

DATED _____ 2025

(1) BOLSOVER DISTRICT COUNCIL

(2) THE HONOURABLE JAMES MORYS BRUCE, ROBERT STURDEE MASON
and TIMOTHY EDWARD SHULDMAN

(3) LGK FARMS LLP

(4) WAYSTONE LIMITED

(5) DERBYSHIRE COUNTY COUNCIL

**PLANNING OBLIGATION BY WAY OF AN AGREEMENT
UNDER SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990**
relating to
Land at Clowne, Derbyshire



gunnercooke llp
1 Cornhill
London
EC3V 3ND

Tel: 03330 143 401

Email: sam.ashoka@gunnercooke.com

THIS DEED is made the

day of

2025

BETWEEN:-

- (1) **BOLSOVER DISTRICT COUNCIL** of The Arc High Street Clowne S43 4JY ("the Council")
- (2) **THE HONOURABLE JAMES MORYS BRUCE** of **ROBERT STURDEE MASON** and **TIMOTHY EDWARD SHULDHAM** c/o Mr T E Shuldman of Fisher German LLP Unit 2 Carolina Court Doncaster DN4 5RA ("the First Owners ")
- (3) **LGK FARMS LLP** (LLP Regn. No. OC361744 of 8 Ebor Court Malton Way Adwick Le Street Doncaster South Yorkshire DN6 7FE("LGK") ("the Second Owner")
- (4) **WAYSTONE LIMITED** (Company Number 02451184) whose registered office is situate at CP House Otterspool Way Watford By Pass Watford Hertfordshire WD25 8JJ ("the Developer")
- (5) **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, Derbyshire DE4 3AG ("the County Council")

WHEREAS:-

- (A) The Council is the local planning authority for the area within which the Application Site is situated and is the local planning authority by whom this Agreement is enforceable for the purposes of Section 106 of the Act
- (B) The County Council is the education authority and highway authority for the area in which the Site is situated.
- (C) On 14 December 2017 the Developer submitted the Planning Application to the Council and the Council has resolved that the Planning Permission shall be granted subject to a legal agreement being entered into making provision for the planning obligations herein contained
- (D) [The First Owners are the owners with freehold title absolute of part of the Site registered at the Land Registry under Title Numbers []
- (E) The Second Owner is the owner with freehold title absolute of part of the Site registered at the Land Registry with Title Number DY462468
- (F) Waystone intends to acquire legal and/or equitable interests in the Third Party Land and agrees that once it does so it will (unless the Council shall first agree the interest acquired is not required to be bound by this Agreement) procure that the owners of such Third Party Land either enter into an agreement in the same form as this Agreement (mutatis mutandis) or enter into a Deed of Adherence to bind their interests in the Third Party Land by the terms of this Agreement
- (G) The Council considers it expedient in the interests of the proper planning of its area that the Planning Permission should be granted subject to the parties entering into this Agreement and this Agreement is entered into to make provision for regulating the Development and securing the matters hereinafter referred to

OPERATIVE PART

For the purposes of this Agreement the following expressions shall have the following meanings:-

17910281-1

“County Council’s Additional Funding”	the 15% of the estimated cost of delivering the Primary School as specified in the approved Primary School Costs Schedule
“Critical Infrastructure Contributions”	means the Primary School Facility or Primary School Contribution (where payable), the Secondary School Contribution, the Health Care Contribution and the Travel Plan Contribution but shall exclude the other Contributions and obligations
“Deed of Adherence”	means a deed in the form set out in Annexure 2
“Deferred Contributions”	means the Library Contribution and the SEND Contribution
“Deferred Contribution Cap”	means in respect of the Library Contribution the sum of £126,840 (One Hundred and Twenty Six Thousand Eight Hundred and Forty Pounds) and in respect of the Send Contribution the sum £1,463,597.00 (One Million Four Hundred and Sixty Three Thousand Five Hundred and Ninety Seven Pounds)
“Development”	means the mixed use development of the Site to provide a mixed use development including up to 24 ha of Employment Land (E(g) (i) (ii) (iii), B2, B8) up to 1,800 Residential Dwellings, Green Infrastructure, Educational and Recreational uses, a Retirement Village Neighbourhood Centre, Hotel, Restaurant, Health and Care and Leisure uses, Demolition of Existing Station Road Industrial Estate where applicable, demolition of dwelling/outbuilding as applicable and construction of new Link Road with in principle points of access
“Disposal”	means a sale of the freehold interest or the grant of a long leasehold interest of at least 125 years
“Dwellings”	means the Affordable Housing Units and the Market Dwellings and a reference to Dwelling shall be construed accordingly
“Fully Serviced”	means fully serviced to its boundary which shall mean the provision of a permanent electricity supply, water supply, foul and surface water drainage, a duct for accommodating broadband and telecommunications and the benefit of full vehicular, cycle and pedestrian rights of way over the estate road, footpaths and cycle paths (if any) (once built) to and from the adopted road network from and to the Primary School Site [<i>substantially in accordance with Appendix X</i>].
“Healthcare Contribution”	means the sum of £1,800,000 (One Million Eight Hundred Thousand Pounds) Index Linked
“Implementation”	<p>means the carrying out on the relevant part of the Site of a material operation as defined by Section 56(4) of the 1990 Act (“Material Operation”) in connection with the Development save that for the purposes of this Agreement none of the following operations shall constitute a Material Operation:-</p> <ul style="list-style-type: none"> (a) archaeological or site inspections; (b) site or soil surveys; (c) decontamination works; (d) demolition or site clearance;

- (e) works to the existing public highways including the Treble Bob Works and provision of temporary site access and temporary internal roads;
- (f) the laying or diversion of services;
- (g) the erection of a site compound;
- (h) the erection of temporary fences or hoardings;
- (i) the display or advertisements including the erection of advertisement hoardings;
- (j) interim landscaping works; and
- (k) the servicing earthworks and infrastructure associated with creating saleable development platform(s)

and “Implement” “Implemented” and “Implementation Date” shall be construed accordingly

“Index Linked”

means [increased in accordance with the following formula:](#)

[Amount payable = the payment specified in this deed x \(A/B\)](#)
[where:](#)

[A = the figure for the Index which applied immediately preceding the date the payment is due;](#)

[B = the figure for the Index which applied when the index was last published prior to the date of this Deed](#)

“Index”

means the Consumer Price Index

“Interest Rate”

means interest at 2% per cent above the Bank of England base lending rate published from time to time

“Library Contribution”

means the sum of £126,840 (One Hundred and Twenty Six Thousand Eight Hundred and Forty Pounds)

“Market Dwellings”

means those Dwellings which are not Affordable Housing Units

“Market Value”

means the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction after proper marketing and where the parties had each acted knowledgeably prudently and without compulsion on the basis that it is assessed in accordance with the Royal Institution of Chartered Surveyors (RICS) Valuation – Professional Standards 2017 UK Edition commonly known as the Red Book (or any subsequent updated version)

