of Development of each Later Phase respectively the Owner of the relevant Later Phase shall submit a Revised Viability Appraisal to the Council for approval for that Later Phase which identifies the maximum percentage (and proposed tenure mix) of Affordable Housing Units (at all times seeking to provide the Target Level) that the relevant Later Phase of the Development can viably support.
- 2.2 To provide separate Revised Viability Appraisals for the Second Phase the Third Phase and the Residual Phase 1B unless otherwise agreed with the Council.
- 2.3 To either provide a separate Revised Viability Appraisal for the Residual Phase 1A or the Residual Phase 1A may be included as part of Revised Viability Appraisal for the Second Phase at the absolute discretion of the Owner.
- 2.4 In the event that on the expiration of:

- 2.4.1 a period of 2 (two) years from the date of the last Reserved Matters Approval in respect of the relevant Later Phase; or if later;
- 2.4.2 a period of 1 (one) year from the date when all planning conditions imposed on the Planning Permission for the relevant Reserved Matters Approval which prevent development from being carried out on the relevant Later Phase have been discharged

no Dwelling comprised in the relevant Later Phase has been constructed to damp proof course the Owner shall submit to the Council for approval a further Revised Viability Appraisal which identifies the maximum percentage (and proposed tenure mix) of Affordable Housing Units that the relevant Later Phase of the Development can viably support seeking at all times to achieve the Target Level

- 2.5 The Council shall (acting reasonably at all times):

- 2.5.1 respond within 20 (twenty) Working Days of receipt of the Revised Viability Appraisal to make any reasonable and proper requests for further information which is necessary in order for the Council to assess the Revised Viability Appraisal; and
- 2.5.2 Within:
- (a) 25 (twenty five) Working Days of receipt of the Revised Viability Appraisal; or
  - (b) 15 (fifteen) Working Days from the receipt by the Council of any additional information requested pursuant to paragraph 2.5.1 above (whichever date is the later)

the Council shall serve written notice on the Owner to confirm whether the Revised Viability Appraisal is approved or rejected and in the event that the Council rejects the Revised Viability Appraisal, the Council's notice shall contain detailed reasons as to why the Revised Viability Appraisal has been rejected

3. In the event that the Council does not approve or reject the Revised Viability Appraisal within the time period specified in paragraph 2.5.2 above, the Revised Viability Appraisal shall be deemed to have been approved.
4. In the event that the Council rejects the Revised Viability Appraisal within the time period specified in paragraph 2.5.2 of this Schedule the Owner of the relevant Later Phase and the Council shall liaise (each acting reasonably) for a further period of 15 (fifteen) Working Days to agree the Revised Viability Appraisal and at the end of that period if the matter is not agreed either party may refer it to the Expert for determination pursuant to clause 12 of this Agreement.
5. For the avoidance of doubt the provisions of paragraphs 2.2, 2.4, 3 and 4 shall apply to all and each Revised Viability Appraisal
6. In the event that the approved Revised Viability Appraisal indicates that the Development in the relevant Later Phase can viably support the provision of Affordable Housing Units the Owners shall, unless otherwise agreed in writing by the Council, include within the Affordable Housing Scheme for that Later Phase such percentage of the Affordable Housing Units as identified in the approved Revised Viability Appraisal (seeking at all time to achieve the Target Level) SUBJECT TO:
  - 6.1 No more than 25% (twenty five percent) of the total number of Dwellings within Phase 1A, Residual Phase 1A, Phase 2 and Phase 3 together shall be Affordable Housing Units;
  - 6.2 No more than 25% (twenty five percent) of the total Dwellings within Phase 1B and Residual Phase 1B together shall be Affordable Housing Unitsand shall provide the Affordable Housing Units within that Later Phase in accordance with the provisions of Schedule 2.
7. In the event that a period of thirty (30) months passes between the approval of a Revised Viability Appraisal and the submission of Reserved Matters Applications for the Later Phase to which that Revised Viability Appraisal related then the Owner shall be required to submit a further Revised Viability Appraisal in respect of that Later Phase and the Council and the Owner shall comply with paragraphs 2.2 to 6 of Schedule 3 inclusive in this regard PROVIDED THAT in the event of Force Majeure the Owners serve an Extension Notice in respect of that Later Phase subject to a Revised Viability Appraisal and such notice is accepted by the Council subject to paragraph 8 of this Schedule 3.
8. Upon receipt of an Extension Notice the Council shall review it and by the date which is 20 (twenty) Working Days from receipt of the Extension Notice the Council shall respond either:
  - 8.1 confirming agreement to the Extension Notice proposed by the Owner shall apply; or
  - 8.2 proposing a different date for the submission of the Revised Viability Appraisal; or
  - 8.3 requesting further information from the Owner in relation to any matter contained within the Extension Notice;

#### **Reserved Matters Applications**

9. Any submission for a Reserved Matters Approval for a Later Phase to which a Revised Viability Appraisal has been completed shall be in accordance with the Schedule of Accommodation submitted as part of the Revised Viability Appraisal for that Later Phase (unless otherwise agreed with the Council) PROVIDED THAT the Parties agree that a tolerance of no more than 2.5% (two point five percent) greater than the Schedule of Accommodation shall be in accordance with this paragraph.
10. In the event that a submission for a Reserved Matters Approval for a Later Phase to which a Revised Viability Appraisal has been completed and the Schedule of Accommodation

exceeds 2.5% (two point five percent) (unless otherwise agreed with the Council) the Owner shall submit a Revised Viability Appraisal for that Phase to the Council for approval.

