

**Planning Obligation by Deed of Agreement under  
Section 106 of the Town and Country Planning Act 1990**

Relating to an application for  
the erection of 35 no. Affordable Residential Dwellings and Associated Infrastructure  
on land known as the Former Boundary Pub Site Pilch Lane Roby Knowsley L14 0JG  
Planning Application 25/00344/FUL

Dated 202~~6~~<sup>5</sup>

- (1) Knowsley Metropolitan Borough Council
- (2) Breck Homes Limited

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EXECUTION OF DEED

DATE

202~~6~~<sup>5</sup>

## PARTIES

- (1) **Knowsley Metropolitan Borough Council** of Municipal Buildings Archway Road Huyton Knowsley Merseyside L36 9YU ("**Council**")
- (2) **Breck Homes Limited** (co. reg. no. 10621017) whose registered office is situated at 20 Sceptre Way Bamber Bridge Preston PR5 6AW ("**Owner**")

## INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site registered under title number MS720859 (as detailed in the First Schedule).
- 3 The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 4 The Council is minded to grant planning permission subject to the prior completion of this Deed.
- ~~5~~ The parties to this Agreement Deed agree that the planning obligations contained in this Deed are necessary to comply with the requirements of regulation 122 of the Community Infrastructure Regulations 2010 (as amended).
- ~~56~~ The parties to this Deed acknowledge that it is the intention of the Owner to dispose of the Site in its entirety to a Registered Provider for the provision of 100% Affordable Housing.

NOW THIS DEED WITNESSES as follows:

## OPERATIVE PART

### 1 DEFINITIONS

- 1.1 "Act" means the Town and Country Planning Act 1990
- ~~1.2~~ "Affordable Units" means the same as in Part 1 of the Second Schedule
- ~~1.32~~ "Application" means the application for planning permission submitted to the Council for the Development and allocated reference number 25/00344/FUL
- ~~1.43~~ "Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than

(for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “**Commence Development**” shall be construed accordingly

- 1.54 “**Committed**” means any amount which the Council has allocated for expenditure relevant to the purpose for which the sum was paid and such amount has been authorised by the relevant committee, or Council member or Council officer or has contracted to expend where such contract provides for payment contingent on the provision of works and/or services and/or supplies
- 1.65 “**Development**” means erection of 35 no. Affordable Residential Dwellings and Associated Infrastructure
- 1.76 “**Dwelling**” means any unit of self-contained residential accommodation constructed on the Site pursuant to the Planning Permission.
- 1.86 “**Index**” means All Items Index of Retail Prices issued by the Office for National Statistics
- 1.97 “**Indexation Date**” means the date immediately preceding the date hereof when the last firm figure was published for the Index unless expressly stated otherwise in this Deed
- 1.108 “**Index Linked**” means the contribution is to be adjusted by reference to the amount of any increase in the Index over the period from the Indexation Date to the last, firm figure published for the Index for the month immediately prior to payment of the relevant contribution to the Council (or where the Owner is required by this Deed to apply a specified sum or make a specified sum available for a specified purpose the date of application of such sum for the specified purpose) and “**Indexation**” shall be construed accordingly
- 1.119 “**Interest**” means interest at 4% (four per cent) above the base lending rate of Barclays Bank PLC from time to time
- 1.12 “**Non-Section 106 Units**” means the same as in Part 1 of the Second Schedule
- 1.139 “**Occupation**” means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, or decoration or occupation for marketing or display or occupation in relation to security operations (and Occupy, Occupant(s) and Occupied shall be construed accordingly)
- 1.141 “**Plan**” means the plan at Annex 2
- 1.152 “**Planning Permission**” means the planning permission for the Development subject to conditions to be granted by the Council pursuant to the Application a draft of which is at Annex 1 to this Deed
- 1.163 “**Site**” means the property (including land and any buildings) against which this Deed may be enforced as shown edged red on the Plan and more particularly described in the First Schedule

## **2 INTERPRETATION**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving through or under that party any title interest or estate in any part of the Site and in the case of the Council the successors to its relevant statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.

## **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

## **4 CONDITIONALITY**

This Deed is conditional upon the grant of the Planning Permission save for the provisions of this clause 4 and clauses 1, 2, 3, 7 - 15 which shall come into effect immediately upon completion of this Deed.

## **5 THE OWNER'S COVENANTS AND WARRANTY**

- 5.1 The Owner covenants with the Council as set out in the Second Schedule.
- 5.2 The Owner hereby warrants and confirms that apart from the parties hereto there are no other persons with a legal estate equitable or beneficial interest in the rents and profits or proceeds of sale of the Site or any part thereof.

## **6 THE COUNCIL'S COVENANTS**

The Council covenants with the Owner to observe the restrictions and perform the obligations as set out in the Third Schedule.

## **7 MISCELLANEOUS**

7.1 The Owner shall pay to the Council on completion of this Deed

7.1.1. the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed; and

7.1.2 the sum of £500 in respect of the Council's administrative costs for registering the obligations contained in this Deed

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

7.3 This Deed shall be registrable as a local land charge by the Council.

7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Services, or in the event of any restructuring of posts by the Council such successor as the Council may from time to time determine, and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith secure the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

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

7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

7.8 No person shall be liable for any breach of any planning obligations or other provisions of this deed after parting with its entire interest in the Site or its interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest

7.9 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.

7.10 Nothing contained or implied in this Deed grants planning permission or other consent or shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as a Local Authority and its rights powers duties and obligations under any statute

byelaw or regulation may be as fully and effectually exercised as if the Council were not a party to this Deed.

7.11 The planning obligations in this Deed shall not be enforceable against:

7.11.1 any statutory undertaker holding an estate easement or interest in the Site or part of the Site insofar as the relevant statutory undertaker is occupying the relevant part of the Site for its purposes as a statutory undertaker; nor

7.11.2 anyone whose only interest in the Site or any part of it is the nature of the benefit of an easement or covenant, or as the owner of the subsoil of any highway within the Site.

7.11.3 any individual owner, occupier or tenant of an individual Dwellingindividual Affordable Unit save for the obligation in paragraph 4.1 of part 1 of the Second Schedule (which for the avoidance of doubt is subject always to the exclusions set out paragraph 7 of that schedule).

7.11.4 any individual owner, occupier or tenant of an individual Non-Section 106 Unit.;

7.12 Nothing contained or implied in this Deed shall prejudice affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

7.13 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party as detailed in this Deed or such other address notified in writing to the other party from time to time. Provided however that

7.13.1 any notices to be served upon the Owner shall be sent to [REDACTED]; and

7.13.2 any notices to be served upon the Council shall be marked for the attention of the Council's Head of Planning

7.13 If the Council agrees pursuant to an application under section 73 of the Act to any variation or release of any condition contained in the Planning Permission or if any condition is varied or released following an appeal under section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission save where the Council in their determination of such an application for the new planning permission or the Secretary of State or inspector in their determination of such appeal indicate that consequential amendments are required to this Deed to reflect the impact of the section 73 application and in such circumstances a separate deed pursuant to section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.

**8. WAIVER**

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

**9. CHANGE IN OWNERSHIP**

The Owner agrees with the Council to give 14 days' written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

**10. INDEXATION**

Any sum referred to in the Schedules shall be Index Linked and where the Owner is required by this Deed to apply a specified sum or make a specified sum available for a specified purpose such sum shall also be Index Linked

**11. INTEREST**

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

**12. VAT**

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

**13. DISPUTES**

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

13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 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 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.

- 13.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty Working Days after the conclusion of any hearing that takes place or twenty Working Days after he has received any file or written representation.
- 13.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.
- 13.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

#### **14 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

#### **15 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.

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

## **FIRST SCHEDULE**

### **Details of the Owner's Title, and description of the Site**

#### **Details of the Owner's Title**

The land within title number MS720859 registered at HM Land Registry  
The Boundary, Pilch Lane, Liverpool (L14 0JG)

#### **Description of the Site**

All that land known as the Former Boundary Pub Site Pilch Lane Roby Knowsley L14 0JG and shown edged red on the Plan at Annex 2.

**SECOND SCHEDULE**  
**Owner's Covenants to the Council**  
**Affordable Housing**

**PART 1**

Interpretation

In this Part 1 the following words and phrases shall have the meanings:

"Affordable Housing" means affordable housing as defined in the National Planning Policy Framework (July 2021) or any revision or extension or modification thereto;

"Affordable Housing Contract" means a contract between the Owner and a Registered Provider for the provision of Affordable Housing within the Development which includes as a minimum the terms set out in paragraph 3.6 of the Second Schedule;

~~"Affordable Housing for Rent" means Affordable Housing which complies with the definition of "affordable housing for rent" in Annex 2 of the NPPF and the Council's Delivering Affordable Housing Policy KMBC Developer Contributions SPD June 2016 or Social Rented Housing;~~

"Affordable Housing Provision" means ten per cent (10%) of the total number of Dwellings (four Dwellings) to be provided as Affordable Housing in accordance with the Affordable Housing Scheme. In calculating the number of dwellings any figure of 0.5 or above shall be rounded up and any figure less than 0.5 shall be rounded down.

"Affordable Housing Scheme" means the scheme to be agreed under paragraph 1 of Part 2 of this second schedule of this Deed which shall include details of:

- i. the location of the Affordable Units on the Site including by reference to a plan;
- ii. the arrangements for the transfer of the Affordable Units to a Registered Provider (if any) by way of freehold or long leasehold;
- iii. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Units.

~~"Affordable Units" means Four Dwellings to be provided as an Affordable Rented Units or such other form of Affordable Housing for Rent as may be agreed by the Council in writing which make up the Affordable Housing Provision including their allocated parking space and/or garage as may be required and "Affordable Unit" shall be construed accordingly;-~~

~~"Affordable Rent" means the rent charged for an Affordable Rented Unit which is up to 80% (Eighty Percent) of local market rent including Service Charge and having regard to the Local Housing Allowance for the Broad Rental Market Area as set out in the Government's "Policy Statement on rents for social housing" but not exceeding the Local Housing Allowance for a similar type of property in the relevant rental market area allowing for any modifications to a level of allowance as published by the Government as calculated using RICS approved valuation methods;-~~

"Affordable Rented Unit" means an affordable rented unit provided by a Registered Provider let at an Affordable Rent and which complies with the definition of "other affordable housing for rent" in Annex 2 of the NPPF and the Council's Delivering Affordable Housing Policy KMBC Developer Contributions SPD June 2016.

"Capital Funding Guide" means the capital funding guide published by Homes England.

"Charge" means any mortgagee or charge of a Registered Provider (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole or part of the Site or any persons or bodies deriving title through such mortgagee or charge or receiver.

"Dwelling" means the same as in clause 1 of this Deed.

"Local Housing Allowance" means the maximum amount of rent that can be used when calculating entitlement to housing benefit depending on the number of people in a household and in the case of this Deed based on the location of the Dwelling and for the avoidance of doubt it is acknowledged that the Local Housing Allowance is updated annually.

"Nominations Agreement" means an agreement between the Council and a Registered Provider in relation to the allocation of an Affordable Unit.

"Non-Section 106 Units" means any Dwelling which is not an Affordable Unit.

"NPPF" means the National Planning Policy Framework (~~December 2024~~~~July 2021~~) or any planning policy statement guidance notes or circulars which may supersede it and which is current at the date of this Deed.

"Occupation" means the same as in clause 1 of this Deed.

"Protected Tenant" means any tenant who:

- i. has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being enforced (or any equivalent contractual right) in respect of a particular Affordable Unit;
- ii. has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Unit;
- iii. has acquired an Affordable Unit from a Registered Provider through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, or any amendment or replacement thereof;
- iv. has been granted a Shared Ownership Lease by a Registered Provider (or similar arrangement where a share of the Affordable Unit is owned by the Tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Unit and the Tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Unit;

and any person or body and/or their mortgagee deriving title through or from any of the parties mentioned in paragraphs (i) to (iv) above;

“Receipts” means the aggregate receivable in each 12 month period in respect of (a) the net premium receivable on each disposal of the equity retained on a shared ownership housing unit or other form of intermediate housing after deduction of all reasonable costs and expenses of the Registered Provider (including without limitation its administrative and legal costs and fees) and (b) the net premium payable by any person exercising any right to buy an interest in an Affordable Unit after the deduction of all reasonable costs and expenses of the Registered Provider (including without limitation its administrative valuation and legal costs and fees) and (c) the amounts repayable to central government or any Registered Provider by any person that has exercised a right to buy an interest at a preferential rate.

“Registered Provider” means a provider of social housing as defined by Part 2 of the Housing and Regeneration Act 2008 or other entity providing Affordable Housing under equivalent arrangements which is approved or accredited by the Regulator of Social Housing or similar successor body.

“Rent Guidance” means the ‘Guidance on Rents for Social Housing’ issued by the Department of Communities and Local Government in May 2014, the Policy Statement on Rent for Social Housing updated on 14 December 2022, the Rent Standard April 2020, the Direction on the Rent Standard 2019 and (as applicable) the Direction on the Rent Standard 2023 or such other replacement guidance or direction or legislation from time to time

“Regulator of Social Housing” means the Government’s agency for regulating registered providers of social housing and publishing rent standards which definition shall include any successor agency/organisation taking over such functions.

[“Rented Unit” means a Dwelling which may be either an Affordable Rented Unit or a Social Rented Unit](#)

“Rent Standard” means the standard set by the Regulator of Social Housing in relation to rent from time to time having regard to the Rent Guidance

[“Right to Shared Ownership” means the right to acquire a Rented Unit on shared ownership terms in accordance with the terms of the Capital Funding Guide.](#)

“Service Charge” means the amount payable by the owner or occupant of any Affordable Unit for all services repairs maintenance and improvements of a communal nature and insurance of the building and curtilage (where relevant) including estate management costs to the extent that all costs in the Service Charge have been reasonably incurred.

“Serviced Condition” means the relevant property has proper connections within its boundary so as to connect it to surface water drainage facilities and to mains foul drainage, water, gas, electricity and telecommunications and enjoy direct access to the public highway or a roadway constructed to adoptable standards and in each case completed to a satisfactory standard ready for Occupation.

“Social Rented [Housing Unit](#)” means [housing-a Dwelling](#) which is let at a rent which is no higher than Target Rent and complies with the definition of “Social Rent” in Annex 2 of the NPPF and the Council’s Delivering Affordable Housing Policy KMBC Developer Contributions SPD June 2016.

“Target Rent” means rents for Social Rented [Housing Units](#) conforming with the pattern produced by the rents formula set out in the Rent Guidance and subject to the limit on rent changes and rent caps set out therein and subject to indexation as permitted by the Rent Standard or Rent Guidance from time to time.

"Voluntary Affordable Housing" means any Non-Section 106 Unit in relation to which the Owner for the time being elects on a purely voluntary basis and outside the terms of this Deed to manage and occupy any such Dwelling or Dwellings as though any such Dwelling or Dwellings are Affordable Housing.

The Owner covenants with the Council as follows ~~with the intention that the following provisions in this Part 1 of Schedule 2 of this Deed shall bind the Site PROVIDED ALWAYS THAT where the Council has confirmed in writing that it is in support of the Site being transferred wholly to a Registered Provider the requirements of Part 1 of Schedule 2 of this Deed shall not be binding on the Registered Provider or on any Dwellings to be constructed on the Site:-~~

#### AFFORDABLE HOUSING SCHEME

1. Prior to Commencement of Development to submit the Affordable Housing Scheme to the Council for approval in writing. Commencement of Development shall not take place until such time as the Affordable Housing Scheme has been approved in writing by the Council.
2. Thereafter to deliver the Affordable Units as part of the Development in accordance with the Planning Permission and the approved Affordable Housing Scheme.

#### CONSTRUCTION OF THE AFFORDABLE UNITS

- 2.1 The Owner will or will procure the construction and completion of the Affordable Units to a Serviced Condition ready for Occupation prior to Occupation of the Non-Section 106 Dwellings and shall not cause or permit Occupation of the Non-Section 106 Dwellings until this has been done.
- 2.2 Construction of the Affordable Units shall be as follows –
  - 2.2.1 constructed in accordance with the standards specified by the Regulator of Social Housing or equivalent successor body in the latest version of its Design and Quality Standards at the time of construction and to no less standard than nor visually distinguishable from the Non-Section 106 Dwellings; and
  - 2.2.2 practical completion of such Affordable Units shall be deemed to be either when the NHBC Buildmark Certificate of Choice (or similar equivalent) shall have been issued in respect of the Affordable Unit or when the Local Authority Building Control or approved inspector certifies them all as complete if earlier.

#### DELIVERY MECHANISM

- 3.1 To ensure that the Affordable Units are let to Occupants for an Affordable Rent ~~in accordance with this Deed or in the case of Social Rented Housing Units no higher than Target Rent in accordance with this Deed~~ and to provide evidence to the Council that the rent set for ~~any~~ the Affordable ~~Rented~~ Units ~~(if so provided)~~ provided are in accordance with the Government's rent policy for Affordable Rent prior to first Occupation and thereafter from time to time (but not more than once in each 12 month period) if reasonably requested by the Council.
- 3.2 To ensure full and free rights of access both pedestrian and vehicular from a public highway to the relevant part of the Affordable Units.

- 3.3 To ensure full and free rights for the passage of water soil electricity gas if provided and other services through the pipes drains channel wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the relevant part of the Affordable Units.
- 3.4 To transfer to the Registered Provider the freehold interest or a minimum of 125 year leasehold interest in the Affordable Units ~~upon no later than~~ practical completion of the Dwellings and satisfactory evidence of such has been received by the Council and not to Occupy the Dwellings until this has been done and FOR THE AVOIDANCE OF DOUBT in any such disposal the Owner shall include provisions requiring the Affordable Units not to be used or Occupied other than in accordance with the provisions of Part 1 of this Second Schedule of the Deed and be subject to the nomination rights in favour of the Council provided for in paragraph 4 below and for the avoidance of doubt this paragraph shall not prohibit or prevent the Owner from mortgaging or otherwise charging the Site or part thereof.
- 3.5 The Owner shall enter into an Affordable Housing Contract in respect of the Affordable Units with a Registered Provider prior to the construction of any of the Non-Section 106 Units and not to commence construction of any Non-Section 106 Units until this has been done.
- 3.6 The Affordable Housing Contract in respect of the Affordable Units shall (unless otherwise agreed in writing with the Council) include as a minimum the following terms:
- 3.6.1 the design, construction and completion by the Owner (~~which for the avoidance of doubt may be a Registered Provider~~) of the Affordable Units to a Serviced Condition in accordance with the Planning Permission;
- 3.6.2 the transfer to the Registered Provider of the freehold or leasehold interests in the Affordable Units such sale to be completed ~~within no later than~~ 10 Working Days following the Practical Completion of the Dwellings;
- 3.6.3 a requirement that prior to the Occupation of the Affordable Units the Registered Provider shall enter into a Nominations Agreement with the Council;
- 3.6.4 the sale or grant of a lease by the Registered Provider to tenants and occupiers in respect of the Affordable Units are to be in accordance with the Nominations Agreement;
- 3.6. 5 the rent to be charged by the Registered Provider for the Affordable Units shall comply with the definition of Affordable Rent or Target Rent (as the case may be) in this Deed.
- 3.7 That following the transfer pursuant to this Deed of the Affordable Units to a Registered Provider the Affordable Units shall at all times be owned and managed by a Registered Provider for the purpose of providing Rented Units and the Affordable Units shall be maintained and repaired in accordance with the proper and normal customs and practices of a good landlord and the Registered Provider shall accept full responsibility for servicing managing repairing and maintaining the Affordable Units.
- 3.8 The Owner shall not without the Council's written consent dispose of the freehold interest or grant a long leasehold interest in the Affordable Units except to a Registered Provider.

~~The Owner shall not without the Council's written consent dispose of the freehold interest or grant a long leasehold interest in the Affordable Units except to a Registered Provider and in any such disposal the Owner shall include provisions requiring the Affordable Units not to be used or Occupied other~~

~~than in accordance with the provisions of Part 1 of the Second Schedule of this Deed and be subject to the nomination rights in favour of the Council provided for in paragraph 4 below and for the avoidance of doubt this paragraph shall not prohibit or prevent the Owner from mortgaging or otherwise charging the Site or part thereof.~~

- 3.95- That if the Development involves the creation of employment of a management company there shall be a management company for all the common parts which serve the Dwellings including the Affordable Units.

## OCCUPATION

4. Subject to the provisions of paragraph 7:
- 4.1 From the date of practical completion of the Affordable Units they shall only be used as Affordable Housing; and
- 4.2 Not to cause or permit the Affordable Units to be Occupied other than as Affordable Housing; and
- 4.3 The Affordable Units shall be subject to the following nomination rights:
- 4.3.1 100% (one hundred percent) of the Affordable Units shall be available for Occupation by Nominees of the Council and the procedures for nominations shall be determined by the Nominations Agreement:
- 4.3.1.1 in the form specified by the Council; and
- 4.3.1.2 by no later than prior to first Occupation of the Affordable Units
- 4.3.2 nominees of the Council shall Occupy the Affordable Units as soon as reasonably practical following the date of [practical] completion of the Affordable Units ("the Initial Letting").
- 4.3.3 upon the Owner obtaining vacant possession of each of the Affordable Units after the Initial Letting 75% of all subsequent lettings and re-lettings of the ~~these~~ Affordable Units shall be to nominees of the Council and the procedures for nominations shall be determined in the Nominations Agreement.

## REGISTERED PROVIDER

5. If a Registered Provider at any time while having a legal interest in the Affordable Units was but ceases to be accredited or approved by the Regulator of Social Housing or its equivalent successor body the provider shall:
- 5.1 give notice immediately in writing to the Council of the cessation of accreditation or approval; and
- 5.2 as soon as reasonably possible if required by the Council and subject to obtaining all necessary consents from the Regulator of Social Housing to transfer its legal interest in the Affordable Units to another Registered Provider subject to the provisions of this Deed or to remedy any circumstances giving rise to the cessation of accreditation or approval with the Regulator of Social Housing so as to obtain accreditation or approval; and

- 5.3 until such time as the Affordable Units is transferred if required by the Council or until such accreditation or approval is obtained pursuant to paragraph 5.2 not to increase any rents or service charges above the levels prevailing at the time that the Registered Provider ceased to be approved or accredited.

#### APPLICATION OF RECEIPTS

- 6.1 In the event that a tenant or other Occupier of any of the Affordable Units exercises the right to buy or right to acquire including the right to acquire a further equity interest under applicable legislation to use or procure the use of the Receipts to fund the provision of further Affordable Housing in accordance with the provisions of paragraph 6.2.
- 6.2 In respect of any of the Affordable Units:
- 6.2.1 to give notice to the Council as soon as reasonably possible following any disposal and thereafter to calculate the Receipts and notify the same in writing to the Council;
- 6.2.2 such Receipts shall be used for the provision of further Affordable Housing ~~within the administrative boundaries of Knowsley on a basis to be prescribed by the Council and within such reasonable timescales as shall be specified by the Council~~ within the administrative boundaries of Knowsley on a basis to be prescribed by the Council and within such reasonable timescales as shall be specified by the Council PROVIDED THAT in the event that this requirement conflicts with the future local investment priorities of Homes England the latter shall take priority and the Receipts shall be used in a manner which is consistent with these priorities; and
- 6.2.3 the Receipts shall be held in a separate designated account by the Registered Provider and it shall at least once a year supply to the Council a statement showing monies held on such account with such supplemental information showing how such sums are derived and how the use of such sums are in accordance with the provisions of paragraph 6.2.2 as the Council may require to satisfy itself that monies are being used for the purposes of Affordable Housing ~~in Knowsley~~.

#### EXCLUSIONS

- 7.1 The provisions of this Part 1 of the Second Schedule of this Deed shall not be binding on:
- 7.1.1 a Chargee exercising its power of sale PROVIDING THAT
- (i) the Chargee has given written notice to the Council of its intention to dispose of the Affordable Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Units to a Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest costs and expenses; and
- (ii) if such disposal has not completed within a three (3) month period the Chargee shall be entitled to dispose of the Affordable Units free from the provisions in this Part 1 of the Second Schedule which provisions shall determine absolutely in relation to those Affordable Units; or
- 7.1.2 a ~~Protected Tenant~~ tenant who has exercised a right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) and any mortgagee or chargee of any of the Affordable Units so acquired or any persons deriving title from them; or

-  
~~7.1.3 a tenant who has exercised any statutory right to buy preserved right to buy or voluntary right to buy (or any equivalent contractual right) and any mortgagee or chargee of any of the Affordable Units so acquired or any persons deriving title from them.~~

-  
8. VOLUNTARY AFFORDABLE HOUSING

8.1 Nothing in this Deed shall prevent the Owner for the time being of any of the Non-Section 106 Units electing on a purely voluntary basis and outside the terms of this Deed to manage and Occupy any such Dwelling or Dwellings as though any such Dwelling or Dwellings are Affordable Housing on a voluntary basis and for the avoidance of doubt it is hereby agreed and understood between the parties as follows:

8.1.1 the provisions of paragraphs 1 – 7 of this Part 1 of the Second Schedule of this Deed shall not apply to such Voluntary Affordable Housing; and

8.1.2 any reference to "Non-Section 106 Dwellings" at paragraph 2.1 of this Part 1 of the Second Schedule of this Deed above shall include any Voluntary Affordable Housing Units.

9. RIGHT TO SHARED OWNERSHIP

9.1 Nothing in this Part 1 of the Second Schedule of this Deed shall prevent a Registered Provider from issuing a shared ownership lease pursuant to the Right to Shared Ownership to a tenant of a Rented Unit.

## OFF SITE PUBLIC OPEN SPACE CONTRIBUTION

### PART 2

#### Interpretation

In this Part 2 the following words and phrases shall have the following meanings:

“Public Open Space Contribution” means the sum of £52,208.85 (Fifty Two Thousand Two Hundred and Eight Pounds and 85 Pence) comprising:

|                                                                                      |                                                                                                               |
|--------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| <i>Parks and Gardens – existing<br/>Court Hey Park Masterplan Delivery Project</i>   | <i>£25,937.37 (Twenty Five Thousand Nine Hundred and Thirty Seven Thousand Pounds and Thirty Seven Pence)</i> |
| <i>Amenity Greenspace (existing) – Roby Fields<br/>Improvement Project</i>           | <i>£4,052.61 (Four Thousand and Fifty Two Pounds and Sixty One Pence)</i>                                     |
| <i>Children and Young People (New) - Court Hey<br/>Park Play Improvement Project</i> | <i>£3,492.06 (Three Thousand Four Hundred and Ninety Two Pounds and Six Pence)</i>                            |

*Outdoor Sports (Existing) - Jubilee Park Sports Improvement Project*      £18,726.81 (Eighteen Thousand Seven Hundred and Twenty Six Pounds and Eighty One Pence)

payable to the Council as a contribution towards the improvement of public open space in the Huyton area.

The Owner covenants with the Council as follows:

- 1.1 Prior to the Commencement of Development the Owner shall pay the Public Open Space Contribution to the Council and shall not Commence Development until the Public Open Space Contribution has been paid.

## **SOCIAL VALUE STRATEGY**

### **PART 3**

#### **Interpretation**

1. In this Part 3 the following words and phrases shall have the meanings:
  - 1.1 **“Social Value Strategy”** means a strategy for providing training programmes and delivering social value during construction and end use phases of the Development as required and described in the SPD and which has been
    - 1.1.1 submitted by the Owner in support of the Application;
    - 1.1.2 approved by the Council as part of the Planning Permission; and
    - 1.1.3 a copy of which is at Annex 3 to this Deed.
  - 1.2 **“Social Value Contribution”** means the sum of £3,500 (Three Thousand Five Hundred Pounds) to be used by the Council’s approved partner organisation to support and monitor the provision of social value activity relevant to the Development in accordance

with the approved Social Value Strategy. Social Value activity may include but shall not be limited to the provision of apprenticeships, local employment and trainee placements.

1.3 **“SPD”** means the Council's adopted SPD “Adding Social Value to Development: Employment and Skills” September 2018

2. The Owner covenants to pay the Social Value Contribution to the Council prior to Commencement of Development.
3. The Owner covenants not to Commence Development until the Social Value Contribution has been paid to the Council.
4. The Owner covenants that from the Commencement of Development to implement the approved Social Value Strategy.

## **TRAVEL PLAN CONTRIBUTION**

### **PART 4**

#### **Interpretation**

In this Part 4 the following words and phrases shall have the meanings:

1. **“Travel Plan Contribution”** means the sum of £2,500750 (two thousand ~~fiveseven~~ hundred ~~and fifty~~ pounds) towards the costs of the monitoring of the Travel Plan.
2. The Owner covenants to pay the Travel Plan Contribution to the Council prior to Commencement of Development.
3. The Owner covenants not to Commence Development until the Travel Plan Contribution has been paid to the Council.

## MONITORING CONTRIBUTION

### PART 54

#### Interpretation

In this Part 54 the following words and phrases shall have the meanings:

4. **“Monitoring Contribution”** means the sum of £5,0003,7501,250 (~~fivethreeone~~ thousand ~~seven two hundred and fifty~~ pounds) towards the additional resource costs arising from the monitoring of the Development and the obligations arising under this Deed.
5. The Owner covenants to pay the ~~Social Value Contribution and the~~ Monitoring Contribution to the Council prior to Commencement of Development.
6. The Owner covenants not to Commence Development until ~~the Social Value Contribution and the~~ Monitoring Contribution has~~ve~~ been paid to the Council.

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### **THIRD SCHEDULE**

#### **Council's Covenants to the Owner**

The Council hereby covenants with the Owner:

- 1 to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such per other purposes for the benefit of the Development as the Owner and the Council shall agree
- 2 that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if such sum has been Committed to be spent by the Council) within 15 (fifteen) years of the date of receipt by the Council of the payment such payments to be paid together with interest at Barclay's Bank PLC base rate from time to time for the period from the date of payment to the date of refund
- 3 that it will provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed

## **ANNEX 1 The Draft Planning Permission**

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## ANNEX 2 The Plan

Draft

## **ANNEX 3**

### **The Approved Social Value Strategy**

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## EXECUTION

THE COMMON SEAL OF THE COUNCIL )  
was affixed in the presence of: )

Authorised Signatory:

## EXECUTION BLOCK FOR OWNER