

Dated **2021**

[REDACTED] (1)
AND
SKILLDRAW LIMITED (2)
AND
BLOOR HOMES LIMITED (3)
TO
WEST BERKSHIRE DISTRICT COUNCIL (4)

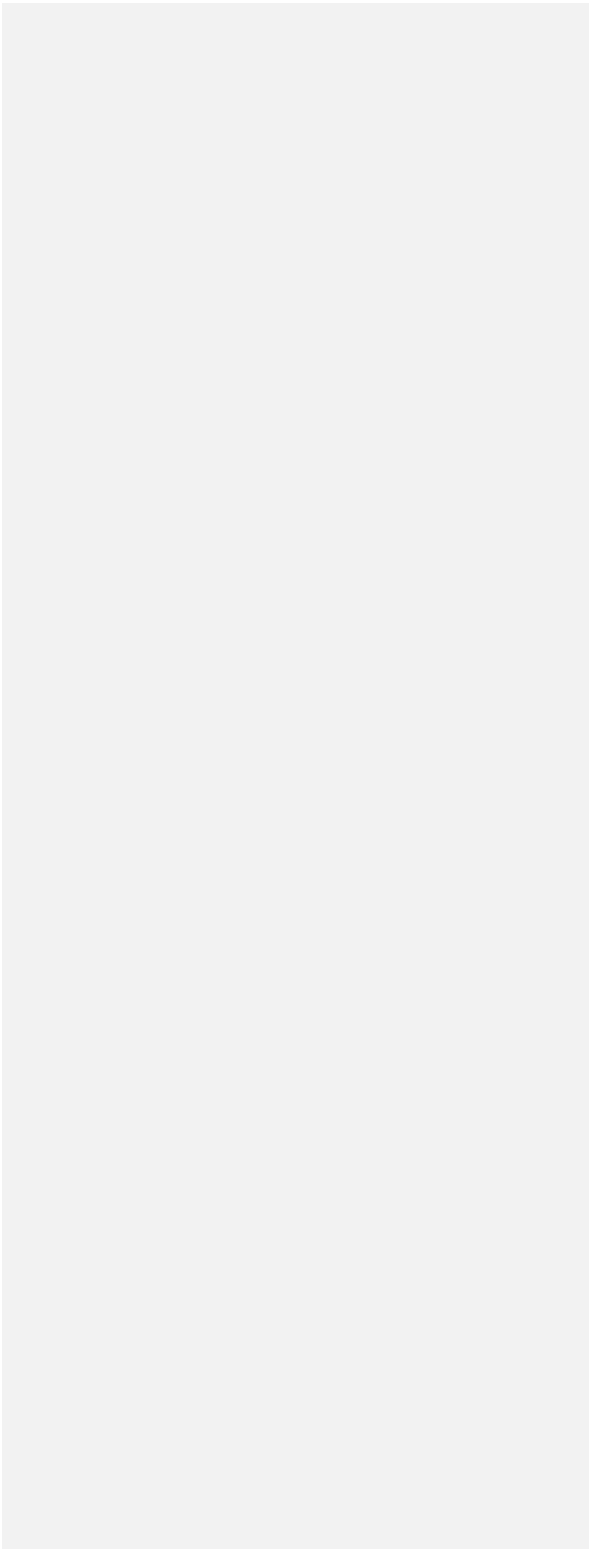
SECTION 106 UNILATERAL UNDERTAKING
Sandleford Park, Newbury, Berkshire
Appeal Reference: APP/W0340/W/20/3265460

CONTENTS

Clause	Heading	Page
1	INTRODUCTION.....	1
2	DEFINITIONS.....	2
3	INTERPRETATION.....	15
4	LEGAL BASIS.....	16
5	CONDITIONALITY.....	17
6	UNDERTAKINGS BY THE OWNERS.....	17
7	MISCELLANEOUS.....	17
8	WAIVER.....	18
9	FETTER OF DISCRETION.....	18
10	CHANGE OF OWNERSHIP.....	19
11	NOTICES.....	19
12	INTEREST.....	19
13	LATER PLANNING PERMISSION.....	19
14	VAT.....	20
15	JURISDICTION.....	20
16	DELIVERY.....	20
17	DEVELOPER'S CONSENT.....	20
18	EXPERT DETERMINATION.....	20
SCHEDULE 1	EDUCATION.....	22
SCHEDULE 2	COMMUNITY FACILITY.....	28
SCHEDULE 3	PUBLIC OPEN SPACE.....	32
SCHEDULE 4	HIGHWAY.....	36
SCHEDULE 5	TRIANGLE LAND.....	39
SCHEDULE 6	FURTHER CONTRIBUTIONS.....	41

SCHEDULE 7 HOUSING.....	44
SCHEDULE 8 CONNECTION TO SANDLEFORD PARK WEST	60
APPENDIX 1 PLAN	64
APPENDIX 2 PRIMARY SCHOOL TRANSFER	65
APPENDIX 3 SECONDARY SCHOOL TRANSFER	66
APPENDIX 4 DEVELOPMENT PARCEL PLAN	67
APPENDIX 5 LAND USE PARAMETERS PLAN	68
APPENDIX 6 STRATEGIC LANDSCAPE AND GREEN INFRASTRUCTURE PLAN	69
APPENDIX 7 COUNTRY PARK PHASING PLAN	70
APPENDIX 8 HIGHWAY PLANS.....	71
APPENDIX 9 TRIANGLE LAND.....	72
APPENDIX 10 DEED OF COVENANT (COUNCIL).....	73
APPENDIX 11 SPECIFICATION FOR PRIMARY SCHOOL SITE NORTH AND SECONDARY SCHOOL SITE	74
APPENDIX 12 TRIANGLE LAND TRANSFER	76
APPENDIX 13 SANDLEFORD PARK WEST.....	76
APPENDIX 14 SECONDARY SCHOOL SITE	69

DRAFT



DATE

2021

THIS PLANNING OBLIGATION BY UNILATERAL UNDERTAKING is given

BY

- (1) [REDACTED] (the "Partnership")
- (2) **SKILLDRAW LIMITED** (company number 04010455) whose registered office is situated at c/o Cooke & Arkwright, 10 Bridgend Business Centre, Bennett Street, Bridgend, Wales, CF31 3SH ("Skilldraw")

the Partnership and Skilldraw together being "the Owners"

- (3) **BLOOR HOMES LIMITED** (company number 02162561) whose registered office is situated at Ashby Road, Measham, Swadlincote, Derbyshire DE12 7JP ("the Developer")

TO

- (4) **WEST BERKSHIRE DISTRICT COUNCIL** of Council Offices, Market Street, Newbury, Berkshire RG14 5LD ("the Council")

1 INTRODUCTION

- 1.1 The Council is the Local Planning Authority for the purposes of the Act and the Highway Authority for the purposes of the Highways Act 1980 for the area in which the Site is situated.
- 1.2 The Partnership are registered as the owners with freehold absolute title of that part of the Site registered at Land Registry under title number BK200633.
- 1.3 Skilldraw is the registered owner with freehold absolute title of that part of the Site registered at Land Registry under title number BK443938.
- 1.4 The Developer has entered into an option with the Partnership dated 4 June 2014 to acquire land within the Partnership's land registered at Land Registry under title number BK200633.
- 1.5 The Developer has entered into an option with Skilldraw dated 4 June 2014 to acquire land within Skilldraw's land registered at Land Registry under title number BK443938.

Commented [SA1]: Is this the developer of Bloor Holdings Limited?

- 1.6 The Developer and the Partnership submitted the Application to the Council and the Council refused the Application on 13 October 2020.
- 1.7 On 17 December 2020, the Developer and the Partnership submitted the Appeal.
- 1.8 The Owners and the Developer enter into this Deed by way of Unilateral Undertaking to the Council in order to secure the planning obligations contained in this Deed in the event that the Planning Permission is granted pursuant to the Appeal.

2 DEFINITIONS

In this Deed the following expressions shall have the following meanings:

Act	means the Town and Country Planning Act 1990 (as amended);
Appeal	means the appeal reference number APP/W0340/W/20/3265460 submitted to the Secretary of State by the Developer and the Partnership against the refusal of the Application by the Council;
Application	means the application for planning permission for the Development submitted to the Council and allocated reference 20/01238/OUTMAJ;
Approved Lettings	means the letting for a fee of parts of the Secondary School Site by the Council to local community groups and/or for community uses including organised team sports but excluding informal recreational use;
A339 Access Link	means the link road between the eastern boundary of the Site and Newtown Road (A339) as shown on drawing number 4768-SK-100 Rev B at Appendix 8 of this Deed, or such other drawing as may be agreed between the Owners, the Developer and the Council;

A339 Access Link Contribution	means the sum of £1,500,000 (One Million Five Hundred Thousand Pounds) Index Linked to be paid to the Council as a contribution to the provision of the A339 Access Link;
Bus Revenue	means the total ticket revenue generated by the Bus Service since the Payment Date;
Bus Service	means the new bus service linking Sandford Park and Newbury Town Centre to be funded by the Public Transport Contributions;
Chartered Landscape Architect	means a chartered member of the Royal Chartered Institute of Landscape Architects;
Commencement	has the meaning given to it by clause 3.7 and "Commence" shall be construed accordingly;
Community Infrastructure Levy	means any sums payable to the Council in respect of the Development pursuant to a charging schedule adopted by the Council pursuant to the Community Infrastructure Levy Regulations 2010;
Council Tax	means the annual tax payable to the Council towards the funding of local services;
Country Park	means the country park to be provided within the Site in the locations shown coloured pink and green on the Country Park Phasing Plan annexed to this Deed to be provided in two phases as illustrated on the Country Park Phasing Plan with parkland east shown coloured pink on the Country Park Phasing Plan to be delivered with Development Parcel North 1 and parkland west shown coloured green on the Country Park Phasing Plan to be delivered with Development Parcel Central 3;
Country Park Phasing Plan	means the plan at Appendix 7 of this Deed or such other plan as may be agreed between the Owners, the Developer and the Council;

Deduction	means the Excess Revenue less any part of the Excess Revenue which has already been deducted from an earlier instalment of the Public Transport Contribution;
Deed of Covenant (Council)	means a deed of covenant substantially in the form at Appendix 10 of this Deed pursuant to which the Council covenants to the Owners and the Developer to, amongst other things, only expend any sums received pursuant to this Deed for specified purposes and to repay any unspent sums after a specified period;
Deed of Covenant (Manco)	means a deed of covenant entered into between the first (and any subsequent) owner of any individual Dwelling which shall require that owner and his successors in title pays its reasonable share of the costs and liabilities associated with the management and maintenance of the Country Park in perpetuity to the Management Company PROVIDED ALWAYS THAT this covenant will place a restriction on the title of the owner of an individual Dwelling to ensure that the Dwelling can only be transferred in the event that the incoming purchaser enters into a deed of covenant mutatis mutandis;
Development	means development of the Site pursuant to the Planning Permission for up to 1,000 new homes; 80 extra care housing units (Use Class C3) as part of the affordable housing provision; a new 2 form entry primary school (D1); expansion land for Park House Academy School; a local centre to comprise flexible commercial floorspace (A1-A5 up to 2,150sq m, B1a up to 200sq m) and D1 use (up to 500sq m); the formation of new means of access onto Monks Lane; new open space including the laying out of a new country park; drainage infrastructure; walking and cycling infrastructure and other associated infrastructure works. Matters to be considered: Access;
Development Parcel Central	means the development parcel shown on the Development Parcel Plan;

Development Parcel North	means Development Parcel North 1 and Development Parcel North 2;
Development Parcel North 1	means the development parcel shown with that reference on the Development Parcel Plan;
Development Parcel North 2	means the development parcel shown with that reference on the Development Parcel Plan;
Development Parcel Central 3	means the development parcel shown with that reference on the Development Parcel Plan;
Development Parcel Plan	means the plan at Appendix 4 of this Deed or such other plan as may be agreed between the Owners, the Developer and the Council;
Dwelling	means any single dwelling unit constructed on the Site pursuant to the Planning Permission to be used for Class C3 residential purposes, including Affordable Housing Units as defined in Schedule 7;
Excess Revenue	means a sum equal to the Bus Revenue less the Ring-fenced Revenue;
Head of Development and Planning	means the person from time to time holding the post of Head of Development and Planning with the Council or the person who is designated as such by the Council for the purposes of this Deed;
Service Director – Strategy and Governance	means the person from time to time holding the post of Service Director – Strategy and Governance with the Council or the person who is designated as such by the Council for the purposes of this Deed;

Healthcare Contribution means a contribution in the sum of Five Hundred and Twelve Thousand Six Hundred and Twenty-Five Pounds (£512,625) Index Linked to be paid to the Council towards the provision of healthcare facilities to serve the Development in the form of an extension to the Falklands Surgery at Monks Lane, Newbury RG14 7DF;

Highways Agreement means an agreement made pursuant to sections 38 and/or 278 of the Highways Act 1980 for the carrying out of works to the public highway;

Index means:

- In the case of the Primary School Contribution, the Secondary Education Delivery Package 1 Contribution, the Secondary Education Delivery Package 2 Contribution and the Secondary Education Delivery Package 3 Contribution, the Building Cost Information Service (BCIS) Tender Price Index; and
- In the case of all other contributions payable pursuant to this Deed, the General Index of Retail Prices (All Items) published by the Office of National Statistics,

or during any period where the above indices cease to exist the index which replaces the same or is the nearest equivalent thereto as may be reasonably specified by the Council;

Index Linked means increased or decreased by multiplying the relevant financial contribution by the percentage by which the Index has increased from the date of this Deed (save for the Primary School Contribution and the Secondary Education Contributions which shall be from [BCIS Q1 2021](#)) to the date that the relevant financial contribution is due;

**Land Use & Access
Parameters Plan**

means the drawing at Appendix 5 of this Deed or such other drawing as may be agreed between the Owners, the Developer and the Council;

Commented [SA2]: This does not accord with appendix 14

LAPs

means the local areas of play to be provided within the Development;

LEAP

means the locally equipped area of play shown indicatively on the Strategic Landscape and Green Infrastructure Plan;

Local Centre

means the local centre shown on the Land Use Access Parameter Plan capable of accommodating the Local Centre Uses the boundaries of which shall be fixed by reserved matters approval;

Local Centre Uses

means uses (and gross external floorspace) within:

- Class E comprising former Use Classes A1 to A3 and/or sui generis use as a public house or drinking establishment or hot food takeaway comprising former Use Classes A4 and A5 (2150m²),
- Class E comprising former Use Class B1 (200m²), and
- Class E comprising former Use Class D1 (500m²)

of the Use Classes Order;

Management Company

means a body or bodies established or nominated by the Owners to carry out the long term management and maintenance of the Public Open Space in accordance with the provisions of this Deed and whose objectives shall include:

- Taking a transfer of the Public Open Space in accordance with the provisions of this Deed;
- Setting the level of charges for funding the running of the body and collecting such charges;

- Managing and maintaining the Public Open Space including the retention of a full-time warden;
- Ensuring that the Public Open Space is retained for the purposes set out in this Deed; and
- Ensuring accountability to residents of the Development for the maintenance of the Public Open Space;

Marketing Period

means the period of 18 months from the commencement of marketing of the Local Centre;

Commented [SA3]: 18 months is not a sufficient period and it is unclear how this will relate to the residential units that are incorporated into the design. As per earlier comments there is a condition that covers this

NEAP

means the neighbourhood equipped area of play shown indicatively on the Strategic Landscape and Green Infrastructure Plan;

Newbury Rugby Football Club Contribution

means the sum of £180,000 (One Hundred and Eighty Thousand Pounds) Index Linked to be paid to the Council towards the construction of surface and drainage upgrades to the existing playing pitches at the Newbury Rugby Club located to the north west of the Site and to the south of Monks Lane;

Newbury Rugby Football Club Limited

means Newbury Rugby Football Club Limited registered at Companies House with number IP28289R;

Occupation

means first beneficial residential occupation of any Dwelling which shall be the date upon which Council Tax becomes payable in respect thereof or when the same is first Transferred (whichever is earlier) but excluding occupation for the purposes of fitting out or marketing and "Occupied" shall be construed accordingly;

Off Site Highways Works "A"

means the works to upgrade traffic signals at Newtown Road/Pound Street and Bartholomew Street/Market Street;

Off Site Highways Works "B" means the improvements to A339, Pinchington Lane and Monks Lane shown illustratively on drawing number 172985_A_01 Rev C at Appendix 8 of this Deed;

Off Site Highways Works "C" means the improvements to A339/A343 St John's Roundabout shown illustratively on drawing number 172985_A_12 at Appendix 8 of this Deed;

~~**Off Site Highways Works "A" Contribution** means the sum of £286,000 (Two Hundred and Eighty-Six Thousand Pounds) Index Linked to be applied towards the Off Site Highways Works "A";~~

~~**Off Site Highways Works "B" Contribution** means the sum of £[9,996,179] ([Nine Million Nine Hundred and Ninety-Six Thousand One Hundred and Seventy-Nine Pounds]) Index Linked to be applied towards the Off Site Highways Works "B";~~

~~**Off Site Highways Works "C" Contribution** means the sum of £1,532,703 (One Million Five Hundred and Thirty Two Thousand and Seven Hundred and Three Pounds) Index Linked to be applied towards the Off Site Highways Works "C";~~

~~**Off Site Highways Works Contribution** means the sum of £11,814,882 (Eleven Million Eight Hundred and Fourteen Thousand Eight Hundred and Eighty-Two Pounds) Index Linked to be applied towards the Off Site Highways Works~~