11. The Revised Viability Appraisal required to be submitted pursuant to paragraph 10 of this Schedule shall be submitted to the Council within twenty (20) Working Days of the submission of the Reserved Matters Application and the provisions of paragraphs 2.5 to 7 inclusive of this Schedule shall apply.

## SCHEDULE 4

### Financial Contributions

1. In this Schedule (and in this Agreement) the following terms shall have the following meanings:

<b>"Community Hall Contribution"</b>	a sum equal to £936.32 (nine hundred and thirty six pounds and thirty two pence) per Dwelling towards a new facility at Riversmeet within the SSA to be provided in consultation with the community to clarify their vision for the community space (which may include youth facilities to be delivered on a voluntary basis), its uses, management and maintenance arrangements, and cost
<b>"Library Contribution"</b>	a sum equal to £252.00 (two hundred and fifty two pounds and forty pence) per Dwelling towards improvements to Gillingham Library and increasing stock
<b>"Health Facilities Contribution"</b>	means the sum of £112.28 (one hundred and twelve pounds and twenty eight) per Dwelling to be applied towards the provision of new clinical rooms at Gillingham Medical Centre required as a result of the Development;
<b>"Household Recycling Contribution"</b>	means the sum of £271.94 (two hundred and seventy one pounds and ninety four pence) per Dwelling to be applied towards the provision or upgrading of household recycling facilities within the District required as a result of the Development;
<b>"Principal Street Commuted Sum"</b>	means a contribution towards the cost of maintaining the landscaping and trees along the Principal Street in the sum of £249,790.59 (two hundred and forty nine thousand seven hundred and ninety pounds and fifty nine pence)
<b>"Principal Street Contribution"</b>	means a contribution towards the cost of constructing the Principal Street including below ground utilities infrastructure in the sum of £3,823,277.87 (three million eight hundred and twenty three thousand two hundred and seventy seven pounds and eighty seven pence)
<b>"Principal Street Footway Contribution"</b>	means a contribution towards the cost of constructing the final surfacing of the footways and cycleways on the Principal Street in the sum of £227,490.16 (two hundred and twenty seven thousand four hundred and ninety pounds and sixteen pence)

2. The Owners covenants with the Council as follows:

- 2.1 Not to cause or permit the Occupation of more than 75% (seventy five percent) of the Dwellings comprised in a Phase or Part of a Phase unless and until the Community Hall Contribution relating to the relevant Phase or Part of a Phase have been paid to the Council
- 2.2 Not to cause or permit the Occupation of more than 30% (thirty percent) of the Dwellings comprised in a Phase or Part of a Phase unless and until the Health Facilities Contribution the Household Recycling Contribution and the Library Contribution relating to the relevant Phase or Part of a Phase have been paid to the Council
3.
  - 3.1 Not to cause or permit the Commencement of Development in any Phase unless and until the Principal Street Commuted Sum relevant to that Phase has been paid to the Council as follows:
    - 3.1.1 £79,558.30 (seventy nine thousand five hundred and fifty eight pounds and thirty pence in respect of Phase 1A
    - 3.1.2 £57,941.42 (fifty seven thousand nine hundred and forty one pounds and forty two pence in respect of Phase 1B
    - 3.1.3 £54,329.45 (fifty four thousand three hundred and twenty nine pounds and forty five pence) in respect of Phase 2
    - 3.1.4 £57,941.42 (fifty seven thousand nine hundred and forty one pounds and forty two pence in respect of Phase 3
  - 3.2 Not to cause or permit the Occupation of more than 80% (eighty percent) of the Dwellings comprised in a Phase unless and until Principal Street Footway Contribution relevant to that Phase has been paid to the Council as follows:
    - 3.2.1 £72,455.61 (seventy two thousand four hundred and fifty five pounds and sixty one pence in respect of Phase 1A
    - 3.2.2 £52,777.72 (fifty two thousand seven hundred and seventy seven pounds and seventy two pence) in respect of Phase 1B
    - 3.2.3 £49,479.11 (forty nine thousand four hundred and seventy nine pounds and eleven pence) in respect of Phase 2
    - 3.2.4 £52,777.72 (fifty two thousand seven hundred and seventy seven pounds and seventy two pence) in respect of Phase 3
4. In the event that the Council constructs the Principal Street, the Owners shall pay to the Council the Principal Street Contribution relating to the relevant Phase shall be paid as follows:
  - 4.1 £1,217,714 (one million two hundred and seventeen thousand seven hundred and fourteen pounds (representing 31.85% (thirty one point eight five percent) of the Principal Street Contribution) payable by the owner of the Phase 1A Land on the later of:
    - 4.1.1 The Occupation of 80% (eighty percent) of the Dwellings comprised on the Phase 1A Land; or
    - 4.1.2 The commencement of construction of the Principal Street by the Council.
  - 4.2 £887,000.47 (eight hundred and eighty seven thousand pounds and forty seven pence)(representing 23.2% (twenty three point two percent)) of the Principal Street Contribution) payable by the owner of the Phase 1B Land on the later of:
    - 4.2.1 The Occupation of 80% (eighty percent) of the Dwellings comprised on the Phase 1B Land; or