“Monitoring Fees”

means the fee to cover the County Council’s costs of monitoring the contributions paid to them under this Agreement which shall be calculated as £77.00 (Seventy Seven Pounds) x the total number of triggers for payment of financial contributions payable to them under this Agreement

“Nominations Agreement”

means an agreement between the Registered Provider and the Council (or its nominee) containing arrangements for the initial; and subsequent selection and prioritisation of tenants or occupiers of the Affordable Housing Units

“Occupation” and “Occupied”	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
“Off-Site Highway Improvements Schemes”	means the schemes for the provision of off-site highway improvements proposed in connection with the Development as set out in the Fifth Schedule
“Owners”	means the First, Second and Third Owners and the First and Second Trustees
“Planning Application”	means the application for outline planning permission for the Development submitted to the Council on [14 th December 2017] and allocated reference number 17/00649/OUT
“Planning Permission”	means the planning permission to be granted for the Development in pursuance of the Application the current draft of which is annexed at Annexure 2
“Phase of Development”	means each phase of the Development as generally shown on drawing number CN-PP-01 REV A as may be varied from time to time and a reference to a Phase shall mean the relevant part or the whole thereof as the circumstance shall permit
“Practical Completion”	means the issue of a certificate of practical completion of the Primary School (or such part as may be specified) by the Owners’ architect or other project consultant appointed by the Owners and “Practical Complete” and “Practically Completed” shall be construed accordingly
“Primary School”	means a 2 form entry primary school capable of accommodating 420 primary age pupils to be provided pursuant to the Sixth Schedule
“Primary School Approval Date”	means the date on which all necessary planning permissions for the construction of the Primary School have been granted and are no longer capable of being challenged including the expiration of any relevant statutory period for judicial review without a challenge being made or, if a challenge is made, the date on which such challenge is finally determined, withdrawn, or otherwise disposed of, allowing the planning permissions to remain in full force and effect
“Primary School Contribution”	means £9,500,000.00 (Nine Million Five Hundred Thousand Pounds) to be paid to the County Council in accordance with the Part Three to the Sixth Schedule and used towards the construction of the Primary School
“Primary School Site”	means a site of not less than 1.8 ha (in the range 15,986 – 20,040 sqm) capable of delivering the Primary School, Fully Serviced and made available at a location to be agreed in writing by the Owners and the County Council (all acting reasonably)
“Primary School Specification”	means the detailed specification necessary for the construction of the Primary School in accordance with DfE Baseline Design guidelines for similar sized primary schools or such higher standards as may be agreed to be submitted by the County

Council for approval by the Owners in accordance with Part One to the Sixth Schedule

“Primary School Costs Schedule”

means a document prepared by a qualified professional which specifies the estimated cost of delivering the Primary School in accordance with the Primary School Specification to be submitted by the County Council to the Owners for approval in accordance with Part One to the Sixth Schedule

“Public Access Areas”

means the areas of open space and other public access routes or areas (and including play areas) to be provided within the Development for public use and ‘Public Access Area’ shall be construed accordingly

“Public Access Strategy”

means the public access strategy to be agreed between the Owners and the Council

“Public Access Areas Management Plan”

means a plan for the management and maintenance (including repair and renewal) of the Public Access Areas to include details of either stewardship **or** other appropriate management arrangements to deal with the future management and maintenance of the public access areas

“Reasonable Endeavours”

means that the following steps have been taken over a reasonable period of time in order to achieve the desired result:-

- (a) methods commercially prudent (including for the avoidance of doubt, the expenditure of money, but not such as to sacrifice the commercial interests of the Party under the obligation) and likely to achieve the desired result have been taken; and
- (b) in the event a first attempt at securing the desired result has failed (unless there are no reasonable alternatives) at least one alternative method of achieving the desired result has been pursued over a reasonable period and in accordance with paragraph (a) of this definition

“Registered Provider”

means a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 who is registered with the regulator for affordable housing (as defined in Chapter 2 of Part 2 of the said Act) pursuant to Chapter 3 of Part 2 of the said Act and has not been removed from the register pursuant to section 118 or section 119 of that Act and who has been approved by the Council for the delivery of Affordable Housing in the Council's area generally or in relation to the Development

“Relevant Owner”

means the owner of the freehold interest in part of the Site that is affected by the obligations of this Agreement and reference to Relevant Owners shall be construed accordingly

“Reserved Matters Application”

means a reserved matters application made pursuant to the Planning Permission for some or all of the Development or each phase of the Development

“Reserved Matters Approval”

means an approval by the Council of a Reserved Matters Application

“SEND Contribution”	means the sum of £1,463,597.00 (One Million Four Hundred and Sixty Three Thousand Five Hundred and Ninety Seven Pounds)
“Secondary School Education Contribution”	means
“Site”	means the land described in the First Schedule and identified on the Application Site Plan as being in the ownership of the Owners
“Social Rent Units”	means housing that is available to rent at a rent no greater than the Homes and Communities Agency Target Rent by persons in housing need via the medium of a Registered Provider and which housing remains permanently accessible for those purposes to people who for any reason cannot afford to rent or purchase suitable accommodation at prevailing market prices and ‘Social Rental’ shall be construed accordingly
“Surplus”	means the sum which is 50% of the figure that equates to the gross development value of the Development (which includes any grants , subsidy or financial support provided by any charity, company, financial institution or by central or local government or any linked organisation) less build costs owners profit and benchmark land value assessed in accordance with the Viability Review
[“Third Party Land”	means any legal or equitable interest in land forming part of the Site which is not in the ownership of the Developer and/or the Owners provided always that where a Deed of Adherence has been completed pursuant to clause 6.3 such land the subject of the Deed of Adherence shall cease to be Third Party Land and shall thereupon form part of the Site]
“Transfer”	<p>means a transfer of the Primary School Site in accordance with but not limited to the following:</p> <ul style="list-style-type: none"> • The transfer shall be for nominal consideration of £1.000 (One Pound); • The transfer shall include such easements as are reasonably required to ensure the Primary School Site is Fully Serviced; • The transfer shall include a covenant by the County Council restricting the use of the land transferred for the purposes of the Primary School <p>and such other terms as the parties may agree in writing acting reasonably, and the word “Transferred” shall be construed accordingly</p>
“Travel Plan”	means the long term management strategy as agreed by the County Council that encourages sustainable travel for the Development setting out transport impacts, establishes targets and identifies a package of measures to encourage sustainable travel to be implemented on the sixth anniversary of Implementation of Development
“Travel Plan Contribution”	means the sum of £50,000.00 (Fifty Thousand Pounds) Index Linked to be paid by the Owner to the County Council and used for the monitoring of the Travel Plan