On-Site PROW Improvements means the improvements to the public rights of way within the Site to create a shared pedestrian and cycle way as shown indicatively on the Strategic Landscape and Green Infrastructure Plan;

On-Site PROW Improvements Plan means a plan and specification detailing the improvements to be carried out to the public rights of way within the Site;

Parish Councils means Newbury Town Council and Greenham Parish Council;

Payment Date	means the date on which the first instalment of the Public Transport Contribution is paid pursuant to paragraph 1 of Part 1 of this Schedule 6 ;
Phase	means any of the individual development parcels on which all or any part of the Development is to be carried out comprising Development Parcel North 1; Development Parcel North 2; Development Parcel Centre 3 and Development Parcel Centre as shown on plan 14.273/PP05 Rev B annexed hereto or such other plan as may be agreed between the Owners, the Developer and the Council;
Plan	means the plan with reference number 14.273/PP01 Rev B at Appendix 1 of this Deed;
Planning Condition	means a condition subject to which Planning Permission is granted;
Planning Permission	means the planning permission to be granted pursuant to the Appeal and including any variation pursuant to Section 73 and Section 73A of the Act and non-material amendment to such planning permission under Section 96A of the Act;
Play Areas	means the NEAP, LEAPs and LAPs and a reference to a "Play Area" shall be a reference to the relevant one of them;
Primary School	means an early years and two form entry primary school to be constructed on Primary School Site North;
Primary School Contribution	means a contribution in the sum of £5,905,287 (Five Million Nine Hundred and Five Thousand Two Hundred and Eighty Seven Pounds) Index Linked to be paid to the Council towards the construction of the Primary School to be constructed on Primary School Site North;
Primary School Site North	means a site of no less than 2 hectares and no more than 2.043 hectares in the general location shown on the Land Use Parameters Plan within Development Parcel North 1 the

	boundaries of which shall be fixed by planning condition [Reserved-Matters-Approvals] ;
Primary School Specification	means the specification for the Primary School Site North at Appendix 11(1) to this Deed;
Primary School Transfer	means the transfer substantially in the form at Appendix 2 of this Deed;
Public Open Space	means areas of land of not less than 86 hectares within the Site including the Country Park and the Play Areas that are to be laid out and retained as public open space for public use in accordance with the provisions of Schedule 3 and the Public Open Space Management Plan the details of which will be approved through the Public Open Space Plan and Reserved Matters Approvals;
Public Open Space Plan	means an outline plan showing indicatively the Public Open Space to be provided within the Development as a whole (or such amended plan as may be approved by the Council from time to time);
Public Open Space Specification	means a specification for the laying out of the Public Open Space;
Public Open Space Management Plan	means a plan setting out details for the future management and maintenance of the Public Open Space, including provision for the appointment of a full-time warden;
Public Transport Contribution	means the sum of up to £1,500,000 (One Million Five Hundred Thousand Pounds) Index Linked towards the Bus Service;
Reserved Matters Approval	means approval of reserved matters details pursuant to the Planning Permission;

Revenue Statement means a statement to be provided by the Council to the Owners one month prior to the due date for each instalment of the Public Transport Contribution, such statement to set out:

- the Bus Revenue;
- the amount if any of the Ring-fenced Revenue;
- the amount if any of the Excess Revenue;
- the total amount of any Deductions if any already made to the Public Transport Contribution; and
- the amount if any of the Deduction to be made from the next instalment of the Public Transport Contribution;

Ring-fenced Revenue means the first £500,000 (Five Hundred Thousand Pounds) of the Bus Revenue, such sum to be ring-fenced by the Council and applied towards the Second Bus Service Trial;

Sandleford Park West Contribution means the sum of £[3,733,496] ([Three Million Seven Hundred and Thirty-Three Thousand Four Hundred and Ninety-Six Pounds]) being that part of the Off Site Highways Works "A" Contribution, Off Site Highways Works "B" Contribution and Off Site Highways Works "C" Contribution which is to be secured and payable pursuant to the grant of the Sandleford Park West Planning Permission towards their share of the funding of the Off Site Highways Works "A", Off Site Highways Works "B" and Off Site Highways Works "C";

Sandleford Park West Land means the land shown edged red on drawing number SLP-01 annexed at Appendix 13 to this Deed;

Sandleford Park West Planning Permission means the planning permission applied for pursuant to the outline planning application made by Donnington New Homes to the Council given reference 18/00828/OUTMAJ for development of up to 500 new homes and associated development on the Sandleford Park West Land ~~or any other~~

Commented [SA4]: These contributions are required to mitigate the development proposed as part of this appeal. Had the allocated site come forward comprehensively then the contribution would have be split between the land ownership 68.35/31.65%. However it is important to recognise that the appellants proposal alone causes the harm that these monies mitigate

[planning application made in respect of the Sandleford Park West Land for substantially the same development;](#)

Second Bus Service Trial	means the trial of a second bus service bus-service linking Sandleford Park and Newbury Town Centre;
Secondary Education Contributions	means together the Secondary School Delivery Package 1 Contribution, the Secondary School Delivery Package 2 Contribution and the Secondary School Delivery Package 3 Contribution;
Secondary Education Delivery Package 1	means the works to provide enhanced secondary education facilities comprising 32 new pupil spaces at Park House Secondary School;
Secondary Education Delivery Package 2	means the works to provide enhanced secondary education facilities comprising 55 new pupil spaces at Park House Secondary School;
Secondary Education Delivery Package 3	means the works to provide enhanced secondary education facilities comprising 53 new pupil spaces at Park House Secondary School;
Secondary School Delivery Package 1 Contribution	means the sum of £1,713,085 (One Million Seven Hundred and Thirteen Thousand and Eighty Five Pounds) being the estimated cost of Secondary Education Delivery Package 1 Index Linked to be paid to the Council to be applied in respect of Secondary Education Delivery Package 1;
Secondary School Delivery Package 2 Contribution	means the sum of £1,076,169 (One Million and Seventy Six Thousand and One Hundred and Sixty Nine Pounds) being the estimated cost of Secondary Education Delivery Package 2 Index Linked to be paid to the Council to be applied in respect of Secondary Education Delivery Package 2;
Secondary School Delivery Package 3 Contribution	means the sum of £3,143,333 (Three Million One Hundred and Forty Three Thousand and Three Hundred and Thirty Three Pounds) being the estimated cost of Secondary Education

Delivery Package 3 Index Linked to be paid to the Council to be applied in respect of Secondary Education Delivery Package 3;

Secondary School Site means the site shown indicatively edged pink on drawing number BG-SP-001 rev B at Appendix 14 to this Deed, or such other land of no less than 1.6 hectares as may be approved pursuant to a Reserved Matters Approval;

Secondary School Specification means the specification for the Secondary School Site at Appendix 11 [\(1\)](#) and [11 \(2\)](#) to this Deed;

Secondary School Transfer means the transfer substantially in the form at Appendix 3 of this Deed;

Security Strip means a strip of land one metre in width forming part of the Site at the boundary of the Site with the Sandleford Park West Land;

Services means the supply of water, electricity and the disposal of foul and surface water and to the extent that they are provided for the Development gas and radio, television, telephone and other audio visual and data signals;

Site means the land shown edged red on the Plan and known as Sandleford Park, Newbury, Berkshire;

Strategic Landscape and Green Infrastructure means the green infrastructure, open space and facilities (including drainage features) shown on the Strategic Landscape and Green Infrastructure Plan including (for the avoidance of doubt) the Play Areas;

Strategic Landscape and Green Infrastructure Plan means the drawing at Appendix 6 of this Deed or such amended drawing as may be approved by the Council from time to time;

Travel Plan Contribution means a contribution in the sum of £428,730 (Four Hundred and Twenty-Eight Thousand Seven Hundred and Thirty

Commented [SA6R5]: Please confirm the position as your position statement includes a contingency

Pounds) towards the provision of travel plan measures to encourage sustainable and low carbon modes of travel;

Commented [GWL5]: Contingency of £20k TBA

Triangle Land means the land shown shaded yellow on drawing number SOXX-CP-004 at Appendix 9 of this Deed;

Triangle Land Transfer means a transfer substantially in the form at Appendix 12; and

Use Classes Order means the Town and Country Planning (Use Classes) Order 1987 (as amended).

3 INTERPRETATION

- 3.1 Save where this Deed specifies otherwise or where the context so requires the singular includes the plural and vice versa and references in this Deed to any party shall include the successors in title to that party's interest in the Site or part thereof.
- 3.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 3.3 Where in this Deed reference is made to any clause, paragraph, schedule, plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule plan or recital in this Deed or (in the case of the plan) attached to this Deed.
- 3.4 The titles and headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 3.5 Where in this Deed any party covenants not to act such covenant shall include an obligation not to permit or suffer such an act by another person.
- 3.6 All references in this Deed to statutes, statutory instruments, regulations and other legislation shall include their successor amended or replacement provision.
- 3.7 For the purposes of clause 5 and Schedule 1 to 8 of this Deed, the Development shall be deemed to be Commenced on the earliest date on which any material operation (as defined in Section 56(4) of the Act) comprised in the Development is to be carried out and the words "Commence" "Commenced" and "Commencement" shall in such clauses and Schedule 1 to 8

be construed accordingly PROVIDED THAT for the purposes of this Deed and for no other purpose a material operation shall not be taken to include site clearance, site survey, archaeological investigation, demolition, investigation, preparation or remediation and any studies or investigations in that respect, incidental mineral extraction, the carrying out of arboricultural works or ecology works, the laying out or removal of services and any construction access, the erection of fences, hoardings and any temporary marketing suite.

- 3.8 All references in this Deed to a particular title of offices or posts at the Council shall include successor or replacement offices or posts.
- 3.9 Where in this Deed there is reference to an approval consent or agreement being given by the Council then such approval consent or agreement shall be deemed to have been given if no response is received from the Council within twenty-eight (28) days of notice being served or details being provided to the Council or such other period as may be specified in the relevant clause or paragraph of this Deed.

4 LEGAL BASIS

- 4.1 This Deed is made pursuant to Section 106 of the Act.
- 4.2 Subject to clause 4.3, each and every covenant given by the Owners and/or the Developer in this Deed is a planning obligation for the purposes of Section 106 of the Act and shall be enforceable by the Council in respect of the Site.
- 4.3 The covenants and obligation on the part of the Owners and the Developer as set out in this Deed shall not apply and shall not be enforceable by the Council if the person appointed to determine the Appeal states clearly in the decision letter granting the Planning Permission that such obligations, or any of them, are unnecessary or otherwise fail to meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 PROVIDED THAT if any of the obligations are determined by the person appointed to determine the Appeal to be unnecessary or otherwise fail to meet the statutory tests it shall not affect the lawfulness of the balance of the covenants and obligations in this Deed which shall continue to be enforceable.
- 4.4 The covenants and obligation on the part of the Owners and the Developer as set out in this Deed shall not apply and shall not be enforceable by the Council if the person appointed to determine the Appeal states clearly in the decision letter granting the Planning Permission that such obligations, or any of them, should not be payable on the grounds that they are not justified

and/or are duplicated by payments to be made to the Council in respect of any Community Infrastructure Levy PROVIDED THAT if any of the obligations are determined by the person appointed to determine the Appeal to be unjustified and/or duplicated it shall not affect the lawfulness of the balance of the covenants and obligations in this Deed which shall continue to be enforceable.

5 CONDITIONALITY

5.1 With the exception of clauses 7, 12, 13 and 17 which shall come into effect immediately upon completion of this Deed, this Deed is conditional upon the grant of the Planning Permission and Commencement of the Development.

5.2 The obligations set out at paragraphs [] are conditional upon the Council entering into the Deed of Covenant (Council).

Commented [SA7]: As set out previously the Council has a concern about the principle of a UU being conditional on another deed as there is no certainty.

6 UNDERTAKINGS BY THE OWNERS

6.1 The Owners undertake to the Council as set out in Schedules 1 to 8.

6.2 The Owners undertake to pay the Council's reasonable legal costs on completion of this Deed.

6.3 The Owners undertake not to Commence Development without first paying to the Council a planning administration fee of £1,350.

6.4 The Owners undertake not to Commence the Development without first giving written notice to the Council of the date of Commencement.

7 MISCELLANEOUS

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

7.2 This Deed shall be registrable on the Register of Local Land Charges and any other Register as the Council shall determine.

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

7.4 This Deed shall cease to have effect (except insofar only as it has already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to Commencement of the Development.

7.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they shall have parted with their entire interest in the Site or where the planning obligation relates solely to a part of the Site or Phase of the Development parted with their entire interest in that part or Phase but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.6 The planning obligations or other provisions of this Deed will not be enforceable by or against:

- (a) any purchaser of a Dwelling and his successors in title and his mortgagees; or
- (b) any statutory undertaker occupying the Site or any part of the Site for the purposes of their undertaking;
- (c) (save for the obligations in Schedule 7) any Registered Provider who acquires an interest in the Affordable Housing Units; or
- (d) the Council as owner of the Primary School Site North or the Secondary School Site and/or as owner of any public open space within the Site or as public highway authority in respect of any estate roads within the Site.

8 WAIVER

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

9 FETTER OF DISCRETION

Nothing in this Deed shall prejudice the exercise of any statutory power duty or discretion by the Council.

10 CHANGE OF OWNERSHIP

The Owners undertake to give the Council immediate written notice 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 transferees full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan but shall not be required to give such notice in respect of the transfer (freehold or leasehold) of any individual Dwelling.

11 NOTICES

11.1 Unless otherwise agreed in writing:

- (a) notices shall be in writing and delivered by hand or first class post to the Owners and the Developer at such address and for the attention of such person as may be specified from time to time or in the absence of a specified address to (in the case of a company) its registered address marked for the attention of the Company Secretary or (in the case of an individual) to their usual or last known address and to the Council at West Berkshire District Council Offices, Market Street, Newbury, Berkshire RG14 5LD addressed to the Head of Development and Planning; and
- (b) notices served by the Council are deemed to be valid if signed by the Head of Development and Planning or his authorised officer or by the Service Director – Strategy and Governance.

11.2 Notices and representations served by the Owners and the Developer are deemed valid if signed by the relevant person referred to in clause 11.1.

12 INTEREST

If any payment which is due under this Deed is paid late interest will be payable from the date payment is due to the date of payment at the rate of 4% above the Bank of England's base rate.

13 LATER PLANNING PERMISSION

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

14 VAT

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

15 JURISDICTION

This Deed is governed by and shall be interpreted in accordance with the law of England.

16 DELIVERY

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

17 DEVELOPER'S CONSENT

The Developer acknowledges and declares that this Deed has been entered into by the Owners with its consent and that the Site shall be bound by the obligations contained in this Deed PROVIDED THAT the Developer shall otherwise have no liability under this Deed unless and until it acquires a freehold or long leasehold interest in the Site in which case it will be bound by the obligations as a person deriving title from the Owners.

18 EXPERT DETERMINATION

18.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed (other than the sum of any Contribution) such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the president (or equivalent person) for the time being of the professional body chiefly relevant in England to such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties to the dispute or difference and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

18.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 18.1 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 in respect of such appointment, suitability or appropriateness as the case may be 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.

- 18.3 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 28 days after the conclusion of the hearing that takes place or 28 days after he has received any file or written representation.
- 18.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting materials and the other party will be entitled to make a written counter submission within a further ten days.

DRAFT

SCHEDULE 1

Education

Part 1 - Primary School

- 1 The Owners undertake if requested by the Council acting reasonably to assist the Council and supply as soon as reasonably practicable any necessary consent or documentation to support the Council in the Reserved Matters Application for the [detailed design of the Primary School North](#). PROVIDED THAT nothing in this paragraph shall oblige the Owners to disclose any confidential or commercially sensitive documentation.
- 2.1 Prior to the transfer of the Primary School Site North to the Council (or to a governing body or such other organisation as directed by the Council upon notice in writing to the Owner) the Owners undertake to prepare the Primary School Site North to the reasonable satisfaction of the Council which includes but is not limited to:
- 2.1.1 ensuring the Primary School Site North is level and free from any other adverse ground conditions;
- 2.1.2 removing from the Primary School Site North all debris, rubble, asbestos, and all other waste and superfluous materials;
- 2.1.3 undertaking remediation of the Primary School Site North as appropriate so that it is transferred to the Council in a condition which renders it fit for its intended use;
- 2.1.4 ensuring that the Primary School Site North is otherwise cleared and in a fit and proper state for the commencement of the construction of the Primary School;
- 2.1.5 erecting appropriate fencing around the boundary of the Primary School Site North;
- 2.1.6 connecting the Primary School Site North to all Services at the points specified in writing by the Council (acting reasonably); and
- 2.1.7 in all other respects ensuring the Primary School Site North conforms with the Primary School Specification.

- 32 Following completion of preparation of the Primary School Site North in accordance with paragraph 2, the Owners undertake to serve written notice on the Council inviting the Council to carry out an inspection of the Primary School Site North within twenty eight (28) days of such notice.
- 43 If the Council fails to carry out an inspection of the Primary School Site North within twenty eight (28) days or does carry out an inspection within twenty eight (28) days but fails to give any notice to the Owners within twenty eight (28) days of the date of inspection then the Primary School Site North shall be deemed to have been satisfactorily prepared in accordance with paragraph 2.
- 54 If within twenty eight (28) days of undertaking the inspection of the Primary School Site North the Council (acting reasonably) gives notice to the Owners that the Primary School Site North has not been prepared in accordance with paragraph 2 the Owners undertake to rectify any deficiencies and carry out such works or operations as may reasonably be required by the Council to bring the Primary School Site North up to the standard set out in paragraph 2 and the procedures referred to in paragraphs 3, 4 and 5 shall be repeated as often as necessary until the Council (acting reasonably) has confirmed that the Primary School Site North has been satisfactorily prepared in accordance with paragraph 2 or such approval has been deemed.
- 65 Following the acceptance or deemed acceptance by the Council that the Primary School Site North has been satisfactorily prepared in accordance with paragraph 2 the Owners undertake to offer to transfer the Primary School Site North to the Council or to a governing body or such other organisation as directed by the Council upon notice in writing to the Owner) in accordance with the terms set out in Part 5 of this Schedule and on the date of the Transfer the Owners undertake to assign all warranties and benefits in respect of the Primary School Site North to the Council.
- 76 Subject to the Council agreeing to enter into the Transfer of the Primary School Site North and the Council using reasonable endeavours to conclude the Transfer prior to Occupation of one hundred (100) Dwellings (excluding for the purposes of this paragraph any Extra Care Units), the Owners undertakes not to Occupy (or suffer permit or allow Occupation) of more than one hundred (100) Dwellings (excluding for the purposes of this paragraph any Extra Care Units) until the Primary School Site North has been transferred to the Council (or to a governing body or such other organisation as is directed by the Council upon notice in writing to the Owners).

Part 2 - Primary School Contribution

87 The Owners undertake to the Council to pay the Primary School Contribution to the Council in the following instalments:

8.17.1 10% prior to Commencement of the Development;

8.27.2 81% prior to Occupation of the 250th Dwelling; and

8.37.3 The remaining 9% prior to Occupation of the 750th Dwelling.

Part 3 - Secondary School Site

98 Prior to the transfer of the Secondary School Site to the Council (or to a governing body or such other organisation as directed by the Council upon notice in writing to the Owner) the Owners undertake to prepare the Secondary School Site to the reasonable satisfaction of the Council which includes but is not limited to:

8.1 ensuring the Secondary School Site is level and free from any other adverse ground conditions;

9.18.2 ensuring there are appropriate mechanisms in place to safeguard the ancient woodland, ancient and veteran trees and associated hedgerow that is to be retained;

9.28.3 removing from the Secondary School Site all debris, rubble, asbestos, and all other waste and superfluous materials;

9.38.4 undertaking remediation of the Secondary School Site as appropriate so that it is transferred to the Council in a condition which renders it fit for its intended use;

~~9.4 ensuring that the Secondary School Site is otherwise cleared and in a fit and proper state for the commencement of the construction of the Secondary School;~~

9.58.5 erecting appropriate fencing around the boundary of the Secondary School Site;

9.68.6 connecting the Secondary School Site to all Services at the points specified in writing by the Council (acting reasonably); and

9.78.7 in all other respects ensuring the Secondary School Site conforms with the Secondary School Specification.

[409](#) Following completion of preparation of the Secondary School Site in accordance with paragraph 9, the Owners undertake to serve written notice on the Council inviting the Council to carry out an inspection of the Secondary School Site within twenty eight (28) days of such notice.

[4410](#) If the Council fails to carry out an inspection of the Secondary School Site within twenty eight (28) days or does carry out an inspection within twenty eight (28) days but fails to give any notice to the Owners within twenty eight (28) days of the date of inspection then the Secondary School Site shall be deemed to have been satisfactorily prepared in accordance with paragraph 9.

[4211](#) If within twenty eight (28) days of undertaking the inspection of the Secondary School Site the Council (acting reasonably) gives notice to the Owners that the Secondary School Site has not been prepared in accordance with paragraph 9 the Owners undertake to rectify any deficiencies and carry out such works or operations as may reasonably be required by the Council to bring the Secondary School Site up to the standard set out in paragraph 9 and the procedures referred to in paragraphs 10, 11 and 12 shall be repeated as often as necessary until the Council (acting reasonably) has confirmed that the Secondary School Site has been satisfactorily prepared in accordance with paragraph 9 or such approval has been deemed.

[4312](#) Following the acceptance or deemed acceptance by the Council that the Secondary School Site has been satisfactorily prepared in accordance with paragraph 9 the Owners undertake to offer to transfer the Secondary School Site to the Council or to a governing body or such other organisation as directed by the Council upon notice in writing to the Owner) in accordance with the terms set out in Part 5 of this Schedule and on the date of the Transfer the Owners undertake to assign all warranties and benefits in respect of the Secondary School Site to the Council.

[4413](#) Subject to the Council agreeing to enter into the Transfer of the Secondary School Site and the Council using reasonable endeavours to conclude the Transfer prior to Occupation of two hundred (200) Dwellings (excluding for the purposes of this paragraph any Extra Care Units), the Owners undertakes not to Occupy (or suffer permit or allow Occupation) of more than two hundred (200) Dwellings (excluding for the purposes of this paragraph any Extra Care Units) until the Secondary School Site has been transferred to the Council (or to a governing body or such other organisation as is directed by the Council upon notice in writing to the Owners).

Part 4 - Secondary Education Contribution

[4514](#) The Owners undertake to the Council:

~~15.414.1~~ not to use or Occupy or cause suffer or permit to Occupy more than 100 Dwellings without first having paid the Secondary School Delivery Package 1 Contribution;

~~15.214.2~~ not to use or Occupy or cause suffer or permit to Occupy more than 200 Dwellings without first having paid to the Council the Secondary School Delivery Package 2 Contribution;

~~15.314.3~~ not to use or Occupy or cause suffer or permit to Occupy more than 500 Dwellings without first having paid to the Council the Secondary School Delivery Package 3 Contribution.

Part 5 - Terms of Transfer

~~16.15~~ The terms and conditions referred to at paragraphs 6 and 13 of this Schedule are that:

~~16.115.1~~ The Primary School Site North and the Secondary School Site shall be transferred according to the Law Society's Standard Conditions of Sale (5th Edition) so far as they are applicable to a sale by private deed and each area shall be transferred subject to:

- (a) all matters registrable or capable of registration as local land charges (whether before or after the date hereof);
- (b) all entries proposals or requirements affecting or relating to the land to be transferred given or made by a Government Department statutory undertaker or other public body or local authority (whether before or after the date hereof); and
- (c) all rights easements created easements or privileges in the nature of light air drainage way passage and the light use enjoyed by or over the land to be transferred.

~~17.16~~ The transfer shall:

~~17.116.1~~ be for a consideration of £1 and be made with full title guarantee;

~~17.216.2~~ be a fee simple estate in the land thereby transferred with vacant possession unencumbered save as disclosed prior to the date of and in accordance with this Deed;

~~17.316.3~~ reserve in favour of the Owners any usual and necessary rights and easements to enable the proper construction, maintenance, and use of the Development and to use existing Services insofar as they are necessary;

17.4 ~~reserve in favour of the Owners the rights to lay and use new services in the land together with any rights of entry to inspect, repair, review, cleanse and maintain the same;~~

Commented [SA8]: Services under the school land should be avoided if possible

17-516.4 include a requirement that the transferee shall promptly upon reasonable request enter into any necessary agreements, deeds and/or leases for the use, adoption or dedication of any Services in the land (and to procure that any mortgagee or tenant does likewise);

17-616.5 impose a restriction on the use of the land transferred so that:

- (a) the Primary School Site North may only be used for the purposes of an educational institution serving the local area and charging no fees for admission unless the circumstances set out in paragraph 17.4(b) apply; and
- (b) the Secondary School Site may only be used for the purposes of an educational institution serving the local area and charging no fees for admission provided that this restriction shall not prevent the letting of parts of the Secondary School Site for Approved Lettings;

17-716.6 subject to a restriction on title that:

- (a) subject to paragraph 17.4(b), provide that upon the land transferred or any part thereof, ceasing to be used for the purposes referred to in this Schedule, the land transferred shall thereupon immediately revert and be transferred to the transferor for a consideration of £1, PROVIDED THAT for these purposes ceasing to be used shall be taken to mean the permanent discontinuance of the school without an immediate replacement by the establishment of another school or the planned relocation of an existing school to the land transferred on the same terms as set out in this paragraph 8; and
- (b) in the event that an approved reorganisation of the primary education provision in the area necessitates the disposal of the land transferred for redevelopment in order to fund the capital costs associated with the approved reorganisation, then the reverter provisions set out at paragraph 17.4(a) shall not apply, save that the transferor shall be granted a right of pre-emption in respect of the land transferred (with the land value accruing from the land being paid to the Council).

SCHEDULE 2

Community Facility and Local Centre

Part 1 – Community Facility

Commented [SA9]: The community facility should be designed as an integral part of the local centre and include the building as well as the land as required by SPD page 55 bullet point 4

- 1 The Owners undertake to the Council to offer to transfer to the Council or the Council's nominee (being either the Parish Council or a charitable body) land within that part of the Development comprising the local centre for use as a community facility, such offer to remain open for acceptance for a minimum period of 6 months and to be on the terms set out in Part 2 of this Schedule.
- 2 In the event that the offer set out in paragraph 1 of this Schedule is accepted in writing within the abovementioned 6 month period then the Owners undertake to use reasonable endeavours for a period of not less than 3 months from the date of such acceptance to conclude an agreement for transfer or a transfer of the Community Facility to the Council or the Council's nominee (as the case may be).
- 3 For the avoidance of doubt, in the event that the agreement for transfer or a transfer of the Community Facility has not been concluded within the period specified in paragraph 2 of this Schedule then the obligations in this Schedule shall cease to apply.

Part 2 – Community Facility Transfer

- 4 The terms and conditions referred to in paragraph 1 of this Schedule are that:
 - 4.1 The land for use as a community facility shall be transferred to the Council or the Council's nominee as the case may be in the condition set out in [];
 - 4.2 The land shall be transferred according to the Law Society's Standard Conditions of Sale (5th Edition) so far as they are applicable to a sale by private deed and each area shall be transferred subject to:
 - (a) all matters registrable or capable of registration as local land charges (whether before or after the date hereof);

(b) all entries proposals or requirements affecting or relating to the land to be transferred given or made by a Government Department statutory undertaker or other public body or local authority (whether before or after the date hereof); and

(c) all rights easements created easements or privileges in the nature of light air drainage way passage and the light use enjoyed by or over the land to be transferred.

5 The transfer shall:

5.1 be for a consideration of £1 and be made with full title guarantee;

5.2 be a fee simple estate in the land thereby transferred with vacant possession unencumbered save as disclosed prior to the date of and in accordance with this Deed;

5.3 impose a restriction on the use of the land transferred so that the land may only be used for the purposes of providing a community facility within Use Class E (formerly Use Class D1) of the Use Classes Order;

5.4 provide that upon the land transferred or any part thereof ceasing to be used for the purposes referred to in paragraph 5.3, the land transferred shall thereupon immediately revert and be transferred to the transferor for a consideration of £1, such transfer to be on the same terms as set out in paragraph 5.1 and paragraph 5.2.

Part 3 – Local Centre Marketing Plan

6 The Owners undertake to the Council not to use or Occupy or cause, suffer or permit to be used or Occupied more than 200 Dwellings in Development Parcel Centre until:

6.1 a marketing plan in respect of the provision of Local Centre Uses in the Local Centre has been submitted to and approved in writing by the Council; and

6.2 Services have been provided to the boundary of the Local Centre (but not for the avoidance of doubt to the boundary of any individual building or plot).

7 The Owners undertake to the Council not to carry out any development on the land for the Local Centre other than for Local Centre Uses until after the expiry of the Marketing Period.

Commented [SA10]: This will not provide a local centre. It should be dealt with by condition, preventing them to occupy more than 750 units until it is provided. The local centre needs to be satisfactory in urban design terms. It is envisaged that it will feature residential units at upper floors. Para 3.4 is contrary to DAS pages 78 and 79. No residential above provided here.

Commented [SA11]: The Council's concern is how this relates to the residential units that form part of the design?

Part 4 – Marketing of the Local Centre

- 8 The Owners undertake to the Council to market by offering for sale at open market value on the open market through independent commercial selling agents appointed by and at the cost of the Owners a freehold or leasehold interest in the Local Centre for each of the Local Centre Uses such marketing to be:
- 8.1 begun within two months of the date on which the marketing plan shall have been approved in writing by the Council;
 - 8.2 continued until the expiry of the Marketing Period or in the case of any part of the land for which a binding contract for the sale thereof has been entered into between the Owners and an intending purchaser sooner than the expiry of the Marketing Period until the date of exchange of contracts;
 - 8.3 the open market value sought for shall be on the basis that the land may only be used for the purpose for which such interest is being marketed;
 - 8.4 on the basis that the Services referred to in paragraph 6 are to be provided;
 - 8.5 on the basis that the interests to be sold or granted shall contain the appropriate reciprocal rights and easements;
 - 8.6 with a good and marketable title;
 - 8.7 subject to all matters to which the title to the part of the Site is subject at the date hereof and all matters registered as local land charges including this Deed; and
 - 8.8 in accordance with the approved marketing plan.
9. Every 6 months during the Marketing Period the Owners shall arrange for a written report to be supplied to the Council from its selling agents as to whether there is any commercial demand for the uses marketed unless either:
- 9.1 terms for the sale of any land for the uses marketed have been agreed between the Owners and an intending purchaser sooner; or

9.2 the Council has confirmed by notice in writing to the Owners that the Council is satisfied as the result of receiving such reports that there is no commercial demand for one or more of the Local Centre Uses in which case the obligations contained in this schedule in respect of those uses shall terminate.

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SCHEDULE 3

Public Open Space

Commented [SA12]: I understand that BBOWT will be requesting a contribution to mitigate the harm to Greenham and Crookham Common

Part 1 – Provision of Public Open Space

- 1 The Owners undertake to the Council as follows:
 - 1.1 Prior to Commencement of the Development, to submit the Public Open Space Plan to the Council for approval;
 - 1.2 Subject to the Council not unreasonably withholding or delaying its consent to the same, not to Commence Development unless and until the Public Open Space Plan has been approved by the Council;
 - 1.3 To provide the Public Open Space within the Development on a Phase by Phase basis in accordance with the approved Public Open Space Plan and the requirements of this Schedule;
 - 1.4 Prior to Commencement of the Development of each Phase, to submit the Public Open Space Specification and the Public Open Space Management Plan for that Phase to the Council for approval;
 - 1.5 Subject to the Council not unreasonably withholding or delaying its consent to the same, not to Commence Development of any Phase unless and until the Public Open Space Specification and the Public Open Space Management Plan for that Phase have been approved by the Council;
 - 1.6 To provide the Public Open Space as part of the Development and not to cause or permit Occupation of more than sixty five per cent (65%) of the Dwellings in a Phase unless otherwise agreed in writing with the Council until the Public Open Space in that Phase has been laid out and landscaped in accordance with the Public Open Space Specification;
 - 1.7 Not to use or Occupy or cause, suffer or permit to be used or Occupied:
 - (a) more than 200 Dwellings without first having provided one LEAP within the Development;

- (b) more than 600 Dwellings without first having provided a second LEAP within the Development; and
 - (c) more than 150 Dwellings in Development Parcel Centre without first having provided the NEAP within the Development;
- 1.8 Not to use or Occupy or cause, suffer or permit to be used or Occupied more than 50% of the Dwellings within a Phase without first having provided the LAPs in that Phase;
- 1.9 To inform the Council in writing when the Public Open Space in a Phase has been laid out and landscaped in accordance with paragraph 1.6 of this Schedule;
- 1.10 Following issue of a written notification referred to in paragraph 1.9 of this Schedule and for a period of not less than fifty-six (56) days, to allow the Council access to carry out an inspection of the Public Open Space provided that if the Council fails to inspect the Public Open Space within the fifty-six (56) day period then it shall be deemed that the Council has approved the Public Open Space;
- 1.11 If, within fourteen (28) days of inspection of the Public Open Space, the Council serves notice in writing on the Owners that the Public Open Space has not been laid out and landscaped in accordance with this Schedule, to rectify any deficiencies and carry out such works or operations as may reasonably be required by the Council to bring the Public Open Space up to the standard required and thereafter the process referred to in paragraphs 1.9 to 1.11 of this Schedule shall be repeated as often as necessary until either:
- (a) the Council (acting reasonably) gives written approval that the Public Open Space has been laid out and landscaped as required or such approval is deemed to have been given; or
 - (b) a Chartered Landscape Architect confirms that the Council's requests are unreasonable upon which the Council is deemed to have accepted the Public Open Space.

Part 2 – Management and Maintenance of the Public Open Space

- 2 The Owners undertake to the Council as follows:

- 2.1 Prior to Occupation of any Dwellings, to establish or nominate the Management Company who shall be responsible for the future management and maintenance of the Public Open Space and to provide to the Council of the Management Company;
- 2.2 Following the acceptance or deemed acceptance that the Public Open Space has been satisfactorily laid out and landscaped in accordance with this Schedule, to transfer the Public Open Space to the Management Company, such transfer to be on the terms set out in Part 3 of this Schedule;
- 2.3 To procure that the Public Open Space and all the facilities on the Public Open Space are made available for use by the public as an open amenity or recreation area, from the date it is laid out and landscaped in perpetuity and the public shall have unrestricted access at all times to the Public Open Space including the right to gain access to the Public Open Space over any roads and associated footways and footpaths on the Public Open Space even if such roads footways and footpaths are in (or remain in) the private ownership of the Owner after the Development has been completed PROVIDED THAT nothing in this paragraph 2.3 shall prevent the Public Open Space from being closed from time to time for emergencies, maintenance works or other similar issues.
- 3 The Owners undertake to procure that:
- 3.1 each buyer of each Dwelling (whether freehold or leasehold) will pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining, repairing and, as necessary, reviewing the Public Open Space in accordance with the Public Open Space Management Plan; and
- 3.2 upon the sale of each and every Dwelling for first Occupation each buyer shall be required to enter into a Deed of Covenant (ManCo) and a restriction will be placed upon the title of that Dwelling referring to the existence of that Deed of Covenant (ManCo) and restricting any onward sale of that Dwelling unless a further Deed of Covenant (ManCo) is entered into by the incoming purchaser.

Part 3 – Transfer of the Public Open Space

- 4 The Owners undertake to include in a transfer of the Public Open Space to the Management Company:
- 4.1 a covenant by the transferee only to permit the Public Open Space to be utilised by the public as open space and prohibits the use of the Public Open Space for any purpose other than for public recreation and amenity subject to the right of the Public Open Space Management Company to construct any buildings or other structures ancillary to such use;
- 4.2 a covenant by the transferee that it shall not be voluntarily wound up and it shall not alter its constitution without the prior written consent of the Council; and

- 4.3 a covenant by transferee to maintain the Public Open Space in perpetuity in accordance with the Public Open Space Management Plan.
- 5 The transfer of the Public Open Space to the Management Company shall:
- 5.1 be a transfer of the freehold interest of the Public Open Space;
- 5.2 be free from any pre-emption or option agreement;
- 5.3 be free from any mortgage, charge, lien or any other such incumbrance in favour of the Owners;
- 5.4 include all the usual and necessary rights of way with or without vehicles for the benefit of the Public Open Space and will reserve in favour of the Owners any usual and necessary rights and easements to enable the proper construction, maintenance, and use of the Development and to use existing services insofar as they are necessary based upon the final approval layout of the Development and location of the Public Open Space;
- 5.5 will reserve in favour of the Owners the rights to lay and use new services in the Public Open Space together with any rights of entry to inspect, repair, review, cleanse and maintain the same;
- 5.6 contain an obligation by the Management Company that should the Council so require for the Management Company to enter into a direct covenant with the Council to perform the obligations set out in this paragraph 4 of this Schedule.
- 6 The Owners undertake to furnish a copy of any completed transfer of the Public Open Space to the Management Company to the Council and to inform the Council in writing of the contact details of the Management Company.

SCHEDULE 4

Highways

Part 1 - A339 Access Link Contribution

- 1 The Owners undertake to the Council not to Commence the Development without first having paid the A339 Access Link Contribution to the Council.

Part 2 - On-Site PROW Improvements

- 2 The Owners undertake to the Council:
- 2.1 subject to the Council not unreasonably withholding or delaying its consent to the same, not to allow permit or suffer Occupation of any Dwellings until the On-Site PROW Improvements Plan has been approved by the Council;
- 2.2 not to use or Occupy or cause, suffer or permit to be used or Occupied more than one hundred (100) Dwellings within Development Parcel Central without first completing, to the reasonable satisfaction of the Council, the On-Site PROW Improvements from the western boundary of the Site to the A339 in accordance with the approved On-Site PROW Improvements Plan; and
- 2.3 to procure that the On-Site PROW Improvements are maintained to the reasonable satisfaction of the Council for the lifetime of the Development.

Part 3 – Off Site Highway Works "A", Off site Highway Works "B" and Off Site Highway Works "C" ("Off Site Highway Works")

- ~~3 The Owners undertake to the Council:~~
- ~~3.1 not to Commence the Development without first paying to the Council the sum of £[] ({}) towards the Off Site Highways Works "A" Contribution and the Off Site Highways Works "C" Contribution;~~
- ~~3.2 not to permit, allow or suffer the Occupation of more than [] Dwellings without first paying to the Council the sum of £[] ({}) towards the Off Site Highways Works "A" Contribution and the Off Site Highways Works "C" Contribution; and~~

~~3.3 not to permit, allow or suffer the Occupation of more than [] Dwellings without first paying to the Council the balance of the Off Site Highways Works "A" Contribution and the Off Site Highways Works "C" Contribution.~~

Part 4 – Off Site Highway Works "B"

43 The Owners undertake to the Council not to Commence the Development until they have served written notice on the Council confirming that they elect to either:

4.13.1 pay the Off Site Highway Works "B" Contribution to the Council in accordance with paragraph 5 of this Schedule ("Option 1"); or

3.2 (a) pay the Off Site Highway Works "A" and "C"; and

(b) carry out and complete the Off Site Highway Works "B" in accordance with paragraph 6 of this Schedule ("Option 2").

Option 1

54 In the event that the Owners elect to comply with Option 1, the Owners undertake to the Council:

5.14.1 not to Commence the Development without first paying to the Council the sum of £[~~£862,444~~ (Eight Hundred Sixty-Two Thousand Four Hundred and Forty-Four Pounds)] Index Linked towards the Off Site Highways Works "B" Contribution;

4.2 not to permit, allow or suffer the Occupation of more than 200[~~]~~ Dwellings without first paying to the Council the sum of £1,456,068 [~~]~~ (One Million Four Hundred Fifty-Six Thousand and Sixty-Eight Pounds) Index Linked towards the Off Site Highways Works "B" Contribution;

4.3 not to permit, allow or suffer the Occupation of more than 700 Dwellings without first paying to the Council the sum of £5,756,960 Five Million Seven Hundred Fifty-Six Thousand Nine Hundred and Sixty Pounds) Index Linked towards the Off Site Highways Works Contribution;

5.24.4 and

Commented [SA13]: It has been agreed between the parties that works A and C are required by 200 dwellings

5.34.5 not to permit, allow or suffer the Occupation of more than 850[~~]~~ Dwellings without first paying to the Council the balance of the Off Site Highways Works "B" Contribution being £3,739,410 (Three Million Seven Hundred and Thirty-Nine Thousand Four Hundred and Ten Pounds) Index Linked.

Option 2

65 In the event that the Owners elect to comply with Option 2, the Owners undertake to the Council:

5.1 [Not to Commence the Development without first paying to the Council the sum of £1,818,703 \(One Million Eight Hundred and Eighteen Thousand Seven Hundred and Three Pounds Index Linked towards the Off Site Highways Works A and C; and](#)

6.15.2 not to Occupy or allow or permit the Occupation of more than 850 Dwellings until the Off Site Highway Works "B" have been completed and are open to traffic.

Part 5 - Highway Works

76 The Owners undertake to the Council not to:

7.16.1 Commence Development without first entering into a Highways Agreement for works to Monks Lane Eastern Site Access as shown illustratively on drawing 172985_A_07.1 at Appendix 8;

7.26.2 Occupy more than 100 Dwellings without first entering into a Highways Agreement for works to Monks Lane Western Site Access as shown illustratively on drawing 172985_A_08 at Appendix 8;

7.36.3 Occupy more than 100 Dwellings without first entering into a Highways Agreement for works to the A339/B4640 Swan Roundabout improvements with VMS and A339 PROW Greenham 9 crossing as shown illustratively on drawing 81311-041-108 at Appendix 8; and

7.46.4 Occupy more than 50 Dwellings without first entering into a Highways Agreement for works to Rupert Road, Chandos Road and Wendan Road pedestrian improvements as shown illustratively on drawing 172985/A/21 Revision A at Appendix 8.

SCHEDULE 5

Triangle Land

- 1 The Owners undertake to the Council as follows:
- 1.1 With effect from the Occupation of any Dwelling within that part of the Site shown [] on [], to reserve and make available the Triangle Land for the playing of sports and not to use the Triangle Land for any other purpose; and
- 1.2 Not to Occupy any Dwelling within that part of the Site shown [] on [] until the Owner has made an irrevocable offer to transfer the freehold interest in the Triangle Land to Newbury Rugby Football Club Limited in accordance with the terms and conditions set out in paragraph 3 of this Schedule, such offer to remain open for acceptance for a period of ~~63~~ (six~~th~~ree) months.
- 2 The terms and conditions referred to at paragraph 1.2 of this Schedule are that:
- 2.1 The Triangle Land shall be transferred according to the Law Society's Standard Conditions of Sale (5th Edition) so far as they are applicable to a sale by private deed and each area shall be transferred subject to:
- (a) all matters registrable or capable of registration as local land charges (whether before or after the date hereof);
 - (b) all entries proposals or requirements affecting or relating to the land to be transferred given or made by a Government Department statutory undertaker or other public body or local authority (whether before or after the date hereof); and
 - (c) all rights easements created easements or privileges in the nature of light air drainage way passage and the light use enjoyed by or over the land to be transferred.
- 3 The transfer shall:
- 3.1 be for a consideration of £1 and be made with full title guarantee;

- 3.2 be a fee simple estate in the land thereby transferred with vacant possession unencumbered save as disclosed prior to the date of and in accordance with this Deed;
- 3.3 impose a restriction on the use of the land transferred so that the land may only be used for the purposes of sports playing fields;
- 3.4 reserve in favour of the Owners any usual and necessary rights and easements to enable the proper construction, maintenance, and use of the Development and to use existing Services insofar as they are necessary;
- 3.5 reserve in favour of the Owners the rights to lay and use new services in the Triangle Land together with any rights of entry to inspect, repair, review, cleanse and maintain the same;
- 3.6 include a requirement that the transferee shall promptly upon reasonable request enter into any necessary agreements, deeds and/or leases for the use, adoption or dedication of any Services in the Triangle Land (and to procure that any mortgagee or tenant does likewise);
- 3.7 subject to a restriction on title that if use of the land does not commence within 3 years of the date of the transfer then the land shall thereupon immediately revert and be transferred to the transferor for a consideration of £1.

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SCHEDULE 6

Further Contributions

Part 1 – Public Transport Contribution

Commented [SA14]: The position statement refers to 6 instalments rather than the 9 agreed

- 1 The Owners undertake to pay the Public Transport Contribution to the Council in the following instalments on the following dates:

Contribution	Trigger
£162,000 (One Hundred and Sixty-Two Thousand Pounds) Index Linked	Prior to the Occupation of the 50 th Dwelling
£162,000 (One Hundred and Sixty-Two Thousand Pounds) Index Linked	No later than the first anniversary of the Payment Date
£162,000 (One Hundred and Sixty-Two Thousand Pounds) Index Linked	No later than the second anniversary of the Payment Date
£162,000 (One Hundred and Sixty-Two Thousand Pounds) Index Linked	No later than the third anniversary of the Payment Date
£162,000 (One Hundred and Sixty-Two Thousand Pounds) Index Linked	No later than the fourth anniversary of the Payment Date
£162,000 (One Hundred and Sixty-Two Thousand Pounds) Index Linked less any Deduction set out in the Revenue Statement relating to this instalment of the Public Transport Contribution	On the later of: <ul style="list-style-type: none">• The fifth anniversary of the Payment Date; or• The expiry of the period of one month from receipt from the Council of the Revenue Statement relating to this instalment of the Public Transport Contribution

<p>£162,000 (One Hundred and Sixty-Two Thousand Pounds) Index Linked less any Deduction set out in the Revenue Statement relating to this instalment of the Public Transport Contribution</p>	<p>On the later of:</p> <ul style="list-style-type: none"> • The sixth anniversary of the Payment Date; or • The expiry of the period of one month from receipt from the Council of the Revenue Statement relating to this instalment of the Public Transport Contribution
<p>£162,000 (One Hundred and Sixty-Two Thousand Pounds) Index Linked less any Deduction set out in the Revenue Statement relating to this instalment of the Public Transport Contribution</p>	<p>On the later of:</p> <ul style="list-style-type: none"> • The seventh anniversary of the Payment Date; or • The expiry of the period of one month from receipt from the Council of the Revenue Statement relating to this instalment of the Public Transport Contribution
<p>£204,000 (Two Hundred and Four Thousand Pounds) Index Linked less any Deduction set out in the Revenue Statement relating to this instalment of the Public Transport Contribution</p>	<p>On the later of:</p> <ul style="list-style-type: none"> • The eighth anniversary of the Payment Date; or • The expiry of the period of one month from receipt from the Council of the Revenue Statement relating to this instalment of the Public Transport Contribution

Part 2 – Healthcare Contribution

- 2 The Owners undertake to the Council not to Commence the Development until the Healthcare Contribution has been paid to the Council.

Part 3 – Travel Plan Contribution

- 3 **[The Owners undertake to the Council:**
- 3.1 **not to Commence the Development until 25% of the Travel Plan Contribution has been paid to the Council;**

3.2 not to Occupy or allow or permit Occupation of the Development until a second instalment of 25% of the Travel Plan Contribution has been paid to the Council;

3.3 not to Occupy or allow or permit Occupation of more than 300 Dwellings until a third instalment of 25% of the Travel Plan Contribution has been paid to the Council; and

3.4 not to Occupy or allow or permit Occupation of more than 600 Dwellings until the fourth and final instalment of 25% of the Travel Plan Contribution has been paid to the Council.]

Commented [GWL15]: Note agreed save for repayment of £20k contingency

Part 4 – Newbury Rugby Football Club Contribution

4 The Owners undertake to the Council not to allow permit or suffer Occupation of any Dwellings until the Newbury Rugby Football Club Contribution has been paid to the Council.

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SCHEDULE 7

Housing

Part 1 - Interpretation

1 In this Schedule and throughout this Deed in addition to the definitions provided in clause 1 of this Deed the following words shall have the following meanings:

Affordable Housing means affordable housing for sale or rent for those whose needs are not met by the market, as defined in the National Planning Policy Framework or National Planning Policy Guidance or any reissue of the same and which shall include Affordable Rented Housing, Extra Care Housing, Intermediate Housing, Shared Ownership Housing and Social Rented Housing;

Affordable Housing Commuted Sum means a sum equal to 50% of the actual sale price achieved for any Affordable Housing Unit which is sold as an Open Market Unit pursuant to paragraph 4.3(b) of this Schedule;

Affordable Housing Land means land to be used for Affordable Housing Units in accordance with the details submitted pursuant to this Schedule;

Affordable Housing Scheme means a scheme for each Phase outlining:

- (a) the residential mix within that Phase;
- (a) the location of the Affordable Housing Units within that Phase which shall ~~not~~ be in groups of 5 to a maximum of more than 12 Affordable Housing Units (depending on size, mix and tenure) (unless otherwise approved in writing by the Council); PROVIDED THAT this restriction on groups of Affordable Housing Units shall not apply to the Extra Care Housing Units

;

- (b) the tenure mix within that Phase with the Affordable Housing Units comprising not less than

70% Social Rented Housing and 30% Intermediate Housing (of which not less than 25% shall be for home ownership) unless otherwise agreed by the Council;

(c) the triggers for the delivery of the Affordable Housing Units or General Affordable Housing Units (as the case may be) within that Phase based on the delivery of Open Market Units;

(d) the Intermediate Housing Scheme; and

(e) the Intermediate Rent Scheme and/or Shared Equity Scheme (if applicable);

Affordable Housing Unit

means each and every unit of Affordable Housing to be constructed pursuant to the Development and "Affordable Housing Units" shall be construed accordingly;

Affordable Rented Housing

means rented housing subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable);

Allocation Policy

means the Housing Allocation Policy adopted by the Council on 17.12.20 or any scheme/policy that replaces it or any other scheme or policy that the Council and the Registered Provider shall agree in writing;

Base Rent

means the annual rent of each individual Affordable Housing Unit divided by the number of weeks over which such rent is collected in each year excluding the Service Charge;

Building Standard

means the Building Regulations 2010;

Choice Based Lettings Schemes

means a scheme between the Council and Registered Providers who provide Social Rented Housing within the Council's area comprising arrangements for the priority allocation of such housing;

Extra Care Housing

means housing which provides care and/or support for people aged 55 years and over (or by exception for people below the age of 55 years who are not able to live independently without assistance) in need of

	Affordable Housing comprising individual residential units and additional facilities for the provision of care services providing independent living for people with care needs;
Extra Care Housing Provider	means a provider of Extra Care Housing;
Extra Care Housing Scheme	means a scheme outlining the residential mix and tenure mix of the Extra Care Housing Units;
Extra Care Housing Unit	means (unless otherwise agreed by the Council in writing) not more than 80 (eighty) units of Extra Care Housing which are to be constructed on the Development including any associated parking spaces(s) and residential curtilage and "Extra Care Housing Unit" shall mean any one of such units;
Extra Care Land	means the land upon which the Extra Care Housing is to be constructed;
Extra Care Land Services	means the following rights and the following services: <ul style="list-style-type: none"> (a) rights that enable access to and from the public highway by vehicles pedestrians and cyclists; (b) metalled access road to and from the public highway suitable for use by vehicles pedestrians and cyclists; (c) electricity and gas supply (if gas is available); (d) foul and surface water drainage; (e) telecommunications service; and (f) water services;
First Time Buyer	means a prospective purchaser who has not been the freehold or long leasehold owner of any other housing (whether as the outright owner or with mortgages or other loan finance) either in whole or part at any previous time within the United Kingdom and who cannot otherwise afford to rent or buy housing generally available on the open market within West Berkshire;
General Affordable Housing	means Affordable Housing which is not Extra Care Housing;
General Affordable Housing Unit	means each and every unit of General Affordable Housing to be constructed pursuant to the Development and "General Affordable Housing Units" shall be construed accordingly;
Homes England	means Homes England as established under the Housing and Regeneration Act 2008;

Initial Let	means the first tenancy of each newly constructed and previously unoccupied Affordable Housing Unit to be offered for rent within the Development;
Independent Valuer	means a member of the Royal Institution of Chartered Surveyors appointed by the Owners at their own cost, the Owners having first given the Council an opportunity to comment on the proposed choice of valuer and had regard to the Council's comments, and the phrase "Independent Valuers" shall be construed accordingly;
Intermediate Housing	means housing for sale or rent provided at a cost above Social Rented Housing but below Market Value or Market Rent meeting the criteria of Affordable Housing. Such housing may include Shared Equity products, Shared Ownership, Intermediate Rent or other approved affordable home ownership products (where a discount or subsidy from Market Value applies to provide for affordability) as may be agreed between the Owners, the Registered Provider and the Council and "Intermediate Housing Unit" shall be construed accordingly;
Intermediate Housing Scheme	means a scheme outlining the: <ul style="list-style-type: none"> (a)(g) the tenure of the Intermediate Housing on each Phase; and (b)(h) marketing strategy that will be applied to the disposal of Shared Equity units and Intermediate Rent units;
Intermediate Rent	means Affordable Housing available for private letting through a Registered Provider at a Base Rent above that for Social Rented Housing but below Market Rent subject to the Base Rent for an Affordable Housing Unit comprising Intermediate Rent not exceeding 80% of Market Rent and "Intermediate Rent Units" shall be construed accordingly;
Intermediate Rent Scheme	means a scheme submitted pursuant to paragraph 5.3 of this present schedule detailing the marketing arrangements for Intermediate Rent Units;
Local Help to Buy Agent	means the organisation approved by Homes England from time to time to administer its affordable home ownership programme;
Local People	means people who meet the eligibility criteria set out in Part Two of the Allocation Policy or such other people

Commented [SA16]: At least 10% of total housing i.e. 5/6 of the 30% to be affordable home ownership

	or classes of people as may be approved from time to time by the Council in writing;
Market Rent	means the market rent of a Unit at the point of letting on the assumption that the Unit is a Market Housing Unit and not an Affordable Housing Unit;
Market Value	means the market value of the relevant Affordable Housing Unit at the point of sale as validated by an Independent Valuer on the assumption that the Unit was otherwise a Market Housing Unit and not an Affordable Housing Unit;
Open Market Unit	means each and every Residential Unit (other than an Affordable Housing Unit) to be constructed pursuant to the Development;
Practical Completion	means completion of the construction of any Unit together with all associated infrastructure works and service connections to such a standard that any such Unit is fit for human habitation, free of patent defects and complies with the Planning Permission to enable beneficial Occupation;
Registered Provider	means a provider of Social Housing who is registered with Homes England under Part 2 of the Housing and Regeneration Act 2008;
Residential Units	means any units constructed on the Site pursuant to the Planning Permission to be used for Class C3 residential purposes;
Service Charge	means the amount chargeable by the Owners or Registered Provider as the case may be to the tenant of each Affordable Housing Unit to cover services to be provided by the Owners or Registered Provider having regard to the Landlord and Tenant Acts 1985 and 1987 as amended;
Shared Equity	means Intermediate Housing where the purchaser (which may include a First Time Buyer) acquires an Affordable Housing Unit in part with a conventional mortgage (usually up to 75% of the Unit's Market Value including deposit) from a lender offering mortgages for residential property purchase together with an equity loan provided by the Registered Provider, Council or Owners as applicable for the balance of the Market Value in accordance with a detailed scheme to be agreed with the Council;

Shared Equity Scheme

means the scheme to be submitted pursuant to paragraph 5.2 of this Schedule which shall include:

- (a) confirmation that the First Time Buyer (and any subsequent purchaser unless or until the charge is redeemed) will pay 75% of the Market Value for the Shared Equity Unit and a charge over 25% of the equity of the Shared Equity Unit in favour of the Council or a Registered Provider or the Council's nominee as agreed with the Council will be entered into;
- (b) details of the charge in favour of the Council, the terms of which are to be agreed but which will rank behind any primary charge in relation to a mortgage obtained by the purchaser in respect of the 75% of the equity which is not going to be subject to the charge in favour of the Council;
- (c) details of the re-sale provisions by first and subsequent purchasers, including the status of the charge and a cascade mechanism in the event that it is not possible to sell the Shared Equity Units to a Qualifying Person; and
- (d) confirmation that no rent or interest is payable on the 25% of the equity in the Shared Equity Unit that is to be charged to the Council;

Shared Ownership

means housing provided by a Register Provider as applicable which is made available on the basis of part rent and part sale in proportions agreed between the relevant seller and the buyer/tenant in accordance with a Shared Ownership Lease

Shared Ownership Lease

means a lease in the form or substantially in the form of the Homes England model form from time to time or in such other form as shall be approved by Council;

Social Housing

means housing for either low cost rental or low cost home Ownership as defined in Part 2 of the Housing and Regeneration Act 2008 and which meets the criteria of Affordable Housing set out in the Deed;

Social Rented Housing

means housing owned by local authorities and private Registered Providers which is subject to Homes England guidance target rents regime and which is made available to people who are registered under the Choice Based Lettings Scheme to be agreed with the Council; and

Target Housing Mix means the mix as set out in the tables at paragraph 7 of this Schedule, unless otherwise agreed with the Council.

Part 2 – Affordable Housing

2 Quantum

2.1 Subject to paragraph 4.3 of this Schedule and unless otherwise agreed by the Council in writing, the Owners covenant to:

- (a) provide at least 40% of the Residential Units within the Development as Affordable Housing Units and in accordance with the Affordable Housing Scheme;
- (b) provide 70% of the Extra Care Housing Units as Social Rented Housing and 30% of the Extra Care Housing Units as Intermediate Housing (or such alternative tenure mix as may be agreed [in writing](#) between the Council and the Extra Care Provider);
- (c) provide 70% of the General Affordable Housing Units as Social Rented Housing and 30% of the General Affordable Housing Units as Intermediate Housing; and
- (d) provide the General Affordable Housing Units in accordance with the Target Housing Mix

PROVIDED THAT any fraction of a General Affordable Housing Unit (as the case may be) produced by calculating the percentage shall be rounded up if 0.5 General Affordable Housing Units or over and shall be rounded down if under 0.5 General Affordable Housing Units.

2.2 In respect of the Affordable Housing Units to be provided as Extra Care Housing the Owners shall use reasonable endeavours to conclude an agreement relating to the transfer of Extra Care Land to an Extra Care Housing Provider for a period of 24 months from the date of Commencement of Development.

2.3 In the event that the Owners conclude an agreement with an Extra Care Housing Provider by the expiry of the period referred to in paragraph 2.2 above:

- (a) the Owners shall provide the Extra Care Land Services to the Extra Care Land and transfer the Extra Care Land to the Extra Care Housing Provider as required in

accordance with the contract entered into between the Owners and the Extra Care Housing Provider;

- (b) the Extra Care Housing Provider shall submit the Extra Care Housing Scheme to the Council as part of any application for Reserved Matters Approval for the Extra Care Housing; and
- (c) the Extra Care Housing Provider shall provide the Extra Care Housing in accordance with the Extra Care Housing Scheme.

2.4 In the event that the Owners have not been able to conclude an agreement with an Extra Care Housing Provider by the expiry of the period referred to in paragraph 2.2 despite using reasonable endeavours to do so then the Owners may submit to the Council for its approval reasonable evidence of efforts made to conclude an agreement with a Registered Provider during that period and thereafter subject to the Council's approval:

- (a) the provisions of paragraphs 2.2 and 2.3 of this Schedule will cease to apply; and
- (b) the Owners shall provide all of the Affordable Housing as General Affordable Housing Units in accordance with the Affordable Housing Scheme and paragraphs 2.1(b) and 2.1(c) of this Schedule.

2.5 The Owners shall provide to the Council within 10 Working Days of receipt of written request such evidence as the Council may reasonably require to demonstrate the endeavours taken to try and conclude an agreement with an Extra Care Housing Provider pursuant to paragraph 2.2 of this Schedule.

2.6 The Owners shall not:

- (a) erect or cause suffer or permit to be erected the Affordable Housing Units or any of them otherwise than on the Affordable Housing Land; and
- (b) use or cause suffer or permit to be used the Affordable Housing Land or any part or parts thereof for any purpose other than the provision of the Affordable Housing Units in accordance with the terms of this Schedule.

2.7 The Owners shall not cause suffer or permit Occupation of any of the Open Market Units in a Phase until the freehold interest in the Affordable Housing Land in that Phase has been transferred to a Registered Provider with the benefit of the following:

- (a) full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land; and
- (b) full and free rights to the passage of water soil electricity gas and other services through the pipes drains channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Land all such services to be connected to the mains; and
- (c) reserving such rights as the transferors may reasonably require in order to service and deliver the Development.

2.72.8 The Owners shall:

- (a) ensure that all Affordable Housing shall be advertised in accordance with the Council's Allocation Policy;
- (b) procure that all Affordable Housing Units shall be constructed to the Building Standard;
- (c) subject to paragraph 6 of this Schedule, ensure that all Affordable Housing Units shall not be used other than for Affordable Housing.

3 Phased Housing Provision

3.1 The Owners undertake:

- (a) to submit an Affordable Housing Scheme for each Phase to the Council as part of any application for Reserved Matters Approval for that Phase; and
- (b) not to Commence Development of any Phase until the Affordable Housing Scheme for that Phase has been approved by the Council.

3.2 In the event that paragraph 2.3 of this Schedule applies and the Extra Care Housing is provided within the Development then the Owners undertake to provide between 30% and 40% of the

Residential Units in each Phase as General Affordable Housing Units and in accordance with the Affordable Housing Scheme. For the avoidance of doubt the percentage of Affordable Housing Units provided across the Development shall be kept under review and the Council shall not be obliged to approve the Affordable Housing Scheme for a particular Phase if the proposal put forward in that Affordable Housing Scheme is less than 40% and the average provision across the previously approved Phases is less than 40%.

3.3 In the event that paragraph 2.4 of this Schedule applies and the Extra Care Housing is not provided within the Development then the Owners covenant to provide between 35% and 45% of the Residential Units to be provided in each Phase as General Affordable Housing Units and in accordance with the Affordable Housing Scheme. For the avoidance of doubt the percentage of General Affordable Housing Units provided across the Development shall be kept under review and the Council shall not be obliged to approve the Affordable Housing Scheme for a particular Phase if the proposal put forward in that Affordable Housing Scheme is less than 40% and the average provision across the previously approved Phases is less than 40%.

3.4 The Owners may at any time submit to the Council for approval an amendment to the approved Affordable Housing Scheme for a Phase on the grounds that the Affordable Housing Scheme for that Phase is undeliverable or does not reflect local needs, such application to be supported by [a viability assessment reasonable evidence](#) demonstrating the need for the amendment and, subject to receiving the Council's written approval, the amended Affordable Housing Scheme as approved shall thereafter apply to that Phase.

4 **Restriction on Occupation**

4.1 The Owners shall not Occupy or cause or permit the Occupation of more than 80% of the Open Market Units in a Phase until all of the Affordable Housing Units or General Affordable Housing Units (as the case may be) in that Phase have been completed and are available for occupation.

4.2 In respect of any Affordable Housing Units to be provided as Shared Ownership Housing, Social Rented Housing or Affordable Rented Housing, the Owners undertake:

- (a) to use reasonable endeavours to conclude an agreement with a Registered Provider selected by the Owners for the transfer of the Shared Ownership Housing, Social Rented Housing or Affordable Rented Housing in a Phase within 12 months from Commencement of Development of the relevant Phase; and

- (b) in the event that the Owners have not concluded an agreement with a Registered Provider for the transfer of either Social Rented Housing or Affordable Rented Housing or Shared Ownership Housing within such 12 month period the Owners may submit to the Council for its approval reasonable evidence of efforts made to conclude an agreement with a Registered Provider during that period together a full open book viability assessment using an agreed toolkit demonstrating that such units are unviable and setting out a proposal as to what tenure or combination of tenure would be viable. Subject to receiving the Council's written approval, the Owners may thereafter dispose of such Shared Ownership Housing, Social Rented Housing or Affordable Rented Housing in accordance with the agreed tenure combination which may include any type of Intermediate Housing subject to the provisions of this Schedule.

4.3 In respect of the Affordable Housing Units comprising Intermediate Housing (excluding Shared Ownership Housing other than those units which may be disposed of as Intermediate Housing pursuant to paragraph 4.2(a) of this Schedule) the Owners shall:

- (a) use reasonable endeavours to conclude an agreement relating to the transfer of Intermediate Housing Units to a Registered Provider or an occupier (as the case may be) for a period of 12 months following the approval of the Intermediate Housing Scheme; and

(b) in the event that the Owners have not concluded an agreement with a Registered Provider or an occupier for the transfer of the Intermediate Housing by the expiry of the period referred to in paragraph 4.3(a) the Owners may submit to the Council for its approval reasonable evidence of efforts made to dispose of the units during that period, together with a full open book viability assessment using an agreed toolkit demonstrating that such units are unviable then subject to receiving the Council's written approval the Owners shall be free to dispose of the Intermediate Housing as Market Housing Units and this Schedule shall no longer apply or be binding or enforceable on or against the Owners of those units or their mortgagee or any successors or other persons deriving title from them PROVIDED THAT the Owners shall pay to the Council within one month of the date of disposal of each unit to which this paragraph applies the Affordable Housing Commuted Sum in respect of that unit.

(b) 4.4 For the avoidance of doubt, any viability considerations relating to the Affordable Housing Units shall be considered over the entire Development and not just a particular Phase unless otherwise agreed with the Council.

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Commented [SA17]: This should apply to 4.2 and 4.3

- 4.4 Subject to the provisos hereinafter set out not to sell lease licence let or otherwise dispose of the Affordable Housing Land or any part thereof in any manner whatsoever (except by way of legal charge or mortgage) or dispose of the Social Rented Housing on assured tenancies above social target rents without first obtaining the written consent of the Council given under the hand of its Head of Development and Planning (such consent not to be unreasonably withheld or delayed) PROVIDED THAT:
- (a) subject to the Council having approved the choice of Registered Provider (and such approval not being unreasonably withheld or delayed), no consent is required for the first disposal of the Affordable Housing Land to a Registered Provider;
 - (b) no consent will be required for the disposal of the Social Rented Housing or any of them on assured tenancies at or below social target rents to be assessed by a Registered Provider in accordance with the performance standards set out in "The Regulatory Framework for Social Housing in England" dated April 2012 by Homes England or such other Homes England guidance as shall be available from time to time to a Registered Provider; and
 - (c) no consent will be required for the disposal of the Shared Ownership Housing or any of them if such disposal is by way of lease by shared equity in a form which is based on forms published from time to time by Homes England and has first been approved in writing by the Council (such approval not to be unreasonably withheld or delayed) or with such minor variations as the parties shall agree ("Approved Lease") PROVIDED THAT for the avoidance of doubt assignment surrender or other disposal of the Approved Lease shall not constitute a disposal for the purposes of this paragraph.
- 4.5 On the first disposal of each of the Shared Ownership Housing (for the avoidance of doubt this does not include the first disposal of the Affordable Housing Land to a Registered Provider) not to sell lease or otherwise dispose of a share of the same for a consideration in excess of seventy five per cent (75%) of the Market Value at the date of such first sale, lease or other disposal.
- 4.6 The Owners undertake not to appoint a Registered Provider to deliver the Affordable Housing or transfer the Affordable Housing Land to a Registered Provider without first obtaining the Council's written approval to the identity of the Registered Provider.

4.7 The Owners covenant not to allow permit or suffer any Affordable Housing Units in a Phase to be Occupied without a nomination agreement for that Phase first being entered into with the Council.

5 Intermediate Housing

5.1 In respect of the Affordable Housing Units comprising Intermediate Housing, the Owners may either:

- (a) transfer the Intermediate Housing to a Registered Provider for letting or disposal as appropriate to Local People as Shared Ownership Housing; or
- (b) directly dispose of the Intermediate Housing Units to eligible Local People on a Shared Equity basis; or
- (c) let those Intermediate Housing Units to eligible Local People on an Intermediate Rent basis.

5.2 In the event that the Owners elect to provide Intermediate Housing to eligible Local People on a Shared Equity basis pursuant to 5.1(b) of this Schedule, a Shared Equity Scheme will be submitted to the Council for approval as part of the Affordable Housing Scheme.

5.3 In the event that the Owners elect to provide Intermediate Housing Units to eligible people on an Intermediate Rent basis pursuant to paragraph 5.1(c) of this Schedule, an Intermediate Rent Scheme shall be submitted to the Council for approval as part of the Affordable Housing Scheme.

6 Exclusion of Liability

6.1 In the event that a mortgagee or chargee (or any receiver including and administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver") of a Registered Provider or of a shared ownership lessee of the Affordable Housing Units is bound by the terms of this Deed as mortgagee or chargee or Receiver in exercise of its power of sale of the Affordable Housing Units or any of them none of the Affordable Housing Units shall be sold or otherwise disposed of by the mortgagee or chargee or Receiver unless the following procedure has been followed in respect of each of the Affordable Housing Units:

- (a) the mortgagee, chargee or Receiver shall on each sale have first offered in writing to transfer each of the Affordable Housing Units at the price hereinafter defined for the purposes of social housing to the Council or to a Registered Provider nominated by the Council whose objects or functions include the provision of low cost rented housing (the deed of transfer relating to such transfer to be in such form as the Council shall reasonably require) or in the case of Shared Ownership Housing or any of them to a person nominated by the Council;
- (b) the Council has refused the offer or has failed to accept such offer or is unable to nominate a Registered Provider or in the case of the Shared Ownership Housing is unable to nominate a person for such unit(s) within a period of six (6) weeks from the date of receipt by the Council of the offer in writing by the mortgagee chargee or Receiver OR has accepted such offer or made such nomination and has failed to complete the disposal arising from such offer or nomination within a period of six (6) weeks from the date of such offer or nomination (whichever is the later) AND the mortgagee chargee or Receiver shall then be at liberty to dispose of the Affordable Housing Units or any of them free from the restrictions contained in this Schedule;
- (c) the price referred to in paragraph 6.1(a) above shall be a sum equal to the Market Value PROVIDED THAT notwithstanding the terms of this paragraph the said mortgagee or chargee or Receiver shall be permitted to recover all interest on the outstanding mortgage or charge together with the mortgagee's chargee's or Receiver's costs and expenses relating thereto subject to having complied with the provisions in this paragraph of this Schedule.

6.2 In the event that any of the Affordable Housing Units is sold pursuant to the right to buy or the right to acquire provisions of the Housing Act 1985 or the Housing Act 1996 or any amendment or re-enactment thereof such sale and all subsequent dealings shall be free from the restrictions relating to the Affordable Housing Units contained in this Schedule subject to paragraph 6.3 below.

6.3 Subject to paragraph 6.3, if:

- (a) a leaseholder of a lease of one of the Shared Ownership Housing has completed the purchase of the freehold reversion pursuant to its right to staircase under the said lease the restrictions relating to the Affordable Housing Units contained in this Schedule shall with effect from the date of completion of such purchase cease to apply to that Shared Ownership Housing; or

- (b) a leaseholder of a flat provided by way of Shared Ownership Housing has completed the purchase of the full leasehold interest pursuant to its right to staircase under the said lease the restrictions relating to the Affordable Housing Units contained in this Schedule shall with effect from the date of completion of such purchase cease to apply to that flat; or
- (c) a person acquiring one of the Affordable Housing Units pursuant to any form of statutory right to acquire binding upon the then owner of the relevant Affordable Housing Unit or the mortgagee chargee or receiver of the relevant Affordable Housing Unit shall be released from the restrictions relating to the Affordable Housing Units contained in this Schedule with effect from the date of such acquisition; and
- (d) the successors in title to the parties listed in this paragraph shall not be bound by the restrictions relating to the Affordable Housing Units contained in this Schedule.

7 On the first disposal of the General Affordable Housing Units to a Registered Provider the consideration for the General Affordable Housing Units (for the avoidance of doubt all of the General Affordable Housing Units are to be transferred at nil grant) are to be constructed pursuant to this paragraph of this Schedule shall be a sum calculated per dwelling plot (which for the avoidance of doubt shall include the consideration for the plot of land and the infrastructure and utilities to the boundary of the plot) PROVIDED THAT and for the avoidance of doubt nothing in this Schedule shall restrict or prevent granting funding being sought or secured in respect of the provision of the Extra Care Units.

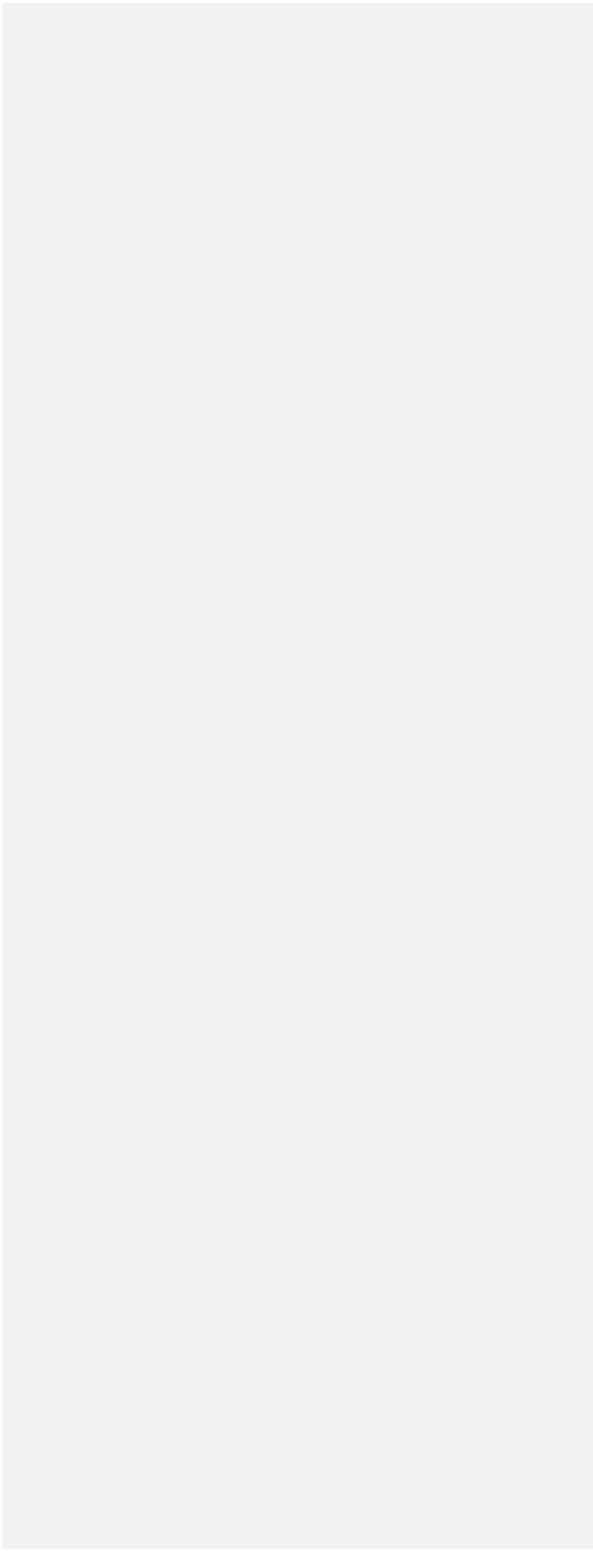
8 Target Housing Mix

The Target Housing Mix is as set out below:

	General Affordable Housing
1 bed flat	35%
2 bed flat/maisonette	8%
2 bed house	27%

3 bed house	25%
4 bed house	5%

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SCHEDULE 8

Connection to Sandlesford Park West

Commented [SA18]: The addition of this security strip/ransom strip is a concern to the Council as it may prevent the comprehensive development of the site

1 Subject to satisfaction of the pre-condition set out in paragraph 2 of this Schedule the Owners covenant to grant the Rights and to enter into any Highways Agreement provided that it is at no cost to the Owners for the benefit of the Sandlesford Park West Land within 20 Working Days of the pre-condition being satisfied.

1 The pre-condition is that all of the following are satisfied:

1.1 the Owners have received written notice from the Council that the whole of the Sandlesford Park West Contribution have been received by the Council and confirming that the Owners shall have no further liability to pay the sums set out in paragraph 3.4 of Schedule 4; and

1.2 the Council has reimbursed to the Owners any part of the sum previously paid by the Owners pursuant to paragraph 3.4 of Schedule 4 such sum to be increased by multiplying such sum by the percentage by which the Index has increased from the date of payment by the Owners to the date of reimbursement of such sums by the Council to the Owners.

Commented [SA19]: There was no 3.4

2 The Rights referred to in paragraph 1 above are the right for the Council (or at the Council's election the owners of the Sandlesford Park West Land) to enter onto the Security Strip with or without workmen for the purpose of constructing a road (which is intended to become a highway maintainable at public expense) to create a connection between Sandlesford Park West and the Site and to lay and connect into Services.

IN WITNESS WHEREOF the Parties have executed this Deed as a deed the day and year before written

EXECUTED AS A DEED by

██████████

Signature:

Witness:

Address:

.....

.....

EXECUTED AS A DEED by

██████████

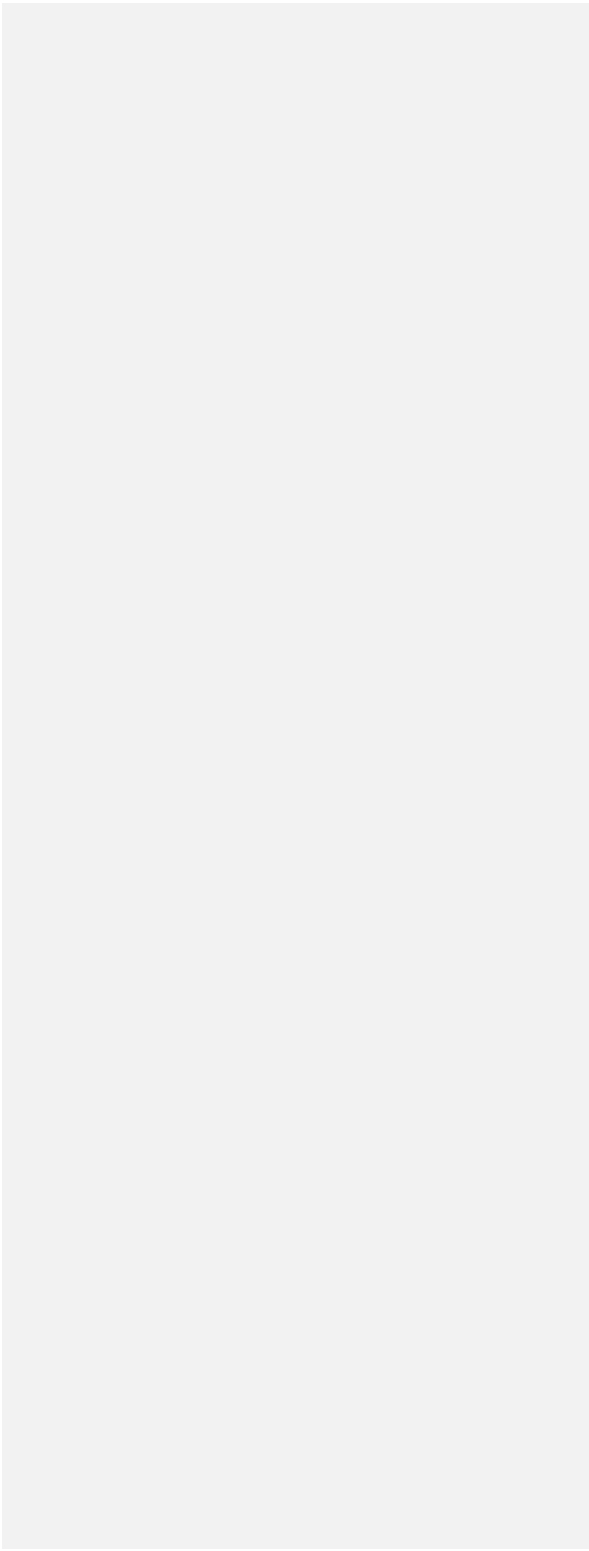
Signature:

Witness:

Address:

.....

DRAFT



EXECUTED AS A DEED by

[Redacted]

Signature:

Witness:

Address:

.....

.....

EXECUTED AS A DEED by

[Redacted]

Signature:

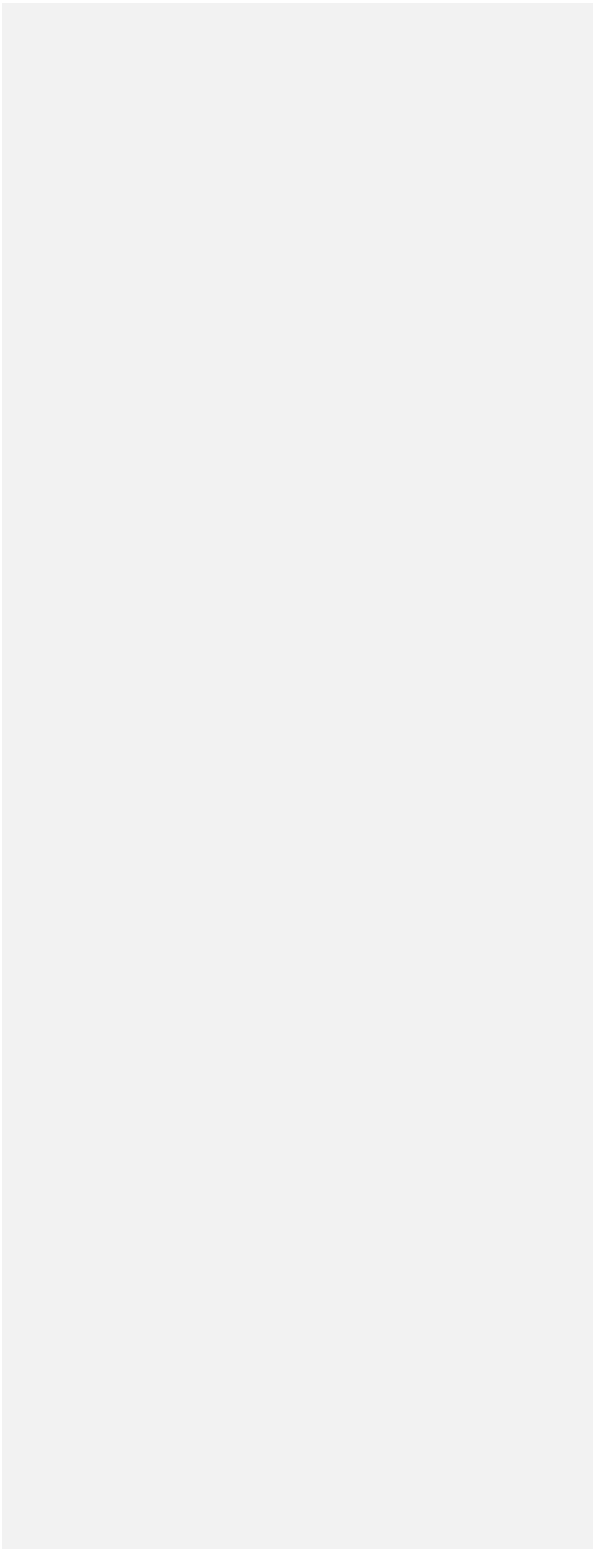
Witness:

Address:

.....

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DRAFT



EXECUTED as a DEED by

SKILLDRAW LTD

acting by one Director in the presence of a witness:

Witness Signature:

Witness Name:

Address:

DRAFT

EXECUTED as a DEED by

BLOOR HOMES LIMITED

acting by its first attorney

.....

acting by its second attorney

.....

witnessed by:

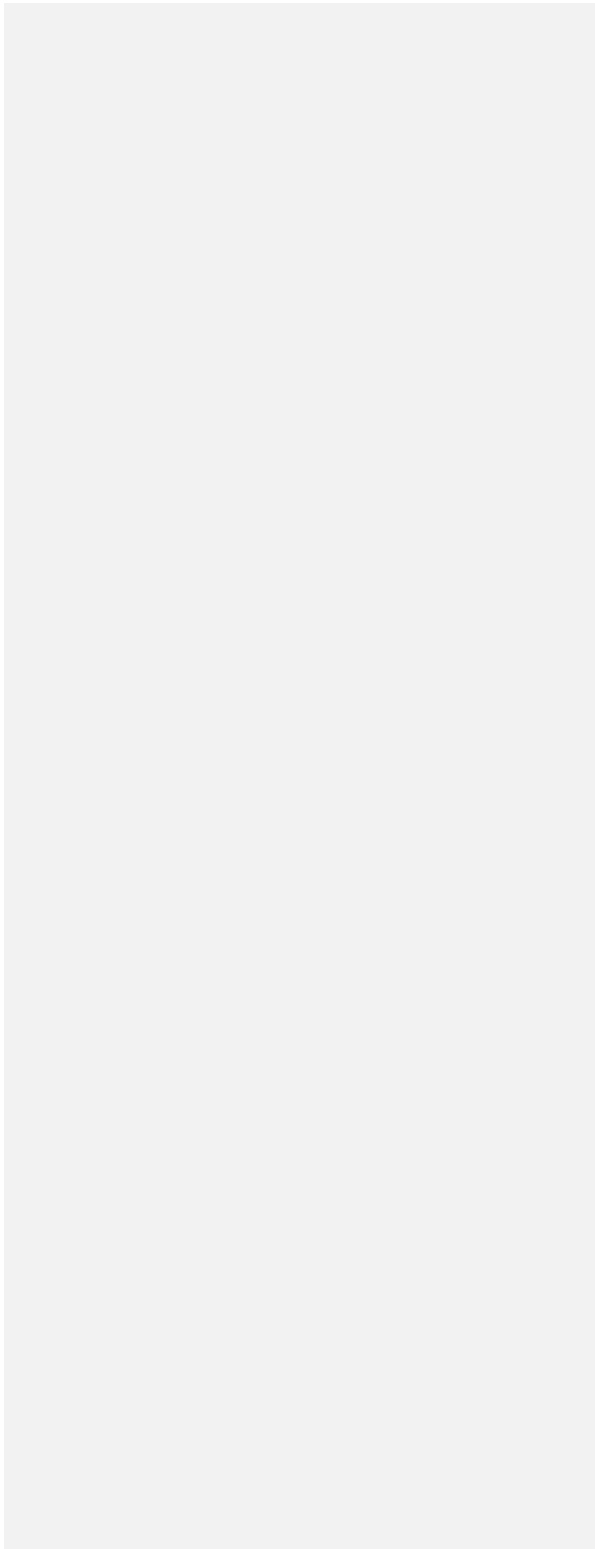
Name (in BLOCK CAPITALS)

Signature:

Address:

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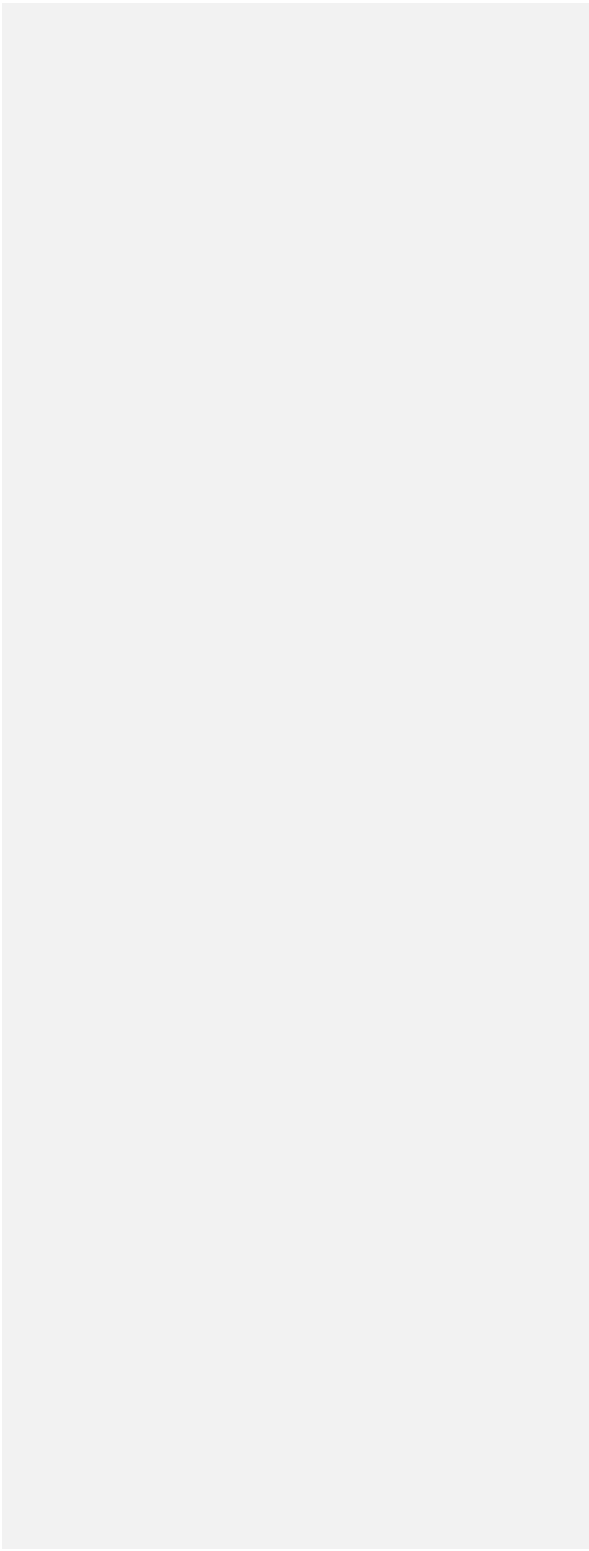


APPENDIX 1

Plan

Drawing number 14.273/PP01 Rev B

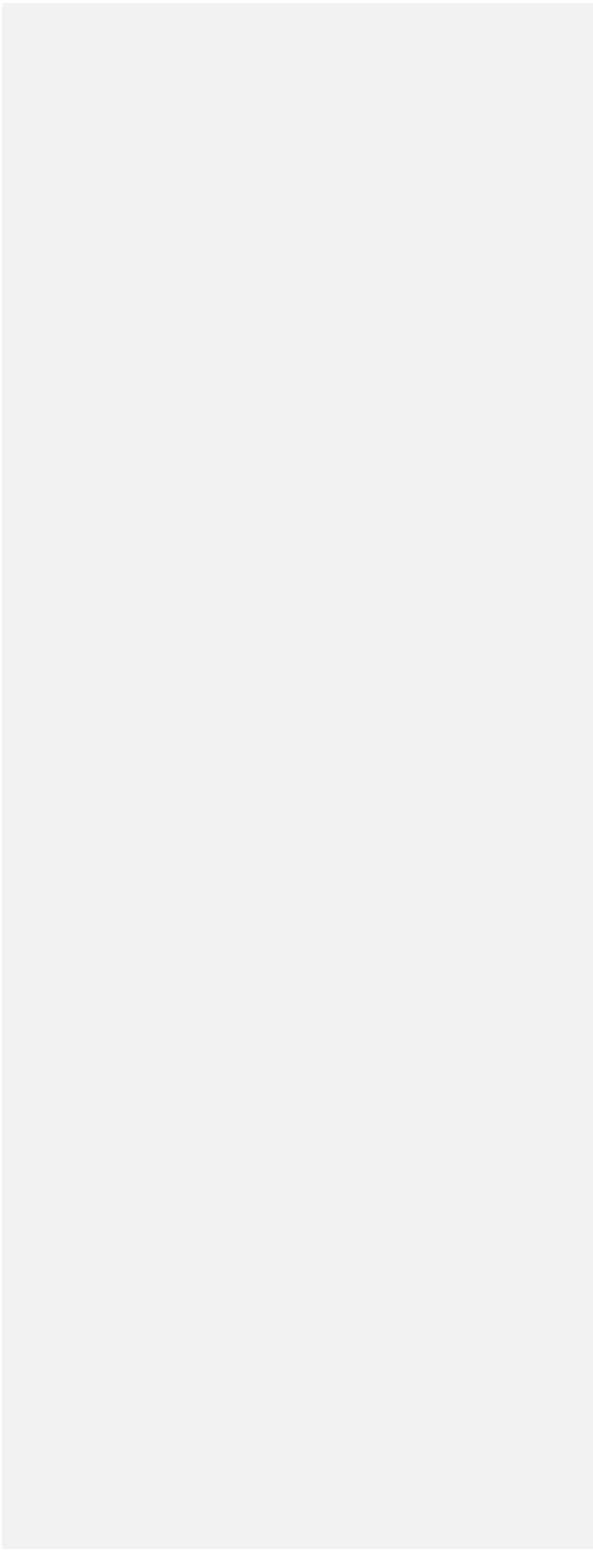
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APPENDIX 2

Primary School Transfer

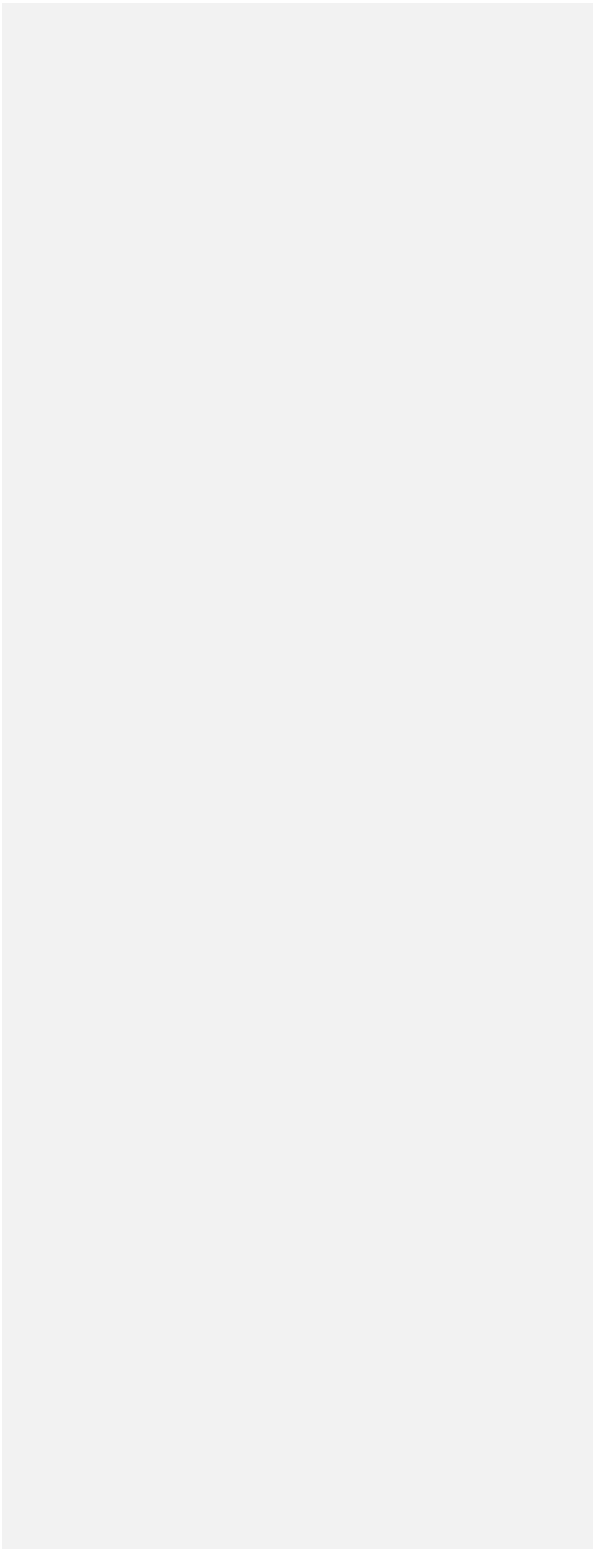
DRAFT



APPENDIX 3

Secondary School Transfer

DRAFT

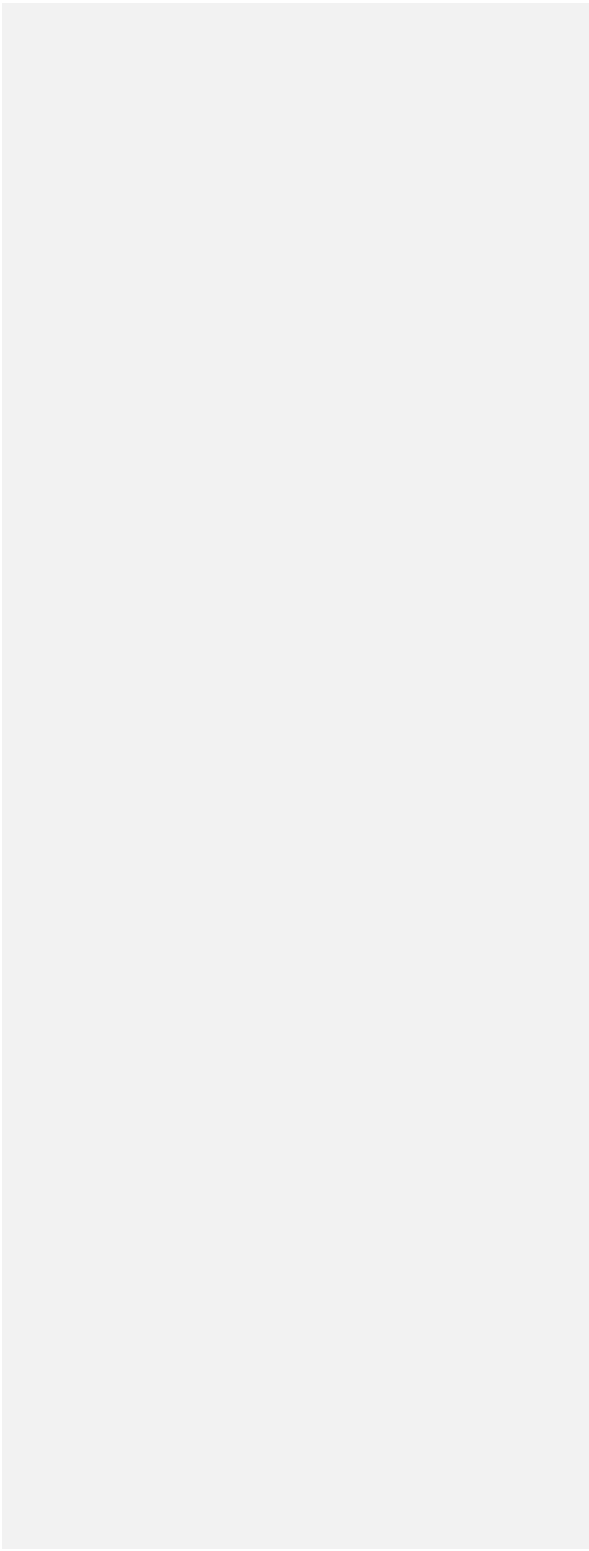


APPENDIX 4

Development Parcel Plan

Plan 14.273/PP05 Rev B

DRAFT

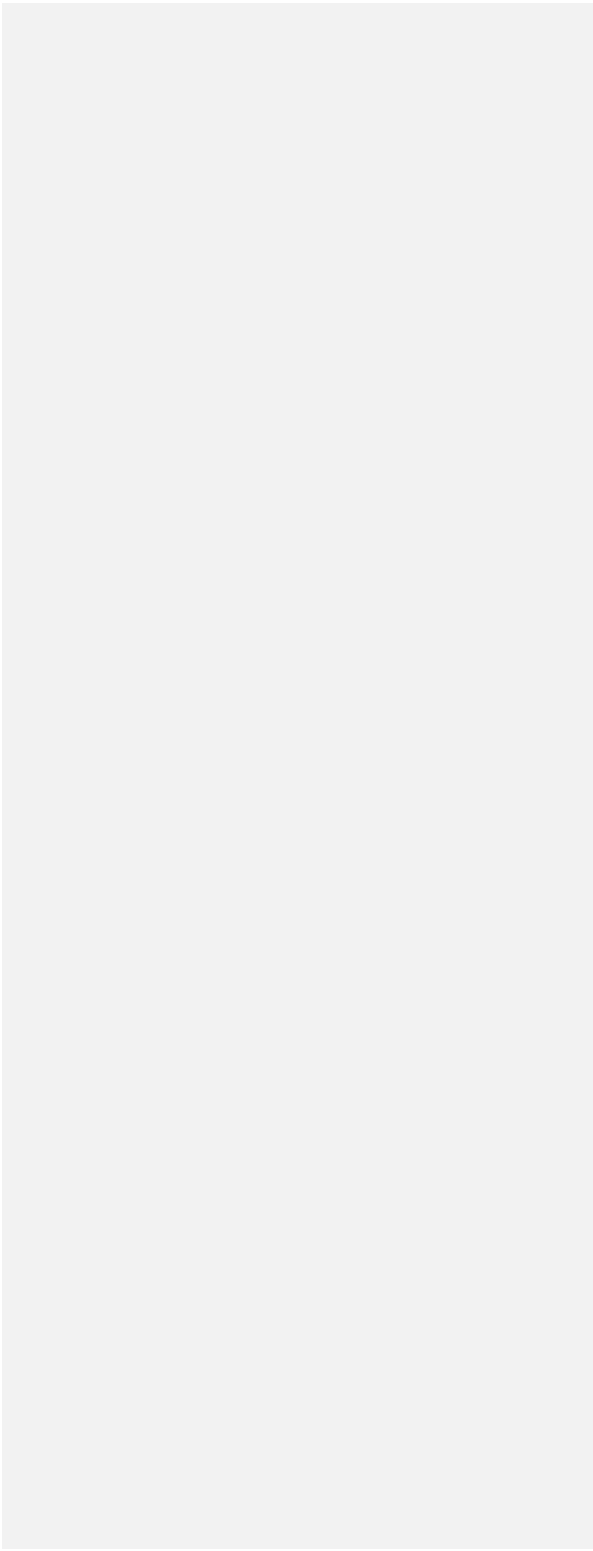


APPENDIX 5

Land Use Parameters Plan

Drawing number 14.273/PP02 Rev H1

DRAFT

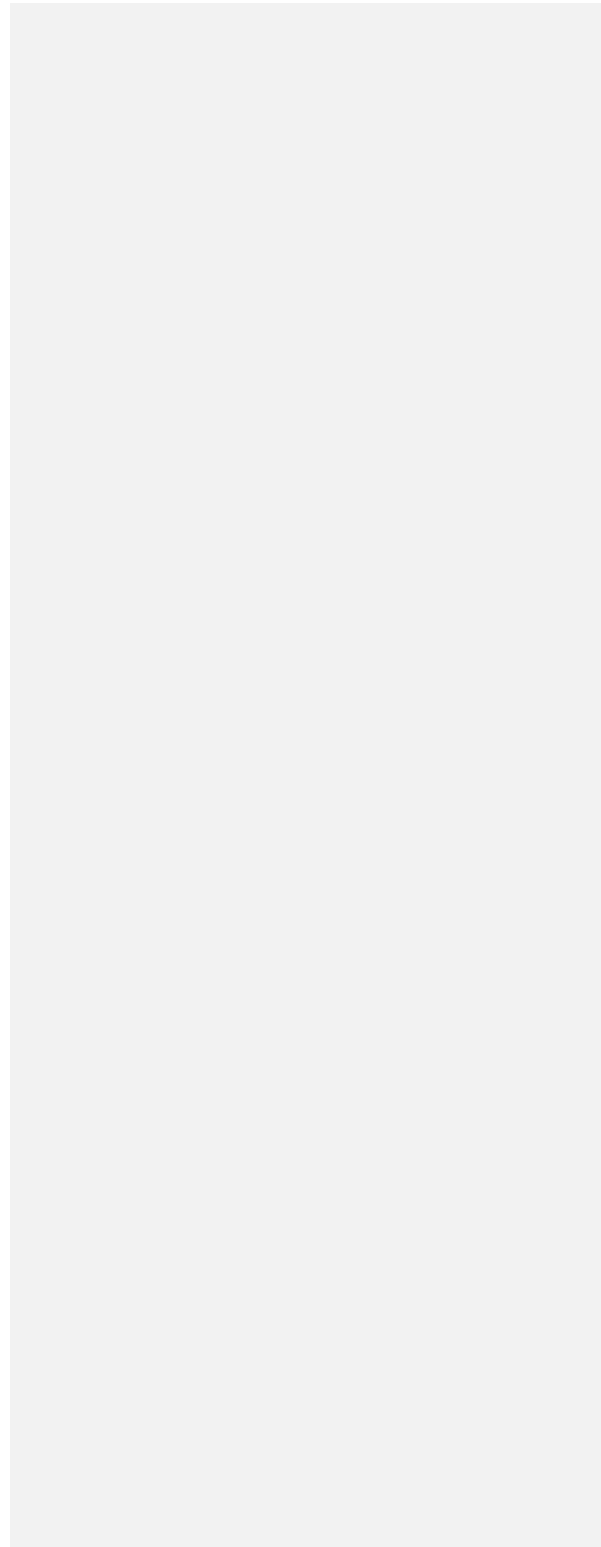


APPENDIX 6

Strategic Landscape and Green Infrastructure Plan

Drawing number 04627.00005.16.632.13

DRAFT

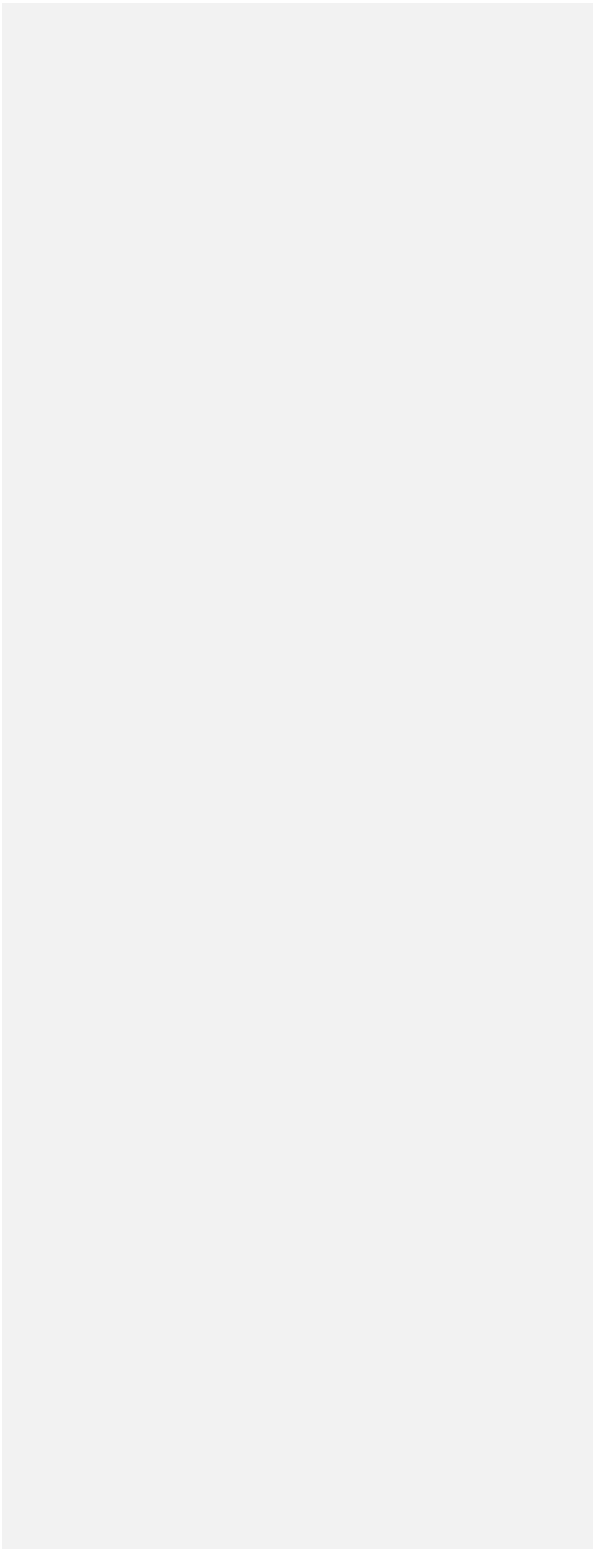


APPENDIX 7

Country Park Phasing Plan

Drawing number 04627.00005.16_306_15

DRAFT



APPENDIX 8

Highway Plans

Plan 172985_A_07.1 Monks Lane (Eastern Access)

Plan 172985_A_08 Monks Lane (Western Access)

Drawing 172985_A_01 Rev C A339, Pinchington Lane and Monks Lane

Drawing 172985_A_12 A339/A343 St John's Roundabout

Drawing 172985/A/21 Revision A Rupert Road, Chandos Road and Wendan Road Pedestrian Improvements

Drawing number 4768-SK-100 Rev B A339 Access Link

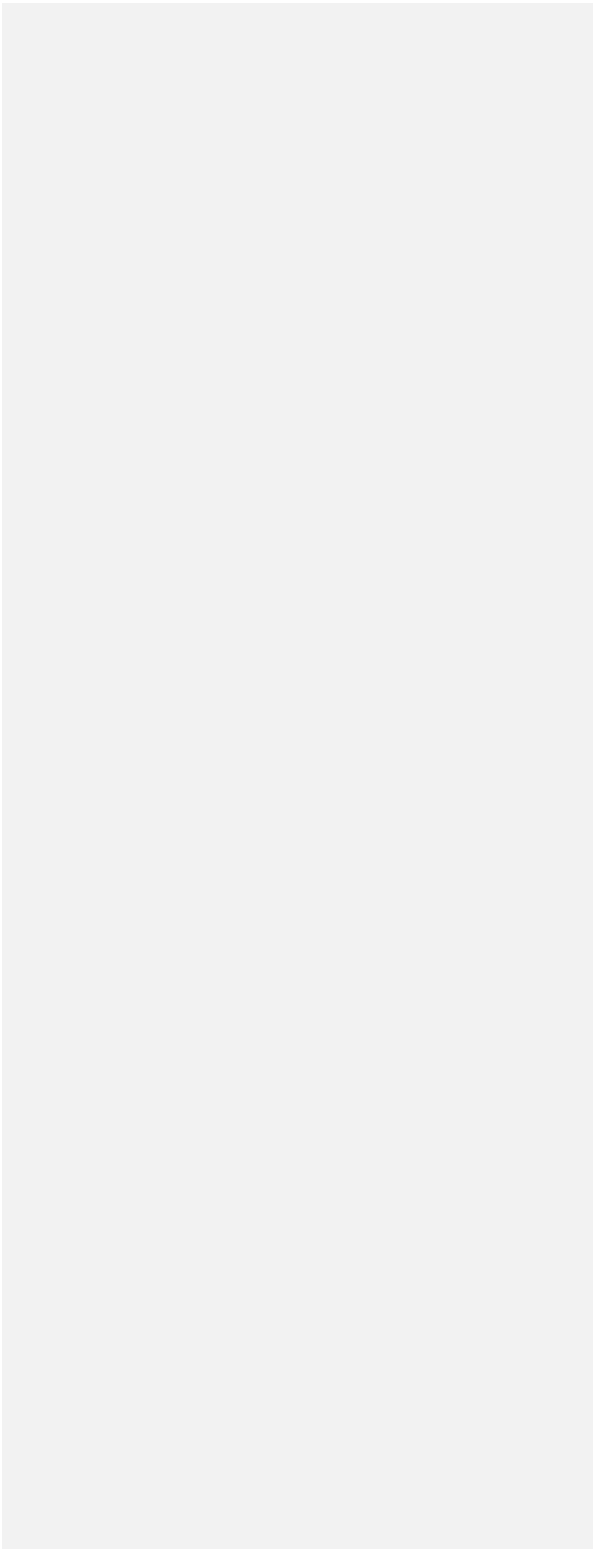
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APPENDIX 9

Triangle Land

Drawing number SOXX-CP-004

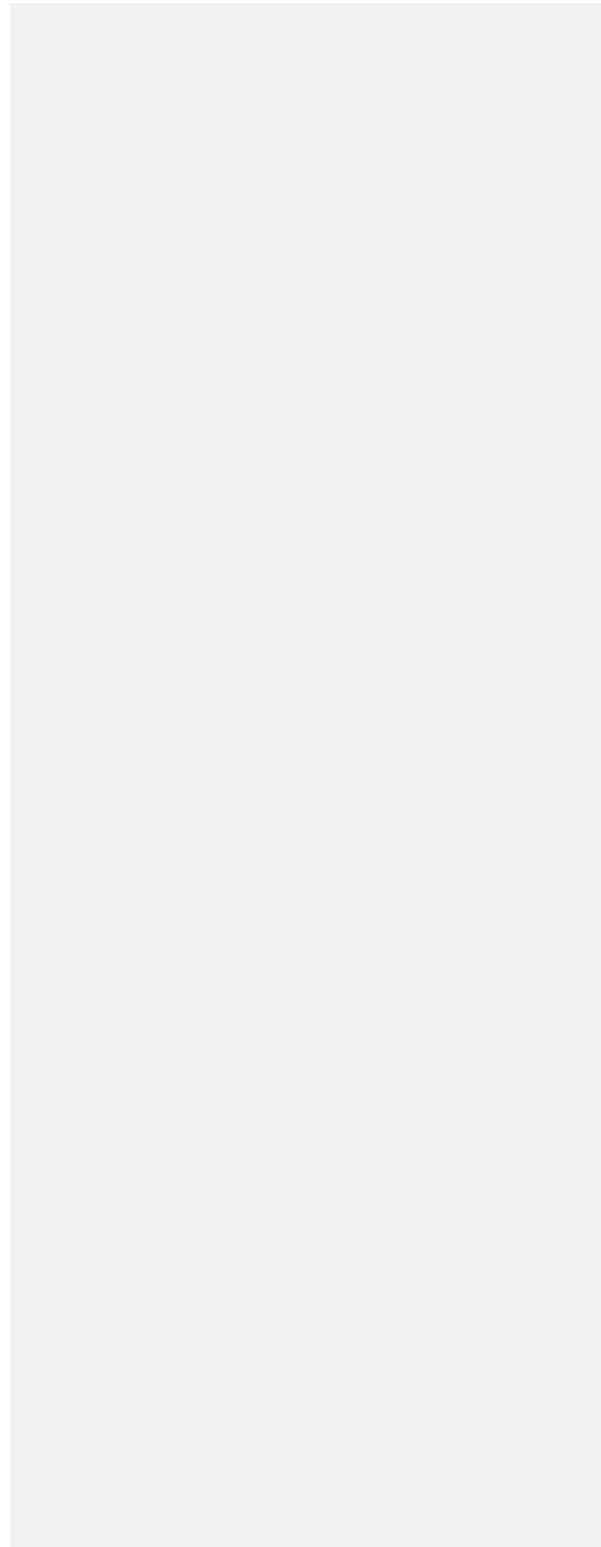
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APPENDIX 10

Deed of Covenant (Council)

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APPENDIX 11

Specification for Primary School Site North and Secondary School Site

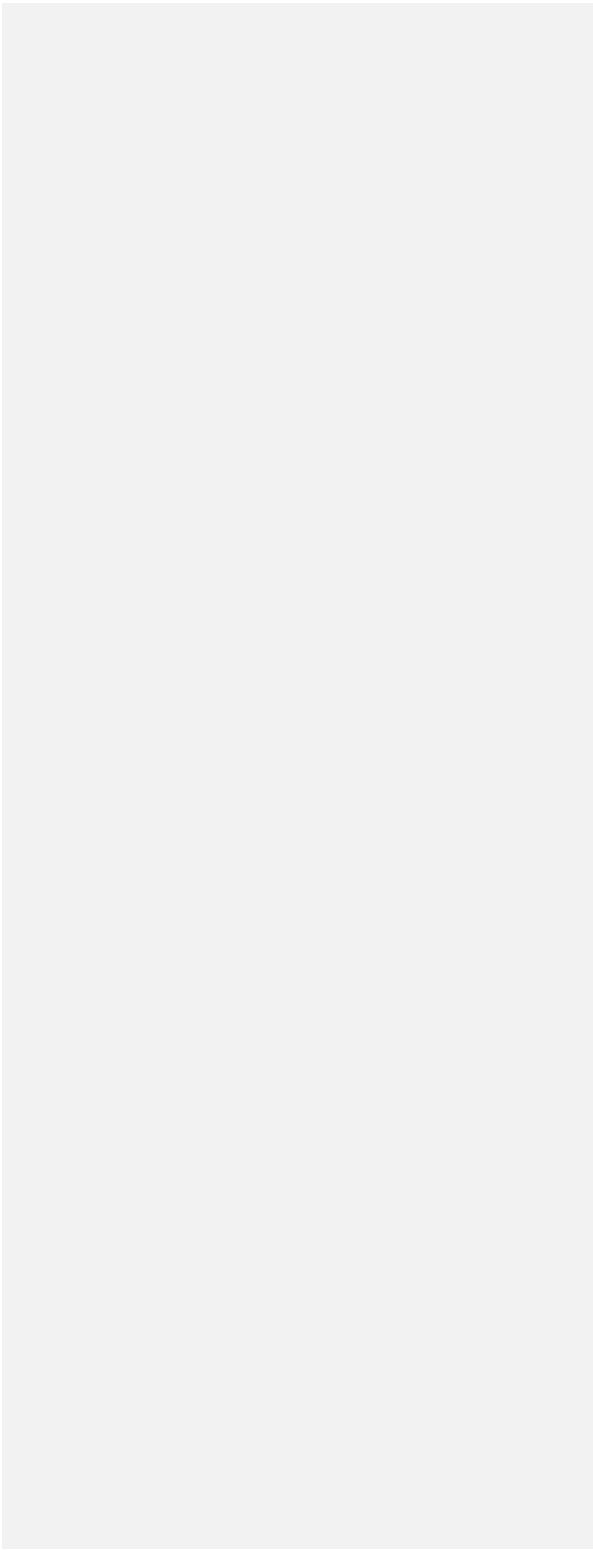
In respect of the Primary School Site North, the document entitled 'Site and Survey Requirements for New Schools v1.1' and in respect of the Secondary School Site, the document entitled 'Park House School Expansion Land (29.4.21)

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APPENDIX 12

Triangle Land Transfer

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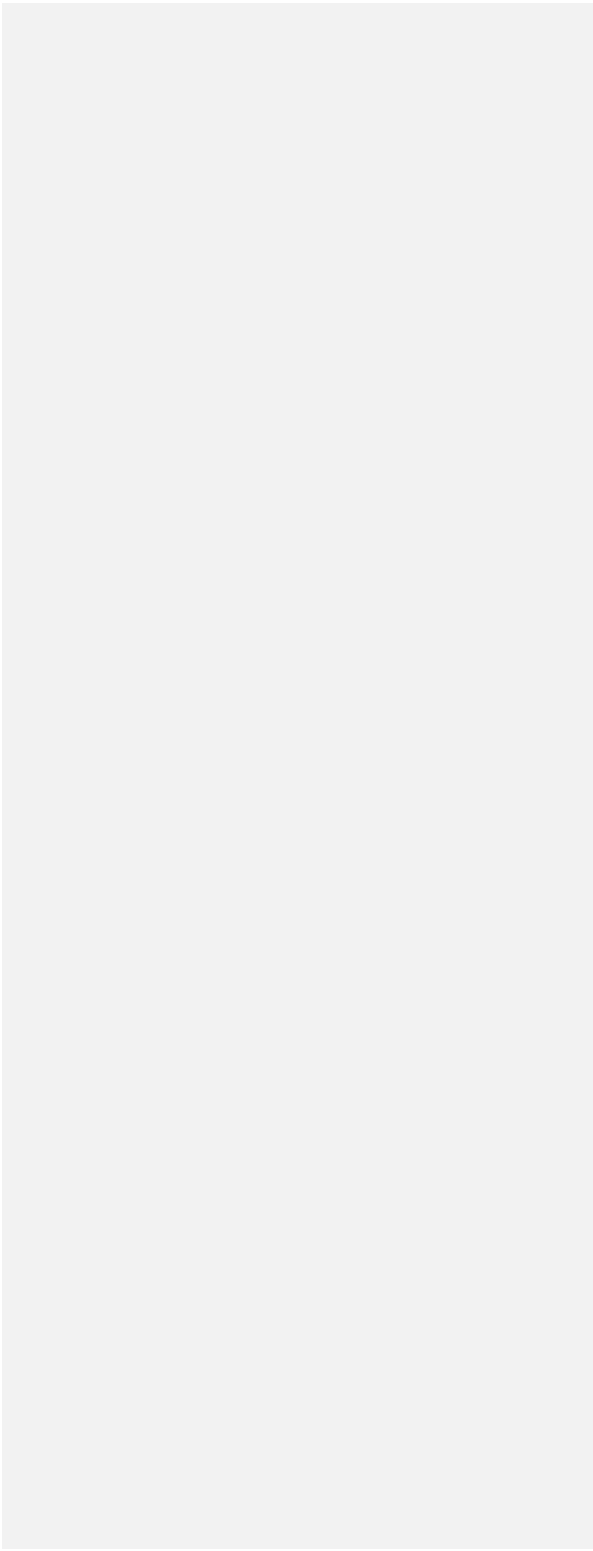


APPENDIX 13

Sandleford Park West

Drawing number SLP-01

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APPENDIX 14

Secondary School Site

Drawing number BG-SP-001 rev B

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