- 4.2.2 The commencement of construction of the Principal Street by the Council.
- 4.3 £831,562.93 (eight hundred and thirty one thousand five hundred and sixty two pounds and ninety three pence) (representing 21.75% (twenty one point seven five percent)) of the Principal Street Contribution on the later of:
- 4.3.1 The Occupation of 80% (eighty percent) of the Dwellings comprised on the Phase 2 Land; or
- 4.3.2 The completion of the Principal Street by the Council and the Principal Street being opened for use by traffic and the completion of the Highway Improvements.
- 4.4 £887,000.47 (eight hundred and eighty seven thousand pounds and forty seven pence)(representing 23.2% (twenty three point two percent)) of the Principal Street Contribution) on the later of:
- 4.4.1 The Occupation of 80% (eighty percent) of the Dwellings comprised on the Phase 3 Land; or
- 4.4.2 The completion of the Principal Street by the Council and the Principal Street being opened for use by traffic and the completion of the Highway Improvements.
- 4.5 The Council shall notify the Owners of the Actual Cost of the Principal Street within 20 (twenty) Working Days of the Principal Street being adopted as highway maintainable at public expense ("the Council's Notice") and in the event that the total cost of delivering the Principal Street is less than £6,803,124 (six million eight hundred and three thousand one hundred and twenty four pounds) excluding the Principal street Footway Contribution and Principal Street Commuted Sum the Principal Street Contribution shall be reduced by the sum calculated in accordance with the below formula:

$$(\text{Actual Cost of Principal Street} \div 1710) \times 961$$

And in the event that the Owner has paid any sums in addition to that required in respect of the reduced Principal Street Contribution the Council shall repay any such excess to the Owner together with any interest actually accrued within 20 (twenty)Working Days of the Council's Notice

## SCHEDULE 5

### Public Open Space

1. In this Schedule (and this Deed) the following terms shall have the following meanings:

<b>"Allotments"</b>	means the allotments being an area of 0.48ha shown for identification purposes on Plan 4
<b>"Access and Adoption Agreement"</b>	means the agreement between the parties for the delivery of the Principal Street including the provision of the Flood Compensation Land and the Planting Mitigation Land
<b>"Certificate of Practical Completion"</b>	a certificate issued by a reputable architect appointed by the Owner to the effect that practical completion of the Public Open Space in accordance with the Public Open Space Specification or as the case may be the Sports Pitches in accordance with the Sports Pitch Specification has taken place or as the case may be the Pavilion in accordance with the Pavilion Specification
<b>"Flood Compensation Land"</b>	means the land shown coloured brown on Plan 5
<b>"LAP"</b>	a local area of play within the Development of not less than 0.01 (nought point nought one) hectares to include a play space for toddlers with at least three different types of play equipment impact absorbing surface beneath and around the play equipment, seating and litter bin surrounded by fencing with pedestrian gate(s) and a buffer zone
<b>"LEAP"</b>	a local equipped area of play within the Development of not less than 0.04 (nought point nought four) hectares with at least 8 (eight) different types of play equipment (forming not less than 2 (two) separate installations) impact absorbing surface beneath and around the play equipment, seating and litter bin surrounded by fencing with pedestrian gate(s) and a buffer zone (including planting)
<b>"Incidental Public Open Space"</b>	the SUDS, the area coloured dark green [and annotated ] on Plan 4 and any other parts of the Development approved as areas of public open space (not including the Open Space) by virtue of a Reserved Matters Approval
<b>"Informal Open Space"</b>	means the area coloured light green on Plan 4
<b>"Management Body"</b>	means a body which has been first approved in writing by the Council which is capable of maintaining the Public Open Space [the Pavilion and Sport Pitch] (as appropriate)
<b>"NEAP"</b>	means a neighbourhood area of play with a minimum area of 0.1 nought point one hectares comprising an area for play equipment and structures with a minimum 30 (thirty) metres separation distance



	between the activity zone and the boundary of any Dwelling
<b>"Offer"</b>	means an offer in writing such offer to remain open for acceptance for a period of 2 (two) months
<b>"Open Space"</b>	<p>means (unless otherwise agreed in writing with the Council) public open space comprising the following:</p> <p>(a) formal open space of no less than 2.66 (two point sixty six) hectares which shall include:</p> <p>(i) the area comprised in the Sports Pitches and the Pavilion Sports Pitch Scheme</p> <p>(ii) (1) x NEAP</p> <p>(iii) (2) x LEAP</p> <p>(iv) (2) x LAP</p> <p>(v) Allotments</p>
<b>"Pavilion"</b>	means a pavilion/changing rooms of no less than 133m <sup>2</sup> GEA (one hundred and thirty three square metre gross external area) to be constructed adjacent to the Sports Pitch in accordance with the Sports Pitch Scheme PROVIDED THAT nothing contained here shall require the Owner to carry out works to deliver a pavilion rooms which have an aggregate total costs of more than £800,000 (eight hundred thousand pounds)
<b>"Pavilion Contribution"</b>	means a contribution in the sum of £800,000 (eight hundred thousand pounds) payable to the Council in lieu of constructing the Pavilion
<b>"Pavilion Specification"</b>	means the specification for the Pavilion which shall unless otherwise agreed comply with the Sports England Guidance for the requirements and needs of the type of Sports Pitch
<b>"Planting Mitigation Land"</b>	means the land shown coloured green on Plan 5
<b>"Practically Completed"</b>	means completed as certified by the Owner's architect or agent save for snagging defects
<b>"Public Open Space"</b>	the part of the Application Land forming the Open Space and the Incidental Public Open Space
<b>"Public Open Space Specification"</b>	means a specification for the carrying out of works to deliver (and where appropriate equip) and to thereafter maintain the Public Open Space (or the relevant part thereof) to be agreed in writing between the Owners and the Council
<b>"Public Open Space Transfer"</b>	the legal basis on which the Public Open Space transfers to Gillingham Town Council or the Management Body