“Treble Bob Plan”	means the AECOM indicative drawing Treble Bob roundabout Traffic Signals Option 2B annexed hereto at Annexure 2 and bearing reference CGV-ACM-XX-XX-DR-CE-010001 Revision P01
“Treble Bob Roundabout Scheme”	the scheme in accordance with the plans set out in Appendix 3
“Treble Bob Roundabout Works”	means the works to be carried out in accordance with the Treble Bob Scheme
“Unit”	means an individual unit of accommodation within the Development
“Viability Review”	<p>means a review of the financial viability of the Development and the extent of the Contributions which can continue to be payable such review to be carried out on the basis set out in the Eighth Schedule and further on the basis that:-</p> <ul style="list-style-type: none"> (a) it is forward looking and based on that part of the Development which has yet to be completed on the date of the Viability Review; (b) it includes from the assessment those parts of the Development already completed; (c) it reflects the anticipated costs of the Development and takes into account the costs of the Development already completed; (d) it takes into account to Contributions already paid
“Working Days”	means any day upon which the London clearing banks are open for business

2. INTERPRETATION

2.1 Unless the context otherwise requires:-

- (a) words incorporating the singular include the plural and vice versa and words importing any gender include every gender;
- (b) words importing persons include firms companies other corporate bodies or legal entities and vice versa;
- (c) references to clauses sub-clauses paragraph numbers sections recitals schedules and plans are unless otherwise stated references to clauses sub-clauses paragraph numbers sections and recitals of and schedules to this Agreement and plans attached to this Agreement;
- (d) references in this Agreement to statutes, bye laws, regulations, orders and delegated legislation shall include any statute bye law regulation order or delegated legislation amending, re-enacting or made pursuant to the same as current and in force from time to time;
- (e) the clause and paragraph headings contained in this Agreement are included as an aid to interpretation are for reference purposes only and have no binding legal effect;

(f) where in any schedule or part of a schedule reference is made to a paragraph, such reference shall (unless the context otherwise requires) be to a paragraph of that schedule or (if relevant) part of a schedule;

(g) Reference to 'Owner' shall be a reference to the Owner of the relevant part of the Site

(h) Where approval of a party is required it shall not be unreasonably withheld or delayed

3. LEGAL BASIS

3.1 This Agreement is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling the Parties.

3.2 The obligations herein on the part of the Owners are planning obligations for the purposes of Section 106 of the 1990 Act and in so far as they fall within the terms of the said Section 106 are enforceable by the Council pursuant to the said Section 106 and in so far as any obligations in this Agreement fall outside of the scope of Section 106 of the 1990 Act they are entered into and are enforceable pursuant to Section 111 of the 1972 Act and/or Section 1 of the 2011 Act.

3.3 The Owners covenant and undertake with the Council and the County Council to observe and perform the obligations as set out in each of the Second, Third, Fifth Sixth Seventh and Eighth Schedules

3.4 The Council and the County Council covenant and undertakes with the Owners to observe and perform their respective obligations as set out in the Third Fourth Sixth and Eighth Schedules

4. PROVISIONS TO BE CONDITIONAL

It is hereby agreed between the parties that save for clauses 1, 2, 3.1, 3.2, 4, 8, 10, 12, 13, 14, 15, 16, 18, 21, 22 and 23 the planning obligations in this Agreement will have no operative effect upon a Relevant Owner unless and until all of the following have occurred in respect of that Relevant Owner's land, namely:-

4.1 the Planning Permission has been granted; and

4.2 the Planning Permission has been Implemented on land in the ownership of the Relevant Owner in question provided always that the planning obligations will continue to have no operative effect on the remaining land which continues to remain the ownerships of the Relevant Owner unless and until the Planning Permission has been Implemented on that part

5. FURTHER PLANNING PERMISSIONS

5.1 Nothing in this Agreement shall be construed as prohibiting or limiting the right of the Owners to develop any part of the Site with and to the extent permitted by a planning permission (other than the Planning Permission) granted by the Council or by the Secretary of State on appeal or following a reference to him

5.2 If the parties shall so agree in writing in relation to any planning permission granted as a result of any application under Section 73 of the Act affecting the Planning Permission the parties shall comply with the terms of this Deed as if the definition of the Planning Permission in this Deed had been replaced by the description of the said planning permission granted as a result of any application under Section 73 of the Act affecting the Planning Permission with the intention that the provisions of this Deed will apply as if the definition of the Planning Permission in this Deed were the new planning permission granted as a result of such application and a memorandum of that agreement shall be endorsed on the face of this Deed which is recorded on the public register

- 5.3 If the Planning Permission expires without the Development having been Implemented or is revoked, this Agreement will cease to have effect (but without prejudice to the Parties' ability to enforce any breach of the obligations in this Agreement which occurs prior to such quashing or revocation) and upon such expiry or revocation its registration on the Register of Local Land Charges will be cancelled

6. THIRD PARTY LAND

- 6.1 The Owners shall not assist or facilitate in any way in the carrying out of the Development on Third Party Land unless a Deed of Adherence has been entered into in relation to all proprietary interests in such Third Party Land (save in respect of any such interest that the Council has (upon an application made by the Developer) confirmed does not need to be subject to a Deed of Adherence).
- 6.2 Upon any of the Owners or the Developer acquiring any proprietary interest in any part of the Third Party Land the Owner or the Developer in question shall notify the Council within twenty (20) Working Days of the acquisition of such interest and if required to do so by the Council shall enter into a Deed of Adherence in respect of any such interest AND (and for the avoidance of doubt whether or not notice of acquisition has been served on the Council under this clause 6.2) the Owners shall not carry out any works pursuant to the Development on any land acquired until a Deed of Adherence has been entered into in respect of the interest acquired or the Council has confirmed such Deed of Adherence is not required in respect of such interest

7. MORTGAGEE PROVISIONS

The Council acknowledges and declares that any mortgagee taking a charge over any part of the Site after the date of this Agreement (or any part of the Third Party Land once a Deed of Adherence has been entered into) shall not be required to perform the obligations or incur any liability under this Agreement unless it takes possession of that part of the Site (or as the case may be Third Party Land) to which the charge relates in which case it will too be bound by the obligations relating to the said part of the Site or Third Party Land as if it were a person deriving title from the owner of the said part of the Site or Third Party Land to which the charge relates to the extent that such obligations are outstanding and continue to bind the said part of the Site or Third Party Land as at the date the mortgagee exercises its powers under the relevant charge

8. COUNCIL'S OBLIGATIONS

The Council and the County Council covenant with each of the Owners separately and with the successors in title and assigns of each of them that they will comply with the obligations on part in this Agreement

9. ENFORCEABILITY RELEASE AND CERTIFICATES OF COMPLIANCE

- 9.1 The Owners agree with the Council to give the Council notice within 14 days of any change in ownership of any of their interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan PROVIDED THAT this clause shall not apply to the disposal of individual Dwellings
- 9.2 Upon the disposal of the whole or any part of the freehold interest of any Relevant Owner in the Site:-
- (a) the Council and the County Council shall automatically be released by the Relevant Owner; and
 - (b) the Relevant Owner shall automatically be released by the Council and the County Council

from all the obligations and covenants under this Agreement in relation only to that interest or the relevant part thereof (as the case may be) but without prejudice to the rights of the Council the County Council or the Relevant Owner in relation to any antecedent breach of those obligations or covenants

9.3 The Council hereby covenants with each of the Owners that it will upon reasonable request from any Owner certify in writing compliance or partial compliance (as and if appropriate) with the provisions of this Agreement PROVIDED THAT any such request shall be accompanied by reasonable evidence of such compliance or partial compliance

9.4 This Agreement shall not be enforceable against:-

- (a) individual purchasers of Dwellings or occupational tenants of any Non-Residential Unit;
- (b) statutory undertakers holding an interest in the Site for the purposes of their statutory undertaking nor the mortgagee or chargee or receiver appointed by a mortgagee or chargee of such persons;
- (c) a mortgagee or chargee or receiver of a Registered Provider which has acquired an interest in the Site, save to the extent provided for in paragraph 1.6(b) of the Third Schedule

10. **COUNCIL'S AND COUNTY COUNCIL'S POWERS AND DUTIES**

Nothing contained in this Agreement shall fetter the statutory rights, powers or duties of the Council and the County Council nor require them to act in any way inconsistent with such rights, powers or duties

11. **VIABILITY REVIEW**

11.1 The Council, County Council and the Owner agree with each other that:-

- 11.1.1 they shall carry out a Viability Review every 5 years from the date of the Planning Permission or earlier by agreement by all the parties
- 11.1.2 they shall act in the utmost good faith in the carrying out of and agreement of the Viability Review
- 11.1.3 at the same time as the Viability Review is carried out the parties shall carry out [a review to consider and review the need for and amount of the Primary School Education Contribution and the Secondary School Contributions provided that such contributions shall not exceed the sum set out in this Agreement]

the Contributions shall be adjusted and shall be agreed following each Viability Review

11.2 The Council covenant with the Owner and the Developer that where economic conditions adversely affect the delivery and viability of the Development the Council will modify (subject to the Owner and the Developer providing appropriate financial information to justify such a request being made and such information being reviewed and agreed by an independent advisor experienced in the viability of developments of a similar size and scope of the Development appointed by the Council whose reasonable and proper fees of appointment being remunerated by the Owner/Developer subject to the agreement by the Owner/Developer of a cap thereon and if agreement cannot be reached as to the viability or deliverability cannot be reached the final decision will be subject to clause 15 of this Deed) (here meaning either reducing the Contributions suspending the payment of the Contributions varying the timing of the payment of the Contributions, amending or suspending the application of the Index or such other step as the Council considers appropriate or justifiable in the circumstances which is approved by the Owner (acting reasonably and in good faith)) the planning obligations contained in

this agreement including but not limited to the Contributions and the Affordable Housing to reflect the affordability and deliverability of the Development as evidenced within the Viability Review and the economic conditions to ensure the continued deliverability and viability of the Development provided that there shall not be a reduction in the Critical Infrastructure Contributions unless otherwise approved by the Council

- 11.3 The Owner covenant not to occupy more than 800 Dwellings until the First Viability Review has been submitted and approved by the Council and the County Council who each covenant with the Owner and the Developer that they shall act reasonably and expeditiously in reviewing each application for a Viability Review

12. **REGISTRATION**

The Council will promptly after the date of this Agreement register it as a Local Land Charge for the purposes of the Local Land Charges Act 1975

13. **APPROVALS, EXPRESSIONS OF SATISFACTION**

Where any approval, agreement, consent, certificate, confirmation or an expression of satisfaction is required under the terms of this Agreement the request for it shall be made in writing and such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed

14. **RESOLUTION OF DISPUTES**

- 14.1 The Parties agree that they will resolve any dispute arising out of or in connection with this Agreement in accordance with the provisions of this clause 14
- 14.2 Any Party may serve written notice of any dispute arising out of or in connection with this Agreement on all other Parties with an interest in the outcome of the dispute ("**the Notice of Dispute**"). The Notice of Dispute must specify the nature, basis and brief description of the dispute and the clause or paragraph of this Agreement pursuant to which the dispute has arisen
- 14.3 The Parties agree that, following service of a Notice of Dispute, the Parties will first attempt to resolve the dispute by negotiations which shall be conducted in good faith. Those negotiations shall include at least one meeting between representatives of the Parties ("**the Settlement Meeting**"). The Settlement Meeting shall take place as soon as reasonably practicable and in any event within twenty (20) Working Days of the Notice of Dispute being served unless the Parties to the dispute (acting reasonably) agree a longer period. The representatives who attend the Settlement Meeting on behalf of each Party shall include at least one representative who is vested with authority to settle the dispute on behalf of the Party that he or she represents
- 14.4 If the dispute remains unresolved any Party shall be entitled to serve a further written notice of the dispute ("**the Further Notice of Dispute**") which shall trigger the procedure for the determination of the dispute by an Expert
- 14.5 The Further Notice of Dispute shall be served on all other Parties with an interest in the outcome of the dispute and shall specify:-
- (a) the nature, basis and brief description of the dispute;
 - (b) the clause or paragraph of this Agreement pursuant to which the dispute has arisen; and
 - (c) the proposed Expert

- 14.6 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of fraud or manifest error) be final and binding on the Parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the Parties to the dispute in equal shares
- 14.7 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute which shall be not more than forty (40) Working Days from the date of his appointment to act unless the Parties to the dispute acting reasonably agree a longer period taking into consideration all the relevant circumstances
- 14.8 The Expert will be required to give notice to each of the said Parties inviting each of them to submit to him within ten (10) Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within ten (10) Working Days in respect of any such submission and material SAVE THAT any of the timescales in this clause may be extended by the Expert on reasonable application of any of the Parties to the dispute (all Parties to be given the opportunity to comment on such application)
- 14.9 The Parties shall agree at the time of the relevant dispute whether the individual appointed as the Expert shall be:-
- (a) a Solicitor (who shall be a member of the Law Society with a minimum of ten (10) years' recent and relevant experience in the subject matter of the dispute);
 - (b) Leading Planning Counsel;
 - (c) a specialist Chartered Surveyor (who shall be a Fellow of the Royal Institute of Chartered Surveyors with a minimum of ten (10) years' recent and relevant experience in the subject matter of the dispute); or
 - (d) a Chartered Civil Engineer (who shall be a member of the Institute of Civil Engineers with a minimum of ten (10) years' recent and relevant experience in the public or private sector)
- 14.10 If the Parties are able to agree upon the qualification of the Expert in accordance with clause 14.9 but are unable to agree upon the identity of the individual to be appointed as the Expert the parties shall apply for nomination of an individual to:-
- (a) in the case of clause 14.9(a) the President of the Law Society;
 - (b) in the case of clause 14.9(b) the Chairman of the Bar Counsel;
 - (c) in the case of clause 14.9(c) the President of the Royal Institution of Chartered Surveyors; and
 - (d) in the case of clause 14.9(d) the President of the Institution of Civil Engineers
- 14.11 If the Parties are unable to agree upon the qualification of the Expert in accordance with clause 14.9 the matter shall be referred to the President of the Law Society who shall determine the appropriate qualification for the Expert from the list set out in clause 14.9 and the President of the Law Society having determined the qualification of the Expert shall nominate an individual in the case of a Solicitor or shall refer the matter to the Chairman of the appropriate body as set out in clause 14.10

15. THIRD PARTY RIGHTS

Save where otherwise specified in this Agreement no person who is not a Party to the Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement

16. NOTICES

- 16.1 Any notice to be delivered to a Party under this Agreement must be in writing and be sent to it at the address referred to in this Agreement or instead, to such alternative address as may be substituted by a Party from time to time by written notification sent to all other Parties
- 16.2 Any such notice must be delivered by hand or recorded delivery post or sent by fax and if delivered by hand, will conclusively be deemed to have been received on the next Working Day after the date of delivery, if sent by fax on the date of despatch or, if that is not a Working Day, on the next Working Day and if sent by recorded delivery post and posted within the United Kingdom will conclusively be deemed to have been received two (2) Working Days after the date of posting
- 16.3 If a notice is sent by fax a copy must be sent on the same day by recorded delivery post but for the avoidance of doubt the date of service of such notice will be the date of despatch of the fax

17. NOTIFICATION OF CERTAIN EVENTS AND MONITORING REPORTS

- 17.1 The Owners shall give notice to the Council no less than five (5) Working Days prior notice of intended date of Implementation of the Development
- 17.2 The Owner will give notice to the Council of actual Implementation of the Development within five (5) Working Days of the same having occurred PROVIDED THAT nothing in this clause 16.2 shall prevent Implementation of the Development from having taken place in the event that any such notice shall not have been served
- 17.3 Without prejudice to clause 16.3 the Owners shall give the Council notice of the date of occurrence of the Milestone Payments

18. INTEREST

- 18.1 If any Party fails to pay a Contribution within fifteen (15) Working Days of the due date any sum payable by such party under this Agreement, that Party shall pay interest at the Interest Rate calculated on a day to day basis from the date the sum became payable until the date of actual payment (such Interest to accrue as well as after before any judgement)
- 18.2 All interest earned on the Contributions paid to the Council under this Agreement shall be taken to form part of any principal sum payable under this Agreement and may be expended by the Council and the County Council accordingly

19. APPLICATION AND REPAYMENT OF FINANCIAL CONTRIBUTIONS

- 19.1 The Council and the County Council shall only spend any Contribution for the purposes stated in the Fourth Schedule and for which the Contribution has been paid and save where otherwise specified in this Agreement the Council and County Council shall use reasonable endeavours to spend any Contribution on the stated purpose for which it has been paid within five (5) years of receipt of the relevant Contribution in full so that where a Contribution is to be paid in instalments then the said period of five (5) years shall run from the payment of the latest instalment paid to the Council or the County Council and in relation to the Council the provisions of clause 19.4 shall be applicable.

- 19.2 Any Contribution which has not been spent or contractually (here meaning an unconditional contract) committed to be spent on the stated purpose for which it has been paid to the Council or the County Council within the time period specified in clause 19.1 shall be repaid to the Party which paid the Contribution within one (1) calendar month of the end of the period of five years (5) years referred to in clause 19.1 together with any interest earned upon such amount
- 19.3 The Council and the County Council shall confirm to the Owners following written request the amount of unexpended monies received pursuant to this Agreement the amount of interest accrued on monies received pursuant to this Agreement, the amount of monies received pursuant to this Agreement which have been expended and the purposes on which such monies have been expended PROVIDED THAT any such requests shall not be made more than once every six (6) months
- 19.4 The Council shall have no further liability in relation to the Health Contribution once it has been paid to the Derby and Derbyshire ICB

20. COUNCIL'S POWER OF ENTRY

Without prejudice to any other specific power of entry conferred on the Council pursuant to this agreement, the Owners shall permit the Council with or without agents surveyors and others at any time during all reasonable hours, but upon giving at least five (5) Working Days prior written notice to enter upon the Site and any buildings erected on it in order to ascertain whether the obligations contained in this Agreement are being complied with PROVIDED THAT the Council shall remain on the Site and any buildings only for such period as may be reasonably necessary in order to ascertain whether the provisions of this Agreement are being complied with

21. USE OF REASONABLE ENDEAVOURS

- 21.1 Where in this Agreement a Party or Parties (not including the Council) is under an obligation to use Reasonable Endeavours or all Reasonable Endeavours to achieve a stated outcome then within twenty (20) Working Days of receipt of a written request made by the Council to the Party or Parties under the obligation to use such Reasonable Endeavours the Party or Parties will provide to the Council such written evidence as may reasonably be required by the Council to demonstrate the steps taken by the Party or Parties to achieve such outcome
- 21.2 Where in this Agreement the Council or the County Council is under an obligation to use Reasonable Endeavours to achieve a stated outcome then the provisions of clause 21.1 shall apply as if references to a Party were references to the Council or the County Council and vice versa

22. MISCELLANEOUS

- 22.1 No waiver whether express or implied by the Council of any breach or default by the Owners in performing or observing any other obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default
- 22.2 The Parties shall each act reasonably and in good faith in connection with this Agreement and fulfilment of the obligations contained in it
- 22.3 All payments made under this Agreement shall be exclusive of any value added tax properly payable
- 22.4 This Agreement shall be governed by and interpreted in accordance with the laws of England and the Parties agree to submit to the exclusive jurisdiction of the Courts of England over any claim dispute or any matter arising under or in connection with this Agreement

22.5 In so far as any clause or other provision of this Agreement is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provision of this Agreement

23. **LEGAL FEES**

The Owner will pay the sum of [] Pounds (£[]) in respect of the Council's reasonable legal fees for the preparation of this Agreement on the completion of this Agreement and the sum of [] Pounds (£[]) in respect of the County Council's reasonable legal fees for the preparation of this Agreement

24. **TREBLE BOB ROUNDABOUT**

The County Council and the Developer covenant with each other that:-

- 24.1 The Developer shall use its reasonable but commercial endeavours to obtain grant funding for the Treble Bob Roundabout Works; and
- 24.2 The County Council and the Council shall fully support the Developer in its endeavours to obtain the funding referred to at clause 24.1; and
- 24.3 The County Council and the Developer shall each complete the Treble Bob Roundabout Works and shall act in the utmost good faith to each other including but not limited to keeping each other fully informed of their endeavours
- 24.4 The County Council covenants with the Developer and the Owners that if it obtains details of any grant funding available whether in full or in part it will pass full details thereof to the Developer and the Developer full assistance to obtain such funding
- 24.5 If the Developer obtains grant funding whether in whole or in part for the carrying out of the Treble Bob Roundabout Works then the Developer shall carry the Treble Bob Roundabout Work
- 24.6 Subject to obtaining the funding the Council and the County Council and the Developer shall expeditiously enter into such statutory agreements (whether any highways or services agreements) that are required to enable the Developer to carry out and complete the Treble Bob Roundabout Works
- 24.7 If required the Council will use it's compulsory purchase powers to expeditiously acquire any third party land required to carry out and complete the Treble Bob Roundabout Works
- 24.8 The County Council shall pay to the Developer any contributions it may have received from any other developer or owner of developments in the area towards the carrying out of the Treble Bob Works such contributions it has received in the past or receives in the future and such payment to be made on the commencement of the Treble Bob Works

IN WITNESS whereof this Agreement has been executed as a deed and delivered by the parties hereto on the date which appears at the head of this document

THE FIRST SCHEDULE
Site

All those parcels of land known as land to the north of Clowne and shown edged red on the Application Site Plan

THE SECOND SCHEDULE

The Contributions

1. EDUCATION CONTRIBUTION

- 1.1 The Owners will to pay a Secondary School Education Contribution in the sum of £2,294,077.50 (Two Million and Two Hundred and Ninety Four Thousand Seventy Seven Pounds and Fifty Pence) plus Indexation prior to the occupation of the 500th Dwelling and the balance of the Secondary Education Contribution on each anniversary thereof at the rate of £ 4,588.15 plus Indexation for each Dwelling provided that the full contribution shall only be payable if all 1800 Dwellings are constructed

2. TRAVEL PLAN CONTRIBUTION [constructed within that one (1) year period]

- 2.1 The Owners will pay the Travel Plan Contribution Index Linked for the monitoring of a site-wide Travel Plan in accordance with the following arrangements;
- 2.1.1 the sum of £8,333 (Eight Thousand Three Hundred and Thirty Three Pounds) on the 6th anniversary of the Implementation of Development;
 - 2.1.2 the sum of £8,333 (Eight Thousand Three Hundred and Thirty Three Pounds) on the 7th anniversary of the Implementation of Development;
 - 2.1.3 the sum of £8,333 (Eight Thousand Three Hundred and Thirty Three Pounds) on the 8th anniversary of the Implementation of Development;
 - 2.1.4 the sum of £8,333 (Eight Thousand Three Hundred and Thirty Three Pounds) on the 9th anniversary of the Implementation of Development;
 - 2.1.5 the sum of £8,333 (Eight Thousand Three Hundred and Thirty Three Pounds) on the 10th anniversary of the Implementation of Development;
 - 2.1.6 the sum of £8,333 (Eight Thousand Three Hundred and Thirty Three Pounds) on the 11th anniversary of the Implementation of Development

3. HEALTHCARE CONTRIBUTIONS

The healthcare contribution will be made to the Council as agent for the Derby and Derbyshire ICB(or any statutory successor organisation) towards the expansion/provision of healthcare facilities within Clowne and shall be payable in equal instalments prior to the occupation of the 500th, 750th and 1,000th Dwelling

4. SEND CONTRIBUTION

If any Viability Review shall so provide the Owners shall pay the SEND Contribution to the County Council towards the provision of Special Needs and Disability Provision within the County of Derbyshire in accordance with the Eighth Schedule

5. LIBRARY CONTRIBUTION

If any Viability Review shall so provide the Owners shall pay the Library Contribution to the County Council to be used towards local library stock measures in accordance with the Eighth Schedule

THE THIRD SCHEDULE
Affordable Housing

1. The Owners covenant with the Council:-
 - 1.1 The Affordable Housing Units shall be 10% of the Dwellings constructed within the Development.
 - 1.2
 - (a) that when submitting any application for Reserved Matters Approval which includes Affordable Housing Units they shall accompany such application with an Affordable Housing Scheme in respect of the part of the Site the subject of such application;
 - (b) not to Implement any Development encompassed by any Reserved Matters Approval which includes Affordable Housing Units until the Affordable Housing Scheme) in respect of those Affordable Housing Units has been approved by the Council;
 - (c) that the Affordable Housing Units shall be designed and constructed to the same standard as the Market Dwellings
 - (d) upon Disposal of any Affordable Housing Units to a Registered Provider the Registered Provider shall enter into a Nominations Agreement with the Council
 - 1.3 The Owners covenant to use all Reasonable Endeavours over a period of twelve months from the date of the completion of the Affordable Housing Units in each Phase to enter into an Affordable Housing Agreement/Affordable Housing Agreements with a Registered Provider/Registered Providers in respect of the Affordable Housing Units and transfer the Affordable Housing Units to a Registered Provider or Registered Providers;
 - 1.4 In the event that the Owners are unable to find a Registered Provider to accept the transfer of some or all of such Affordable Housing Units within a period of 3 months from the date of the final offer to a Registered Provider the Owners shall provide written evidence of such final offer and marketing to the Council and following the Council's written approval may dispose of such Affordable Housing Units on the open market and in lieu of the on-site provision of Affordable Housing Units the Owners shall pay to the Council the Affordable Housing Commuted Sum towards the provision of alternative Affordable Housing Units within the administrative area of the Council (or whichever council may be in existence at that time);
 - 1.5 The Owners will provide the Council on request within 7 working days from such a request evidence setting out the marketing of the Affordable Housing Units to a Registered Provider or Registered Providers. The Council reserves the right if (acting reasonably) it considers that following a review of the evidence that the Owners have not made reasonable efforts to market and transfer the Affordable Housing Units to a Registered Providers or Registered Providers to request that the Owners over a further period of 3 months seek to market and transfer the Affordable Housing Units to a Registered Provider or Registered Providers.
 - 1.6 The Owners covenant with the Council that:-
 - (a) save in the circumstances referred to in paragraphs 1.7 or 1.8, the Affordable Housing Units shall not be occupied other than for Affordable Housing ;
 - (b) the Owner shall not dispose of its interest in the freehold of any of the Affordable Housing Dwellings (except by way of mortgage) other than to a Registered Provider PROVIDED THAT the covenants contained in this Agreement shall not be binding upon a mortgagee in possession (or a receiver appointed by such a mortgagee in possession or chargee or successors in title) of any

or all of the Affordable Housing Units (hereinafter called the "Mortgaged Properties") or a bona fide purchaser for value thereof from such a mortgagee in possession or chargee or receiver (except in the case of a purchaser who is a Registered Provider within the meaning of Part I of the Housing Act 1996) or the successors in title of such purchaser PROVIDED THAT the following procedures shall have been followed:-

- (i) any mortgagee in possession (or receiver appointed by such a mortgagee in possession or chargee or successor in title) entitled to exercise a right of disposal in accordance with this paragraph shall first have served written notice on the Council of its intention to exercise its right of disposal of the Mortgaged Properties;
- (ii) the mortgagee or chargee in possession (or a receiver appointed by such a mortgagee or chargee or successor in title) exercising any power of sale or leasing shall first have made every effort to the reasonable satisfaction of the Council over a period of three (3) months from the date on which it took possession to dispose of the Mortgaged Properties to an alternative Registered Provider or the Council on terms which are reasonable in all respects to enable the same to be used for the purposes specified in this Agreement;
- (iii) if any such mortgagee or chargee in possession (or a receiver appointed by a mortgagee or chargee or successor in title) is unable within the said period of three (3) months to dispose of the Mortgaged Properties in accordance with paragraph 1.13(b)(ii) above the obligations and restrictions relating to the Affordable Housing Units on this Agreement shall not be binding upon the mortgagee or chargee or successor in title and they shall be entitled to dispose of the Mortgaged Properties free of the restrictions set out in this Agreement and they and their successors in title shall be released from all obligations and covenants set out in this Agreement in perpetuity;
- (iv) any mortgagee or chargee in possession (or receiver appointed by a mortgagee or chargee or successor in title) shall act in good faith in seeking to secure the transfer of all of the Affordable Housing Units to an alternative Registered Provider or the Council on the terms specified herein
- (v) for any notice to be validly served under this paragraph 1.6 it shall be marked "Urgent Notice" and sent by recorded delivery post for the attention of the Council's Joint Head of Service (Housing and Community Safety) for the time being; and
- (vi) any mortgagee in possession is not required to agree a price which does not cover all monies due under a mortgage/charge

1.7 The covenants contained in this Agreement shall further not be binding on any tenant who:-

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (b) has exercised any statutory right to buy (or equivalent contractual right) in respect of a particular Affordable Housing Dwelling; or
- (c) has been granted a lease of a [Shared Ownership] Unit by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant or its mortgagee or chargee has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit

The covenants in this Agreement shall not be binding on any mortgagee or chargee exercising a power of sale in relation to a [Shared Ownership Unit] or any successors in title to such Unit

THE FOURTH SCHEDULE
Application of Contributions

- 1.1 The Council covenants with the Owners that (subject to clause 20.5) it will only use the Contributions for the purposes specified in this Deed for which they are to be paid
- 1.2 The County Council covenants that it will use all sums received from the Owners under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.

THE FIFTH SCHEDULE
Off-Site Highway Improvement Schemes

1.1 The Owners covenant with the Council and the County Council that:-

- (a) *No part of the Development shall be occupied until the improvement scheme identified for M1 junction 30 as shown in general accordance with AECOM drawing CGV-ACM-M1J30-XX-DR-CE-010001 Revision P03 is completed and open to traffic.*
- (b) *No more than 200 Dwellings shall be occupied until the improvement scheme identified for M1 junction 30, as shown in general accordance with AECOM drawing ref 60556776-M1J30-TSD001 (or revised scheme following a Stage 1 Road Safety Audit (RSA) and Walking, Cycling, Horse-riding Assessment and Review (WCHAR) is completed and open to traffic.*

THE SIXTH SCHEDULE

Primary Education

1. PART ONE (PROVISION OF THE PRIMARY SCHOOL SITE AND OWNER'S NOTICE)

- 1.1 The Owners covenant to agree (acting reasonably) with the Council and County Council the location of and the proposed access to the Primary School Site and allocate the Primary School Site within the masterplan
- 1.2 The County Council shall submit an application in a form approved by the Owners (acting reasonably) for outline planning approval for the Primary School to be constructed on the Primary School Site.
- 1.3 Either before or after the planning application referred to in paragraph 1.2 the County Council shall submit a draft version of the Primary School Specification and the Primary School Costs Schedule to the Owner for written approval.
- 1.4 If the Owner indicates that the Primary School is likely to result in the Owner electing to pay the Primary School Contribution pursuant to Part Three of this Schedule the County Council may (but shall not be obliged to) amend the Primary School Specification and/or the Primary School Costs Schedule and submit the same to the Owner for approval and this procedure may be repeated but no more than 3 times
- 1.5 Following the grant of planning permission for the construction of the Primary School and the submission of the Primary School Specification and the Primary School Costs Schedule by the County Council to the Owner pursuant to paragraph 1.4. the Owner covenants to serve notice in writing to the County Council within 3 months thereof that it shall either:-
 - 1.5.1 Perform the planning obligations listed under Part Two to this Sixth Schedule and construct the Primary School; or
 - 1.5.2 Perform the planning obligations listed under Part Three to this Sixth Schedule and pay the Primary School Contribution.
- 1.6 The Owners shall not, subject to the satisfaction of the conditions in paragraph 1.5. occupy the 800th Dwellings until it has served notice on the County Council under paragraph 1.1.

2. PART TWO (CONSTRUCTION THE PRIMARY SCHOOL)

- 2.1 Part Two to this Sixth Schedule shall apply if the Owners serve notice in writing under paragraph 1.5 to Part One that they shall perform the planning obligations set out hereunder in this Part Two and in such circumstances Part Three of this Sixth Schedule shall cease to have legal effect.
- 2.2 The County Council covenants that it shall pay to the Owners the County Council's Additional Funding before the date which is 12 calendar months after the []
- 2.3 The Owners shall Practically Complete the construction of the Primary School in accordance with the agreed Primary School Specification and all such statutory regulatory and third party consents, agreements, approvals and licenses as may be necessary to enable the delivery of the Primary School such that the Primary School is Practically Complete prior to the Occupation of the 800th Dwelling within the Development.
- 2.4 The Owners covenant that they shall not Occupy or allow the first Occupation of the 800th Dwelling within the Development until the Primary School has been Practically Completed.
- 2.5 The Owners shall Transfer the Primary School Site together with the Primary School erected thereon to the County Council within 30 working days of the Practical Completion of the Primary School.

3. PART THREE (PRIMARY SCHOOL CONTRIBUTION)

- 3.1 Part Three to this Sixth Schedule shall apply if the Owners serve notice in writing under paragraph 1.5 that they shall perform the planning obligations set out hereunder in this Part Three and in such circumstances Part Two to this Sixth Schedule shall cease to have legal effect.
- 3.2 The Owners shall Transfer the Primary School Site to the County Council with six months of serving notice pursuant to paragraph 1.5 of Part One of this Schedule
- 3.3 The Owners shall pay the Primary School Contribution to the County Council in accordance with the following arrangements:
 - 3.3.1 34% of the Primary School Contribution prior to the Occupation of the 375th Dwelling within the Development;
 - 3.3.2 33% of the Primary School Contribution prior to the Occupation of the 600th Dwelling within the Development; and
 - 3.3.3 33% of the Primary School Contribution prior to the Occupation of the 800th Dwelling within the Development.
- 3.4 From the Transfer of the Primary School Site to the County Council the County Council or its nominated delivery agent shall use reasonable endeavours to proceed with the construction of the Primary School.
- 3.5 The County Council shall return the Primary School Site to the Owner if construction of the Primary School has not commenced before the later of the date which is:-
 - 3.5.1 2 years after the Transfer of the Primary School Site;
 - 3.5.2 2 years after the Primary School Approval Date; or
 - 3.5.3 2 years after the first Occupation of the 375th Dwelling within the Development

THE SEVENTH SCHEDULE
Public Access and Open Space

The Owners covenant with the Council as follows:

Public Access Areas

- 1.1 The Owners will submit to the Council (acting reasonably and without delay) the Public Access Strategy and Public Access Areas Management Plan during the Reserved Matters application for the relevant part or whole as the case may be in each Phase and the Owners further agree that the Development will not be Implemented in that Phase of the Development until the Public Access Strategy and Public Access Management Plan for that relevant part or whole of the Phase as the case may be have been approved by the Council in writing
- 1.2 The Owners shall provide all Public Access Areas and Complete the same in accordance with the Public Access Areas Strategy as approved by the Council
- 1.3 The Public Access Areas Strategy as approved shall prescribe the number of Dwellings or Non-Residential Units (as the case may be) within a Phase that may be Occupied prior to Completion of any Public Access Areas within such Phase
- 1.4 As from the date of Completion of any Public Access Area the Owners will permit the general public to have continuous access on foot and with pedal cycles to and from and over such Public Access Area at all times free of charge

Management and Maintenance of Public Access Areas

- 1.5 The Owners will at their own expense manage and maintain each Public Access Area in the Development (unless the same shall be adopted as public open space maintainable at the public expense) in accordance with the Public Access Areas Management Plan as approved by the Council

THE EIGHTH SCHEDULE

Basis of Viability Review

1. The Owners covenant with the Council
- 1.1 [The Owners covenant with the Council not to occupy more than 800 Dwellings comprising Market Housing Units or Affordable Housing Units until the First Viability Review has been submitted to and approved by the Council.
- 1.2 The Owners covenant with the Council that prior to construction of the 750th Dwelling to provide the financial information to the Council on an open book basis to provide the information which is set out at 1.3 .
- 1.3 The Owners agree to pay to the Council the fee for the appointment of an independent valuer to review the financial information provided that:-
 - (a) the fees are reasonable and proper and have been reasonably and properly incurred; and
 - (b) the Council has carried out its procurement policy in relation to such appointment; and
 - (c) the fees are agreed by the Owner (acting reasonably and in good faith) and are capped
- 1.4 The information to be provided as part of the Viability Review is as follows:
 - a) the actual net sales values inputted for the residential (both market value and affordable) and also the commercial and the following appraisal assumptions for the purposes of future testing to be fixed in the following form:
 - b) Plot costs should be based on BCIS lower quartile generally figure, rebased to Derbyshire and restricted to the last five years of data, at the date that the reassessment is undertaken.
 - c) Externals, 17% of the plot costs
 - d) EV charging/part Regulations should be excluded, because over time this will be incorporated into the BCIS rate
 - e) Contingency should be 3.5% of the plot costs/externals
 - f) Professional fees 7% of the plot costs/externals
 - g) Planning policy contributions as set out elsewhere in the 106 agreement (plus indexation CPI or similar)
 - h) Residential sales/marketing 3% of net sales revenue
 - i) Residential legals at £800 per unit (plus indexation) CPI or similar
 - j) Commercial sales/marketing 1% of net sales revenue
 - k) Commercial legals 0.5% of net sales revenue
 - l) Finance £5,230,954 (plus Indexation)
 - m) Developer Profit which is to be measured as residential market value at 20% on net sales revenue, residential affordable at 6% on net sales revenue and commercial land at 15% on revenue. This gives a 'blended' profit equivalent to 19.16% on the total net sales revenue for the scheme. The threshold for whether the viability has improved or not is a developer profit of 19.16% on revenue.
 - n) Fixed based abnormal costs at £5,180,813 (plus Indexation) and the benchmark land value at £27,740,150 (plus Indexation)

- n) a separate mechanism for unforeseen costs extra over abnormals/site specific infrastructure that do not form part of the base of normal costs or build costs inflation to the developer to be agreed with the Council as part of the appraisal process enabling a reasonable review of the benchmark land value
- 2. If the Council do not approve the Viability Review or give cogent reasons for refusal or seek further reasonable information within 25 working days the Viability Review being submitted to it the Viability Review shall be deemed approved and the deeming provision shall apply once all the information sought by the Council has been provided to the Council and if the parties are in dispute such dispute shall be resolved in accordance with clause 15
- 3. If the Viability Review demonstrates that there is a Surplus then the Deferred Contributions shall be paid from such Surplus but shall not exceed the Deferred Contribution Cap

THE COMMON SEAL of)
BOLSOVER DISTRICT COUNCIL)
was hereunto affixed in the presence of:)

Chairman/Member

Solicitor to the Council

SIGNED as a Deed by)
THE HONOURABLE JAMES MORY BRUCE)
in the presence of:-)

.....
The Honourable James Mory Bruce

Signature of witness
Name (in BLOCK CAPITALS)
Address
.....
Occupation

SIGNED as a Deed by)
ROBERT STURDEE MASON)
in the presence of:-)

.....
Robert Sturdee Mason

Signature of witness
Name (in BLOCK CAPITALS)
Address
.....
Occupation

SIGNED as a Deed by)
TIMOTHY EDWARD SHULDHAM)
in the presence of:-)

.....
Timothy Edward Shuldham

Signature of witness
Name (in BLOCK CAPITALS)
Address
.....
Occupation

EXECUTED as a Deed by)
LGK FARMS LLP)
acting by)
a director in the presence of:-)

.....
Director

Signature of witness
Name (in BLOCK CAPITALS)
Address
.....
Occupation

EXECUTED as a Deed by)
WAYSTONE LIMITED)
acting by Stuart McLoughlin)
a director in the presence of:-)

.....
Director

Signature of witness
Name (in BLOCK CAPITALS)
Address
.....
Occupation

THE COMMON SEAL of
DERBYSHIRE COUNTY COUNCIL
was hereunto affixed in the presence
of: