

SCHEDULE 2

Viability Assessment

1. The Owner covenants with the Council as follows:
 - 1.1 Prior to or together with the submission of a Reserved Matters Application for a Phase the Owner may elect to provide the Council with a Viability Assessment for approval.
 - 1.2 The submitting of a Viability Assessment relating to a Phase for approval does not preclude the Owner from submitting any subsequent Viability Assessments for that relevant Phase employing the same, similar or different figures prior to such Viability Assessment being accepted and approved by the Council **PROVIDED THAT** once a Viability Assessment is accepted and approved by the Council (whether pursuant to paragraph 1.3, 1.4, 1.5 1.6 or 1.7 of this Schedule) no further Viability Assessments shall be submitted for that Phase, unless otherwise agreed in writing by the Council.
 - 1.3 Subject to paragraph 1.5 of this Schedule, the Council must, within six (6) weeks of the date of receipt of a Viability Assessment either:
 - 1.3.1 confirm, in writing that it is accepted by the Council; or
 - 1.3.2 set out in writing what further information the Council reasonably requires from the Owner to enable the Council to further consider the Viability Assessment; or
 - 1.3.3 provide to the Owner reasons, in writing, as to why that Viability Assessment is not accepted;

AND in the event that the Council responds in accordance with **paragraph 1.3.3**, or does not respond to the Owner in writing within the six (6) week period specified above (or within thirty (30) Working Days following provision, by the Owner, of the further information required by the Council under **paragraph 1.3.2**), the Council shall be deemed not to have accepted the Viability Assessment and the provisions of **paragraph 1.4** below shall apply.

- 1.4 In the event that the Council does not accept the Viability Assessment under **paragraph 1.3** above the Owner and the Council shall liaise and use their reasonable endeavours to reach agreement upon the terms of that Viability Assessment **PROVIDED THAT** if within twenty (20) Working Days of receipt by the Owner of the Council's written response (or deemed response) under **paragraph 1.3**:
 - 1.4.1 no such liaising has taken place; and/or
 - 1.4.2 it has not been possible to reach agreement in respect of the Viability Assessment by liaising between the parties;

either party may thereafter refer the matter for determination under **clause 16**.

- 1.5 In the event that the Viability Assessment submitted to the Council in accordance with paragraph 1.1 of this Schedule demonstrates that the process set out within Gateway 1, Gateway 2(iii) and/or Gateway 2(iv) will apply, the Parties acknowledge and agree that the Council will refer the approval of such Viability Assessment to the Council's planning committee for consideration and subsequent approval by relevant members of such committee at the next available meeting and should the Council so elect, the following timescales shall apply rather than those timescales for approval set out within paragraph 1.3 of this Schedule (**PROVIDED ALWAYS THAT** should the Council not elect to refer the approval of a Viability Assessment to the Council's planning committee then the provisions within paragraph 1.3 and 1.4 above shall continue to apply to any such Viability

Assessment) and the Council must within six (6) weeks of receipt of the Viability Assessment from the Owner:

- 1.5.1 confirm in writing that the submitted Viability Assessment is acceptable in principle to officers of the Council and thereafter the Viability Assessment will be presented (with a recommendation) to members of the Council's planning committee at the next available planning committee meeting for determination; or
 - 1.5.2 set out in writing what further information the Council's officer reasonably requires from the Owner to enable the Council's officer to confirm that the Viability Assessment is acceptable in principle and to recommend approval to the Council's planning committee; or
 - 1.5.3 provide to the Owner reasons, in writing, as to why that Viability Assessment is not accepted in principle and therefore will not be recommended for approval to the Council's planning committee.
- 1.6 In the event that the Council does not approve the Viability Assessment in principle in accordance with paragraph 1.5 of this Schedule the Owner and the Council shall further liaise and use reasonable endeavours to reach agreement in principle on the terms of the Viability Assessment (including the Owner providing further information if required by the Council) and thereafter should agreement be reached in principle the Owner shall provide an updated or replacement Viability Assessment and the Council shall provide a report on the Viability Assessment (with a recommendation) for consideration by the Council's planning committee at the next available meeting PROVIDED THAT if within a further thirty (30) Working Days from the date on which the Council confirms to the Owner that the Viability Assessment has not been approved in principle it has not been possible to reach agreement in principle in respect of the Viability Assessment by liaising between the parties either party may refer the matter for determination under **clause 16** and thereafter the recommendation of the Expert shall be provided along with the officer's recommendation (which must give adequate consideration to the Expert's finding and recommendation before being presented to the Council's planning committee but for the avoidance of doubt officers shall not be bound by the Expert's findings and recommendation) to the next available meeting of the Council's planning committee for due consideration.
- 1.7 In the event that the Council's planning committee does not resolve to accept and approve the Viability Assessment under paragraph 1.5 or 1.6 above the Owner and the Council shall liaise and use their reasonable endeavours to reach agreement upon the terms of a further update to or replacement of that Viability Assessment and the Owner shall further use its reasonable endeavours to provide any further information requested by the Council and thereafter should agreement be reached in principle the Owner shall provide an updated or replacement Viability Assessment and the Council shall provide a report on the Viability Assessment (with a recommendation) for consideration by the Council's planning committee at the next available meeting PROVIDED THAT if within a further thirty (30) Working Days from the date on which the Council's planning committee resolves that that the Viability Assessment has not been approved it has not been possible to reach agreement in principle in respect of the Viability Assessment by liaising between the parties either party may refer the matter for determination under **clause 16** and thereafter the recommendation of the Expert shall be provided along with the officer's recommendation (which must give adequate consideration to the Expert's finding and recommendation before being presented to the Council's planning committee but for the avoidance of doubt officers shall not be bound by the Expert's findings and recommendation) to the next available meeting of the Council's planning committee for due consideration.
- 1.8 The Parties agree that the process in paragraph 1.5, 1.6 and 1.7 of this Schedule shall, if triggered, be repeated until the Viability Assessment is in a form that is acceptable to the Owner and the Council.

- 1.9 For the avoidance of doubt a Viability Assessment submitted in accordance with paragraphs 1.5 to 1.8 of this Schedule will not be so accepted and approved by the Council unless and until it is resolved as such by the Council's planning committee
- 1.10 The Owner shall be responsible for the costs of the preparation and submission of each Viability Assessment and shall also be responsible for the Council's reasonable costs incurred in respect of the process of reviewing, responding to and seeking to agree each Viability Assessment (including the reasonable and properly incurred fees of any professional adviser appointed by the Council to assist it in this regard) such costs to be agreed in writing between the Owner and the Council (both acting reasonably) and paid to the Council within 7 Working Days of receipt of evidence of those costs.
- 1.11 Where a Viability Assessment is accepted and approved by the Council (whether pursuant to paragraph 1.3, 1.4, 1.5, 1.6 or 1.7 of this Schedule) and concludes (or it is determined under **clause 16 if relevant**) that it is more likely than not that the Gross Development Value generated by the Development and/or the relevant Phase) is less than the sum of the Gross Development Costs, the Acceptable Return and the Benchmark Land Value and the approved Viability Assessment (applying the order of priority within the definition of "Viability Assessment" within clause 2.1 of this Deed):

Gateway 1

- 1.11.1 demonstrates that a Composition Review (whether or not in combination with the matters noted at paragraphs 1.11.2 to 1.11.5 of this Schedule) will increase the Gross Development Value and/or reduce the Gross Development Costs of the Development and/or relevant Phase (whichever has previously been shown not to be viable) such that the Gross Development Value is equal to or greater than the sum of the Gross Development Costs, the Acceptable Return and the Benchmark Land Value then the Viability Assessment will also provide details of the steps to be taken to secure and deliver the revised mix of Alternative Uses (including any additional Affordable Housing and/or Affordable Alternative Uses (if relevant)) within the Development and/or relevant Phase. The Owner will then use all reasonable but commercially prudent endeavours to secure and deliver the revised mix of Alternative Uses (including any additional Affordable Housing and/or Affordable Alternative Uses (if relevant)) including but not being limited to securing and/or obtaining any consents, approvals and/or other authorisations required to deliver the revised mix of Alternative Uses (including any additional Affordable Housing and/or Affordable Alternative Uses (if relevant)) as part of the Development; and/or

Gateway 2(i)

- 1.11.2 demonstrates that a specific delay in the delivery of Affordable Housing Units and/or the Affordable Alternative Uses until specified later Phases of the Development (whether or not in combination with the matters noted at **paragraphs 1.11.1 and 1.11.3 to 1.11.5 of this Schedule**) will increase the Gross Development Value and/or reduce the Gross Development Costs such that the Gross Development Value of the Development and/or relevant Phase (whichever has previously been shown not to be viable) is equal to or greater than the sum of the Gross Development Costs, the Acceptable Return and the Benchmark Land Value, then the timing of construction of the Affordable Housing Units and their phasing in relation to the occupancy of the Market Dwellings within any approved Affordable Housing Scheme and/or the Affordable Alternative Uses in accordance with any approved Affordable Alternative Uses Scheme shall be deemed to be amended to refer to the revised timing for delivery of the Affordable Housing Units and/or the Affordable Alternative Uses contained within any such approved Viability Assessment and the obligations thereafter to construct and deliver the Affordable Housing Units and/or the Affordable Alternative Uses in accordance with Schedule 1 of this Deed shall be interpreted accordingly; and/or

Gateway 2(ii)

- 1.11.3 demonstrates that a specific delay in the timing for any payment of the Contributions or any Contribution pursuant to this Deed beyond the timing for payment contained within this Deed (whether or not in combination with the matters noted at paragraphs 1.11.1, 1.11.2, 1.11.4 and 1.11.5 of this **Schedule**) will increase the Gross Development Value and/or reduce the Gross Development Costs such that the Gross Development Value of the Development and/or relevant Phase (whichever has previously been shown not to be viable) is equal to or greater than the sum of the Gross Development Costs, the Acceptable Return and the Benchmark Land Value, then the obligation on the Owner to pay the Contributions or any Contribution to the Council within this Deed shall be deemed to be amended to refer to the timing for any payment of the Contributions or any Contribution contained within any such approved Viability Assessment; and/or

Gateway 2(iii)

- 1.11.4 demonstrates that a specific reduction in the Affordable Housing Requirement and/or the quantum of Affordable Alternative Uses (whether or not in combination with the matters noted at paragraphs 1.11.1 to 1.11.3 and 1.11.5 of this **Schedule**) will increase the Gross Development Value and/or reduce the Gross Development Costs such that the Gross Development Value of the Development and/or relevant Phase (whichever has previously been shown not to be viable) is equal to or greater than the sum of the Gross Development Costs, the Acceptable Return and the Benchmark Land Value, then reference to the Affordable Housing Requirement and/or the quantum of Affordable Alternative Uses within this Deed shall be deemed to be amended to refer to the reduced Affordable Housing Requirement and/or the reduced quantum of Affordable Alternative Uses contained within any such approved Viability Assessment and the Owner's obligations in relation to the delivery of Affordable Housing in accordance with the Affordable Housing Requirement within **Schedule 1** of this Deed and/or the quantum of Affordable Alternative Uses shall be interpreted accordingly; and/or

Gateway 2(iv)

- 1.11.5 demonstrates that a specific reduction in the amount of the Contributions or any Contribution (other than the Primary Education Contribution and the Secondary Education Contribution which for the avoidance of doubt shall be ring-fenced and not at any time subject to a Viability Assessment) (whether or not in combination with the matters noted at **paragraphs** 1.11.1 to 1.11.4 of this **Schedule**) will increase the Gross Development Value and/or reduce the Gross Development Costs such that the Gross Development Value of the Development and/or relevant Phase (whichever has previously been shown not to be viable) is equal to or greater than the sum of the Gross Development Costs, the Acceptable Return and the Benchmark Land Value, then reference to the Contributions or any Contribution (other than the Primary Education Contribution and the Secondary Education Contribution) within this Deed shall be deemed amended to refer to the reduced Contributions or any Contribution contained within any such approved Viability Assessment and the Owner's obligation to pay the Contributions or any Contribution pursuant to this Deed shall be interpreted accordingly

and PROVIDED ALWAYS THAT for the avoidance of doubt where there is any conflict between the terms of this Deed in relation to the matters listed at **paragraphs** 1.11.1 to 1.11.5 of this **Schedule** and an approved Viability Assessment the terms of the approved Viability Assessment shall take precedence over the terms of this Deed.