**"Sports Pitches"**

means the sports pitches within the Development to be delivered in accordance with the Sports Pitch Scheme

**"Sports Pitch Scheme"**

means a specification for the provision and maintenance of the Sports Pitches which shall accord with the Field in Trust Standard Guidance for Outdoor Sport and Play England (current as at the date of the grant of the Planning Permission) which for the avoidance of doubt shall include the Pavilion or such other changing rooms or other facilities as may be agreed between the Owners and the Council in writing. The scheme shall include details of the exact location phasing and timing of delivery of the Sports Pitches including appropriate settlement periods and a minimum maintenance period of 12 (twelve) months and shall include the details of the standards to which the Sports Pitches and the Pavilion shall be constructed and arrangements for the long term management and maintenance of the Sports Pitches and Pavilion

**"SUDS"**

Sustainable Urban Drainage System in the form of the attenuation ponds to be provided within that part of the Application Land the exact size and location of which shall be as set out in the Reserved Matters Approval

The Owner covenants with the Council as follows:

**2. Public Open Space**

- 2.1 not to Occupy any Dwelling in a Phase or Part of a Phase until the Public Open Space Specification relating to that Phase or Part of a Phase has been submitted to and approved by the Council
- 2.2 to provide the Public Open Space in accordance with the approved Public Open Space Specification;
- 2.3 unless otherwise agreed in writing with the Council, not to Occupy or permit the Occupation of more than 70% (seventy percent) of the Dwellings comprised in a Phase or Part of a Phase unless and until the Public Open Space within that Phase or Part of a Phase has been completed to the Council's reasonable satisfaction;
- 2.4 Within 10 (ten) Working Days of the completion of the laying out and planting of each Public Open Space serve written notice on the Council stating that the laying out and planting of that Open Space Area has been completed;
- 2.5 give the Council not less than 20 (twenty) Working Days' prior notice in writing of the Owner's' landscape architect's intention to issue a Certificate of Practical Completion in respect of each Public Open Space and to invite the Council to make an inspection of each Public Open Space jointly with the Owner's landscape architect and any other party reasonably nominated by the Council and to make observations and written representations thereon; and
- 2.6 following the issue of a Certificate of Practical Completion of any Public Open Space to: maintain thereafter each relevant part of the Public Open Space to the reasonable satisfaction of the Council and

- 2.7 subject to any defects identified in such written representations pursuant to paragraph 2.5 above being made good as reasonably required by the Council: the Owner may either transfer the Public Open Space (or any part thereof) to a Management Body or offer to transfer the Public Open Space to Gillingham Town Council PROVIDED THAT any such transfer shall be accompanied by the payment of a maintenance contribution to cover the first (20) twenty years of the maintenance of the relevant part of the Public Open Space such maintenance contribution to be agreed between the Owner and Gillingham Town Council or in the event that agreement cannot be reached within 20 (twenty) Working Days either party may refer the matter to be determined by Expert Determination pursuant to clause 12
- 2.8 following completion of the Public Open Space to permit the public at large public access to the Public Open Space save for periods when it is necessary to close the facility for necessary maintenance and the Public Open Space or the Application Land and the Public Open Space may be closed for at least one entire day per calendar year in order to prevent the accrual of public rights; and
- 2.9 the LAP and the LEAP shall be constructed to the specifications recommended for local equipped areas for play and local areas of play by Fields in Trust (formerly the National Playing Fields Association) unless otherwise agreed in writing by the Council

### **Sports Pitch**

- 2.10 The Owner shall not cause or permit the Commencement of Development of the Phase which includes the Sports Pitches unless or until the Sports Pitch Scheme has been submitted and approved by the Council
- 2.11 No more than 75% (seventy five percent) of the Dwellings of the Phase which includes the Sports Pitches shall be Occupied unless or until:
- 2.11.1 the Sports Pitches have been laid out in accordance with the Sports Pitch Scheme; and
- 2.11.2 the Pavilion has been Practically Completed to the reasonable satisfaction of the Council PROVIDED THAT the Owner and the Council may agree in writing that instead of constructing the Pavilion the Owner may instead pay the Pavilion Contribution to the Council AND FURTHER PROVIDED THAT in the event the Owner pays the Pavilion Contribution the occupancy restriction at paragraph 2.11 shall not apply to this paragraph 2.11.2
- 2.12 The Owner shall give the Council not less than 20 (twenty) Working Days prior notice in writing of the intention of the Owner's landscape architect to issue a Certificate of Practical Completion in respect of the Sports Pitches and to invite the Council to make an inspection of the Sports Pitches jointly with the Owner's landscape architect and to make written representations thereon;
- 2.13 Following the Practical Completion of the Pavilion if provided pursuant to paragraph 2.11.2 the Owner shall manage and maintain the Pavilion in accordance with the Sports Pitch Scheme

### **Flood Compensation Land**

- 2.14 The Owner shall allow the Council access to inspect and maintain the Flood Compensation Land at any time after construction of the Principal Street
- 2.15 The Council shall maintain the Flood Compensation Land in accordance with clause 5.4 of the Access and Adoption Agreement
- 2.16 Following the adoption of the Principal Street as highway maintainable at the public expense in accordance with the Access and Adoption agreement the Flood Compensation Land shall continue to be maintained by the Council until the issue of the Certificate of Practical Completion for the Flood Compensation Land.

- 2.17 Following issue of the Certificate of Practical Completion for the Flood Compensation Land the Owner shall;
- 2.17.1 Inspect the Flood compensation Land on 1 June each year and after any flood event and
- 2.17.2 Within 14 days of any inspection under paragraph 2.17.1 to carry out any work necessary to restore the levels of the Flood Compensation Land to those shown on Plan 6
- 2.18 The Second Owner covenants with the Council that any application for Reserved Matters Approval on land adjoining the Flood Compensation Land shall include the Flood Compensation Land as Public Open Space and for the avoidance of doubt the final application for Reserved Matters Approval for Phase 2 shall include the Flood Compensation Land as Public Open space if the Flood Compensation Land has not been included as Public Open Space in any earlier application for Reserved Matters in Phase 2
- 2.19 On the approval of any application for Reserved Matters Approval that incorporates the Flood Compensation Land (or any part of it) as Public Open Space the provisions of paragraphs 2.1 to 2.8 above shall apply to the Flood Compensation Land as they apply to the Public Open Space SUBJECT TO any maintenance of the Flood Compensation Land by the Second Owner not commencing any sooner than the date of adoption of the Principal Street as a highway maintainable at the public expense

#### **Planting Mitigation Land**

- 2.20 The Council shall maintain the Planting Mitigation Land in accordance with the clause 5.4 of the Access and Adoption Agreement
- 2.21 Following the "Licence Period" as defined in the Access and Adoption Agreement the Planting Mitigation Land shall continue to be maintained by the Council until the issue of the Certificate of Practical Completion for the Planting Mitigation Areas
- 2.22 The Owners shall allow the Council access to maintain the Planting Mitigation Land in accordance with paragraphs 2.20 and 2.21
- 2.23 The Owners covenant with the Council that any application for Reserved Matters Approval on land adjoining the Planting Mitigation Land shall include the Planting Mitigation Land as Public Open Space and for the avoidance of doubt the final application for Reserved Matters Approval for any Phase containing any Planting Mitigation Land shall include the Planting Mitigation Land in that Phase as Public Open space if the Planting Mitigation Land in that Phase has not been included as Public Open Space in any earlier application for Reserved Matters in that Phase
- 2.24 On the approval of any application for Reserved Matters Approval that incorporates the Planting Mitigation Land (or any part of it) as Public Open Space the provisions of paragraphs 2.1 to 2.8 above shall apply to the Planting Mitigation Land as they apply to the Public Open Space SUBJECT TO any maintenance of the Planting Mitigation Land by the respective Owner not commencing any sooner than the date following the "Licence Period" as defined in the Access and Adoption Agreement.

## SCHEDULE 6

### Highway Obligations

1. In this Schedule (and in this Agreement) the following terms shall have the following meanings

<b>"Bus Service Contribution"</b>	the sum of £434.04 (four hundred and thirty four pounds and four pence) per Dwelling to be applied by the Council towards the cost of increasing bus service frequency (in connection with the delivery of the Dwellings) on the Gillingham – Shaftesbury corridor to achieve a service level of approximately one every 20 minutes between 07:00 – 19:00 Monday – Saturday;
<b>"Bus Stop Contribution"</b>	the sum of £52.63 (fifty two pounds and sixty three pence) per Dwelling as a contribution towards the cost of the Council carrying out bus stop infrastructure improvements at additional key bus stops within Gillingham town centre and at Gillingham Rail Station;
<b>"Community Transport Contribution"</b>	the sum of £29.23 (twenty nine pounds and twenty three pence) per Dwelling to be applied towards the enhancements of Community Transport schemes and community-led transport initiatives within Gillingham Town;
<b>"Enmore Green Link Road"</b>	the new road to be constructed by the Council approximately in the position shown for identification purposes only on Plan 7;
<b>"Enmore Green Link Road Contribution"</b>	the sum of £329.47 (three hundred and twenty nine pounds and forty seven pence) per Dwelling to be applied to the construction of the Enmore Green Link Road;
<b>"Gillingham Rail Station Improvements Contribution"</b>	means the sum of £94.15 (ninety four pounds and fifteen pence) per Dwelling to be applied by the Council towards improvements to Footpath No.64/47 and 64/48 to the west of Gillingham rail station, including the pedestrian bridge over the River Stour, shown for identification purposes on Plan 8;
<b>"Framework Travel Plan"</b>	the travel plan submitted with the Planning Application relating to the whole of the Southern Extension Land;
<b>"Off-site Pedestrian and Cycle Improvements"</b>	<p>means the following pedestrian and cycleway improvements:</p> <p>(a) Route 4 –Newbury (High Street) and Harding's Lane to Gillingham Secondary School generally in accordance with Plan 9; and</p> <p>(b) Wayfinding signing</p> <p>each of which is shown for identification purposes on Plan 9;</p>

<b>"Rail Station Cycle Parking Contribution"</b>	the sum of £2,014 (two thousand and fourteen pounds) to be applied towards additional cycling parking facilities at Gillingham Rail Station;
<b>"Residential Travel Plan"</b>	a travel plan specifically relating to the Dwellings on the Application Land which shall accord with the provisions of the Framework Travel Plan;
<b>"Sustainable Transport Improvements Contribution"</b>	the sum of £137.43 (one hundred and thirty seven pounds and forty three pence) per Dwelling to be applied towards improving pedestrian and cycle links between the High street and Gillingham railway station including improvements to the existing cycle route on Le Neubourg Way and pedestrian accessibility on Station Road;
<b>"Sustainable Travel Voucher"</b>	a voucher to the value of £100 (one hundred pounds) provided to the first occupant of each Dwelling redeemable towards the purchase of a bicycle or the cost of travel to and from the Application Land other than by private motor car or motorcycle such voucher to remain valid for a period of 5 years;
<b>"Town-wide Personalised Travel Planning Contribution"</b>	the sum of £99.85 (ninety nine pounds and eighty five pence) (per Dwelling) to be applied towards the funding of personalised travel plan measures in Gillingham the objectives of which shall be to encourage Gillingham residents to consider their travel choices and choose more sustainable travel options (including foot, bike, bus, train or through community transport schemes).

The Owner covenants with the County Council as follows:

## 2. **Highways and Accessibility**

- 2.1 Not to Occupy any Dwelling unless and until the Owner has completed the Off Site Pedestrian and Cycle Improvements

### **Contributions**

- 2.2 not to Occupy the Development unless or until

2.2.1 the Rail Station Cycle Parking Contribution

has been paid to the Council

- 2.3 not to Occupy any Dwelling comprised in any Phase or Part of a Phase unless or until the following contributions relating to that Phase or Part of a Phase have been paid to the Council:

2.3.1 Bus Service Contribution

2.3.2 Bus Stop Contribution

2.3.3 Community Transport Contribution

2.3.4 Enmore Green Link Road Contribution

2.3.5 Gillingham Rail Station Improvements Contribution

2.3.6 Sustainable Transport Improvements Contribution

2.3.7 Town-wide Personalised Travel Planning Contribution.

3. **Travel Plans**

- 3.1 Not to Occupy any Dwelling comprised in a Phase or Part of a Phase until the Residential Travel Plan for that Phase has been submitted to and approved in writing by the Council such Residential Travel Plan to be in accordance with the Framework Travel Plan.
- 3.2 to provide the Sustainable Travel Voucher to the first occupier of each and every Dwelling (such vouchers to remain valid and capable of being redeemed for a period of 5 (five) years following the first Occupation of each Dwelling) and to reimburse each first Occupier for costs incurred in the purchase of a bicycle or the cost of travel to and from the Application Land other than by private motor car or motorcycle and to inform the first occupier of each and every Dwelling of the provisions of this paragraph up to £100 (one hundred pounds)
- 3.3 To implement comply with and monitor the Residential Travel Plan in accordance with the programme contained in the approved Residential Travel Plan for a period of 5 (five) years from the date of the first Occupation of the Development.

## SCHEDULE 7

### Education

In this Schedule (and in this Agreement) the following terms shall have the following meanings:

<b>"Primary Education Contribution"</b>	the sum of £2017 (two thousand and seventeen pounds) per Qualifying Dwelling to be applied towards the expansion of St Mary the Virgin School and/or to provide additional primary school places to serve the Development
<b>'Primary School Extension Land'</b>	means a site of no less than 1.1 hectares as shown coloured lilac on Plan 4 to be used for the expansion of St Mary's School;
<b>"Qualifying Dwelling"</b>	means each Dwelling with more than one bedroom
<b>"Secondary Education Contribution"</b>	the sum of £4077 (four thousand and seventy seven pounds) per Qualifying Dwelling to be applied towards the expansion of Gillingham Secondary School and/or to provide additional secondary school places to serve the Development
<b>'School Services'</b>	means surface water, sewerage, foul water sewerage, water supply, electricity, and telecommunications including fibre optic broadband with such capacities as may be agreed between the Owners and the Council in accordance with clause 7.3 or in the absence of such agreement as are set out in Part 5 of this Schedule 7;
<b>"St Mary's School"</b>	means the St Mary the Virgin Primary School adjoining the Application Land



The Owner covenants with the Council as follows:

**1. SCHOOL SITE**

**Part 1 - Precise Location and Boundaries**

1.1 From the date of this Agreement for a period of 12 months (or such longer period as may be agreed) to allow the Council access to the Primary School Extension Land at all reasonable times and as many times as the Council may reasonably require for the purposes of undertaking site surveys, boreholes, environmental investigations, archaeological investigations and other similar activities which may be agreed between the Owners and the Council subject to:

- 1.1.1 7 (seven) Working Days' prior written notice being provided to the Owners;
- 1.1.2 the Council shall make good any damage caused to the Primary School Extension Land as soon as possible after any such damage is caused and this shall include the payment to the Owners of compensation for any crop damage caused by the Council's access to the Primary School Extension Land as soon as possible after any such damage; and
- 1.1.3 the Council shall minimise the number of visits required.

**Part 2 – Terms of the Transfer**

1.2 The Primary School Extension Land shall be transferred

- 1.2.1 for the sum of £1; and
- 1.2.2 free from any financial charges; and
- 1.2.3 subject to and where applicable with the benefit of the matters referred to in title number DT372171 as at 16 October 2019 and timed at 11.48 save as prescribed by paragraph 1.2.5 and 1.3 of this Third Schedule but otherwise free from charges rights or encumbrances of any kind; and
- 1.2.4 with ground levels as shown on Plan 10 or as may be agreed with the Council in accordance with the School Site Levels Specification at Part 6 this Schedule 7
- 1.2.5 the transfer shall include:
  - (i) The grant of all necessary vehicular and pedestrian rights of access over the access routes over the Application Land reasonably required by the Council to be constructed to access the Primary School Extension Land pending their adoption as publicly maintainable highway which for the avoidance of doubt shall include any access routes required pursuant to any planning permission for St Mary's School or the Primary School Extension Land; and
  - (ii) The benefit of all rights and easements required for and rights to use construct inspect maintain and replace School Services pending their adoption as publicly maintainable; and
  - (iii) Subject to obtaining all necessary consents and approvals the right to drain surface water to a watercourse on the Owners retained land suitable to take surface water run off from St Mary's School or the Primary School Extension Land and to construct

inspect repair maintain replace and use a pipe under or over the Application Land as may be required for that purpose (the location thereof to be agreed by the Owners); and

- (iv) An obligation on the Owners to enter into such reasonable and necessary deed of easement or consent or wayleave as any utility provider responsible for the supply and use of any services may reasonably require and that are necessary for the operation of St Mary's School or the Primary School Extension Land after the date of the transfer; and
- (v) A restriction on the Council not to use the Primary School Extension Land other than for education use including community use of the school facilities outside of normal teaching times; and
- (vi) Rights of entry onto the Primary School Extension Land in favour of the retained parts of the Application Land in order to comply with this Agreement and/or the Planning Permission subject to;
  - (a) The Owners giving 7 (seven) Working Days written notice to the Council
  - (b) The Owners shall make good any damage caused to the Primary School Extension Land as soon as possible after any such damage is caused
  - (c) And persons entering the Primary School Extension Land once operational as part of St Mary's School shall be accompanied by a member of school staff at all times or have completed the appropriate Disclosure and Barring Service check and has provided evidence of such to the Council or school staff before entering the Primary School Extension Land.
- (vi) A requirement for the Council to agree reasonable measures with the Owners to prevent the deposit of mud and other debris from the Primary School Extension Land on the estate roads comprised in the Development
- (vii) A requirement for the Council to make good any damage which may be caused by the Council (including its servants, agents and any person authorised by the Council to access the Application Land) to the estate roads comprised in the Development when accessing the Primary School Extension Land with construction traffic or other heavy goods vehicles prior to the Primary School Extension Land becoming operational as part of St Mary's School
- (viii) An obligation that until such time as the Council commences work to expand St Mary's School on the Primary School Extension Land and the Council (or its nominee as successor in title to the Owner) shall:
  - (a) Not use the Primary School Extension Land for any other purpose than as a grassed area of private amenity open space which may be fenced by the Council to prevent public access;
  - (b) Maintain the Primary School Extension Land as a grassed area of land which shall be kept tidy and free of debris or other material, structures and chattels;

- (c) Not to cause or permit the Primary School Extension Land to be used in a manner that causes any nuisance to the residents of the Development

- 1.3 To ensure that immediately prior to and on transfer of the Primary School Extension Land to the Council, the Primary School Extension Land
- 1.3.1 is accessible from the public highway over an access constructed to at least sub-base course level and suitable for construction traffic; and
- 1.3.2 all School Services have been constructed to a point(s) on the boundary of the Primary School Extension Land to be agreed in writing with the Council; and
- 1.3.3 all necessary wayleaves and/or easements as may be reasonably required by the relevant services suppliers have been granted to enable the construction provision and use of services for the supply and removal of electricity, gas, water, sewage, telecommunications, data and other services and utilities to and from the Primary School Extension Land
- 1.4 The Owner shall procure that the layout of the estate roads within the Development will enable a coach to drop off and pick up passengers at a point within 30 metres of the vehicular and/or pedestrian entrance to the Primary School Extension Land without having to turn within St Mary's School or the Primary School Extension Land (or at an alternative distance to be agreed with the Council)
- 1.5 The Owners will use their reasonable endeavours to ensure that the estate roads comprised in the Development will be constructed to a standard which can be adopted as public highways.

### **Part 3 - Timing of Transfer and Timing of Access**

- 1.6 The timescales contained in this Schedule may be varied by the Council and the Owner by agreement in writing
- 1.7 The Owner shall transfer the Primary School Extension Land to the Council (or its nominee) within 20 Working Days of the expiration of 4 calendar years from first Occupation of any Dwelling
- 1.8 The Owner shall provide
- 1.8.1 vehicular access to the boundary of the Primary School Extension Land which access shall:
- 1.8.1.1 be wide enough (and constructed to a sufficient standard) for use by coaches; and
- 1.8.1.2 be laid out to enable coaches to enter and leave the Application Site in forward gear without having to perform a reversing manoeuvre to turn around
- 1.8.2 such other pedestrian and cycle accesses over the Application Land that are necessary for the operation of the Primary School in accordance with planning requirements and health and safety requirements in accordance with a timetable to be agreed between the Council and the Owner in writing prior to the Occupation of any Dwelling (together with any amendments to that timetable as may subsequently be agreed between the Council and the Owner in writing) PROVIDED THAT in the event that the Council and the Owner cannot agree such a timetable within 30 Working Days of the first Occupation of any Dwelling the Owner shall provide the said vehicular access prior to the Primary School Extension Land becoming operational subject to the Council giving the Owner 9 months' notice of the date on which the Primary School Extension Land will

become operational (and for the avoidance of doubt the actual date on which the School opens shall not affect the Owner's obligation under this paragraph).

#### **Part 4 - Return of Primary School Extension Land**

- 1.9 In the event that the Council has not begun development (within the meaning of s.56(4) of the Act) on the Primary School Extension Land within 5 years of the date on which the Primary School Extension Land was transferred to the Council the Council shall (unless otherwise agreed in writing with the Owner)

offer to transfer the Primary School Extension Land back to the Owner in no worse condition and on the same terms and for the same consideration that the Primary School Extension Land was transferred to the Council; and

Such offers to remain open for a period of no less than 3 months

- 1.10 In the event that the Owner accepts either or both offers the Council shall act with due expedition and execute such further documents as may be necessary to implement and carry out the intent that the Primary School Extension Land shall be returned to the Owner.

#### **Part 5 - School Services Capacities**

Gas supply.

430 kW, 40m<sup>3</sup>/hr. U65 meter in kiosk at boundary of the site

Electrical Supply:

3 Phase. 75 kW, 85 kVA.

Water connections:

New building supply: Max flow 1.5 l/s, Min - 0.5 l/s, average - 1 l/s. Average annual consumption 2300 m<sup>3</sup> with 90 mm OD service pipe onto boundary of site.

Sprinkler main.- 0.5 l/s

Fire Hydrant to be located near site boundary max 90 m from entrance to school. Location to be fully accessible by emergency vehicle. Required flow rate 25 l/s.

#### **Part 6 - School Levels Specification**

The levels/gradients across the Primary School Extension Land shall be as shown on Plan 10 PROVIDED THAT if the existing ground levels are altered from that shown on Plan 10 to the ground level of the Primary School Extension Land ground levels shall accord with the following tolerances (or such other specification for the levels of the Primary School Extension Land as shall be proposed by the Owners and agreed in writing by the Council).

The relationship between the levels on the Application Land and the Primary School Extension Land shall (unless otherwise agreed between the Council and the Owner) reflect the relationship between the levels shown on Plan 10 so that if the absolute levels are different, the gradient and relationships remain generally the same and the access between the Application Site and the Primary School Extension Land shall be at the same level PROVIDED THAT:

the Owner shall only be required to ensure that the relationship between the levels remain generally the same in respect of works carried out which have the effect of changing the levels on the Application Land (not including the Primary School Extension Land after transfer to the Council) so that in the event that the levels are changed by the Council (or any person other than the Owner and its servants or agents) on the Primary School Extension land the Owner shall not be required to alter the levels on the surrounding Application Land; and

this obligation shall cease and terminate on the date when the development of the Primary School is begun as defined in s.56 of the Act or, if the development of the Primary School is not begun as defined in s.56 of the Act, on the expiration of 5 years from the date that the Primary School Extension Land was transferred to the Council

The purpose of this Specification is to ensure that the Primary School can be constructed on the Primary School Extension Land so that;

the Primary School's facilities are accessible to all and

the relationship of the Primary School (including the school building) to the surrounding development will be acceptable in planning terms

## **Part 7 - Contributions**

- 2.1 not to Occupy any of the Open Market Dwellings in any Phase or Part of a Phase unless or until 50% of the Primary Education Contribution and Secondary Education Contribution relating to the relevant Phase or Part of a Phase has been paid to the Council
- 2.2 not to Occupy more than 50% of the Open Market Dwellings in any Phase or Part of a Phase unless or until all of the Primary Education Contribution and Secondary Education Contribution relating to the relevant Phase or Part of a Phase has been paid to the Council

## **SCHEDULE 8**

### **Council's covenants**

#### **1. Repayment of contributions**

- 1.1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid.
- 1.2 All sums received by the Council are to be held in a separate identifiable interest bearing account.
- 1.3 In the event that any financial contributions payable by the Owner pursuant to this Agreement remain unspent or uncommitted for a period of 10 (ten) years from the date that such payment has been made or where payments are made by instalments for a period of 10 (ten) years following the date that the final instalment payment has been made to the Council then the Council shall return such payment to the person who made such payment (together with any interest accrued on such sum from the date such sum is paid to the Council to the date that such sum (or relevant part thereof) is repaid by the Council to the person who made such payment if a request is made by that person for repayment after the expiry of the relevant 10 (ten) year period. The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Agreement.
- 1.4 Paragraph 1.3 of this Schedule 8 shall not apply to the Principal Street Commuted Sum or the Principal Street Footway Contribution

#### **2. Discharge of obligations**

- 2.1 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed.

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

.....

Authorised signatory

**EXECUTED** as a **DEED** by )  
WELBECK STRATEGIC LAND LLP )  
acting by Wimpole Street )  
Limited )

.....

Authorised Signatory of Wimpole  
Street Limited

Witnessed by: .....

Name:

Address:

Occupation:

**EXECUTED** as a **DEED** by )

NEIL JOHN OVERTON )

in the presence of: )

Witness Signature:

Print Name:

Address:

Occupation:

**EXECUTED** as a **DEED** by )

MARK WOODWARD )

in the presence of: )

Witness Signature:

Print Name:

Address:

Occupation:

**EXECUTED** as a **DEED** by )

RICHARD CHARLES PIKE )

in the presence of: )

Witness Signature:

Print Name:

Address:

Occupation:



**EXECUTED** as a **DEED** by )

SARAH ELIZABETH ANNE SHIELDS )

in the presence of: )

Witness Signature:

Print Name:

Address:

Occupation:

**EXECUTED** as a **DEED** by )

CATHERINE PATRICIA MITCHELL )

in the presence of: )

Witness Signature:

Print Name:

Address:

Occupation:

**EXECUTED** as a **DEED** by )

JEREMY DOUGLAS HINE )

in the presence of: )

Witness Signature:

Print Name:

Address:

Occupation:

**EXECUTED** as a **DEED** by )

RUSSEL HINE )

in the presence of: )

Witness Signature:

Print Name:

Address:

Occupation:

**EXECUTED** as a **DEED** by )

GRAHAM WILLIAM HINE )

in the presence of: )

Witness Signature:

Print Name:

Address:

Occupation: