

DRAFT

**Framework Section 106 Agreement relating to land in Milton Keynes known as the Eastern Expansion Area, the Western Expansion Area, the Strategic Reserve, Kingsmead South and Tattenhoe Park**

**Dated** 2007

**Urban Regeneration Agency (known as English Partnerships)**  
(the Agency)

**Gallagher Estates Limited**  
(Landowner One)

**William Davis Limited**  
(Landowner Two)

**Wilcon Homes Midlands Limited**  
(Landowner Three)

**Genesis Land Limited**  
(Landowner Four)

**Hallam Land Management Limited**  
(Landowner Five)

**Fen Farm Developments**  
(Landowner Six)

**Jane Fitton Williams and Thomas Allan Williams**  
(Landowner Seven)

**Milton Keynes Council**  
(Landowner Eight)

**The Commission for New Towns**  
(Landowner Nine)

**Redlawn Land Limited**  
(Landowner Ten)

**David Eric Long, Adam Smail, Peter Horrocks and George Duncan**  
(Landowner Eleven)

**Nicholas Charles Hedges and Richard Charles Willcock**  
(Landowner Twelve)

**Bletchley Turf Supplies Ltd**  
(Landowner Thirteen)

**George Richard Fountaine**  
(Landowner Fourteen)

**Tudor George Cowley and Ann Christine Cowley**  
(Landowner Fifteen)

**Charles Harry Sherwood, Sylvia Ann Mander, Sir Beville Douglas Stanier and David Hill (the Trustees of Elmers Charity)**  
(Landowner Sixteen)

**Patricia Ann Hooper, Diane Lavina West, Charles Harry Sherwood and Martin James Lockett (the Trustees of the Unknown Donor of Calverton)**  
(Landowner Seventeen)

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## PREAMBLE

This preamble is provided for the purposes of explaining the approach that has been adopted in preparing this Agreement, and the legal policy context within which it sits. The preamble does not form part of the Agreement and is not meant to be read as a legal or policy justification for the approach. It is not meant to be of any legal effect.

### 1 Introduction

The Urban Regeneration Agency (carrying on business as English Partnerships) (the **Agency**) is the local delivery vehicle appointed by Central Government in relation to the Milton Keynes and South Midlands growth area (the **MKSM Growth Area**).

Under Paragraph 4 of the Milton Keynes (Urban Area and Planning Functions) Order 2004 (the **2004 Order**) the Agency is also the specially appointed local planning authority for the purposes of Part 3 of the Town and Country Planning Act 1990 (the **Act**) for major applications in that part of the MKSM Growth Area designated by the 2004 Order (the **Designated Area**) and the tariff arrangements being made in respect of associated planning obligations. For the avoidance of doubt, those tariff arrangements do not apply to the northern expansion area comprised within the Designated Area and shall therefore apply to the eastern expansion area, the western expansion area, the land to the south of the A421, known as the "Strategic Reserve" (should that land be developed), Kingsmead South and Tattenhoe Park.

Central Government's proposals for the required step change in residential development in the growth areas (including the MKSM Growth Area) are well enshrined in policies emerging since publication of the Government's Sustainable Communities Plan (the **Communities Plan**) in February 2003. Central Government recognises that a significant level of strategic (and local) infrastructure will need to be delivered upfront to support the anticipated development in the Designated Area. Such infrastructure cannot be funded entirely from the private purse and will be funded in part by the private sector and in part by public funds.

The relevant statutory development plan for the Designated Area includes the regional spatial strategy (the **RSS**) itself comprising Regional Planning Guidance 9 and the Milton Keynes and South Midlands Sub-Regional Strategy adopted in March 2005 (the **SRS**).

The Communities Plan post-dates the statutory development plan, with the exception of the SRS (which revises the RSS and already reflects the aspirations of the Communities Plan). Once the Government's sustainable communities strategy was crystallised in the Communities Plan in 2003, policy at regional and local level was required to be in conformity with it.

Given the speed with which it is proposed to implement the Communities Plan in Milton Keynes, that process is on-going and therefore policy justification flows necessarily from policy at a higher level in the hierarchy.

The private sector financial contribution to infrastructure will be collected via section 106 planning obligations entered into by the Agency and the major landowners/developers within the Designated Area. The obligations will be based on a "tariff", to be calculated according to the number of residential units and/or employment floorspace.

This mechanism is in line with Central Government's emerging guidance on planning obligations and within the powers conferred by section 106 of the Act.

### 2 Powers of the Agency

Paragraph 4 of the 2004 Order states that "*...the Agency shall be the local planning authority in relation to the following kinds of development -*

- (a) *development which comprises or includes the provision of 10 or more houses, flats or houses and flats*

- (b) *development which comprises or includes 1,000 or more square metres of floorspace for use falling within any or all of the following Classes in the Town and Country Planning (Use Classes) Order 1987 -*
- (i) *class A1 (retail)*
  - (ii) *class A2 (financial and professional)*
  - (iii) *class A3 (food and drink)*
  - (iv) *class B1 (business)*
  - (v) *class B2 (general industrial)*
  - (vi) *class B8 (storage and distribution)*
- (c) *development which occupies 1 hectare or more of land; and*
- (d) *development which is not of a kind specified in sub-paragraph (a) , (b) or (c) but which forms part of more substantial proposed development of such a kind on the same land or adjoining land in a designated area"*

Her Majesty's Treasury issued its formal approval of the infrastructure tariff arrangements in respect of planning obligations on 21 December 2005.

### **3 National Planning Policy**

#### **3.1 Communities Plan**

The Communities Plan acknowledges that realising *this additional growth potential will depend on the provision of infrastructure and a sustainable approach to growth ...*<sup>1</sup> The plan identifies consideration of longer term transport infrastructure needs and integrating strategic transport planning functions more effectively with the regional and local level planning functions as a key action within the growth areas. It acknowledges that different delivery mechanisms will be appropriate in relation to the different growth areas and could include *non-statutory implementation partnerships bringing together key stakeholders*<sup>2</sup>.

#### **3.2 Circular 05/2005 on planning obligations**

The Circular on planning obligations<sup>3</sup> clearly supports a tariff based approach. Paragraph B21 states that *where the combined impact of a number of developments creates the need for infrastructure it may be reasonable for the associated developers' contributions to be pooled, in order to allow the infrastructure to be secured in a fair and equitable way...*<sup>4</sup>.

Paragraph B23 explains that *in cases where an item of infrastructure necessitated by the cumulative impact of a series of development is provided by a local authority or other body before all the developments have come forward, the later developers may still be required to contribute the relevant proportion of the costs. This practice can still meet the requirements of the Secretary of State's policy tests if the need for the infrastructure and the proportionate contributions to be sought is set out in advance*<sup>5</sup>.

#### **3.3 Guidance**

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<sup>1</sup> Page 41 of the Communities Plan.

<sup>2</sup> Page 42 of the Communities Plan.

<sup>3</sup> Circular 05/2005 on planning obligations (published 18 July 2005).

<sup>4</sup> Paragraph B21 of Circular 05/2005.

<sup>5</sup> Paragraph B23 of Circular 05/2005.

PPS1 acknowledges that there may be circumstances where emerging policy can form part of the decision making process. Paragraph 53 states that *emerging policies, in the form of draft departmental circulars and policy guidance, can be regarded as material considerations, depending on the context.*

In December 2005 the Government published a consultation paper entitled "Planning Gain Supplement - a Consultation" into levying a supplement to capture uplift in land values following the "Review of Housing Supply - Delivering Stability - Securing our Future Housing Need Final Report - Recommendations March 2004" prepared by Kate Barker and published by Her Majesty's Treasury.

The consultation paper records at Box 5.3 on page 25 that *Milton Keynes Partnership Committee has developed a "prospectus" identifying and prioritising the local infrastructure and strategic infrastructure need to deliver 15,000 dwellings in the expansion flanks over the period to 2016. The prospectus takes account of committed and planned levels of mainstream and Growth Area public expenditure of these services.*

*The prospectus also identifies the contributions to infrastructure that will be made by developers, through planning obligations, broken down on a per dwelling basis. The section 106 contribution that developers are expected to make amounts to around £18,500 per dwelling plus land for social infrastructure and affordable housing.*

The consultation paper also states that this approach to planning obligations has yet to go through the statutory planning process and is awaiting final business case approval. As stated above in this Preamble Her Majesty's Treasury subsequently issued its formal approval of the infrastructure tariff arrangements on 21 December 2005.

## **4 Regional Planning Policy**

### **4.1 SRS**

A key purpose of the SRS is *to provide strategic guidance on the scale, location and timing of development and associated employment, transport, and other infrastructure to 2021 and the necessary delivery mechanisms.*<sup>6</sup>

The SRS supports the allocation of the eastern and western expansion areas of Milton Keynes and acknowledges that the levels of identified growth will require commitment of substantial funding to deliver the necessary strategic infrastructure and acknowledges that *appropriate contributions will be required from many sources, both from the private and public sectors*<sup>7</sup>.

It defines the role of local delivery vehicles as being to drive forward growth using land assembly, investment and planning roles to create confidence and stimulate private investment. Each local delivery vehicle will be established for long term operation but will allow for evolution as times change.

Each delivery vehicle must formulate a business plan, guided by the SRS and is advised in relation to the provision of strategic infrastructure funding, that *existing funding routes and bidding mechanisms will need to support the aspirations of this sub-regional strategy and new ones created as appropriate. Some of the new funding routes/mechanisms will need to be specifically tailored for implementation within this sub-region ...*<sup>8</sup> (our emphasis).

### **4.2 MKSM inter-regional board**

In order to support further growth area development at regional level, the MKSM inter-regional board (the **Board**) was established to address strategic issues and implementation across the MKSM Growth Area (which includes the Designated Area) and to ensure that all agencies deliver the investment and policy commitments to meet the objectives, policies and proposals expressed in the SRS.

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<sup>6</sup> Paragraph 9 of the SRS.

<sup>7</sup> Paragraph 17 of the SRS.

<sup>8</sup> Paragraph 66 of the SRS.

The Board's terms of reference include *securing the timely delivery of infrastructure and service necessary for sustainable growth in the Sub-Region. A key issue for early consideration will be the need for a consistent and effective approach to developer contributions. Coherence will be enhanced if major proposals are dealt with similarly across the Sub-Region, and competition between the component growth areas should be avoided.*<sup>9</sup>

The SRS recognises that the infrastructure requirements for the Sub-Region will require long term investment and new fund routes will *need to be created as appropriate. Some of the new funding routes/mechanisms will need to be specifically tailored for implementation within this Sub-Region. Central and local Government will work, through the Inter-Regional Board and other available avenues, to secure commitment to the funding for key infrastructure and other investment essential to delivering this Growth Area Strategy in a sustainable fashion.*<sup>10</sup>

In a report to the Board (subsequently approved by it on 22 October 2004), John Walker reported that a tariff based approach was the only way of promoting, in a co-ordinated and joined up way, the provision of the required local and strategic infrastructure. John Walker is the chair of the MKSM funding sub-group which reports to the Board and was previously an advisor to the Office of the Deputy Prime Minister tasked with engineering a link between the Office of the Deputy Prime Minister and the regional and local delivery vehicles.

At a subsequent meeting of the Board on 4 October 2005 it was recorded in the minutes that the tariff based approach was *consistent with making best use of existing legislation, for example the revised Circular on Section 106 agreements*<sup>11</sup>.

## **5 Local Planning Policy**

### **5.1 Local Plan**

On 21st December 2005 the Milton Keynes Council (the **Council**) adopted the Local Plan for the period to 2011, replacing the Plan adopted in January 1995. The Notice of Adoption was published in the London Gazette on 19 January 2006 and Milton Keynes Citizen on 19 and 26 January 2006.

In Chapter 8 of the Local Plan, Policies EA1 and EA2 set out the Council's requirements in relation to the expansion areas and Policy EA5 relates to the western expansion area and Policy EA3 relates to the eastern expansion area.

Policy EA1 of the Local Plan requires the approval of a comprehensive masterplan for each of the expansion areas within the Designated Area, in addition to a development brief for each phase or site. It is intended that both will be adopted as supplementary planning guidance and it is pursuant to this policy that the Milton Keynes Eastern Expansion Area Development Framework - Supplementary Planning Guidance - Consultation Draft - Autumn 2004 together with the modifications approved by the Council at the Cabinet meetings on 21 December 2004 and 15 March 2005 (the **EEADF**) has been adopted as a document of material planning consideration for development control purposes.

Policy EA2 of the Local Plan outlines additional requirements that proposals for the expansion areas must include and cites planning obligations relating to the phasing of development and the early provision of on and off site infrastructure and facilities to include land, capital and initial running costs. In essence, this policy requires that appropriate planning obligations are secured by MKPC as the local planning authority.

The statement on Decisions and Responses to the Consultation on Proposed Modifications to the Replacement Local Plan records that additional text is to be added to Chapter 15 of the Local Plan dealing with Planning Obligations to explain the latest position in relation to the tariff arrangements.

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<sup>9</sup> Paragraph 58 of the SRS

<sup>10</sup> Paragraph 66 of the SRS

<sup>11</sup> Paragraph 5 of the Minutes of Meeting Five: 4 October 2005 of the Milton Keynes and South Midlands Growth Area: Inter-Regional Board

The Local Plan does not make any specific allocation in the Strategic Reserve areas. Potential land uses referred to in the EEADF are only indicative and will need to be justified in accordance with provisions of the Local Plan.

## 5.2 Development Frameworks for the Expansion Areas

The EEADF makes express reference to the tariff based approach. Section 7 (Funding and Delivery) of the EEADF describes the possible approach to planning obligations and states *it is currently envisaged that developers' financial contributions towards transport infrastructure up to 2016 will be included in the overall tariff system being developed for the remaining development on the east and west flanks. This will require a contribution based on the number of dwelling units involved in each development and a separate contribution for each employment site calculated on the basis of a floor area. The tariff amounts will be based on a proportional contribution to both local (community) and strategic infrastructure requirements...*<sup>12</sup>

The Milton Keynes Western Expansion Area Development Framework - Supplementary Planning Guidance - Consultation Draft – 29 November 2004 together with the modifications was approved by the Council at the Cabinet meeting on 21 June 2005 and adopted as a "document of material consideration for development control purposes" (the WEADF)

Section 7 (Funding and Investment) of the WEADF states that *Milton Keynes Partnership Committee (MKPC) as the Local Delivery Vehicle for Milton Keynes is seeking to establish a mechanism for ensuring the costs of strategic and local infrastructure are met. The outcome of the work includes the identification of expected costs and funding mechanisms such as tariff arrangements*<sup>13</sup>

The tariff based approach provides the only practical mechanism for stakeholders to meet the Government's aims in relation to the growth areas, including the Designated Area. The approach is commended in John Walker's report to the Board and approved by the Board in October 2004 (and referred to above). It has also been approved by ODPM and Her Majesty's Treasury in the context of the Designated Area.

It is understood that in due course the tariff based approach will be included as a policy document within the Council's local development scheme, prepared in accordance with section 15(8) of the Planning and Compulsory Purchase Act 2004.

Given the acknowledged urgency for residential development in the Designated Area it is unsurprising that policy at local level is catching up with the Communities Plan strategy expressed by Central Government.

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<sup>12</sup> Paragraph 7.2.5 of the EEADF

<sup>13</sup> Paragraph 7.6.1 of the WEADF

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Dated

2007

**Between**

- (1) **Urban Regeneration Agency (carrying on business as English Partnerships) (the Agency)** of 110 Buckingham Palace Road, London, SW1W 9SA;
- (2) **Gallagher Estates Limited (Landowner One)** registered in England with number 00571817 whose registered office is at 15 Hockley Court, Stratford Road, Hockley Heath, Solihull, West Midlands B94 6NW
- (3) **William Davis Limited (Landowner Two)** registered in England with number 00468397 whose registered office is at Forest Field, Forest Road, Loughborough, Leicestershire LE11 0EW
- (4) **Wilcon Homes Midlands Limited (Landowner Three)** registered in England with number 00226898 whose registered office is at 2 Princes Way, Solihull, West Midlands B91 3ES
- (5) **Genesis Land Limited (Landowner Four)** registered in England with number 02728184 whose registered office is at 20 Bridge Street, Leighton Buzzard, Bedfordshire LU7 1AL
- (6) **Hallam Land Management Limited (Landowner Five)** registered in England with number 02456711 whose registered office is at 10 Duncan Close, Red House Square, Moulton Park, Northampton NN3 6WL
- (7) **Fen Farm Developments (Landowner Six)** registered in England with number 02957038 whose registered office is at Gazeley House, Rockingham Drive, Linford Wood, Milton Keynes MK14 6PD
- (8) **Jane Fitton Williams and Thomas Allan Williams (Landowner Seven)** of Highlands, 95 Weston Road, Olney MK46 5AA
- (9) **Milton Keynes Council (Landowner Eight)** of Civic Offices, 1 Saxon Gate East, Milton Keynes MK9 3AG
- (10) **The Commission for New Towns (Landowner Nine)** of Central Business Exchange 414-428 Midsummer Boulevard, Central Milton Keynes, MK9 2EA; and
- [\(11\)](#) **Redlawn Land Limited (Landowner Ten)** of 15 Hockley Court, Stratford Road, Hockley Heath, Solihull, West Midlands B94 6NW
- [\(12\)](#) **David Eric Long, Adam Smail, Peter Horrocks and George Duncan (Landowner Eleven)** c/o Bevan Brittan of Fleet Place House, 2 Fleet Place, Holborn Viaduct, London EC4M 7RF
- [\(13\)](#) **Nicholas Charles Hedges and Richard Charles Willcock (Landowner Twelve)** c/o Hallam Land Management Limited of 10 Duncan Close, Red House Square, Moulton Park, Northampton NN3 6WL
- [\(14\)](#) **Bletchley Turf Supplies Ltd (Landowner Thirteen)** c/o Wilcon Homes Midlands Limited of 2 Princes Way, Solihull, West Midlands B91 3ES
- [\(15\)](#) **George Richard Fountaine (Landowner Fourteen)** c/o Redlawn Land Limited of 15 Hockley Court, Stratford Road, Hockley Heath, Solihull, West Midlands B94 6NW
- [\(16\)](#) **Tudor George Cowley and Ann Christine Cowley (Landowner Fifteen)** c/o Redlawn Land Limited of 15 Hockley Court, Stratford Road, Hockley Heath, Solihull, West Midlands B94 6NW
- [\(17\)](#) **Charles Harry Sherwood, Sylvia Ann Mander, Sir Beville Douglas Stanier and David Hill (the Trustees of Elmers Charity) (Landowner Sixteen)** c/o Redlawn Land Limited of 15 Hockley Court, Stratford Road, Hockley Heath, Solihull, West Midlands B94 6NW

(18) **Patricia Ann Hooper, Diane Lavina West, Charles Harry Sherwood and Martin James Luckett (the Trustees of the Unknown Donor of Calverton) (Landowner Seventeen)** c/o Redlawn Land Limited of 15 Hockley Court, Stratford Road, Hockley Heath, Solihull, West Midlands B94 6NW

## **Recitals**

- A** The Agency is the strategic local planning authority for the purposes of Part III of the Act for the Designated Area in which the Land is situated
- B** Milton Keynes Council (the **Council**) is the highway authority (for non-strategic roads) and the education authority for the Designated Area
- C** Landowners One to Seventeen each own or hold on option to purchase part of the Designated Area as shown on Plan 1
- D** The Government has declared the Milton Keynes and South Midlands growth area a priority area for the development of housing and employment to meet the region's need and to promote such development has appointed the Agency as the local planning authority for the Designated Area, which forms part of that growth area, for the purposes of Part III of the Act
- E** Central Government's proposals for the required step change in residential development in the growth area (including the Designated Area) are enshrined in policies emerging since publication of the Government's Sustainable Communities Plan in February 2003
- F** The Regional Spatial Strategy seeks to provide strategic guidance on the scale, location and timing of development and associated employment, transport, and other infrastructure to 2021 as well as the necessary delivery mechanisms and acknowledges that the levels of growth required will require commitment of substantial funding from public and private sectors to deliver the necessary associated infrastructure
- G** The Agency will be responsible for co-ordinating the private and public sector contributions to such infrastructure works
- H** In accordance with the Milton Keynes and South Midlands Sub Regional Strategy MKPC has formulated and approved a Business Plan which will ensure that all money received, from whatever source, is applied for the appropriate purpose in accordance with the Business Plan
- I** In order to secure the development of the Designated Area, the Parties have agreed that it will be necessary to secure the funding for a range of local and strategic infrastructure
- J** The Parties have further agreed that Development within the Designated Area should be subject to standard tariff based contributions and an equalisation mechanism to ensure that the cost of infrastructure is shared fairly within the Designated Area
- K** In negotiating the tariff the Agency and the Landowners have agreed, inter alia, that thirty per cent (30%) affordable housing will be provided in relation to each Site Specific Agreement for Residential Land comprising five percent (5%) Social Rented Housing, fifteen percent (15%) Shared Ownership Housing, five percent (5%) Reduced Cost Housing and five percent (5%) Low Cost Market Housing in accordance with the Council's Affordable Housing SPG at the date hereof subject to the proviso to the definition of Affordable Housing Tenures
- L** The Agency will act consistently and fairly with Landowners in dealing with the grant of Planning Permission for Development within the Designated Area in accordance with the principles set out in this Agreement and to that end the Parties have also agreed to append to this Agreement a "standard" set of draft planning conditions to which Planning Permissions would be subject but also acknowledge that the Agency may, in its discretion, vary or add to the conditions when granting Planning Permission

[M](#) The obligations contained in Clause 4 and Schedules 1 and 2 of this Agreement are planning obligations within the meaning of section 106 of the Act and shall bind the Land and shall be enforceable by the Agency to whom the obligations are made

**It is agreed:**

## **1 Definitions and Interpretation**

### **1.1 Definitions**

In this Agreement where the context admits the following expressions shall have the following meanings:

**the Act** means the Town and Country Planning Act 1990 (as amended)

**Affordable Housing** means low cost housing and housing provided by means of a subsidy enabling the sale price or occupancy costs (including rents, rates and service charges) to be lower than the prevailing market prices or occupancy costs for similar housing in the Borough of Milton Keynes and to be made available to people who because of their low income cannot afford to buy or rent houses generally available on the open market

**Affordable Housing Location Plan** means a plan showing the location of the Affordable Housing to be constructed within the relevant Phase

**Affordable Housing Mix** means the mix of the Affordable Housing Units to be provided as follows (unless otherwise approved by the Council):

- (a) twenty per cent (20%) one bed Affordable Housing Units;
- (b) sixty per cent (60%) two bed Affordable Housing Units;
- (c) fifteen per cent (15%) three bed Affordable Housing Units; and
- (d) five per cent (5%) four bed Affordable Housing Units

**Affordable Housing Provider** means an affordable housing provider which is either:

- (a) a registered social landlord within the meaning of the Housing Act 1996 and registered with the Housing Corporation pursuant to Section 1 of that Act; or
- (b) such other body eligible to receive grant monies from the Housing Corporation and/or capable of owning or managing Affordable Housing Units or is otherwise approved by the Council.

**Affordable Housing SPG** means the "Supplementary Planning Guidance – Affordable Housing" adopted by the Council in July 2004 (or any amendment thereof or replacement supplementary planning guidance and/or supplementary planning document applicable at the relevant Review Date)

**Affordable Housing Tenures** means the following mix of tenures in accordance with the Council's Affordable Housing SPG adopted in 2004 (unless otherwise approved by the Council) expressed as a percentage of the total number of Residential Units to be constructed which comprise the thirty per cent (30%) Affordable Housing:

- (a) five per cent (5%) Social Rented Housing;
- (b) fifteen per cent (15%) Shared Ownership Housing;
- (c) five per cent (5%) Reduced Cost Housing; and

(d) five per cent (5%) Low Cost Market Housing Units;

PROVIDED THAT the mix of tenures specified in any Affordable Housing SPD which replaces the July 2004 version shall apply to a Development Site which has not obtained Planning Permission three (3) months after the adoption of such replacement Affordable Housing SPD and for the avoidance of doubt the total number of Residential Units to be constructed as Affordable Housing on Development Sites shall be thirty per cent (30%) and

PROVIDED FURTHER that the mix of tenures to be applied to a Development Site in the Strategic Reserve will be agreed between the parties to the Site Specific Agreement for that particular Development Site at such time as the Site Specific Agreement is entered into and for the avoidance of doubt the total number of Residential Units to be constructed as Affordable Housing on Development Sites in the Strategic Reserve shall be thirty per cent (30%)

**Affordable Housing Unit** means the units of Affordable Housing to be constructed by Landowners as part of Development on Residential Land which shall represent thirty per cent (30%) of the number of Residential Units to be provided as part of that Development in accordance with the Affordable Housing Location Plan, Affordable Housing Mix and the Affordable Housing Tenures

**BC Index** means the Build Cost Information Service All in Tender Price Index as published by BCIS (a trading division of the Royal Institution of Chartered Surveyors Business Services Ltd) on-line or such similar index as may from time to time be published to replace such index

**BREEAM Employment Excellent Rating** means the Building Research Establishment Environmental Assessment Method level of "excellent" for industrial and commercial buildings or the equivalent standard which replaces the Building Research Establishment Environmental Assessment Method which is to be the assessment in force when the Commercial Unit or Units concerned are registered for assessment purposes whilst the registration is live

**BREEAM Employment Very Good Rating** means the Building Research Establishment Environment Assessment Method level of "very good" for industrial and commercial buildings or the equivalent standard which replaces the Building Research Establishment Environmental Assessment Method which is to be the assessment in force when the Commercial Unit or Units concerned are registered for assessment purposes whilst the registration is live

**Business Plan** means the business plan produced by the Agency in its role as local delivery vehicle for the Designated Area which, inter alia, details a tariff approach to planning obligations whereby Landowners contribute to a central fund for Infrastructure which is relevant to Development taking place within the Designated Area and sets out an indicative timetable for delivery including any revisions or modifications of the business plan following each annual review carried out in accordance with its terms and attaches the five (5) year rolling list of infrastructure which is reviewed by MKPC annually

**Commercial Unit** means a building on Employment Land or Mixed Use Land for commercial industrial retail or leisure use and ancillary facilities-but does not include any land used or to be used for Community Uses and Voluntary Community Uses nor any Nil Value Land except where it is in mixed use

**Commercial Unit Carbon Rebate** means fifty percent (50%) of the element of Employment Land Contribution in respect of carbon offsetting (pursuant to Policy D4) Index Linked which at the date of this Agreement is expected to be seven hundred and fifty thousand pounds (£750,000) attributable to that Commercial Unit

**Community Foundation** means the Community Foundation Trust of Acorn House, 381 Midsummer Boulevard, Central Milton Keynes, MK9 3HP or such other body nominated by the Agency in consultation with the Council to whom the Reserve Sites can be transferred for Voluntary Community Uses

**Community Uses** means the following uses: small scale offices and shops; sheltered housing; special needs housing; hostels; meeting places; workshops; and similar facilities and which are to be appropriate to the area in which they are provided, in a residential area being a use which will not cause any nuisance or annoyance to occupiers of adjoining or neighbouring Residential Units

**Completion** means the completion of sale of a Residential Unit or the transfer of a Residential Unit to an Affordable Housing Provider (or other authorised body) or management company or, if earlier, the occupation of a Residential Unit for residential purposes

**Construction Standards Report** means a report that demonstrates how environmental sustainability issues have been addressed during the design process and sets out the way in which the credits under BREEAM Employment Very Good Rating BREEAM Employment Excellent Rating Eco Homes Very Good Rating or Eco Homes Excellent Rating will be achieved based on the actual design of the Commercial Units or Residential Units (as appropriate) in the particular Development Parcel

**Council** means the Milton Keynes Council in its capacity as plan making authority, planning conditions enforcement authority, education and library authority and highway authority or in its capacity as such of those functions as the context requires

**Default Residential Land Contribution** means a sum equivalent to ten per cent (10%) of the Per Unit Contribution for ten per cent (10%) of Residential Units to be constructed on the Development Site pursuant to a Planning Permission

**Delivery Plan** means the rolling list of infrastructure which is to be reviewed annually by MKPC and the version current at the date of this Agreement was approved by MKPC in June 2006 for the eighteen month period thereafter and is attached as Schedule 7

**Design Code** means a code to apply during construction and to have continuing effect setting out the proposed vision and key design principles for a Development to include (but not be limited to) the following details for each separate character area within each Phase: density; details of building types; parking provision; building materials; key elevational and architectural principles; location of landmark buildings and gateways; building heights; street types and block principles; roofs and boundaries; public realm materials including carriageways; footways; landscaping; street furniture and detailing the extent to which or providing guidelines (if appropriate) as to how Residential Units and/or Commercial Units can be altered once constructed all of which shall not conflict with the relevant Development Brief

**Designated Area** means the area in Milton Keynes designated by the Order which forms part of the Milton Keynes and South Midlands growth area and in respect of which the Agency is the strategic planning authority for the purposes of Part III of the Act but for the avoidance of doubt references to the Designated Area in this Agreement do not include the land comprised in the northern expansion area within the Designated Area.

**Development** means development in accordance with a Planning Permission

**Development Brief** means the brief which complies with the Eastern Expansion Area Development Framework or the Western Expansion Area Development Framework (as the case may be) submitted to and approved by the Agency prior to the grant of a Planning Permission which indicates, inter alia, the phasing and sequencing of construction of the Development

**Development Parcel** means an area of land comprised within a Development Site (comprising either a Phase or part of a Phase) in respect of which a Landowner submits an application for approval of one (1) or more Reserved Matters pursuant to a Planning Permission or an application for detailed planning permission

**Development Site** means an area of the Land with Planning Permission

**Dispute Resolution** means the process described in Clause 5, Paragraph 14 of Part 1 Schedule 1, Paragraph 12 of Part 2 Schedule 1, or Paragraph 14 of Part 3 Schedule 1 as appropriate

**Earnings Index** means the Seasonally Adjusted Economy Average Earnings Index for the whole economy excluding bonuses, including arrears as published by the Office for National Statistics or such similar index as may from time to time be published to replace such index

**Eastern Expansion Area** means the area indicatively shown edged in red on Plan 1 and in more detail in the Delivery Plan

**Eastern Expansion Area Development Framework** means the "Milton Keynes Eastern Expansion Area Development Framework - Supplementary Planning Guidance - Consultation Draft - Autumn 2004" together with the modifications approved by the Council at the Cabinet meetings on 21 December 2004 and 15 March 2005 and agreed by the Cabinet on 18 October 2005

**Eco Homes Excellent Rating** means the Building Research Establishment Environment Assessment Method level of "excellent" for dwellings or the equivalent standard which replaces the Building Research Establishment Environment Assessment Method and is the assessment in force when the Residential Unit or Units concerned are registered for assessment purposes whilst the registration is live and which for the avoidance of doubt is deemed to comply with the requirements of Policy D4

**Eco Homes Very Good Rating** means the Building Research Establishment Environmental Assessment Method level of "very good" for dwellings or the equivalent standard which replaces the Building Research Establishment Environmental Assessment Method which is to be the assessment in force when the Residential Unit or Units concerned are registered for assessment purposes whilst the registration is live and of the number of credits required to achieve "very good" PROVIDED ALWAYS that;

- (a) Ten (10) credits must be achieved for Ene1 under the 2006 Eco Homes standard or such equivalent number of credits against any future measure of dwelling emission rates (or similar item) which replaces the 2006 Eco Homes standard;
- (b) Three (3) credits must be achieved for Wat1 under the 2006 Eco Homes standard or such equivalent number of credits against any future measure of internal potable water use (or similar item) which replaces the 2006 Eco Homes standard; and
- (c) Two (2) credits must be achieved for Pol4 under the 2006 Eco Homes standard or such equivalent number of credits against any future measure of renewable and low emission energy sources (or similar item) which replaces the 2006 Eco Homes standard SUBJECT TO the cost of achieving this not exceeding one thousand five hundred pounds (£1500) Index Linked per Residential Unit over and above the minimum cost of achieving "very good" against the Building Research Establishment Environmental Assessment Method or the equivalent standard against any assessment method which replaces the building Research Establishment Environmental Assessment Method on average across the whole Development Site unless the Government introduces minimum national standards which exceed (i.e. are more stringent than) the Pol4 or equivalent standard when the one thousand five hundred pound (£1,500) limit mentioned above shall no longer apply

**Employment Land** means land shown in the Eastern Expansion Area Development Framework or Western Expansion Area Development Framework or any such document produced for the Strategic Reserve for employment industrial retail or leisure purposes only

**Employment Land Contribution** means a contribution in respect of Commercial Units to be two hundred and sixty thousand, seven hundred and ninety five pounds (£260,795) per hectare of Employment Land or Mixed Use Land in each case payable by Landowners to the Agency in respect of all Commercial Unit development

**Employment Monitoring Report** means a detailed report prepared by the Local Employment Co-ordinator specifying the actions and measures that the Landowner has carried out to fulfil the obligations in Paragraph 11.1 of Part 1 or Paragraph 9.1 of Part 2 or Paragraph 10.1 of Part 3 of Schedule 1 (as appropriate) including an evaluation of the success of the actions and measures and identifying any changes in approach that should be adopted to meet better the objective of ensuring that employment and business opportunities are available to those living and working locally

**Excess** means the amount by which the actual Works in Kind Costs exceed any estimated Works in Kind Costs (a) approved by the Independent Valuation Expert or alternatively (b) determined by the Expert or Legal Expert (as appropriate) by way of Dispute Resolution

**Expansion Area** means the Eastern Expansion Area the Western Expansion Area or the Strategic Reserve

**Expansion Area Owners** means owners of Development Sites within one of the Expansion Areas

**Expert** means a person with not less than ten (10) years recent and relevant experience

**Final Instalment** means either (1) the payment of seventy five per cent (75%) of the Per Unit Contribution in respect of Completions of Residential Units or (2) the payment of fifty per cent (50%) of the Employment Land Contribution on Occupation of a Commercial Unit

**Force Majeure Event** means an unforeseen event or legal requirement which prevents Development

**Force Majeure Notice** means a notice issued by a Party that believes a Force Majeure Event is occurring which specifies the event which the Party believes constitutes the Force Majeure Event and requests a review of the Agreement

**Glebe Land** means the area of land shown [green] on Plan 2

**Grampian Condition** means a condition imposed on a Planning Permission for a Development at the direction of the Highways Agency which has the effect of preventing development on a Development Site until specified works have been carried out including but not limited to works in the vicinity of Junction 13 or 14 of the M1<sup>14</sup>

**Implementable Consent** means a Planning Permission in relation to a Development Parcel or Phase (as the case may be) which provides for the construction of either Residential Units or the development of Commercial Units

PROVIDED ALWAYS that for the avoidance of doubt a Planning Permission shall not be an Implementable Consent in respect of that Development Parcel or Phase until such time as:

- (a) all Reserved Matters in respect of the first (1st) Development Parcel or Phase (as appropriate) have been approved;
- (b) any highways or planning agreements required prior to the commencement of development to enable a Landowner to discharge a Grampian Condition have been entered into or a contract to carry out the works to discharge the Grampian Condition has been let; and

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<sup>14</sup> Explanatory Note: If in response to a site specific application the Highways Agency require a Grampian Condition which prevents the occupation of a material part of the development prior to the completion of specified works then provision may be included within the relevant site specific agreement for delaying the date of the long stop payment or of some outstanding Pro Rata Contributions which the developer would be required to make.

- (c) any consent approval order or licence which prevents any development on the Development Site has been obtained including but not limited to:
  - (i) any order or licence required for the removal or relocation of protected species;
  - (ii) any order or licence required for the removal of flora;
  - (iii) any order required for the creation, extinguishment or diversion of a public right of way; and
  - (iv) any other consent, approval, order or licence of a similar nature or determination required from a regulatory body or public authority

PROVIDED ALWAYS that if any such consent approval order or licence could have been sought but was not sought prior to the date of grant of a Reserved Matters approval it shall nonetheless be treated as being an Implementable Consent

AND FURTHER PROVIDED that if a Planning Permission which permits the construction of Residential Units or Commercial Units is Implemented it shall be treated as being an Implementable Consent

**Implementation** means the commencement of a Development pursuant to a Planning Permission on Land by the carrying out of any material operation within the meaning of sections 56(2) and (4) of the Act PROVIDED ALWAYS that for the purposes of this Agreement the following shall not be taken to be a material operation and shall not amount to Implementation:

- (a) works of site clearance
- (b) ground investigation and/or site survey work
- (c) construction of boundary fencing or hoarding
- (d) archaeological investigation
- (e) works of decontamination or remediation
- (f) the laying and construction of drains and other services
- (g) the carrying out of service diversion works
- (h) any work to or in respect of statutory undertakers equipment
- (i) temporary works or structures
- (j) bunding

and **Implemented** shall be construed accordingly

**Implementation Notice** means a notice given by or on behalf of a Landowner to the Agency stating the date of Implementation

**Independent Valuation Expert** means an expert drawn from the Agency's approved panel of appropriately qualified valuation experts

**Index Linked** means the recalculation of a financial contribution to be made under the Site Specific Agreements by applying the following formula (PROVIDED THAT the indexation periods are to be varied where expressly stated in the provisions of Site Specific Agreements):

$$\left(A \times \frac{B}{C}\right) + \left(D \times \frac{E}{F}\right) + \left(G \times \frac{H}{I} \times \frac{J}{K}\right) = L$$

Where:

A = one third of the total contribution in respect of Residential Units and/or Commercial Units payable by a Landowner under the provisions of a Site Specific Agreement

B = the figures shown in the Retail Prices Index for the period immediately prior to the due date for payment of such sum under the provisions of a Site Specific Agreement

C = 192.2 being the figure shown in the Retail Prices Index for the period last published prior to 1 July 2005

D = one third of the total contribution in respect of Residential Units and/or Commercial Units payable by a Landowner under the provisions of a Site Specific Agreement

E = the figures shown in the Earnings Index for the period immediately prior to the due date for payment of such sum under the provisions of a Site Specific Agreement

F = 121.7 being the figure shown in the Earnings Index for the period last published prior 1 July 2005

G = one third of the total contribution in respect of Residential Units and/or Commercial Units payable by a Landowner under the provisions of a Site Specific Agreement

H = the figures shown in the BC Index for the period immediately prior to the due date for payment of such sum under the provisions of a Site Specific Agreement

I = 226 being the figure shown in the BC Index for the period last published prior to 1 July 2005

J = 1 minus (0.5 multiplied by (1 minus the figure shown in the BCIS location factor for the South East (excluding Greater London) for the period immediately prior to the due date for payment of such sum under the provisions of a Site Specific Agreement))

K = 1.03 being 1 minus (0.5 multiplied by (1 minus the figure shown in the BCIS location factor for the South East (excluding Greater London) for the period immediately prior to 1 July 2005))

L = the recalculated sum payable under the provisions of a Site Specific Agreement

**Infrastructure** means the items of infrastructure to be provided in or to serve the Designated Area which are set out in the Infrastructure Delivery Plan. The transport improvements works planned at the date of this Agreement are indicatively shown on Plan 2

**Infrastructure Delivery Plan** means the plan for infrastructure to be provided in the Designated Area as contained in Schedule 5 to this Agreement the Business Plan the Delivery Plan and/or Plan 2 as may be revised from time to time

**Land** means land within the Designated Area shown on Plan 1 (being a plan in two parts with an explanatory index to each) under the ownership or control of one of the Landowners whether or not such land is subject to a Planning Permission granted by the Agency

**Landowner** means an owner of Land in the Designated Area who is either Landowner One Landowner Two or Landowner Three Landowner Four Landowner Five Landowner Six Landowner Seven Landowner Eight or Landowner Nine in this Agreement or a successor in title to them

**Legal Expert** means a person with not less than ten (10) years recent and relevant experience

**Linear Park** means the linear park to be laid out within the land shown edged green on Plan 3 in accordance with the Linear Park Specification

**Linear Park Commuted Sum** means the amount of money to be paid to the Nominee for the maintenance of the Linear Park Index Linked in accordance with a formula which is agreed between a Landowner the Agency and the Nominee

**Linear Park Specification** means the specification for the laying out of the Linear Park to be submitted by a Landowner and agreed by the Agency or as may be determined through Dispute Resolution

**Local Employment Coordinator** means an agent which may be a contractor, licensee, employee or employees of the Landowner whose role it is to promote and facilitate the use of as many local residents as possible in the construction of the Development

**Local Infrastructure** means items of Infrastructure relevant at a local level and which may be funded in part by the Council or other bodies rather than the Agency

**Local Plan** means the Milton Keynes Replacement Local Plan 2001 - 2011 adopted by the Council on 21 December 2005

**Low Cost Market Housing** means Affordable Housing Units to be constructed as part of a Development the sale value of which are to be no more than the Market Value of similar new build shared ownership properties of comparable size in the locality

**Market Housing** means Residential Units to be constructed as part of a Development which are not Affordable Housing

**Market Value** means in respect of any Residential Unit or area of residential or commercial or other land at the relevant date the price which the entire legal estate and equitable interest in the Residential Unit or area of land would then fetch on a freehold sale (or leasehold disposal in respect of the grant of a lease for a term of one hundred and twenty five (125) years (as the case may be)) with vacant possession at "market value" as defined within the Royal Institution of Chartered Surveyors' Appraisal and Valuation Manual current at the date hereof or any replacement thereof from time to time and for the avoidance of doubt the market value of any Reserve Site (or part thereof) shall be calculated by reference to the proposed Community Use or Community Uses to which that Reserve Site (or part thereof) will be put

**Mixed Use Land** means land shown in the Eastern Expansion Area Development Framework or Western Expansion Area Development Framework or any such document produced for the Strategic Reserve for employment industrial retail or leisure purposes and residential purposes

**MKPC** means the legally constituted committee of the Agency established as the local delivery vehicle responsible for overseeing the future growth of, inter alia, the Designated Area

**Nil Value Land** shall mean land provided at no cost (including at nominal cost of one pound (£1)) to the Agency the Council the Community Foundation or a Nominee for the following uses:

- (a) school sites;
- (b) libraries and lifelong learning;
- (c) Public Open Space;
- (d) community halls;
- (e) Park and Ride sites; and

- (f) Crematoria and burial grounds PROVIDED ALWAYS that the Agency and/or the Council have provided evidence to demonstrate the need for land to be provided for this use

**Nominee** means a body nominated by the Agency (which for the avoidance of doubt may include the Council) for the purposes of the transfer of land PROVIDED ALWAYS that where appropriate Milton Keynes Parks Trust shall be reasonably considered by the Agency for nomination

**Nova 1** means the area of land shown purple on Plan 3

**Nova 2** means the area of land shown yellow on Plan 3

**Occupation** means first occupation for trading of a Development or part of a Development PROVIDED ALWAYS that this shall not include occupation for fitting out purposes for the purposes of marketing and **Occupied** shall be construed accordingly

**Open Space Specification** means a scheme to be agreed between the relevant Landowner, the Council and the Agency pursuant to a condition in the Planning Permission which accords with the Eastern Expansion Area Development Framework or the Western Expansion Area Development Framework (as appropriate) and any other relevant supplementary planning documents concerned with open space adopted by the Council

**Party** means the Agency or any Landowner or their successor in title

**Per Unit Contribution** means the sum of eighteen thousand five hundred pounds (£18,500) per Residential Unit granted Planning Permission payable by each Landowner to the Agency in respect of all Development

**Phase** means a phase of a Development identified in the relevant Development Brief approved by the Agency in relation to each Development prior to the grant of Planning Permission

**Plan 1** means the plan annexed to this Agreement marked "Plan 1" showing the extent of the Designated Area edged red and the ownership of Land within it

**Plan 2** means the plan annexed to this Agreement marked "Milton Keynes Transport Improvements to 2016" and dated 15 February 2005 which indicatively shows the location of transport improvement works planned at the date of this Agreement recognising that the location and nature of such works may alter in accordance with revisions to the Infrastructure Delivery Plan

**Plan 3** means the plan annexed showing the location of the Linear Park

**Planning Gain Supplement** means any new tax or charge (excluding for the avoidance of doubt any sums payable under this Agreement) based on enhanced land values resulting from the grant of planning permission that may be imposed by the Government on landowners and developers such as that suggested in the Planning Gain Supplement Consultation

**Planning Gain Supplement Consultation** means the Government consultation "Planning – Gain Supplement" – a consultation" issued in December 2005 into levying a supplement to capture uplift in land values following the "Review of Housing Supply – Delivering Stability". Securing our Future Housing Need Final Report – Recommendations March 2004" prepared by Kate Barker and published by Her Majesty's Treasury

**Planning Permission** means a permission granted pursuant to a planning application for an area of the Land

**Policy D4** means the Council's policy on sustainable construction as set out in the Local Plan

**Post Construction Review Certificate** means a certificate issued by the Building Research Establishment Limited or such body which takes over or similarly performs its functions which

confirms that a particular Residential Unit or Commercial Unit achieves the credits expected based on the Construction Standard Report

**Practical Completion** means in relation to each and every Commercial Unit substantial completion of that unit to a stage where it is fit for Occupation

**Pro Rata Contribution** means the total amount of the Per Unit Contributions calculated by reference to the total number of Residential Units specified in the Site Specific Agreement and the total amount of the Employment Land Contribution in relation to Commercial Units calculated by reference to the maximum gross Commercial Unit floorspace specified in a Site Specific Agreement

**Public Open Space** means the open space areas required to meet the provisions of the relevant supplementary planning guidance and which will be more particularly specified in the Site Specific Agreements which are for use by the public and excludes private gardens and courtyards and landscaping associated closely with individual housing and employment development

**Public Transport Spine** means a road or part of a road designed in accordance with the written guidance and illustrative plans in the Public Transport Spine Guidance

**Public Transport Spine Guidance** means the design guidance issued by the Council on 7 March 2006 named the Design of City Streets which provides guidance on the design of the City Street together with indicative cross sections and annexed to this Agreement or any amendment reissue or replacement thereof

**Quarter Day** means 25 March, 24 June, 29 September and 25 December of each year

**Reduced Cost Market Housing** means Affordable Housing Units to be constructed as part of a Development and to be sold at the following discounts (unless otherwise approved by the Council):

- (a) thirty eight per cent (38%) to be sold at a discount being equal to ten per cent (10%) of the Market Value;
- (b) thirty five per cent (35%) to be sold at a discount equal to twenty percent (20%) of the Market Value; and
- (c) twenty seven per cent (27%) to be sold at a discount equal to thirty percent (30%) of the Market Value;

**Release Date** means either:

- (a) the tenth (10th) anniversary of the date set out in the Implementation Notice in respect of the Development Parcel within which the relevant Reserve Site is situated or if earlier
- (b) 31 December 2021

**Request for Security Confirmation** means a written notice from the Agency requesting a Security Confirmation in relation to all or any specified areas of land within the Development Site

**Reserved Matters** means the details of each of the access siting design external appearance and landscaping where relevant for a Development Parcel or for a Phase (as the case may be) in each case within a Development Site required to be approved by the Agency pursuant to an outline Planning Permission together with any other matter described as a reserved matter or equivalent in future legislation and meeting the test of being details that need to be approved prior to the commencement of development

**Reserve Site(s)** means the areas shown in the Eastern Expansion Area Development Framework and the Western Expansion Area Development Framework and the areas which are

similarly identified in any development framework prepared for the Strategic Reserve for future community use of which no more than fifty per cent (50%) are to be used for Voluntary Community Uses

**Residential Unit** means a unit of residential accommodation (whether house or flat or otherwise and whether Affordable Housing or Market Housing)

**Residential Unit Carbon Rebate** means seventy five pounds (£75) Index Linked for each Residential Unit

**Retail Prices Index** means the Retail Prices (all items) Index published by the Office for National Statistics or such similar index as may from time to time be published to replace such index

**Review** means the Review of this Agreement in accordance with Clause 7 and Schedule 3 on each Review Date

**Review Date** means the fifth (5th), tenth (10th) and fifteenth (15th) anniversary of this Agreement

**Security** means in relation to the area of a Development Site specified in a Request for Security Confirmation legal provision by way of a bank bond cash deposit mortgage parent company guarantee or other mechanism agreed between the Agency and a Landowner guaranteeing the availability of funds to pay all Pro Rata Contributions in relation to the area of a Development Site when they fall due in accordance with this Agreement

**Security Confirmation** means a document that provides detailed information about the resources available to the Landowner (including the value of the land)

**Security Notice** means a notice from the Agency specifying why the Agency is not reasonably satisfied that the Security Confirmation is sufficient to provide the Agency with a good level of confidence that the remaining Pro Rata Contributions in relation to the Development Site will be paid when they fall due in accordance with this Agreement

**Shared Ownership Housing** means Affordable Housing Units provided by an Affordable Housing Provider in which the occupier initially owns a percentage ranging between thirty per cent (30%) and seventy per cent (70%) and the remainder is owned by the Affordable Housing Provider in respect of which the occupier pays rent with the option for the occupier to increase the percentage of their ownership through a process of staircasing up to outright ownership and **Shared Ownership Housing Units** shall be construed accordingly

**Shared Ownership Housing Land** means land or parcels of land which taken together are capable of accommodating the Shared Ownership Housing Units which shall be transferred by the grant of a one hundred and twenty five (125) year lease or by the transfer of the freehold and services to adoptable standards shall be provided to the boundary of such land of sufficient capacity and depth to accommodate the potential requirements of the proposed Shared Ownership Housing Units

**Site Specific Agreement** means a planning obligation entered into under section 106 of the Act between a Landowner and the Agency or entered into unilaterally by the Landowner for the benefit of the Agency in connection with a Planning Permission granted on appeal relating to an area of the Land executed before or on the grant of Planning Permission and where the context permits the planning obligation entered into under section 106 of the Act between the Agency the Council Landowner seven and others dated 26 May 2006

**Social Rented Housing** means Affordable Housing Units made available for rent by an Affordable Housing Provider and **Social Rented Housing Units** shall be construed accordingly

**Social Rented Housing Land** means land or parcels of land which taken together are capable of accommodating the Social Rented Housing Units which shall be provided by the grant of a

one hundred and twenty five (125) year lease or by the transfer of the freehold and services to adoptable standards shall be provided to the boundary of such land of sufficient capacity and depth to accommodate the potential requirements of the proposed Social Rented Housing Units

**Strategic Infrastructure** means items of Infrastructure which are fully funded by Pro Rata Contributions and Government funding to the Agency and without the provision of which there is a possibility that Development could be constrained

**Strategic Reserve** means the land marked as the Strategic Reserve in the Local Plan the extent of which is shown edged [ ] on Plan 1

**SUDS** means a sustainable urban drainage system to be constructed as part of a Development in accordance with details approved pursuant to the Planning Permission

**Voluntary Community Uses** means uses organised through the Community Foundation other than Community Uses

**Western Expansion Area** means the area indicatively shown edged on Plan 1 and in more detail in the Delivery Plan

**Western Expansion Area Development Framework** means the "Milton Keynes Western Expansion Area Development Framework - Supplementary Planning Guidance - Consultation Draft - winter 2004" together with the modifications approved by the Council at the Cabinet meeting on 21 June 2005

**Works in Kind** means those works which are listed in the Infrastructure Delivery Plan and any other works which would otherwise be funded by the Pro Rata Contributions that may be agreed with the Agency from time to time which a Landowner wishes to carry out itself and the Works in Kind Costs of which are approved by the Independent Valuation Expert prior to commencement of such works and for the purposes of the Public Transport Spine shall mean only those works which are agreed as being necessary to comply with the Public Transport Spine Guidance or which are determined as being necessary in Dispute Resolution that are over and above works normally required as works to a highway and further guidance as to Works in Kind and those works normally required as works to a highway are included in Schedule 9 of this Agreement

**Works in Kind Costs** means (as appropriate in the particular context) either (1) the estimated construction costs of carrying out any Works in Kind together with associated design fees and supervision fees and required maintenance contributions (where applicable) though excluding for the avoidance of doubt any bond fees and in the case of items of Infrastructure which are subsidised the amount of subsidy paid; or if lower (2) the actual construction costs of carrying out any Works in Kind together with associated design fees and supervision fees and required maintenance contributions (where applicable) though excluding for the avoidance of doubt any bond fees and in the case of Works in Kind which are subsidised the amount of subsidy paid

## 1.2 Interpretation

1.2.1 Any covenant by a Landowner not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.

1.2.2 References to any statute include any statutory extension, modification, amendment or re-enactment of such statute and any subordinate instruments, regulations or orders made pursuant to it.

1.2.3 Where under this Agreement any notice, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction is required to be given, reached or taken by any Party or any response is requested to any such notice, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction such response shall not be unreasonable or unreasonably withheld or delayed.

- 1.2.4 The headings in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 1.2.5 Where reference is made to a Clause, Paragraph, Recital, Schedule or Plan such reference (unless the context otherwise requires) is a reference to a clause, paragraph, recital, schedule in (or in the case of a plan attached to) this Agreement.
- 1.2.6 In this Agreement the singular includes the plural and vice versa and the masculine includes the feminine and vice versa.
- 1.2.7 References in this Agreement to the Landowners and the Agency include each Party's successors in title and assigns and references to the Agency also include successors to its function as local planning authority.
- 1.2.8 Any covenants given by two (2) or more of the Parties are given severally.

## **2 Statutory Authorities**

- 2.1 It is declared that the obligations on the part of the Landowners are entered into with the intent that the same shall be enforceable against the Landowners during the period when this Agreement remains in force PROVIDED ALWAYS that the Landowners shall not be liable to the Agency for a breach of an obligation relating to any part of the Land which occurs whilst they have no interest or once they have parted with their interest relating to that part of the Land but without prejudice to the liability of the Landowners for any subsisting breach occurring prior to their parting with such interest and PROVIDED FURTHER that the reservation of any rights of access and/or to buy or maintain equipment shall not constitute an interest in the Land for the purposes of this Clause 2.1 of this Agreement.
- 2.2 The obligations contained in Clause 4 and Schedule 1 and Schedule 2 of this Agreement are planning obligations for the purposes of section 106 of the Act and are enforceable by the Agency PROVIDED ALWAYS that the obligations contained in Schedule 1 and Schedule 2 shall not take effect unless and until they are included in a Site Specific Agreement.

## **3 General Provisions**

- 3.1 It is agreed and declared that the covenants on behalf of the Landowners contained in this Agreement and in any Site Specific Agreement shall be treated as local land charges and the Agency shall procure that the same are registered by the Council as such.
- 3.2 Subject to having the legal powers so to do it is agreed that the Council and the Agency will be a party to each Site Specific Agreement.
- 3.3 It is further agreed and declared that each Planning Permission shall be subject to the conditions set out in Schedule 6 of this Agreement although it is acknowledged by the Landowners that the Agency may, in its discretion, vary or add to those conditions taking account of Circular 11/95: Use of Conditions in Planning Permissions (or any replacement) as it regards appropriate when granting individual Planning Permissions.
- 3.4 It is acknowledged by the Agency that a Landowner may request variations to the conditions set out in Schedule 6 of this Agreement and/or conditions additional to those set out in Schedule 6 of this Agreement as it regards appropriate when the Agency is granting a Planning Permission to the Landowner and the Agency will consider whether in its reasonable judgment such conditions should be varied and/or new conditions added as appropriate.

## **4 Covenants**

The Landowners covenant with the Agency:

- 4.1 To specify a maximum number of Residential Units and/or maximum amount of gross Commercial Unit floorspace (which for the avoidance of doubt includes all ancillary facilities and associated parking, service areas and access and any other connected development) within any application for Planning Permission PROVIDED THAT should a Landowner be unable to specify a maximum amount of floorspace in an application for Planning Permission Commercial Units the mechanism for converting the Employment Land Contribution into a contribution per square metre rather than per hectare will be agreed between the Parties and set out in the relevant Site Specific Agreement.
- 4.2 Not to implement development on Land (other than in the Strategic Reserve) except:
- 4.2.1 works relating to existing uses;
- 4.2.2 works to construct or alter small scale agricultural buildings;
- 4.2.3 alterations to houses;
- 4.2.4 site preparation works; or
- 4.2.5 any works covered by the Town and Country Planning (General Permitted Development) Order 1995
- until a Site Specific Agreement relating to that Land has been entered into if required by the Agency or the Council.
- 4.3 Not to implement development in the Strategic Reserve after 1 January 2008 other than development falling within a category listed in sub-Clauses 4.2.1 to 4.2.5 of this Agreement on Land until a Site Specific Agreement relating to that Land has been entered into if required by the Agency or the Council.
- 4.4 That the definitions in this Agreement and the provisions contained in Part 1 of Schedule 1 of this Agreement will be repeated in their entirety in Site Specific Agreements relating to the Development of Residential Units only the definitions in this Agreement and the provisions in Part 2 of Schedule 1 of this Agreement will be repeated in their entirety in Site Specific Agreements relating to the Development of Commercial Units only and the definitions in this Agreement and the provisions in Part 3 of Schedule 1 of this Agreement will be repeated in their entirety in Site Specific Agreements relating to the Development of both Residential Units and Commercial Units except to the extent that:
- 4.4.1 minor changes are required to definitions to ensure sense and clarity;
- 4.4.2 references to Paragraphs and Clauses need to be amended for sense; and
- 4.4.3 other amendments either agreed or determined by dispute resolution are required by the parties to the Site Specific Agreement which do not substantially affect the terms agreed in this Agreement and achieve the objectives of this Agreement
- PROVIDED ALWAYS that if the Agency refuses to grant Planning Permission and a Landowner lodges an appeal the Landowners must either enter into a Site Specific Agreement or submit a unilateral undertaking which incorporates all the obligations set out in the relevant Part of Schedule 1 of this Agreement in relation to Pro Rata Contributions and Reserve Sites and where reasonably practicable makes available at nil cost all land required for Infrastructure for that site or as may otherwise be required by equalisation and such other obligations as the Landowner may consider reasonably necessary to satisfy the inspector appointed to hear the appeal.
- 4.5 That the provisions included in Schedule 2 of this Agreement and the associated definitions in this Agreement will be incorporated into each Site Specific Agreement wherever provisions dealing with equalisation and/or adoption of roads and/or Affordable Housing are required in the Site Specific Agreement.

- 4.6 To use reasonable endeavours to secure any consent, approval, order or licence that is required for a Planning Permission to become an Implementable Consent.
- 4.7 That if there is any default of Clause 4.6 then any payment due on grant of the Implementable Consent in respect of the Development Parcel or Phase concerned pursuant to Paragraph 6.2 of Part 1 of Schedule 1 or Paragraph 5.1 of Part 2 of Schedule 1 or Paragraph 6.2 of Part 3 of Schedule 1 of this Agreement (as appropriate) will become immediately due PROVIDED ALWAYS that no sum shall be payable prior to the grant of a Planning Permission.

## **5 Dispute Resolution**

- 5.1 Any dispute between the Agency and a Landowner in relation to the terms of this Agreement (other than a dispute touching or concerning the meaning or construction of this Agreement) shall be referred to an Expert appointed jointly by the Parties to the dispute or in default appointed by the President or the Vice-President (or in either case their nominated deputy) for the time being of the Royal Town Planning Institute on the application of any Party to the dispute.
- 5.2 Any dispute between the Agency and a Landowner touching or concerning the meaning or construction of this Agreement shall be referred to a Legal Expert appointed jointly by the Parties to the dispute or in default appointed by the President or the Vice President (or in either case their appointed deputy) for the time being of the Law Society of England and Wales on the application of any Party to the dispute.
- 5.3 It is further agreed that:
- (a) the Parties to the dispute will be entitled to make representations and counter-representations in accordance with such timetable as the Expert or the Legal Expert shall direct;
  - (b) the Expert or the Legal Expert shall give written reasons for his decision;
  - (c) the Expert's or the Legal Expert's costs will be borne in equal proportions by the Parties to the dispute or in such other proportions as the Expert or the Legal Expert may direct; and
  - (d) the Expert or the Legal Expert shall comply with any time limits or other directions agreed by the Parties to the dispute on or before his/her appointment PROVIDED ALWAYS that if the Expert or the Legal Expert fails to comply with the time limits any Party to the dispute may apply prior to the making of the Expert's or the Legal Expert's decision for a fresh appointment to be made.
- 5.4 Nothing in this Clause 5 of this Agreement shall be taken to fetter the ability of the Agency to carry out its statutory functions as local planning authority with powers to seek appropriate remedy in respect of any breach of any of the obligations entered into by the Landowners in this Agreement.
- 5.5 Nothing in this Clause 5 of this Agreement shall be taken to fetter the ability of the Council to carry out its statutory functions with powers to enforce breach of planning control under the Act arising from any breach of the conditions subject to which Planning Permission is granted.

## **6 Notices**

- 6.1 Any notice or communication to be given under this Agreement shall be in writing and shall either be delivered personally or sent by registered post or recorded delivery service and the address for service on the Parties shall be those stated in this Agreement or such other address in England for service as the Party to be served may have previously notified in writing.

- 6.2 Each notice served in accordance with this Clause 6 of this Agreement shall be deemed to have been given or made and delivered if by hand delivery when left at the relevant address or if by letter forty eight (48) hours after posting.

## **7 Review Dates**

- 7.1 Subject to Clause 7.2 of this Agreement, at each Review Date (and for the avoidance of doubt only at the Review Date) the Parties will consider whether any of the material changes in circumstances identified in Schedule 3 of this Agreement have occurred since the date of this Agreement or the previous Review Date (as the case may be) and will agree an appropriate variation to the Pro Rata Contributions or to the Affordable Housing provisions in light of any such changes (if reasonably required).
- 7.2 For the avoidance of doubt, any variation will not be retrospective in its effect and any Planning Permission granted before the Review Date in question will be unaffected by any variations agreed pursuant to Clause 7.1 of this Agreement.

## **8 Third Party Rights**

- 8.1 The Parties do not intend that any of the provisions of this Agreement shall be enforceable by any person who is not a party to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **9 Planning Gain Supplement**

- 9.1 If Planning Gain Supplement is introduced in the future the Parties agree that this may justify a review of the provisions contained in this Agreement and/or any Site Specific Agreements if at the time Planning Gain Supplement becomes effective there are any Development Sites which are or may become liable to a charge for Planning Gain Supplement and further that the Parties may agree that it is necessary to enter a deed of variation to this Agreement and/or any Site Specific Agreement
- 9.2 The need for a review will have regard to:
- 9.2.1 any transitional arrangements put in place in the Planning Gain Supplement legislation;
  - 9.2.2 the relevant taxation point at which a Planning Gain Supplement liability is triggered on any individual Development Site;
  - 9.2.3 any proposed allocation of Planning Gain Supplement revenues by the Government to the Designated Area; and
  - 9.2.4 any other matters considered material by the Parties with regard to the Planning Gain Supplement legislation.
- 9.3 The Parties agree that any review which needs to be carried out pursuant to this Clause 9 will be guided by the principle that Landowners will continue to provide sites for infrastructure in accordance with the obligations in their Site Specific Agreements.
- 9.4 Any disputes about the way of addressing the underlying obligations and payments shall be referred to a Legal Expert for a determination. If the appointed Legal Expert has determined that it is not possible, equitably and workably, to find a solution which marries the approach set out in this Agreement and the introduction of Planning Gain Supplement then it is open to any Party to serve a notice terminating this Agreement or any Site Specific Agreement.

## 10 Termination

- 10.1 If a planning application for the Strategic Reserve would on the balance of probabilities be refused on the grounds of prematurity because there is insufficient planning policy in place at 21 June 2011 a Landowner wishing to develop Land in the Strategic Reserve may withdraw from this Agreement by serving six (6) months written notice on the other remaining Parties PROVIDED ALWAYS that any such notice of termination will only apply in respect of the Land within the Strategic Reserve under the ownership or control of the Landowner who serves the notice of termination and for the avoidance of doubt the Landowner is entitled to serve such a notice at any time in the six (6) month period immediately prior to 21 June 2011 if in the reasonable opinion of the Landowner a planning application would on the balance of probabilities be refused on the grounds of prematurity on 21 June 2011 and the Parties hereby agree that:
- (a) a planning application would be refused on the grounds of prematurity in a situation where no core strategy has been adopted for the Strategic Reserve; and
  - (b) the Landowner shall not actually be required to submit a planning application to demonstrate that a planning application would be premature.
- 10.2 If the Agency has failed to determine any application for Planning Permission for Land in the Strategic Reserve by 21 June 2011 the Landowner whose application has not been determined may withdraw from this Agreement by serving six (6) months written notice on the other remaining Parties PROVIDED ALWAYS that any such notice of termination will only apply in respect of the Land in the Strategic Reserve under the ownership or control of the Landowner who serves the notice of termination and for the avoidance of doubt the Landowner is entitled to serve such a notice at any time in the six (6) month period immediately prior to 21 June 2011 if in the reasonable opinion of the Landowner there is no reasonable prospect of the planning application being determined by that date.

## **Schedule 1 – Provisions to be repeated in their entirety in the Site Specific Agreements**

### **Part I – Development of Residential Units**

For the avoidance of doubt the provisions contained in this Part 1 of this Schedule 1 are to be repeated in each Site Specific Agreement which relates to a Development Site which comprises Residential Units only (referred to in this Part 1 of this Schedule 1 as "this Agreement")

#### **1. Conditionality**

- 1.1 The planning obligations in this Agreement are conditional on the grant of the Planning Permission PROVIDED ALWAYS that
- (a) this Agreement shall have no further effect following the revocation of the Planning Permission; and
  - (b) where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:
    - (i) without prejudice to this Paragraph 1 of this Part 1 of this Schedule 1 and save as may otherwise be agreed between the Parties until such time as any such proceedings or challenge are concluded the terms and positive obligations in this Agreement shall have no operative effect notwithstanding the grant of the Planning Permission unless the Landowner Implements the Planning Permission; and
    - (ii) if following the conclusion of such proceedings or challenge the Planning Permission is quashed then without prejudice to any liability which may have arisen pursuant to this Agreement consequent upon the Implementation of the Planning Permission prior to being quashed this Agreement will cease to have any further effect as from the date upon which the Planning Permission is quashed.
- 1.2 Wherever in this Agreement reference is made to a date on which legal proceedings or challenge in relation to the Planning Permission are "concluded" (or cognate expressions are used), proceedings by way of judicial review shall be regarded as having been "concluded":
- (a) when permission to apply for judicial review has been refused and no further application may be made or renewed; or
  - (b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
  - (c) when any appeal is finally determined.

#### **2. Release**

- 2.1 Subject to Paragraph 2.2 of this Part 1 of this Schedule the Landowner's covenants under this Agreement shall be enforceable against the Landowner during the period when this Agreement remains in force.
- 2.2 The Landowner shall not (other than in relation to antecedent breaches) be liable to the Agency or the Council for a breach of any obligation relating to any Land which is transferred following notification to the Agency and the Council of the address for any notice or communication of the proposed transferee within England and Wales PROVIDED ALWAYS that the Landowner is not obliged to notify the Agency and the Council of the address of:
- (a) any proposed transferee of an individual Residential Unit; nor
  - (b) any transferee of Land for statutory undertakers' purposes.

### **3. Implementation**

The Landowner covenants to serve an Implementation Notice on the Agency at least fifteen (15) days prior to the proposed Implementation of the Development within each Development Parcel.

### **4. Submission of application for Reserved Matters and achieving an Implementable Consent**

The Landowner covenants with the Agency:

- 4.1 to submit the first (1st) application for approval of Reserved Matters within eighteen (18) months from the date of the Planning Permission granted pursuant to this Agreement and for the avoidance of doubt the Parties agree that if the Development Site has more than one (1) Landowner the submission of an application for approval of Reserved Matters by one (1) Landowner within eighteen (18) months of the grant of Planning Permission shall satisfy this requirement;
- 4.2 to use reasonable endeavours to secure any consent, approval, order or licence that is required for a Planning Permission to become an Implementable Consent; and
- 4.3 that if the Landowner is in breach of its obligations to use reasonable endeavours in Paragraph 4.2 then any payment due on grant of the Implementable Consent in respect of the Development Parcel or Phase concerned pursuant to Paragraph 6.2 of Part 1 of Schedule 1 of this Agreement will become immediately due.

### **5. Development Parcels**

The Landowner covenants:

- (a) not to develop any Land except in Development Parcels (which may comprise either a Phase or part of a Phase); and
- (b) not to submit an application for approval of Reserved Matters other than with a plan showing the Development Parcel to which the application relates;

PROVIDED ALWAYS that if the Landowner submits a set of Reserved Matters for an area smaller than the Development Parcel shown on the plan submitted in accordance with Paragraph 5(b) of this Part 1 of this Schedule 1 the area to which the set of Reserved Matters relate will be a deemed Development Parcel for the purposes of triggering payment under Paragraph 6 of this Part 1 of this Schedule 1 and if relevant triggering the long stop under Paragraph 7 of this Part 1 of this Schedule 1.

### **6. Payment of contribution in relation to Residential Units**

Subject to Paragraph 7 of this Part 1 of this Schedule 1, the Landowner covenants with the Agency:

- 6.1 That if the first (1st) application for approval of Reserved Matters has not been submitted to the Agency within eighteen (18) months from the date of the Planning Permission:
  - (a) to pay to the Agency the Default Residential Land Contribution on the date which is eighteen (18) months from the date of the Planning Permission granted pursuant to this Agreement; and
  - (b) the Default Residential Land Contribution shall be offset against Per Unit Contributions when paid;
- 6.2 to pay to the Agency ten per cent (10%) of the Per Unit Contribution in respect of each Residential Unit comprised in any Development Parcel within ten (10) working days of the Implementable Consent in respect of that Development Parcel;

- 6.3 to pay to the Agency a further fifteen per cent (15%) of the Per Unit Contribution in respect of each Residential Unit comprised in a Development Parcel prior to Implementation of that Development Parcel; and
- 6.4 to pay to the Agency the Final Instalment in respect of the previous quarter, such payment to be made quarterly no later than ten (10) working days after the next Quarter Day in arrears PROVIDED ALWAYS that:
- (a) no later than two (2) working days prior to each Quarter Day the Landowner shall serve written notice on the Agency of the number of Completions within the previous quarter; and
  - (b) should the Agency request written evidence of the number of Completions in any given quarter the Landowner shall within ten (10) working days of any such request provide such evidence to the satisfaction of the Agency PROVIDED ALWAYS that the Agency shall only make one (1) such request for written evidence in any one (1) month period

PROVIDED FURTHER that the grant of an Implementable Consent in relation to a Development Parcel which does not contain any Residential Units shall not trigger payment under this Paragraph 6 of this Part 1 of this Schedule 1.

## **7. Long stop date**

The Landowner covenants with the Agency that:

- 7.1 except where Paragraph 7.3 of this Part 1 of this Schedule 1 applies, to pay to the Agency all outstanding Pro Rata Contributions for Development in respect of which Planning Permission has been granted for the construction of up to and including two thousand (2,000) Residential Units on the earlier of:
- (a) the tenth (10<sup>th</sup>) anniversary of the date of the grant of the first (1st) Implementable Consent triggering payment by the Landowner pursuant to Paragraph 6.2 of this Part 1 of this Schedule 1; or
  - (b) the tenth (10<sup>th</sup>) anniversary of the date of the Default Residential Land Contribution falling due; or
  - (c) 1 January 2021

unless a Grampian Condition has been imposed in which case the date for payment is (if later) the tenth (10<sup>th</sup>) anniversary of the date of the grant of the first (1st) Implementable Consent triggering payment by the Landowner pursuant to Paragraph 6.2 of this Part 1 of this Schedule 1;

- 7.2 except where Paragraph 7.3 of this Part 1 of this Schedule 1 applies, to pay to the Agency all outstanding Pro Rata Contributions for Development in respect of which Planning Permission has been granted for the construction of two thousand and one (2,001) or more Residential Units on 1 January 2021 unless a Grampian Condition has been imposed in which case the date is (if later) the fifteenth (15<sup>th</sup>) anniversary of the date of the grant of the first (1<sup>st</sup>) Implementable Consent triggering payment by the Landowner pursuant to Paragraph 6.2 of this Part 1 of this Schedule 1;

- 7.3 where:

- (a) the Landowner has submitted an application for Planning Permission for Land in the Strategic Reserve to the Agency following the earlier of 1 January 2008 or the adoption of the core strategy for the Strategic Reserve; and
- (b) the application for Planning Permission was not determined by 1 January 2011;

it shall pay to the Agency all outstanding Pro Rata Contributions for Development comprising the construction of Residential Units within the Strategic Reserve on the tenth (10th) anniversary of the date of the grant of the first (1<sup>st</sup>) Implementable Consent triggering payment pursuant to Paragraph 6.2 of this Part 1 of this Schedule 1.

## **8. Design Codes and Development Limit**

- 8.1 The Landowner covenants with the Agency that prior to the submission of any details to the Agency for approval pursuant to the Planning Permission (including applications for Reserved Matters approvals) for the first (1st) Development Parcel (except in the case of approvals for elements of the Site which do not include a Residential Unit which may be submitted to the Agency following submission of the Design Code but prior to its approval by the Agency (in which case the details submitted are to be in accordance with the draft Design Code)):
- (a) if the whole Development is to be covered by one (1) Design Code to submit to the Agency the draft Design Code relating to the whole Development; or
  - (b) if the Development is over one thousand five hundred (1,500) Residential Units and the Landowner wishes to submit more than one (1) Design Code for the Development:
    - (i) to submit a plan depicting Design Code areas which should normally be over one thousand (1,000) Residential Units except where the Landowner can demonstrate that it is best practice to have smaller Design Code areas and that this will not compromise the continuity of the design of the Development; and
    - (ii) submit to the Agency a draft Design Code which relates to that Development Parcel.

8.2 The Landowner covenants with the Agency:

- (a) not to Implement the Planning Permission on a Phase (or part thereof) until the Agency has approved the Design Code covering the whole Development or that Phase (or part thereof) as appropriate submitted pursuant to Paragraph 8.1 of this Part 1 of this Schedule 1 PROVIDED ALWAYS that if the draft Design Code is not approved by the Agency within six (6) months of submission then the Landowner may submit details to the Agency for approval pursuant to the Planning Permission unless the Agency has confirmed to the Landowners within one (1) month of submission that the content of the draft Design Code is not (in the view of the Agency acting reasonably) of a quality which enabled the draft to be issued for consultation because the draft code does not fulfil its objectives set out in the Development Brief in which case this proviso shall not apply; and
- (b) to carry out the Development in accordance with the Design Code or Design Codes approved by the Agency pursuant to Paragraph 8.2(a) of this Part 1 of this Schedule 1.
- (c) not to build more than [•]<sup>15</sup> Residential Units.

## **9. Reserve Sites**

- 9.1 The Landowner covenants with the Agency and the Council not to carry out any "building operations" (as defined in section 55 (1A) of the Act) in respect of a Reserve Site until the Release Date.
- 9.2 If during the period until the Release Date the Agency or the Council wishes to call for the Reserve Site (or part thereof) to be used for Voluntary Community Uses or Community Uses it shall serve written notice of the details of the proposed uses on the Landowner for agreement.

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<sup>15</sup> To be inserted based on the figure to be specified pursuant to Clause 4.1 of the Framework Agreement

- 9.3 The Landowner shall offer to transfer the freehold interest in the Reserve Site (or part thereof) to the Agency the Council the Community Foundation or Nominee where before the Release Date the Landowner receives a written request for such transfer from the Agency or the Council PROVIDED ALWAYS that:
- (a) the freehold interest in the Reserve Site (or part thereof) shall be deemed to have a nil market value where it is to be transferred to the Community Foundation for Voluntary Community Uses;
  - (b) the freehold interest in the Reserve Site (or part thereof) to be used for Community Uses is to be transferred at the price equivalent to the Market Value of the land in question for the use proposed for it; and
  - (c) the transfer of the freehold interest shall be subject to covenants that the Reserve Site (or part thereof) shall be used in perpetuity solely for the uses detailed in the written notice served on the Landowner pursuant to Paragraph 9.2 of this Part 1 of this Schedule 1.
- 9.4 Any transfer of the Reserve Site (or part thereof) by the Landowner to the Agency the Council the Community Foundation or Nominee pursuant to this Paragraph 9 of this Part 1 of Schedule 1 shall contain only the terms covenants and restrictions agreed between the parties to the transfer.
- 9.5 If by the Release Date no request has been made by the Agency pursuant to Paragraph 9.2 of this Part 1 of this Schedule 1 then the Landowner shall be entitled to use that undeveloped land for residential purposes or such other purpose as it shall see fit (subject to obtaining all requisite consents).

## **10. Construction Standards**

The Landowner covenants with the Agency to:

- 10.1 provide a Construction Standards Report to the Agency at the same time as Reserved Matters applications for a particular Development Parcel containing Residential Units are submitted;
- 10.2 construct ninety percent (90%) of the Residential Units to the Eco Homes Very Good Rating;
- 10.3 construct ten percent (10%) of the Residential Units (which may be either Affordable Housing Units or Market Housing) to the Eco Homes Excellent Rating; and
- 10.4 provide copies of the Post Construction Review Certificates for all Residential Units constructed in a quarter which confirm that all such units achieve Eco Homes Very Good Rating or Eco Homes Excellent Rating along with a summary sheet listing the number of Residential Units constructed in that quarter and the amount which are Eco Homes Very Good Rating and Eco Homes Excellent Rating.

## **11. Local Employment**

The Landowner covenants with the Agency to the extent it is not prevented from doing so by any rule of law whether domestic or international:

- 11.1 Prior to Implementation of any Phase to designate a Local Employment Coordinator who shall where practicable:
  - (a) use reasonable endeavours to ensure that job contract and training opportunities are publicised in free local press, other local papers, local job centres and agencies at the earliest opportunity and where relevant target specific sections of the local community to provide information on these opportunities;
  - (b) identify appropriate training courses and encourage and assist applicants for employment who are not presently qualified for a particular vacancy to obtain the necessary training or qualifications;

- (c) maintain regular contact with all relevant employment agencies;
- (d) encourage and assist the transferees of Phases or parts of Phases to use local people and local companies for their requirements and to ensure effective liaison to match job opportunities with those seeking such work locally; and
- (e) where practicable, advertise locally all employment and training opportunities purchasing and other contracts for the supply of goods and services to the Development Site;
- (f) liaise with the Milton Keynes Economy and Learning Partnership or such other organisation in the locality which provides further education construction training and use reasonable endeavours to ensure that adequate opportunities are made available by employers on the Development Site to enable local schools and other educational establishments to provide students with work experience and to create a positive link between local schools and employers on the Development PROVIDED ALWAYS that compliance with this sub-paragraph (f) shall not be required if the presence of persons of college or school age at or near the Development Site would either:
  - (i) be likely to contravene health and safety legislation; or
  - (ii) would in the reasonable opinion of the Landowner be likely to expose those individuals to a reasonably foreseeable risk of harm.

11.2 To procure that an Employment Monitoring Report is submitted to the Agency by the Local Employment Co-ordinator on each anniversary of this Agreement until the Development is completed.

11.3 To use reasonable endeavours to adopt the actions and measures recommended in the Employment Monitoring Report.

11.4 To use reasonable endeavours to ensure that the Local Employment Coordinator complies with Paragraphs 11.1 to 11.3 of this Part 1 of this Schedule 1.

## **12. Public Open Space**

12.1 The Landowner covenants with the Agency to offer to transfer the Public Open Space to the Nominee (subject to covenants that it shall be used in perpetuity by the Nominee solely as public open space) for one pound (£1) such offer to be made either:

12.1.1 Within one (1) month of completion of the laying out of the Public Open Space if the Public Open Space is being laid out as Works in Kind<sup>16</sup>; or

12.1.2 Within one (1) month of the Agency notifying the Landowner if the Public Open Space is being laid out by or on behalf of the Agency.

12.2 If the Open Space Specification requires works by the Agency or imposes future maintenance costs in either case at a level higher than those anticipated as the cost in calculating the Pro Rata Contributions the Landowner will at the date of transfer pay the Agency a sum that reflects that additional works and/or maintenance cost.

## **13. Indexation**

All Per Unit Contributions payable to the Agency under this Agreement shall be Index Linked.

## **14. Dispute Resolution**

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<sup>16</sup> This assumes that a condition will require open space to be laid out

- 14.1 Any dispute between the Agency and the Landowner in relation to the terms of this Agreement (other than a dispute touching or concerning the meaning or construction of this Agreement) shall be referred to an Expert appointed jointly by the Parties to the dispute or in default appointed by the President or the Vice-President (or in either case their nominated deputy) for the time being of the Royal Town Planning Institute on the application of any Party to the dispute.
- 14.2 Any dispute between the Agency and the Landowner touching or concerning the meaning or construction of this Agreement shall be referred to a Legal Expert appointed jointly by the Parties to the dispute or in default appointed by the President of the Vice President (or in either case their appointed deputy) for the time being of the Law Society of England and Wales on the application of any Party to the dispute.
- 14.3 It is further agreed that:
- (a) the Parties to the dispute will be entitled to make representations and counter-representations in accordance with such timetable as the Expert or the Legal Expert shall direct;
  - (b) the Expert or the Legal Expert shall give written reasons for his decision;
  - (c) the Expert's or the Legal Expert's costs will be borne in equal proportions by the Parties to the dispute or in such other proportions as the Expert or the Legal Expert may direct; and
  - (d) the Expert or the Legal Expert shall comply with any time limits or other directions agreed by the Parties to the dispute on or before his appointment PROVIDED ALWAYS that if the Expert or the Legal Expert fails to comply with the time limits any Party to the dispute may apply prior to the making of the Expert's or the Legal Expert's decision for a fresh appointment to be made.
- 14.4 Nothing in this Paragraph 14 of this Part 1 of this Schedule 1 shall be taken to fetter the ability of the Agency to carry out its statutory functions as local planning authority with powers to seek appropriate remedy in respect of any breach of any of the obligations entered into by the Landowner in this Agreement.
- 14.5 Nothing in this Paragraph 14 of this Part 1 of this Schedule 1 shall be taken to fetter the ability of the Council to carry out its statutory functions with powers to enforce breach of planning control under the Act arising from any breach of the conditions subject to which Planning Permission is granted.

## **15. Planning Considerations**

The Landowner covenants with the Agency:

- (a) not to Implement the Planning Permission on any Development Parcel or any Phase until any conditions attached to the Planning Permission which must be discharged before Implementation of the Planning Permission on that Development Parcel or the Phase (as the case may be) have been discharged and to comply with the requirements of the Act; and
- (b) to comply with all conditions attached to the Planning Permission.

## **16. Transfers to Agency, the Council, the Community Foundation or Nominee**

- 16.1 The Agency the Council the Community Foundation the Nominee and the Landowner will use reasonable endeavours to ensure that no Stamp Duty Land Tax is payable in accordance with the provisions of Section 61 of the Finance Act 2003 on any transfer of Land to the Agency the Council the Community Foundation or Nominee and shall take such steps as may be lawful to structure the transfer arrangements accordingly.

- 16.2 The Landowner covenants to the Agency that if any transfer to the Agency the Council the Community Foundation or Nominee has Stamp Duty Land Tax (or any equivalent replacement tax) payable on it the Landowner will be responsible for all such tax due in relation to the transfer
- 16.3 The Parties agree that if any Land is transferred to the Agency the Council the Community Foundation or a Nominee for the purposes of developing a health facility the value attributed to the Land shall be one million pounds (£1,000,000) Index Linked exclusive of VAT per acre.

## **17. Third Party Rights**

The Parties do not intend that any of the provisions of this Agreement shall be enforceable by any person who is not a party to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **18. Security**

- 18.1 At any time after 1 January 2016 the Agency may issue a Request for Security Confirmation from the Landowner.
- 18.2 A Security Confirmation must be provided within twenty eight (28) days of a Request for Security Confirmation.
- 18.3 If following receipt of a Security Confirmation the Agency is not reasonably satisfied that the Landowner will be able to pay the outstanding Pro Rata Contributions required when they fall due in accordance with this Agreement it shall be entitled to serve a Security Notice on the Landowner.
- 18.4 Unless there is a dispute which shall be resolved using Dispute Resolution the Landowner shall provide Security to the Agency within twenty eight (28) days of the date of the Security Notice.
- 18.5 Subject to Paragraph 18.4 of this Part 1 of this Schedule 1 if the Landowner fails to provide Security within twenty eight (28) days of the date of the Security Notice there shall be a deemed default of the longstop provisions contained in Paragraph 7 of this Part 1 of Schedule 1 and the Agency may commence such enforcement proceedings as it sees fit to secure the provision of Security and shall be entitled to prevent any further development on the land specified until such time as Security has been provided or recover all outstanding Pro Rata Contributions.

## **19. Notices**

- 19.1 Any notice or communication to be given under this Agreement shall be in writing and shall either be delivered personally or sent by registered post or recorded delivery service and the address for service on the Parties shall be those stated in this Agreement or such other address in England for service as the Party to be served may have previously notified in writing.
- 19.2 Each notice served in accordance with this Paragraph 19 of this Part 1 of Schedule 1 shall be deemed to have been given or made and delivered if by hand delivery when left at the relevant address or if by letter forty eight (48) hours after posting.

## **20. Works the Landowner wishes to undertake**

- 20.1 Subject to Paragraph 20.2 of this Part 1 of this Schedule 1, should the Landowner wish to carry out any Works in Kind as part of a Development it shall submit to the Agency and/or the Council for approval (whichever shall be the appropriate body):
- (a) comprehensive details and specifications of the said Works in Kind sufficient to enable the Agency and/or the Council (as the case may be) to assess whether or not the proposed works fall within the scope of those identified in the Infrastructure Delivery Plan; and
  - (b) a detailed delivery programme setting out the timescales within which the works in question will be carried out and completed sufficient to enable the Agency and/or the

Council (as the case may be) to assess whether or not the proposed works fall within the works programme set out in the Infrastructure Delivery Plan

and for the avoidance of doubt should any dispute arise in relation to whether the said works fall within the scope of those identified in the Infrastructure Delivery Plan the dispute shall be resolved using Dispute Resolution.

20.2 If the Agency and/or the Council (as the case may be) determine that the:

- (a) details and specifications are approved; and
- (b) that the Landowner's proposed delivery programme would not adversely affect the Agency and/or Council's programming of works or adversely affect the cost of other works which the Agency and/or Council (as the case may be) intend to carry out

then the Landowner shall prepare a written assessment of the estimated Works in Kind Costs for the said works based upon the said approved details specifications and delivery programme for approval by the Independent Valuation Expert PROVIDED ALWAYS that should any dispute arise in relation to the Independent Valuation Expert's assessment of the estimated Works in Kind Costs the dispute shall be resolved using Dispute Resolution.

20.3 Subject to (1) the details specifications and delivery programme and (2) the estimated Works in Kind Costs each being approved (and for the avoidance of doubt the Agency and/or the Council may decide not to approve the costs if they would exceed the cost of the Agency and/or the Council carrying out the Works) by the Agency and/or the Council (as the case may be) the Landowner shall carry out and complete the said Works in Kind entirely in accordance with the details specifications and delivery programme approved pursuant to Paragraph 20.1 of this Part 1 of this Schedule 1

20.4 Subject to Paragraphs 20.5 and 20.6 of this Part 1 of this Schedule, the Works in Kind Costs (which for the avoidance of doubt are the estimated Works in Kind Costs approved by the Independent Valuation Expert or Dispute Resolution unless the actual Works in Kind Costs are lower than estimated) shall be:

- (a) Index Linked from the date on which the estimated Works in Kind Costs are approved pursuant to Paragraph 20.3 to the Quarter Day preceding the off-setting of the Works in Kind Costs in accordance with Paragraph 20.4(b) of this Part 1 of this Schedule PROVIDED THAT if the actual Works in Kind Costs are lower than the estimated Works in Kind Costs for the purposes of this Paragraph the lesser figure will be substituted for the estimate and Index Linked from the date of the estimate; and
- (b) off-set against the outstanding Per Unit Contribution payable by the Landowner in respect of Residential Units in accordance with the provisions of this Agreement PROVIDED THAT any such credit shall be made against the next Final Instalment payable by the Landowner following the issue of the certificate of practical completion for the said Works in Kind and PROVIDED FURTHER that should the Works in Kind Costs exceed the first Final Instalment following the issue of the certificate of practical completion for the Works in Kind any excess shall be off-set against the following Final Instalments payable by the Landowner.

20.5 For the avoidance of doubt any Excess shall be borne entirely by the Landowner and shall not be off-set against any Final Instalment.

20.6 For the avoidance of doubt should the total Works in Kind Costs exceed the outstanding Per Unit Contribution payable by the Landowner pursuant to the this Agreement (whether on or before the long stop date) any excess shall be borne by the Landowner.

## **21. Legal Costs**

The reasonable legal costs of the Agency and the Council incurred in connection with the preparation and completion of this Agreement shall be paid by the Landowner on or before the date of this Agreement.

## **22. VAT**

22.1 The Parties consider that any payments made under this Agreement are outside the scope of UK VAT.

22.2 Notwithstanding the intention of the Parties expressed in Paragraph 22.1 of this Part 1 of this Schedule 1 where one Party ("the supplier") makes or is deemed to make a supply to another Party ("the recipient") for VAT purposes under this Agreement, whether the supply is for a monetary consideration or otherwise, the recipient shall pay to the supplier an amount equal to the VAT in addition to the sums payable under this Agreement at the earlier of:

- (a) The date on which the recipient recovers the VAT element as input tax whether by credit or repayment; and
- (b) Five (5) days prior to the date on which the supplier is required to account for the VAT on the payments to HM Revenue and Customs

PROVIDED ALWAYS that the supplier has first (1<sup>st</sup>) provided the recipient with a valid VAT invoice in respect of the supply.

## **23. Interest**

If any payment due to the Agency under this Agreement is not paid on the date required, the Landowner shall pay interest at three per cent (3%) above the base lending rate in the National Westminster Bank Plc from time to time on the whole or any part of such payment from the date when the payment became due until actual payment.

## **24. Access**

24.1 Subject to Paragraph 24.2 of this Part 1 of this Schedule the Landowner shall permit access to such part of the Development Site as is reasonably required at reasonable times at nil cost and upon reasonable prior written notice of at least seven (7) days except in the case of an emergency to the Agency and/or the Council (as the case may be) and their respective agents, officers, employees or similar and such rights and licences as are reasonably required by the same in order to facilitate the carrying out of those works and shall use reasonable endeavours to secure the same from third party interests in or related to the Land where:

- (a) the Development has been Implemented; and
- (b) access to the Development is required to carry out any works directly or indirectly associated with the installation of Infrastructure.

24.2 The Landowner shall not be required to comply with Paragraph 24.1 unless the Agency and/or the Council (as the case may be) have first (1<sup>st</sup>) (unless otherwise agreed):

- (a) given the Landowner at least six (6) months' notice of the works which it intends to carry out in order that the Landowner may elect to seek approval to carry out such works as Works in Kind in accordance with Paragraph 20 of this Part 1 of Schedule 1;
- (b) entered into such provisions as the Landowner may reasonably require to ensure that such works are carried out in such a way as to reduce any disruption damage or inconvenience to a reasonable minimum including:
  - (i) provision of warranties in favour of the Landowner;

- (ii) guaranteed access over the completed works and adoption as public highway (where applicable) as soon as reasonably practicable;
  - (iii) agreed programme as to the carrying out of the works;
  - (iv) details of any intended contractors' compounds;
  - (v) specification and design of proposed works;
  - (vi) provisions ensuring adequate maintenance of the works at no cost to the Landowner; and
  - (vii) indemnification of the Landowner in respect of all reasonable legal and other reasonable technical costs properly incurred
- (c) complied with all requirements whether statutory or those of the Landowner relating to health and safety which the Landowner may reasonably require;
  - (d) ensured that the design of the works is as consistent as reasonably practicable with the Development and consistent in all respects with any relevant approved Design Code and/or Reserved Matters approval relating to any relevant part of the Development;
  - (e) entered into a provision to make good any damage caused as soon as possible to the reasonable satisfaction of the Party who owns the Land; and
  - (f) entered into a provision not to interfere with or obstruct access to the Land by the Party who owns the Land.

24.3 Provided that the Development has been Implemented the Landowner covenants with the Agency to allow access to the Development Site at nil cost for the purposes of development control.

## **25. General**

The Landowner the Council and the Agency covenant with each other that where in this Agreement any further information is to be provided or decisions made all such steps shall be taken promptly and not unreasonably withheld or delayed.

## **26. Force Majeure**

26.1 If the Parties agree that a Force Majeure Event has arisen in respect of any Development which is to be decided in each Party's absolute discretion then this Agreement may be reviewed in accordance with the procedure set out in Paragraphs 26.7 and 26.8 below with the aim of securing an equitable and workable resolution to any problems caused by the Force Majeure Event PROVIDED ALWAYS that if the Parties fail to agree the Dispute Resolution procedure shall not apply to this Paragraph 26.1 in relation to whether a Force Majeure Event has arisen.

26.2 If any Party believes that a Force Majeure Event has continuously prevented all Development in an Expansion Area for a period of twelve (12) months it may serve a Force Majeure Notice on the Expansion Area Owners in the affected Expansion Area and the Parties PROVIDED ALWAYS that the notifying Party reasonably considers and specifies in writing to the other Parties that the Force Majeure Event is likely to prevent all development in the affected Expansion Area for at least a further three (3) years.

26.3 If any Party reasonably considers and specifies in writing to the Agency that a Force Majeure Event has prevented all Development on its Development Site for a period of five (5) years it may serve a Force Majeure Notice on the Agency and the Council.

26.4 If the Parties agree that a Force Majeure Event has arisen and that a Force Majeure Notice was validly served pursuant to Paragraph 26.2 or 26.3 the notified Parties shall negotiate and review this Agreement with the aim of securing an equitable and workable resolution to any problems

caused by the Force Majeure Event and altering the Agreement as little as reasonably practicable.

- 26.5 The Parties acknowledge that one (1) possible outcome of a review pursuant to this Paragraph 26 may be to extend the long stop date for payment of outstanding Pro Rata Contributions if appropriate.
- 26.6 If there is any disagreement between the notifying Party and the Parties on whom the Force Majeure Notice has been served pursuant to Paragraphs 26.2 or 26.3 about whether:
- (a) the event the subject of the Force Majeure Notice constitutes a Force Majeure Event; and/or
  - (b) in the case of Paragraph 26.2 only the Force Majeure Event has prevented Development across a whole Expansion Area for a period of at least twelve (12) months from the date upon which the Force Majeure Event first occurred; and
  - (c) in the case of Paragraph 26.3 only the Force Majeure Event has prevented Development across a whole Development Site for at least five (5) years from the date the Force Majeure Event first occurred

the dispute shall be resolved by reference to Dispute Resolution PROVIDED ALWAYS that a Party may not refer the matter to Dispute Resolution before the date twelve (12) months after the Force Majeure Event first occurred.

- 26.7 If following six (6) months of negotiations to alter this Agreement in accordance with Paragraph 26.1 or 26.4 no revised Agreement has been agreed, the matters in dispute shall be resolved using Dispute Resolution.
- 26.8 If in accordance with Paragraph 26.6 or 26.7 the Expert or Legal Expert appointed pursuant to Dispute Resolution determines that no equitable and workable revised Agreement can be entered into this Agreement shall terminate.

## **Part II – Development of Commercial Units**

For the avoidance of doubt the provisions contained in this Part 2 of this Schedule 1 are to be repeated in each Site Specific Agreement which relates to a Development Site in the Designated Area comprising only Commercial Units (referred to in this Part 2 of this Schedule 1 as "this Agreement") but where possible the Site Specific Agreements will refer to square metres rather than hectares

### **1. Conditionality**

- 1.1 The planning obligations in this Agreement are conditional on the grant of the Planning Permission PROVIDED ALWAYS that
- (a) this Agreement shall have no further effect following the revocation of the Planning Permission; and
  - (b) where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:
    - (i) without prejudice to this Paragraph 1 of this Part 2 of this Schedule 1 and save as may otherwise be agreed between the Parties until such time as any such proceedings or challenge are concluded the terms and positive obligations in this Agreement shall have no operative effect notwithstanding the grant of the Planning Permission unless the Landowner Implements the Planning Permission; and
    - (ii) if following the conclusion of such proceedings or challenge the Planning Permission is quashed then without prejudice to any liability which may have arisen pursuant to this Agreement consequent upon the Implementation of the Planning Permission prior to being quashed this Agreement will cease to have any further effect as from the date upon which the Planning Permission is quashed.
- 1.2 Wherever in this Agreement reference is made to a date on which legal proceedings or challenge in relation to the Planning Permission are "concluded" (or cognate expressions are used), proceedings by way of judicial review shall be regarded as having been "concluded":
- (a) when permission to apply for judicial review has been refused and no further application may be made or renewed; or
  - (b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
  - (c) when any appeal is finally determined.

### **2. Release**

- 2.1 Subject to Paragraph 2.2 of this Part 2 of this Schedule the Landowner's covenants under this Agreement shall be enforceable against the Landowner during the period when this Agreement remains in force PROVIDED ALWAYS that the expression "successors in title" shall not be deemed to extend to or include any purchaser or tenant of an individual Commercial Unit or any such purchasers or tenants of an individual Commercial Units successors in title except in relation to the obligations in paragraph 5 of this Part 2 of Schedule 1 unless and until the buyer/successor in title has been approved (or is deemed approved) pursuant to paragraph 15 of this Part 2 of Schedule 1.
- 2.2 The Landowner shall not (other than in relation to antecedent breaches) be liable to the Agency or the Council for a breach of any obligation relating to any Land which is transferred following notification to the Agency and the Council of the address for any notice or communication of the proposed transferee within England and Wales except for Landowners in the Eastern

Expansion Area who will be released in accordance with Paragraphs 15.1 and 15.2 of this Part 2 of Schedule 1 PROVIDED FURTHER that the Landowner is not obliged to notify the Agency and the Council of the address of:

- (a) any proposed transferee of an individual Commercial Unit; nor
- (b) any transferee of Land for statutory undertakers' purposes.

### **3. Implementation**

The Landowner covenants to serve an Implementation Notice on the Agency at least fifteen (15) days prior to the proposed Implementation of the Development within each Phase.

### **4. Submission of application for Reserved Matters**

The Landowner in the Western Expansion Area covenants with the Agency to submit the first (1st) application for approval of all reserved matters in respect of a Commercial Unit within eighteen (18) months from the date of the Planning Permission granted pursuant to this Agreement and for the avoidance of doubt the Parties agree that if the Development Site has more than one (1) Landowner the submission of an application for approval of Reserved Matters by one (1) Landowner within eighteen (18) months of the grant of Planning Permission shall satisfy this requirement.

### **5. Payment of Contribution in relation to Commercial Units**

Subject to Paragraph 6 of this Part 2 of this Schedule 1, the Landowner covenants with the Agency:

- 5.1 to pay to the Agency twenty five per cent (25%) of the Employment Land Contribution in relation to each Commercial Unit prior to Implementation of Development on that Commercial Unit PROVIDED ALWAYS that for the avoidance of doubt where more than one Commercial Unit is included in a Planning Permission or Reserved Matters approval Implementation of Development in relation to one Commercial Unit shall trigger payment in relation to that Commercial Unit only and not any other Commercial Unit within the same Permission;
- 5.2 to pay to the Agency twenty five per cent (25%) of the Employment Land Contribution in relation to each Commercial Unit prior to Practical Completion of that Commercial Unit; and
- 5.3 to pay to the Agency the Final Instalment of the Employment Land Contribution in relation to each Commercial Unit on Occupation of that Commercial Unit.

### **6. Long stop date**

- 6.1 Notwithstanding the provisions of Paragraph 5 but subject to Paragraph 6.2 of this Part 2 of this Schedule 1, the Landowner shall pay all outstanding Pro Rata Contributions to the Agency on 1 January 2021 unless the Development cannot be implemented until a Grampian Condition had been satisfied in which case all outstanding Pro Rata Contributions shall be paid by the tenth (10th) anniversary of the date of full satisfaction of the Grampian Condition.
- 6.2 If on the tenth (10th) anniversary of the date of full satisfaction of a Grampian Condition more than nine thousand two hundred and ninety (9,290) square metres of Commercial Units on which Development could not be implemented until the Grampian Condition had been satisfied remain to be Developed as Commercial Units on Nova 1 Nova 2 and the Glebe Land the outstanding Pro Rata Contributions at that date shall be paid in three (3) equal instalments on the first (1st) second (2nd) and third (3rd) anniversaries of that date (the tenth (10th) anniversary of the date of full satisfaction of a Grampian Condition) less any Employment Land Contribution payments which are made in accordance with Paragraph 5 during that period PROVIDED

ALWAYS all outstanding Pro Rata Contributions in respect of any area of the Land which was not restricted by a Grampian Condition will be paid on 1 January 2021<sup>17</sup>.

## **7. Design Code and Development Limited**

The Landowner covenants with the Agency:

- (a) prior to the submission of details to the Agency for approval pursuant to the Planning Permission (including applications for Reserved Matters approvals) for the first (1<sup>st</sup>) Commercial Unit within a Phase to submit a draft Design Code relating to the whole Development to the Agency for approval (except in the case of approvals for elements of the Site which do not include a Commercial Unit which may be submitted to the Agency following submission of the Design Code but prior to its approval by the Agency in which case the details submitted are to be in accordance with the draft Design Code);
- (b) not to submit any details in relation to the Development (including applications for Reserved Matters approvals) pursuant to conditions imposed on the Planning Permission otherwise than in accordance with the Design Code submitted to the Agency pursuant to this Paragraph 7 of this Part 2 of this Schedule 1;
- (c) not to Implement the Planning Permission on a Phase (or part thereof) until the Design Code submitted pursuant to Paragraph 7(a) of this Part 2 of this Schedule 1 has been approved by the Agency;

PROVIDED ALWAYS that if the draft Design Code is not approved by the Agency within six (6) months of submission then the Landowners may submit details to the Agency for approval pursuant to the Planning Permission unless the content of the draft Design Code is not (in the view of the Agency acting reasonably) of a quality which enabled the draft to be issued for consultation because the draft code does not fulfil its objectives set out in the Development Brief (and such view has been confirmed by the Agency to the Landowners within one (1) month of submission of the draft) in which case this proviso shall not apply; and

- (a) to carry out the Development in accordance with the Design Code approved by the Agency pursuant to Paragraph 7(c) of this Part 2 of this Schedule 1; and
- (b) not to build more than [●]<sup>18</sup> of gross Commercial Unit floorspace.

## **8. Construction Standards**

The Landowner covenants with the Agency to:

- 8.1 provide a Construction Standards Report to the Agency at the same time as Reserved Matters applications for a particular Development Parcel containing Commercial Units are submitted;
- 8.2 construct the Commercial Units to at least the BREEAM Employment Very Good Rating; and
- 8.3 provide a copy of the Post Construction Review Certificate for each Commercial Unit constructed following completion of each Commercial Unit which confirms that the unit achieves BREEAM Employment Very Good Rating or the BREEAM Employment Excellent Rating and sets out the floorspace in that unit.

## **9. Local Employment**

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<sup>17</sup> If the Highways Agency require a Grampian condition which prevents the occupation of a material part of the development prior to the completion of specified works then provision may be included within this Agreement for delaying the date of the long stop payment or of some outstanding Pro Rata Contributions which the Landowner is required to make.

<sup>18</sup> To be inserted based on the figure to be specified pursuant to Clause 4.1 of the Framework Agreement which will be used to work out an Employment Land Contribution based on square metres

The Landowner covenants with the Agency to the extent it is not prevented from doing so by any rule of law whether domestic or international:

- 9.1 Except for Paragraphs 9.5 and 9.6 of this Part 2 of Schedule 1 prior to Implementation on any Commercial Unit and until the Commercial Unit is complete to designate a Local Employment Coordinator for the Commercial Unit who shall where practical:
- (a) use reasonable endeavours to ensure that job contract and training opportunities are publicised in free local press, other local papers, local job centres and agencies at the earliest opportunity and where relevant target specific sections of the local community to provide information on these opportunities;
  - (b) identify appropriate training courses and encourage and assist applicants for employment who are not presently qualified for a particular vacancy to obtain the necessary training or qualifications;
  - (c) maintain regular contact with all relevant employment agencies;
  - (d) encourage and assist the transferees of Phases or parts of Phases to use local people and local companies for their requirements and to ensure effective liaison to match job opportunities with those seeking such work locally;
  - (e) where practicable, advertise locally all employment and training opportunities purchasing and other contracts for the supply of goods and services to the Development Site; and
  - (f) liaise with the Milton Keynes Economy and Learning Partnership or such other organisation in the locality which provides further education construction training and use reasonable endeavours to ensure that adequate opportunities are made available by employers on the Development Site to enable local schools and other educational establishments to provide students with work experience and to create a positive link between local schools and employers on the Development PROVIDED ALWAYS that compliance with this sub-paragraph (f) shall not be required if the presence of persons of college or school age at or near the Development Site would either:
    - (i) be likely to contravene health and safety legislation; or
    - (ii) would in the reasonable opinion of the Landowner be likely to expose those individuals to a reasonably foreseeable risk of harm.
- 9.2 To procure that the Local Employment Co-ordinator submits an Employment Monitoring Report on each anniversary of this Agreement until the Development is completed.
- 9.3 To use reasonable endeavours to adopt the actions and measures recommended in the Employment Monitoring Report.
- 9.4 To use reasonable endeavours to ensure that the Local Employment Coordinator complies with Paragraphs 9.1 to 9.3 of this Part 2 to this Schedule 1.
- 9.5 Throughout the life of any building constructed pursuant to the Planning Permission to the extent not prevented from doing so by any rule of law whether domestic or international the occupier of each Commercial Unit will use reasonable endeavours to ensure that appropriate job and contract opportunities are publicised locally at the earliest opportunity where practical.
- 9.6 Where, after construction, a Commercial Unit is let to a tenant on a lease in excess of seven (7) years the obligations in this Paragraph shall be deemed to apply solely to the tenant for the life of that lease.

## 10. Open Space

The Landowner covenants with the Agency:

- (a) to lay out areas of open space shown in the Eastern Expansion Area Development Framework or Western Expansion Area Development Framework and/or in the indicative master plan included with a Planning Permission in accordance with the approved Open Space Specification and in accordance with the programme set out in the Development Brief; and
- (b) to notify the Council in writing of the date of practical completion of any of the areas of open space to be adopted in accordance with the areas shown in the Open Space Specification and to request the Council to inspect the completed open space and following the inspection to offer to transfer that open space to the Nominee within one (1) month (subject to covenants that it shall be used in perpetuity solely as public open space) for one pound (£1) PROVIDED ALWAYS that the Landowner shall prior to any transfer carry out any remedial works which the Council (acting reasonably) requires following its inspection to bring that open space up to the standard set out in the Open Space Specification.

## **11. Indexation**

All Employment Land Contributions payable to the Agency under this Agreement shall be Index Linked.

## **12. Dispute Resolution**

- 12.1 Any dispute between the Agency and the Landowner in relation to the terms of this Agreement (other than a dispute touching or concerning the meaning or construction of this Agreement) shall be referred to an Expert appointed jointly by the Parties to the dispute or in default appointed by the President or the Vice-President (or in either case their nominated deputy) for the time being of the Royal Town Planning Institute on the application of any Party to the dispute.
- 12.2 Any dispute between the Agency and the Landowner touching or concerning the meaning or construction of this Agreement shall be referred to a Legal Expert appointed jointly by the Parties to the dispute or in default appointed by the President or the Vice President (or in either case their appointed deputy) for the time being of the Law Society of England and Wales on the application of any Party to the dispute.
- 12.3 It is further agreed that:
  - (a) the Parties to the dispute will be entitled to make representations and counter-representations in accordance with such timetable as the Expert or the Legal Expert shall direct;
  - (b) the Expert or the Legal Expert shall give written reasons for his/her decision;
  - (c) the Expert's or the Legal Expert's costs will be borne in equal proportions by the Parties to the dispute or in such other proportions as the Expert or the Legal Expert may direct; and
  - (d) the Expert or the Legal Expert shall comply with any time limits or other directions agreed by the Parties to the dispute on or before his/her appointment PROVIDED ALWAYS that if the Expert or the Legal Expert fails to comply with the time limits any Party to the dispute may apply prior to the making of the Expert's or the Legal Expert's decision for a fresh appointment to be made.
- 12.4 Nothing in this Paragraph 12 of this Part 2 of this Schedule 1 shall be taken to fetter the ability of the Agency to carry out its statutory functions as local planning authority with powers to seek appropriate remedy in respect of any breach of any of the obligations entered into by the Landowner in this Agreement.
- 12.5 Nothing in this Paragraph 12 of this Part 2 of this Schedule 1 shall be taken to fetter the ability of the Council to carry out its statutory functions with powers to enforce breach of planning control

under the Act arising from any breach of the conditions subject to which Planning Permission is granted.

### **13. Planning Considerations**

The Landowner covenants with the Agency:

- (a) not to Implement the Planning Permission on any Phase until any conditions attached to the Planning Permission which must be discharged before Implementation of the Planning Permission on that Phase have been discharged and to comply with the requirements of the Act; and
- (b) to comply with all conditions attached to the Planning Permission.

### **14. Third Party Rights**

The Parties do not intend that any of the provisions of this Agreement shall be enforceable by any person who is not a party to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.

### **15. Security**

For Landowners in the Eastern Expansion Area:

- 15.1 The Landowner shall only be released from liability in relation to the Development Site or part of the Development Site pursuant to Paragraph 2.1 of this Part 2 of Schedule 1 where the disposal is:
- (a) of a Commercial Unit once all the Employment Land Contributions in respect of that unit have been paid in full to the Agency;
  - (b) of the Linear Park provided that the appropriate Linear Park Commuted Sum has been paid to the Nominee in full;
  - (c) of the SUDS provided that all the Employment Land Contributions in respect of the Commercial Unit adjacent to the SUDS have been paid in full to the Agency and where relevant the appropriate commuted sum in respect of the SUDS has been paid to the Nominee in full; and
  - (d) to a buyer who the Agency acting reasonably confirms in writing is of sufficient financial standing to meet the obligations contained in this Agreement with particular reference to the obligation contained in Paragraph 6 of this Part 2 of Schedule 1; or
  - (e) to a buyer which the Agency does not deem to have sufficient financial standing but which provides other appropriate security which the Agency acting reasonably confirms in writing is acceptable

PROVIDED THAT if the Agency fails to respond to any request by the Landowners or buyer for approval pursuant to Paragraph 15.1(d) or Paragraph 15.1(e) within twenty (20) working days of the request (or if the Agency within that twenty (20) working day period reasonably requests further information, within twenty (20) working days of delivery of that information) then the buyer shall be deemed to have sufficient financial standing or have provided appropriate security (as appropriate) and where there is a disagreement as to the financial standing or appropriateness of any security the dispute shall be resolved in accordance with Paragraph 11 of this Part 2 of Schedule 1

PROVIDED FURTHER THAT where this confirmation is sought after disposal by any person who would otherwise remain liable under this Paragraph the Agency shall at the cost of the person making such application assess the financial standing of the Landowner for the time being at the date of the request (whether or not there have been intervening disposals)

and shall in any other case remain liable for any breach of any obligation relating to that part of the Development Site.

For Landowners in the Western Expansion Area:

- 15.2 At any time after 1 January 2016 the Agency may issue a Request for Security Confirmation from the Landowner.
- 15.3 A Security Confirmation must be provided within twenty eight (28) days of a Request for Security Confirmation.
- 15.4 If following receipt of a Security Confirmation the Agency is not reasonably satisfied that the Landowner will be able to pay the Employment Land Contributions when they fall due in accordance with this Agreement it shall be entitled to serve a Security Notice on the Landowner.
- 15.5 Unless there is a dispute which shall be resolved using Dispute Resolution the Landowner shall provide Security to the Agency within twenty eight (28) days of the Security Notice.
- 15.6 Subject to Paragraph 15.4 of this Part 2 of Schedule 1 if the Landowner fails to provide Security within twenty eight (28) days of the date of the Security Notice there shall be a deemed default of the longstop provisions contained in Paragraph 6 of this Part 2 of Schedule 1 and the Agency may commence such enforcement proceedings as it sees fit to secure the provision of Security and shall be entitled to prevent any further development on the land specified until such time as Security has been provided or recover all outstanding Employment Land Contributions.

## **16. Notices**

- 16.1 Any notice or communication to be given under this Agreement shall be in writing and shall either be delivered personally or sent by registered post or recorded delivery service and the address for service on the Parties shall be those stated in this Agreement or such other address in England for service as the Party to be served may have previously notified in writing.
- 16.2 Each notice served in accordance with this Paragraph 16 of this Part 2 of this Schedule 1 shall be deemed to have been given or made and delivered if by hand delivery when left at the relevant address or if by letter forty eight (48) hours after posting.

## **17. Works the Landowner wishes to undertake**

- 17.1 Subject to Paragraph 17.2 of this Part 2 of this Schedule 1, should the Landowner wish to carry out any Works in Kind as part of a Development it shall submit to the Agency and/or the Council for approval (whichever shall be the appropriate body):
  - (a) comprehensive details and specifications of the said Works in Kind sufficient to enable the Agency and/or the Council (as the case may be) to assess whether or not the proposed works fall within the scope of those identified in the Infrastructure Delivery Plan; and
  - (b) a detailed delivery programme setting out the timescales within which the works in question will be carried out and completed sufficient to enable the Agency and/or the Council (as the case may be) to assess whether or not the proposed works fall within the works programme set out in the Infrastructure Delivery Plan

and for the avoidance of doubt should any dispute arise in relation to whether the said works fall within the scope of those identified in the Infrastructure Delivery Plan the dispute shall be resolved using Dispute Resolution.

- 17.2 If the Agency and/or the Council (as the case may be) determine that the:
  - (a) details and specifications are approved; and

- (b) that the Landowner's proposed delivery programme would not adversely affect the Agency and/or Council's programming of works or adversely affect the cost of other works which the Agency and/or Council (as the case may be) intend to carry out

then the Landowner shall prepare a written assessment of the estimated Works in Kind Costs for the said works based upon the said approved details specifications and delivery programme for approval by the Independent Valuation Expert PROVIDED ALWAYS that should any dispute arise in relation to the Independent Valuation Expert's assessment of the estimated Works in Kind Costs the dispute shall be resolved using Dispute Resolution.

17.3 Subject to (1) the details specifications and delivery programme and (2) the estimated Works in Kind Costs each being approved (and for the avoidance of doubt the Agency and/or the Council may decide not to approve the costs if they would exceed the cost of the Agency and/or the Council carrying out the Works) by the Agency and/or the Council (as the case may be) the Landowner shall carry out and complete the said Works in Kind entirely in accordance with the details specifications and delivery programme approved pursuant to Paragraph 17.1 of this Part 2 of this Schedule 1

17.4 Subject to Paragraphs 17.5 and 17.6 of this Part 2 of this Schedule, the Works in Kind Costs (which for the avoidance of doubt are the estimated Works in Kind Costs approved by the Independent Valuation Expert or Dispute Resolution unless the actual Works in Kind Costs are lower than estimated) shall be:

- (c) Index Linked from the date on which the estimated Works in Kind Costs are approved pursuant to Paragraph 17.3 to the Quarter Day preceding the off-setting of the Works in Kind Costs in accordance with Paragraph 17.4(b) of this Part 2 of this Schedule PROVIDED THAT if the actual Works in Kind Costs are lower than the estimated Works in Kind Costs for the purposes of this Paragraph the lesser figure will be substituted for the estimate and Index Linked from the date of the estimate; and

- (d) off-set against the outstanding Employment Land Contribution payable by the Landowner in respect of Commercial Units in accordance with the provisions of this Agreement PROVIDED THAT any such credit shall be made against the next Final Instalment payable by the Landowner following the issue of the certificate of practical completion for the said Works in Kind and PROVIDED FURTHER that should the Works in Kind Cost exceed the first (1<sup>st</sup>) Final Instalment following the [issue of the certificate of practical-completion for the Works in Kind any excess shall be off-set against the following Final Instalments payable by the Landowner.

17.5 For the avoidance of doubt any Excess shall be borne entirely by the Landowner and shall not be off-set against any Final Instalment.

17.6 For the avoidance of doubt should the total Works in Kind Costs exceed the total Employment Land Contribution payable by the Landowner pursuant to this Agreement (whether on or before the long stop date) any excess shall be borne by the Landowner.

## **18. Legal costs**

The reasonable legal costs of the Agency or the Council incurred in connection with the preparation and completion of this Agreement shall be paid by the Landowner on or before the date of this Agreement.

## **19. VAT**

19.1 The Parties consider that any payments made under this Agreement are outside the scope of UK VAT.

19.2 Notwithstanding the intention of the Parties expressed in Paragraph 19.1 of this Part 2 of this Schedule 1 where one Party ("the supplier") makes or is deemed to make a supply to another Party ("the recipient") for VAT purposes under this Agreement, whether the supply is for a

monetary consideration or otherwise, the recipient shall pay to the supplier an amount equal to the VAT in addition to the sums payable under this Agreement at the earlier of:

- (a) The date on which the recipient recovers the VAT element as input tax whether by credit or repayment; and
- (b) Five (5) days prior to the date on which the supplier is required to account for the VAT on the payments to HM Revenue and Customs

PROVIDED ALWAYS that the supplier has first (1<sup>st</sup>) provided the recipient with a valid VAT invoice in respect of the supply.

## **20. Interest**

If any payment due to the Agency under this Agreement is not paid on the date required, the Landowner shall pay interest at three percent (3%) above the base lending rate in the National Westminster Bank Plc from time to time on the whole or any part of such payment from the date when the payment became due until actual payment.

## **21. Access**

21.1 Subject to Paragraph 21.2 of this Part 1 of this Schedule the Landowner shall permit access to such part of the Development Site as is reasonably required at reasonable times at nil cost and upon reasonable prior written notice of at least seven (7) days except in the case of an emergency to the Agency and/or the Council (as the case may be) and their respective agents, officers, employees or similar and such rights and licences as are reasonably required by the same in order to facilitate the carrying out of those works and shall use reasonable endeavours to secure the same from third party interests in or related to the Land where:

- (a) the Development has been Implemented; and
- (b) access to the Development is required to carry out any works directly or indirectly associated with the installation of Infrastructure.

21.2 The Landowner shall not be required to comply with Paragraph 21.1 unless the Agency and/or the Council (as the case may be) have first (unless otherwise agreed):

- (a) given the Landowner at least six (6) months' notice of the works which it intends to carry out in order that the Landowner may elect to seek approval to carry out such works as Works in Kind in accordance with Paragraph 17 of this Part 1 of Schedule 1;
- (b) entered into such provisions as the Landowner may reasonably require to ensure that such works are carried out in such a way as to reduce any disruption damage or inconvenience to a reasonable minimum including:
  - (i) provision of warranties in favour of the Landowner;
  - (ii) guaranteed access over the completed works and adoption as public highway (where applicable) as soon as reasonably practicable;
  - (iii) agreed programme as to the carrying out of the works;
  - (iv) details of any intended contractors' compounds;
  - (v) specification and design of proposed works;
  - (vi) provisions ensuring adequate maintenance of the works at no cost to the Landowner; and
  - (vii) indemnification of the Landowner in respect of all reasonable legal and other reasonable technical costs properly incurred

- (c) complied with all requirements whether statutory or those of the Landowner relating to health and safety which the Landowner may reasonably require;
- (d) ensured that the design of the works is as consistent as reasonably practicable with the Development and consistent in all respects with any relevant approved Design Code and/or Reserved Matters approval relating to any relevant part of the Development;
- (e) entered into a provision to make good any damage caused as soon as possible to the reasonable satisfaction of the Party who owns the Land; and
- (f) entered into a provision not to interfere with or obstruct access to the Land by the Party who owns the Land.

21.3 Provided that the Development has been Implemented the Landowner covenants with the Agency to allow access to the Development Site at nil cost for the purposes of development control.

## **22. General**

The Landowner and Agency covenant with each other that where in this Agreement any further information is to be provided or decisions made all such steps shall be taken promptly and not unreasonably withheld or delayed.

## **23. Force Majeure**

23.1 If the Parties agree that a Force Majeure Event has arisen in respect of any Development which is to be decided in each Party's absolute discretion then this Agreement may be reviewed in accordance with the procedure set out in Paragraphs 23.7 and 23.8 below with the aim of securing an equitable and workable resolution to any problems caused by the Force Majeure Event PROVIDED ALWAYS that the Parties fail to agree the Dispute Resolution procedure shall not apply to this Paragraph 23.1 in relation to whether a Force Majeure Event has arisen.

23.2 If any Landowner believes that a Force Majeure Event has continuously prevented all Development in an Expansion Area for a period of twelve (12) months it may serve a Force Majeure Notice on the Expansion Area Owners in the affected Expansion Area and the Parties PROVIDED ALWAYS that the notifying Landowner reasonably considers and specifies in writing to the Agency that the Force Majeure Event is likely to prevent all development in a the affected Expansion Area for at least a further three (3) years

23.3 If any Landowner reasonably considers and specifies in writing to the Agency that a Force Majeure Event has prevented all Development on its Development Site for a period of five (5) years it may serve a Force Majeure Notice on the Agency and the Council.

23.4 If the Parties agree that a Force Majeure Event has arisen and that a Force Majeure Notice was validly served pursuant to Paragraph 23.2 or 23.3 the notified Parties shall negotiate and review this Agreement with the aim of securing an equitable and workable resolution to any problems caused by the Force Majeure Event and altering the Agreement as little as reasonably practicable.

23.5 The Parties acknowledge that one (1) possible outcome of a review pursuant to this Paragraph 23 may be to extend the long stop date for payment of outstanding Pro Rata Contributions if appropriate.

23.6 If there is any disagreement between the Landowner and the Parties on whom the Force Majeure Notice has been served pursuant to Paragraphs 23.2 or 23.3 about whether:

- (a) the event the subject of the Force Majeure Notice constitutes a Force Majeure Event; and/or

- (b) in the case of Paragraph 23.2 only the Force Majeure Event has prevented Development across a whole Expansion Area for a period of at least twelve (12) months from the date upon which the Force Majeure Event first occurred; and
- (c) in the case of Paragraph 23.3 only the Force Majeure Event has prevented Development across a whole Development Site for at least five (5) years from the date the Force Majeure Event first occurred

the dispute shall be resolved by reference to Dispute Resolution PROVIDED ALWAYS that the Landowner may not refer the matter to Dispute Resolution before the date twelve (12) months after the Force Majeure Event first occurred.

- 23.7 If following six (6) months of negotiations to alter this Agreement in accordance with Paragraph 23.1 or 23.4 no revised Agreement has been agreed, the matters in dispute shall be resolved using Dispute Resolution.
- 23.8 If in accordance with Paragraph 23.6 or 23.7 the Expert or Legal Expert appointed pursuant to Dispute Resolution determines that no equitable and workable revised Agreement can be entered into this Agreement shall terminate.

## **Part III – Development of Residential Units and Commercial Units**

For the avoidance of doubt the provisions contained in this Part 3 of this Schedule 1 are to be repeated in each Site Specific Agreement (referred to in this Part 3 of this Schedule 1 as "this Agreement") which relates to a Development Site comprising both Residential Units and Commercial Units and in relation to the Commercial Units where possible the Site Specific Agreements will refer to square metres rather than hectares

### **1. Conditionality**

- 1.1 The planning obligations in this Agreement are conditional on the grant of the Planning Permission PROVIDED ALWAYS that
- (a) this Agreement shall have no further effect following the revocation of the Planning Permission; and
  - (b) where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:
    - (i) without prejudice to this Paragraph 1 of this Part 3 of this Schedule 1 and save as may otherwise be agreed between the parties until such time as any such proceedings or challenge are concluded the terms and positive obligations in this Agreement shall have no operative effect notwithstanding the grant of the Planning Permission unless the Landowner Implements the Planning Permission; and
    - (ii) if following the conclusion of such proceedings or challenge the Planning Permission is quashed then without prejudice to any liability which may have arisen pursuant to this Agreement consequent upon the Implementation of the Planning Permission prior to being quashed this Agreement will cease to have any further effect as from the date upon which the Planning Permission is quashed.
- 1.2 Wherever in this Agreement reference is made to a date on which legal proceedings or challenge in relation to the Planning Permission are "concluded" (or cognate expressions are used), proceedings by way of judicial review shall be regarded as having been "concluded":
- (a) when permission to apply for judicial review has been refused and no further application may be made or renewed; or
  - (b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
  - (c) when any appeal is finally determined.

### **2. Release**

- 2.1 Subject to Paragraph 2.2 of this Part 3 of this Schedule the Landowner's covenants under this Agreement shall be enforceable against the Landowner during the period when this Agreement remains in force .
- 2.2 The Landowner shall not (other than in relation to antecedent breaches) be liable to the Agency or the Council for a breach of any obligation relating to any Land which is transferred following notification to the Agency and the Council of the address for any notice or communication of the proposed transferee within England and Wales PROVIDED FURTHER that the Landowner is not obliged to notify the Agency and the Council of the address of:
- (a) any proposed transferee of an individual Residential Unit or Commercial Unit; nor
  - (b) any transferee of Land for statutory undertakers' purposes.

### **3. Implementation**

The Landowner covenants to serve an Implementation Notice on the Agency at least fifteen (15) days prior to the proposed Implementation of the Development within each Development Parcel.

### **4. Submission of application for Reserved Matters and achieving an Implementable Consent**

The Landowner covenants with the Agency:

- 4.1 to submit the first (1st) application for approval of Reserved Matters within eighteen (18) months from and including the date of the Planning Permission granted pursuant to this Agreement and for the avoidance of doubt the Parties agree that if the Development Site has more than one (1) Landowner the submission of an application for approval of Reserved Matters by one (1) Landowner within eighteen (18) months of the grant of Planning Permission shall satisfy this requirement;
- 4.2 to use reasonable endeavours to secure any consent, approval, order or licence that is required for a Planning Permission to become an Implementable Consent; and
- 4.3 that if the Landowner is in breach of its obligation to use reasonable endeavours in Paragraph 4.2 then any payment due on grant of the Implementable Consent in respect of the Development Parcel or Phase concerned pursuant to Paragraph 6.2 of Part 1 of Schedule 1 of this Agreement will become immediately due.

### **5. Development Parcels**

The Landowner covenants:

- (a) not to develop any Land except in Development Parcels (which may comprise either a Phase or part of a Phase); and
- (b) not to submit an application for approval of Reserved Matters other than with a plan showing the Development Parcel to which the application relates;

PROVIDED ALWAYS that if the Landowner submits a set of Reserved Matters for an area smaller than the Development Parcel shown on the plan submitted in accordance with Paragraph 5(b) of this Part 1 of this Schedule 1 the area to which the set of Reserved Matters relate will be a deemed Development Parcel for the purposes of triggering payment under Paragraph 6 of this Part 3 of this Schedule 1 and if relevant triggering the long stop under Paragraph 7 of this Part 3 of this Schedule 1.

### **6. Payment of contributions in relation to Residential Units and Commercial Units**

Subject to Paragraph 7 of this Part 3 of this Schedule 1, the Landowner covenants with the Agency:

- 6.1 if the first (1st) application for approval of Reserved Matters has not been submitted to the Agency within eighteen (18) months from the date of the Planning Permission then:
  - (a) the Landowner shall pay to the Agency the Default Residential Land Contribution on the date which is eighteen (18) months from the date of the Planning Permission granted pursuant to this Agreement; and
  - (b) the Default Residential Land Contribution shall be offset against Pro Rata Contributions when paid

- 6.2 to pay to the Agency ten per cent (10%) of the Per Unit Contribution in respect of each Residential Unit comprised in any Development Parcel within ten (10) working days of receipt of written confirmation of the Implementable Consent in respect of that Development Parcel
- 6.3 to pay to the Agency a further fifteen per cent (15%) of the Per Unit Contribution in respect of each Residential Unit comprised in a Development Parcel prior to Implementation of that Development Parcel; and
- 6.4 to pay to the Agency the Final Instalment of the Per Unit Contribution in respect of Completions in that Development Parcel in a previous quarter, such payment to be made quarterly no later than ten (10) working days after the next Quarter Day in arrears PROVIDED ALWAYS that:
- (a) no later than two (2) working days prior to each Quarter Day the Landowner shall serve written notice on the Agency of the number of Completions in the previous quarter; and
  - (b) should the Agency request written evidence of the number of Completions in any given quarter the Landowner shall within ten (10) working days of any such request provide such evidence to the satisfaction of the Agency PROVIDED ALWAYS that the Agency shall only make one (1) such request for written evidence in any one (1) month period
- 6.5 to pay to the Agency twenty five per cent (25%) of the Employment Land Contribution in relation to each Commercial Unit prior to Implementation of Development on that Commercial Unit
- 6.6 to pay to the Agency twenty five per cent (25%) of the Employment Land Contribution in relation to each Commercial Unit prior to Practical Completion of that Commercial Unit; and
- 6.7 to pay to the Agency the Final Instalment of the Employment Land Contribution in relation to each Commercial Unit on or prior to Occupation of that Commercial Unit.

**7. Long stop date in relation to Development comprising both Residential Land and Employment Land**

The Landowner covenants with the Agency that:

- 7.1 except where Paragraph 7.3 of this Part 3 of this Schedule 1 applies, to pay to the Agency all outstanding Pro Rata Contributions for Development in respect of which Planning Permission has been granted for the construction of up to two hundred and seventy-eight thousand seven hundred and nine (278,709) square metres of gross Commercial Unit floorspace and/or for the construction of up to and including two thousand (2,000) Residential Units on the earlier of:
- (a) the tenth (10<sup>th</sup>) anniversary of the date of the grant of the first (1<sup>st</sup>) Implementable Consent triggering payment by the landowner pursuant to Paragraph 6.2 of this Part 3 of this Schedule 1; or
  - (b) the tenth (10<sup>th</sup>) anniversary of the date of the Default Residential Land Contribution; or
  - (c) 1 January 2021
- unless a Grampian Condition has been imposed in which case the date is (if later) the tenth (10<sup>th</sup>) anniversary of the date of the grant of the first (1<sup>st</sup>) Implementable Consent triggering payment by the Landowner whether it relates to Residential Units or Commercial Units pursuant to Paragraph 6.2 of this Part 3 of this Schedule 1
- 7.2 except where Paragraph 7.3 of this Part 1 of this Schedule 1 applies, to pay to the Agency all outstanding Pro Rata Contributions for Development in respect of which Planning Permission has been granted for the construction of more than two hundred and seventy-eight thousand seven hundred and nine (278,709) square metres of gross Commercial Unit floorspace and/or for the construction of more than two thousand (2,000) Residential Units on 1 January 2021 unless a Grampian Condition has been imposed in which case the date is (if later) the fifteenth (15<sup>th</sup>) anniversary of the date of the grant of the first (1<sup>st</sup>) Implementable Consent triggering payment by the Landowner pursuant to Paragraph 6.2 of this Part 3 of this Schedule 1

- 7.3 To pay for Development comprising the construction of Residential Units and Commercial Units within the Strategic Reserve on the tenth (10th) anniversary of the date of the grant of the first (1<sup>st</sup>) Implementable Consent triggering payment by the Landowner pursuant to Paragraph 6.2 of this Part 3 of this Schedule 1 where:
- (a) a Landowner has submitted an application for Planning Permission to the Agency following the earlier of 1 January 2008 or the adoption of the core strategy for the Strategic Reserve; and
  - (b) the Planning Permission was not issued by 1 January 2011.

## **8. Design Code and Development Limits**

- 8.1 The Landowner covenants with the Agency prior to the submission of details to the Agency for approval pursuant to the Planning Permission (including applications for Reserved Matters approvals) for the first (1<sup>st</sup>) Development Parcel (except in the case of approvals for elements of the Site which does not include a Residential Unit or a Commercial Unit which may be submitted to the Agency following submission of the Design Code but prior to its approval by the Agency (in which case the details submitted are to be in accordance with the draft Design Code):
- (a) if the whole Development is to be covered by one (1) Design Code to submit a draft Design Code relating to the whole Development; or
  - (b) if the Development is over one thousand five hundred (1,500) Residential Units and the Landowner wishes to submit more than one (1) Design Code for the Development:
    - (i) to submit a plan depicting Design Code areas which should normally be over one thousand (1,000) Residential Units except where the Landowner can demonstrate that it is best practice to have smaller Design Code areas and that this will not compromise the continuity of the design of the Development; and
    - (ii) to submit a draft Design Code which relates to that Development Parcel

PROVIDED ALWAYS that a Landowner may submit separate Design Codes for the residential areas and the employment areas comprised in the Development.

- 8.2 The Landowner covenants with the Agency:
- (a) not to Implement the Planning Permission on a Phase (or part thereof) until the Agency has approved the Design Code covering the whole Development or that Phase (or part thereof) as appropriate submitted pursuant to Paragraph 8.1 of this Part 3 of this Schedule 1 PROVIDED ALWAYS that if the draft Design Code is not approved by the Agency within six (6) months of submission then the Landowner may submit details to the Agency for approval pursuant to the Planning Permission unless the Agency has confirmed to the Landowners within one (1) month of submission that the content of the draft Design Code is not (in the view of the Agency acting reasonably) of a quality which enabled the draft to be issued for consultation because the draft code does not fulfil its objectives set out in the Development Brief in which case this proviso shall not apply; and
  - (b) to carry out the Development in accordance with the Design Code or Design Codes approved by the Agency pursuant to Paragraph 8.2(a) of this Part 3 of this Schedule 1;
  - (c) not to build more than [•]<sup>19</sup> Residential Units and [•]<sup>20</sup> of gross Commercial Unit floorspace

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<sup>19</sup> To be inserted based on the figure to be specified pursuant to Clause 4.1 of the Framework Agreement

## **9. Reserve Sites**

- 9.1 The Landowner covenants with the Agency and the Council not to carry out any "building operations" (as defined in section 55 (1A) of the Act) in respect of a Reserve Site until the Release Date.
- 9.2 If during the period until the Release Date the Agency or the Council wishes to call for the Reserve Site (or part thereof) to be used for Voluntary Community Uses or Community Uses it shall serve written notice of the details of the proposed uses to the Landowner for agreement.
- 9.3 The Landowner shall offer to transfer the freehold interest in the Reserve Site (or part thereof) to the Agency the Council the Community Foundation or Nominee where before the Release Date the Landowner receives a written request for such transfer from the Agency or the Council PROVIDED ALWAYS that:
- (a) the freehold interest in the Reserve Site (or part thereof) shall be deemed to have a nil market value where it is to be transferred to the Community Foundation or Voluntary Community Uses;
  - (b) the freehold interest in a Reserve Site (or part thereof) to be used for Community Uses is to be transferred at the price equivalent to the Market Value of the land in question for the use proposed for it; and
  - (c) the transfer of the freehold interest is subject to covenants that the Reserve Site (or part thereof) shall be used in perpetuity solely for the uses detailed in the written notice served on the Landowner pursuant to Paragraph 9.2 of this Part 3 of this Schedule 1.
- 9.4 Any transfer of the Reserve Site (or part thereof) by the Landowner to the Agency the Council Community Foundation or Nominee pursuant to this Paragraph 9 of this Part 3 of this Schedule 1 shall contain only the terms, covenants and restrictions agreed between the parties to the transfer.
- 9.5 If by the Release Date no request has been made by the Agency pursuant to Paragraph 9.2 of this Part 3 of this Schedule 1 then the Landowner shall be entitled to use that undeveloped land for residential purposes or such other purpose as it shall see fit (subject to obtaining all requisite consents).

## **10. Local Employment**

Until the Development is completed the Landowner covenants with the Agency to the extent it is not prevented from doing so by any rule of law whether domestic or international:

- 10.1 Except for Paragraphs 10.5 and 10.6 of this Part 3 of this Schedule 1, prior to Implementation of any Phase and until the Development is complete to designate a Local Employment Coordinator who shall where practicable:
- (a) use reasonable endeavours to ensure that job contract and training opportunities are publicised in free local press, other local papers, local job centres and agencies at the earliest opportunity and where relevant target specific sections of the local community to provide information on these opportunities;
  - (b) identify appropriate training courses and encourage and assist applicants for employment who are not presently qualified for a particular vacancy to obtain the necessary training or qualifications;
  - (c) maintain regular contact with all relevant employment agencies;

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<sup>20</sup> To be inserted based on the figure to be specified pursuant to Clause 4.1 of the Framework Agreement which will be used to work out an Employment Land Contribution based on square metres

- (d) encourage and assist the transferees of Phases or parts of Phases to use local people and local companies for their requirements and to ensure effective liaison to match job opportunities with those seeking such work locally; and
  - (e) where practicable, advertise locally all employment and training opportunities purchasing and other contracts for the supply of goods and services to the Development Site;
  - (f) liaise with the Milton Keynes Economy and Learning Partnership or such other organisation in the locality which provides further education construction training and use reasonable endeavours to ensure that adequate opportunities are made available by employers on the Development Site to enable local schools and other educational establishments to provide students with work experience and to create a positive link between local schools and employers on the Development PROVIDED ALWAYS that compliance with this sub-paragraph (f) shall not be required if the presence of persons of college or school age at or near the Development Site would either:
    - (i) be likely to contravene health and safety legislation; or
    - (ii) would in the reasonable opinion of the Landowner be likely to expose those individuals to a reasonably foreseeable risk of harm.
- 10.2 To procure that an Employment Monitoring Report is submitted to the Agency by the Local Employment Co-ordinator on each anniversary of this Agreement until the Development is completed.
- 10.3 To use reasonable endeavours to adopt the actions and measures recommended in the Employment Monitoring Report.
- 10.4 To use reasonable endeavours to ensure that the Local Employment Coordinator complies with Paragraphs 10.1 to 10.3 of this Part 3 of this Schedule 1.
- 10.5 Throughout the life of any building constructed pursuant to the Planning Permission to the extent not prevented from doing so by any rule of law whether domestic or international the occupier of each Commercial Unit covenants with the Agency to use reasonable endeavours to ensure that appropriate job and contract opportunities are publicised locally at the earliest opportunity where practical.
- 10.6 Where, after construction, a Commercial Unit is let to a tenant on a lease in excess of seven (7) years the obligations in this Paragraph shall be deemed to apply solely to the tenant for the life of that lease.

## 11. Public Open Space

The Landowner covenants with the Agency to offer to transfer the Public Open Space to the Nominee subject to covenants that it shall be used in perpetuity by the Nominee solely as public open space in perpetuity) for one pound (£1) such offer to be made either:

- 11.1 within one (1) month of completion of the laying out of the Public Open Space if the Public Open Space is being laid out as Works in Kind<sup>21</sup>; or
  - 11.2 within one (1) month of the Agency notifying the Landowner if the Public Open Space is being laid out by or on behalf of the Agency.
- 11.3 If the Open Space Specification requires works by the Agency or imposes future maintenance costs in either case at a level higher than those anticipated as the cost in calculating the Pro Rata Contributions the Landowner will at the date of transfer pay the Agency a sum that reflects that additional works and/or maintenance cost

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<sup>21</sup> This assumes that a condition requires the open space to be laid out

## **12. Construction Standards**

The Landowner covenants with Agency to:

- 12.1 provide a Construction Standards Report to the Agency at the same time as Reserved Matters applications for a particular Development Parcel containing Residential Units and/or Commercial Units are submitted;
- 12.2 construct ninety percent (90%) of the Residential Units to the Eco Homes Very Good Rating and ten percent (10%) of the Residential Units (whether Affordable Housing Units or Market Housing) to the Eco Homes Excellent Rating;
- 12.3 construct the Commercial Units to at least the BREEAM Employment Very Good Rating; and
- 12.4 provide copies of the Post Construction Review Certificates for all Residential Units and Commercial Units constructed in a quarter which confirm that all such units achieve BREEAM Employment Very Good Rating Eco Homes Very Good Rating or Eco Homes Excellent Rating along with a summary sheet listing the number of Residential Units constructed in that quarter and the amount which are Eco Homes Very Good Rating and Eco Homes Excellent Rating and the number of Commercial Units constructed in that quarter and the amount that are BREEAM Employment Very Good Rating and BREEAM Employment Excellent Rating.

## **13. Indexation**

All Per Unit Contributions and all Employment Land Contributions payable to the Agency and under this Agreement shall be Index Linked.

## **14. Dispute Resolution**

- 14.1 Any dispute between the Agency and the Landowner in relation to the terms of this Agreement (other than a dispute touching or concerning the meaning or construction of this Agreement) shall be referred to an Expert appointed jointly by the parties to the dispute or in default appointed by the President or the Vice-President (or in either case their nominated deputy) for the time being of the Royal Town Planning Institute on the application of any party to the dispute.
- 14.2 Any dispute between the Agency and the Landowner touching or concerning the meaning or construction of this Agreement shall be referred to a Legal Expert appointed jointly by the parties to the dispute or in default appointed by the President of the Vice President (or in either case their appointed deputy) for the time being of the Law Society of England and Wales on the application of any party to the dispute.
- 14.3 It is further agreed that:
  - (a) the parties to the dispute will be entitled to make representations and counter-representations in accordance with such timetable as the Expert or the Legal Expert shall direct;
  - (b) the Expert or the Legal Expert shall give written reasons for his/her decision;
  - (c) the Expert's or the Legal Expert's costs will be borne in equal proportions by the parties to the dispute or in such other proportions as the Expert or the Legal Expert may direct; and
  - (d) the Expert or the Legal Expert shall comply with any time limits or other directions agreed by the parties to the dispute on or before his/her appointment PROVIDED ALWAYS that if the Expert or the Legal Expert fails to comply with the time limits any party to the dispute may apply prior to the making of the Expert's or the Legal Expert's decision for a fresh appointment to be made.
- 14.4 Nothing in this Paragraph 14 of this Part 3 of this Schedule 1 shall be taken to fetter the ability of the Agency to carry out its statutory functions as local planning authority with powers to seek

appropriate remedy in respect of any breach of any of the obligations entered into by the Landowner in this Agreement.

- 14.5 Nothing in this Paragraph 14 of this Part 3 of this Schedule 1 shall be taken to fetter the ability of the Council to carry out its statutory functions with powers to enforce breach of planning control under the Act arising from any breach of the conditions subject to which Planning Permission is granted.

## **15. Planning Considerations**

The Landowner covenants with the Agency:

- (a) not to Implement the Planning Permission on any Development Parcel or any Phase until any conditions attached to the Planning Permission which must be discharged before Implementation of the Planning Permission on that Development Parcel or the Phase (as the case may be) have been discharged and to comply with the requirements of the Act; and
- (b) to comply with all conditions attached to the Planning Permission.

## **16. Transfers to the Agency, the Council, the Community Foundation or Nominee**

- 16.1 The Agency the Council the Community Foundation the Nominee and the Landowner will use reasonable endeavours to ensure that no Stamp Duty Land Tax is payable in accordance with the provisions of Section 61 of the Finance Act 2003 on any transfer of Land to the Agency the Council the Community Foundation or Nominee and shall take such steps as may be lawful to structure the transfer arrangements accordingly.
- 16.2 The Landowner covenants to the Agency that if any transfer to the Agency the Council the Community Foundation or Nominee has Stamp Duty Land Tax (or any equivalent replacement tax) payable on it the Landowner will be responsible for all such tax due in relation to the transfer.
- 16.3 The Parties agree that if any Land is transferred to the Agency the Council the Community Foundation or a Nominee for the purposes of developing a health facility the value attributed to the Land shall be one million pounds (£1,000,000) Index Linked exclusive of VAT per acre.

## **17. Third Party Rights**

The Parties do not intend that any of the provisions of this Agreement shall be enforceable by any person who is not a party to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **18. Security**

- 18.1 At any time after 1 January 2016 the Agency may issue a Request for Security Confirmation from the Landowner.
- 18.2 A Security Confirmation must be provided within twenty eight (28) days of a Request for Security Confirmation.
- 18.3 If following receipt of a Security Confirmation the Agency is not reasonably satisfied that the Landowner will be able to pay the Pro Rata Contributions when they fall due in accordance with this Agreement it shall be entitled to serve a Security Notice on the Landowner.
- 18.4 Unless there is a dispute which shall be resolved using Dispute Resolution the Landowner shall provide Security to the Agency within twenty eight (28) days of the date of the Security Notice.
- 18.5 Subject to Paragraph 18.4 of this Part 3 of this Schedule 1 if the Landowner fails to provide Security within twenty eight (28) days of the date of the Security Notice there shall be a deemed default of the longstop provisions contained in Paragraph 7 of this Part 3 of Schedule 1 and the

Agency may commence such enforcement proceedings as it sees fit to secure the provision of Security and shall be entitled to prevent any further development on the land specified until such time as Security has been provided or recover all outstanding Pro Rata Contributions.

**19. Notices**

- 19.1 Any notice or communication to be given under this Agreement shall be in writing and shall either be delivered personally or sent by registered post or recorded delivery service and the address for service on the Parties shall be those stated in this Agreement or such other address in England for service as the Party to be served may have previously notified in writing.
- 19.2 Each notice served in accordance with this Paragraph 19 of this Part 3 of this Schedule 1 shall be deemed to have been given or made and delivered if by delivery when left at the relevant address or if by letter forty eight (48) hours after posting.

**20. Works the Landowner wishes to undertake**

- 20.1 Subject to Paragraph 20.2 of this Part 3 of this Schedule 1, should the Landowner wish to carry out any Works in Kind as part of a Development it shall submit to the Agency and/or the Council for approval (whichever shall be the appropriate body):
- (a) comprehensive details and specifications of the said Works in Kind sufficient to enable the Agency and/or the Council (as the case may be) to assess whether or not the proposed works fall within the scope of those identified in the Infrastructure Delivery Plan; and
  - (b) a detailed delivery programme setting out the timescales within which the works in question will be carried out and completed sufficient to enable the Agency and/or the Council (as the case may be) to assess whether or not the proposed works fall within the works programme set out in the Infrastructure Delivery Plan

and for the avoidance of doubt should any dispute arise in relation to whether the said works fall within the scope of those identified in the Infrastructure Delivery Plan the dispute shall be resolved in using Dispute Resolution.

- 20.2 If the Agency and/or the Council (as the case may be) determine that the:
- (a) details and specifications are approved; and
  - (b) that the Landowner's proposed delivery programme would not adversely affect the Agency and/or Council's programming of works or adversely affect the cost of other works which the Agency and/or Council (as the case may be) intend to carry out

then the Landowner shall prepare a written assessment of the estimated Works in Kind Costs for the said works based upon the said approved details specifications and delivery programme for approval by the Independent Valuation Expert PROVIDED ALWAYS that should any dispute arise in relation to the Independent Valuation Expert's assessment of the estimated Works in Kind Costs the dispute shall be resolved in using Dispute Resolution.

- 20.3 Subject to (1) the details specifications and delivery programme and (2) the estimated Works in Kind Costs each being approved (and for the avoidance of doubt the Agency and/or the Council may decide not to approve the costs if they would exceed the cost of the Agency and/or the Council carrying out the Works) by the Agency and/or the Council (as the case may be) the Landowner shall carry out and complete the said Works in Kind entirely in accordance with the details specifications and delivery programme approved pursuant to Paragraph 20.1 of this Part 3 of Schedule 1
- 20.4 Subject to Paragraphs 20.5 and 20.6 of this Part 3 of this Schedule, the Works in Kind Costs (which for the avoidance of doubt are the estimated Works in Kind Costs approved by the Independent Valuation Expert or Dispute Resolution unless the actual Works in Kind Costs are lower than estimated) shall be:

- (a) Index Linked from the date on which the estimated Works in Kind Costs are approved pursuant to Paragraph 20.3 of this Part 3 of this Schedule to the Quarter Day preceding the off-setting of the Works in Kind Costs in accordance with Paragraph 20.4(b) of this Part 3 of this Schedule PROVIDED THAT if the actual Works in Kind Costs are lower than the estimated Works in Kind Costs for the purposes of this Paragraph the lesser figure will be substituted for the estimate and Index Linked from the date of the estimate; and
- (b) off-set against the outstanding Per Unit Contribution and Employment Land Contribution payable by the Landowner in respect of Residential Units and Commercial Units in accordance with the provisions of this Agreement PROVIDED THAT any such credit shall be made against the next Final Instalment payable by the Landowner following the issue of the certificate of practical completion for the said Works in Kind and PROVIDED FURTHER that should the Works in Kind Cost exceed the first Final Instalment following the issue of the certificate of practical completion for the Works in Kind any excess shall be off-set against the following Final Instalments payable by the Landowner.

20.5 For the avoidance of doubt any Excess shall be borne entirely by the Landowner and shall not be off-set against any Final Instalment.

20.6 For the avoidance of doubt should the total Works in Kind Costs exceed the outstanding Per Unit Contribution payable by the Landowner pursuant to the Site Specific Agreement (whether on or before the long stop date) any excess shall be borne by the Landowner.

## **21. Legal costs**

The reasonable legal costs of the Agency or the Council incurred in connection with the preparation and completion of this Agreement shall be paid by the Landowner on or before the date of this Agreement.

## **22. VAT**

22.1 The Parties consider that any payments made under this Agreement are outside the scope of UK VAT.

22.2 Notwithstanding the intention of the parties expressed in Paragraph 22.1 of this Part 3 of this Schedule 1 where one Party ("the supplier") makes or is deemed to make a supply to another Party ("the recipient") for VAT purposes under this Agreement, whether the supply is for a monetary consideration or otherwise, the recipient shall pay to the supplier an amount equal to the VAT in addition to the sums payable under this Agreement at the earlier of:

- (a) The date on which the recipient recovers the VAT element as input tax whether by credit or repayment; and
- (b) Five (5) days prior to the date on which the supplier is required to account for the VAT on the payments to HM Revenue and Customs

PROVIDED ALWAYS that the supplier has first (1<sup>st</sup>) provided the recipient with a valid VAT invoice in respect of the supply.

## **23. Interest**

If any payment due to the Agency under this Agreement is not paid on the date required, the Landowner shall pay interest at three percent (3%) above the base lending rate in the National Westminster Bank Plc from time to time on the whole or any part of such payment from the date when the payment became due until actual payment.

## **24. Access**

24.1 Subject to Paragraph 24.2 of this Part 3 of this Schedule the Landowner shall permit access to such part of the Development Site as reasonably required at reasonable times at nil cost and

upon reasonable prior written notice of at least seven (7) days except in the case of an emergency to the Agency and/or the Council (as the case may be) and their respective agents, officers, employees or similar and such rights and licences as are reasonably required by the same in order to facilitate the carrying out of those works and shall use reasonable endeavours to secure the same from third party interests in or related to the Land where:

- (a) the Development has been Implemented; and
- (b) access to the Development is required to carry out any works directly or indirectly associated with the installation of Infrastructure

24.2 The Landowner shall not be required to comply with Paragraph 24.1 unless the Agency and/or the Council (as the case may be) have first (unless otherwise agreed):

- (a) given the Landowner at least six (6) months' notice of the works which it intends to carry out in order that the Landowner may elect to seek approval to carry out such works as Works in Kind in accordance with Paragraph 20 of this Part 3 of Schedule 1;
- (b) entered into such provisions as the Landowner may reasonably require to ensure that such works are carried out in such a way as to reduce any disruption damage or inconvenience to a reasonable minimum including:
  - (i) provision of warranties in favour of the Landowner;
  - (ii) guaranteed access over the completed works and adoption as public highway (where applicable) as soon as reasonably practicable;
  - (iii) agreed programme as to the carrying out of the works;
  - (iv) details of any intended contractors' compounds;
  - (v) specification and design of proposed works;
  - (vi) provisions ensuring adequate maintenance of the works at no cost to the Landowner; and
  - (vii) indemnification of the Landowner in respect of all reasonable legal and other reasonable technical costs properly incurred
- (c) complied with all requirements whether statutory or those of the Landowner relating to health and safety which the Landowner may reasonably require; and
- (d) ensured that the design of the works is as consistent as reasonably practicable with the Development and consistent in all respects with any relevant approved Design Code and/or Reserved Matters approval relating to any relevant part of the Development.
- (e) entered into a provision to make good any damage caused as soon as possible to the reasonable satisfaction of the Party who owns the Land.
- (f) entered into a provision not to interfere with or obstruct access to the Land by the Party who owns the Land.

24.3 Provided that the Development has been Implemented the Landowner covenants with the Agency to allow access to the Development Site at nil cost for the purposes of development control.

## **25. General**

The Landowner the Council and the Agency covenant with each other that where in this Agreement any further information is to be provided or decisions made all such steps shall be taken promptly and not unreasonably withheld or delayed.

## **26. Force Majeure**

- 26.1 If the Parties agree that a Force Majeure Event has arisen in respect of any Development which is to be decided in each Party's absolute discretion then this Agreement may be reviewed in accordance with the procedure set out in Paragraphs 26.7 and 26.8 below with the aim of securing an equitable and workable resolution to any problems caused by the Force Majeure Event PROVIDED ALWAYS that the Parties fail to agree the Dispute Resolution procedure shall not apply to this Paragraph 26.1 in relation to whether a Force Majeure Event has arisen.
- 26.2 If any Landowner believes that a Force Majeure Event has continuously prevented all Development in an Expansion Area for a period of twelve (12) months it may serve a Force Majeure Notice on the Expansion Area Owners in the affected Expansion Area and the Parties PROVIDED ALWAYS that the notifying Landowner reasonably considers and specifies in writing to the Agency that the Force Majeure Event is likely to prevent all development in a the affected Expansion Area for at least a further three (3) years
- 26.3 If any Landowner reasonably considers and specifies in writing to the Agency that a Force Majeure Event has prevented all Development on its Development Site for a period of five (5) years it may serve a Force Majeure Notice on the Agency and the Council.
- 26.4 If the Parties agree that a Force Majeure Event has arisen and that a Force Majeure Notice was validly served pursuant to Paragraph 26.2 or 26.3 the notified Parties shall negotiate and review this Agreement with the aim of securing an equitable and workable resolution to any problems caused by the Force Majeure Event and altering the Agreement as little as reasonably practicable.
- 26.5 The Parties acknowledge that one (1) possible outcome of a review pursuant to this Paragraph 26 may be to extend the long stop date for payment of outstanding Pro Rata Contributions if appropriate.
- 26.6 If there is any disagreement between the Landowner and the Parties on whom the Force Majeure Notice has been served pursuant to Paragraphs 26.2 or 26.3 about whether:
- (a) the event the subject of the Force Majeure Notice constitutes a Force Majeure Event; and/or
  - (b) in the case of Paragraph 26.1(a) only the Force Majeure Event has prevented Development across a whole Expansion Area for a period of at least twelve (12) months from the date upon which the Force Majeure Event first occurred; and
  - (c) in the case of Paragraph 26.1(b) only the Force Majeure Event has prevented Development across a whole Development Site for at least five (5) years from the date the Force Majeure Event first occurred
- the dispute shall be resolved by reference to Dispute Resolution PROVIDED ALWAYS that the Landowner may not refer the matter to Dispute Resolution before the date twelve (12) months after the Force Majeure Event first (1<sup>st</sup>) occurred.
- 26.7 If following six (6) months of negotiations to alter this Agreement in accordance with Paragraph 26.1 or 26.4 no revised Agreement has been agreed, the matters in dispute shall be resolved using Dispute Resolution.
- 26.8 If in accordance with Paragraph 26.6 or 26.7 the Expert or Legal Expert appointed pursuant to Dispute Resolution determines that no equitable and workable revised Agreement can be entered into this Agreement shall terminate.

## **Schedule 2 - Issues to be included in each Site Specific Agreement (if required)**

### **1. Equalisation**

1.1 The Parties agree that save where agreement has otherwise been reached between the Parties an equalisation procedure is necessary to ensure that the cost of Nil Value Land is shared between the Landowners.

1.2 It is agreed between Landowners that where pursuant to a Site Specific Agreement Landowners are required by the Local Plan or pursuant to either the Eastern Expansion Area Development Framework or the Western Expansion Areas Development Framework to provide Nil Value Land they will receive the agreed value for the part of their Land by means of allocation of equivalent Land on other sites or by financial reimbursement from other Landowners in accordance with the following:

- (a) In relation to the Western Expansion Area the cost of the Nil Value Land shall be shared proportionately between the Expansion Area Owners in the Western Expansion Area.
- (b) In relation to the Eastern Expansion Area the cost of the Nil Value Land shall be split between Brooklands and Broughton Manor Farm (Area A) and Nova Park and Glebelands (Area B);
- (c) The cost of the Nil Value Land within Area A shall be shared proportionately between the Parties with a landholding interest in Area A;
- (d) The cost of the Nil Value Land within Area B shall be shared proportionately between the Parties with a landholding interest in Area B;
- (e) In relation to the Strategic Reserve the cost of the Nil Value Land shall be shared proportionately between the Expansion Area Owners in the Strategic Reserve.

PROVIDED ALWAYS that where equalisation provisions reimbursing the Landowner in question for the loss of its Land have already been included within a previous Site Specific Agreement or Agreements (which for the purposes of this Paragraph 1.2 of this Schedule 2 shall include the Site Specific Agreement for the Land known as Broughton Manor Farm dated 22 July 2005) this Paragraph 1 of this Schedule 2 shall not apply and PROVIDED FURTHER that it is agreed that Broughton Manor Farm will not be required to participate in any equalisation provisions for Area A over and above those provisions contained in the Site Specific Agreement for Broughton Manor Farm dated 22 July 2005.

1.3 If the Landowners cannot themselves agree the details of the equalisation scheme or whether an equalisation scheme is required, in order to ensure transparency and fairness, they may invite the Agency to fix and agree with the Landowners the location and size of the relevant facilities and agree the precise equalisation procedure in the Site Specific Agreement and if this still cannot be agreed they will use Dispute Resolution.

1.4 The Parties agree that where a Landowner provides Nil Value Land pursuant to Paragraph 1.2 of this Schedule 2, the transfer of the Land will be subject to covenants that the Land being transferred shall be used in perpetuity by the Agency the Council the Community Foundation or Nominee solely for the community infrastructure for which it is originally transferred.

### **2. Adoption**

The Parties agree that the Site Specific Agreements will include provisions requiring Landowners to enter into highways agreements pursuant to section 38 of the Highways Act 1980 with the Council to secure adoption of the roads indicated on a plan and any other planning or infrastructure agreements that may be required at the relevant time.

### 3. Affordable Housing

The Parties agree that Site Specific Agreements will require Landowners to make the following covenants with the Council:

- 3.1 Not to Implement a Planning Permission for Residential Units on any Development Parcel until a scheme for the provision of Affordable Housing within the Phase in which that Development Parcel is located (which shall have regard to the Council's Affordable Housing SPG) has been submitted to and approved by the Council (in consultation with the Agency) such scheme to include but not be limited to the following details:
  - (a) an Affordable Housing Location Plan plus details of the number of Low Cost Market Units and Reduced Cost Market Units to be provided within the Phase and the number of Affordable Housing Units to be grouped together in any one part of the Phase;
  - (b) any prospective Affordable Housing Provider known of at the time of the submission of the draft scheme;
  - (c) the criteria to be applied to determine that prospective purchasers of Affordable Housing Units comprised within Low Cost Market Housing and Reduced Cost Market Housing are people who because of their low incomes cannot afford to buy houses generally available on the open market in Milton Keynes;
  - (d) the mechanism for ensuring that Reduced Cost Market Housing Units initially sold at a consideration discounted from the Market Value are only subsequently sold at such discount; and
  - (e) the mechanism for ensuring the Affordable Housing Units will be maintained as Affordable Housing in perpetuity.
- 3.2 To construct or procure the construction of the Affordable Housing Units at no cost to the Agency or to the Council in accordance with the scheme or schemes approved pursuant to Paragraph 3.1 of this Schedule 2.
- 3.3 That thirty per cent (30%) of the Residential Units within each Phase shall be Affordable Housing Units and subject to Paragraph 3.5 of this Schedule 2 shall be provided in accordance with the Affordable Housing Tenures and the Affordable Housing Mix unless otherwise agreed by the Council and the relevant Landowner as part of the scheme approved pursuant to Paragraph 3.2 of this Schedule 2.
- 3.4 To ensure that the Affordable Housing Units are not restricted to any particular part of a Phase and that not more than twelve (12) Affordable Housing Units are grouped together in any one (1) part of the relevant Phase unless otherwise agreed in writing between the Council and the relevant Landowner or the Affordable Housing Provider.
- 3.5 Not to Occupy or permit to be Occupied more than eighty per cent (80%) of the Market Housing in any Phase until:
  - (a) the Affordable Housing Units in that Phase have been constructed and the Shared Ownership Housing Units and Social Rented Housing Units in that Phase are under the long term management of an Affordable Housing Provider; or
  - (b) the freehold interest or the leasehold interest of each of the Shared Ownership Housing Units and Social Rented Housing Units and/or the Shared Ownership Housing Land and Social Rented Housing Land in that Phase has been transferred to or granted to an Affordable Housing Provider; and
  - (c) satisfactory evidence of such transfer or grant or management arrangement (whichever shall be applicable) has been provided to the Council

PROVIDED ALWAYS that if any offer to transfer the Shared Ownership Housing Units and/or the Social Rented Housing Units or the Shared Ownership Housing Land and/or Social Rented Housing Land in any Phase to an Affordable Housing Provider has not been accepted in writing by an Affordable Housing Provider within six (6) months of an offer the relevant Landowner shall provide details of efforts made and negotiations and steps taken to conclude an agreement with an Affordable Housing Provider to the Council in writing and upon the Council being satisfied that the relevant Landowner has used all reasonable endeavours to take such steps and to conclude an agreement on reasonable commercial terms during the six (6) month period then the relevant Landowner shall be permitted to provide in equal proportion Low Cost Market Housing Units and Reduced Cost Market Housing Units instead of Shared Ownership Housing Units and/or the Social Rented Housing Units on the land in question in that Phase in accordance with any scheme approved by the Council (in consultation with the Agency) under Paragraph 3.1 of this Schedule 2.

- 3.6 The Affordable Housing shall not be used for any purpose other than for Affordable Housing provided that this provision shall:
- (a) not bind any mortgagee of the Affordable Housing Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Affordable Housing Provider PROVIDED ALWAYS that:
    - (i) a mortgagee receiver or manager shall in writing give the Agency, the Council and the Affordable Housing Provider (as appropriate) four (4) months prior notice of its intention to exercise any power of sale in respect of any of the Affordable Housing Units to provide the Agency, the Council or the Affordable Housing Provider the opportunity to complete a transfer of the Affordable Housing Unit(s) in question in order to ensure that they continue to be used for the purpose of Affordable Housing; and
    - (ii) if the Agency, the Council or the Affordable Housing Provider is unable to dispose of the Affordable Housing Units within the said period of four (4) months in accordance with Paragraph 3.6.1(a)(i) of this Schedule 2 then the mortgagee receiver or manager shall be entitled to dispose of the Affordable Housing Units on the open market,
  - (b) cease to apply to any part of the Affordable Housing where the Affordable Housing Provider shall be required to dispose of any part pursuant to a right to buy under Part IV of the Housing Act 1985 or section 16 of the Housing Act 1996 or any similar or applicable substitute right or shall be required to sell to a tenant with the benefit of a voluntary purchase grant provided under sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation) or shall not apply to a tenant of Shared Ownership Housing Unit who has staircased up to one hundred per cent (100%) or their mortgagee; and
  - (c) cease to apply to any part of the Affordable Housing should such part be transferred or leased by any mortgagee of the Affordable Housing Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Affordable Housing Provider.

#### **4. Strategic Landscaping and Open Space**

- 4.1 The Parties agree that if Site Specific Agreements require areas of landscaping or open space to be provided which are not Public Open Space then the Site Specific Agreement will provide for the specification and maintenance of the landscaping or open space.
- 4.2 For the avoidance of doubt, areas of open space which are strategic landscaping and mitigation planting will need maintaining to specific standards other areas of open space which are not Public Open Space can be maintained as the Landowner chooses PROVIDED THAT should the

Landowner wish to have those areas maintained by another body commuted payments may be required.

### **Schedule 3 – Material Circumstances justifying a variation in the Pro Rata Contributions at a Review Date or a Review of the Affordable Housing Provisions at a Review Date**

1. Not more than twelve (12) months but at least six (6) months before a Review Date, the Agency the Council or any Landowner (which still has Land that is yet to be bound by a Site Specific Agreement) who wishes to request a review shall send to the Agency and any Landowner which still has Land that is yet to be bound by a Site Specific Agreement a notice specifying on which of the following grounds it believes a review of the Pro Rata Contributions or in the case of Ground F the Affordable Housing provisions set out at Paragraph 3 of Schedule 2 of this Agreement is justified:
  - Ground A: That there has been a change in the cost of any item of Infrastructure specified in the Infrastructure Delivery Plan of 15% over and above indexation from the 1 July 2005.
  - Ground B: That a particular item of Infrastructure specified in the Infrastructure Delivery Plan of this Agreement is either no longer needed or the objective could be obtained by a different and less costly means.
  - Ground C: That additional items of infrastructure are required and justifiable owing to changing circumstances and that proposals for the funding of such items are required.
  - Ground D: That savings on infrastructure expenditure means either that further infrastructure items serving the Developments on the Land can be agreed or that the Pro Rata Contributions can be reduced.
  - Ground E: That a material change in circumstances effects the delivery of any particular piece of infrastructure or affects the need for the provision of infrastructure within the Designated Area so as to justify a review.
  - Ground F: That there has been a change in the Council's adopted Affordable Housing policy following a further assessment of housing need in the Designated Area.
2. Any notice served pursuant to Paragraph 1 of this Schedule 3 of this Agreement shall be accompanied by sufficient evidence to show that the proposed variation to the Pro Rata Contributions or the Affordable Housing provisions accords with and can be justified against the Local Plan and supplementary planning documents as well as national and regional government planning policy in force at the Review Date in question and in the case of proposed amendments to the Affordable Housing provisions are in line with the outcome of the Council's most recent assessment of housing need.
3. From the date of receipt of any notice received pursuant to Paragraph 1 of this Schedule 3 of this Agreement any recipient shall have a period of two (2) months in which to serve a counter notice challenging the grounds for the variation to the Pro Rata Contributions or Affordable Housing provisions and/or the evidence produced to justify the said variation such counter notice to be accompanied by such evidence as the recipient is able to provide in order to support their challenge to the proposed variation PROVIDED ALWAYS that in the event that any recipient fails to serve a counter notice within the two (2) month period referred to in this Paragraph 3 of this Schedule 3 to this Agreement they shall be deemed to have accepted the proposed variation to the Pro Rata Contributions or the Affordable Housing provisions (as the case may be)
4. Following the service of any counter notice or notices pursuant to Paragraph 3 of this Schedule 3 to this Agreement the relevant parties (here meaning the server of any initial notice and any Party who has served a counter notice within the two (2) month period) shall have a further period of two (2) months from the expiry of the two (2) month period referred to in Paragraph 3 of this Schedule 3 to this Agreement in which they shall use all reasonable endeavours to reach agreement over the proposed variation PROVIDED ALWAYS that if on expiry of the further two

(2) month period the relevant Parties have still been unable to reach agreement the matter shall be resolved using Dispute Resolution.

## **Schedule 4 – Agency's Obligations**

The Agency covenants with the Landowners to include the following covenants in all Site Specific Agreements:

### **1. Provision of Infrastructure**

- 1.1 The Agency covenants to use its best endeavours to secure the provision of Strategic Infrastructure and reasonable endeavours to secure the provision of Local Infrastructure in accordance with the Infrastructure Delivery Plan.
- 1.2 The Agency covenants that any amendment to the indicative location of transport improvement works shown on Plan 2 which affects a Development Site shall not be made by the Agency unless the Agency has undertaken prior consultation with the relevant Landowners and given due regard to any representations received.

### **2. Expenditure of Contributions**

- 2.1 The Agency covenants with the Landowners to procure that the Pro Rata Contributions shall only be applied towards the provision of Infrastructure in accordance with the Infrastructure Delivery Plan.
- 2.2 Subject to its costs being met by the Council or the Landowners (as the case may be) the Agency covenants with the Council and the Landowners to provide a breakdown of expenditure from the monies paid to the Agency pursuant to this Agreement if so requested in writing by the Council or the Landowners PROVIDED ALWAYS that the Council and the Landowners shall each only make one such request in any six (6) month period.
- 2.3 Subject to its costs being met by the Landowners the Agency covenants with the Landowners to procure from the Council a breakdown of expenditure from the monies received from the Landowners which relate to the Council's functions pursuant to this Agreement if so requested in writing by the Landowners PROVIDED ALWAYS that the Landowners shall each only make one such request in any six (6) month period.
- 2.4 The Agency covenants with each Landowner to return any monies received from each Landowner pursuant to the relevant Site Specific Agreements which are not committed towards the provision of Infrastructure on the fifth (5th) anniversary of the relevant Landowners long stop date as set out in Paragraph 7 of Part 1 Paragraph 6 of Part 2 or Paragraph 7 of Part 3 of Schedule 1 to this Agreement (as appropriate) to the relevant Landowner.

### **3. Treatment of Applications and Approval of details**

- 3.1 The Agency covenants with the Landowners to use reasonable endeavours to ensure that all details (including applications for Reserved Matters approvals) any plan showing proposed Design Code areas and the draft Design Code(s) submitted by the Landowners pursuant to the Planning Permission and this Agreement respectively are considered expeditiously and with all due diligence and not to unreasonably withhold or delay any approvals.
- 3.2 The Agency will use reasonable endeavours to determine any application submitted in accordance with Paragraph 7.3 of Part 1 or Paragraph 7.3 of Part 3 of Schedule 1 of this Agreement within twelve (12) months of submission.

3.3 The Agency covenants with the Landowners:

- (a) to co-operate in any discussions regarding an Open Space Specification or estimated Works in Kind Costs including the likely costs of particular works and/or maintenance requirements (where appropriate);
- (b) on request to provide Landowners with any information in the Agency's possession reasonably relevant to discussions regarding an Open Space Specification or estimated Works in Kind Costs; and

(c) not to unreasonably withhold or delay any approval of an Open Space Specification

#### **4. Access**

4.1 Subject to Paragraph 4.2 of this Schedule the Agency shall permit access to such part of the Land within the Agency's ownership or control to carry out any Works in Kind as is reasonably required at reasonable times at nil cost and upon reasonable prior written notice of at least seven (7) days except in the case of an emergency to the Landowners and/or the Council (as the case may be) and their respective agents, officers, employees or similar and such rights and licences as are reasonably required by the same in order to facilitate the carrying out of those works and shall use reasonable endeavours to secure the same from third party interests in or related to the Land where:

- (a) the Development has been Implemented; and
- (b) access to the Development is required to carry out any works directly or indirectly associated with the installation of Infrastructure

4.2 The Agency shall not be required to comply with Paragraph 4.1 unless the Landowners and/or the Council (as the case may be) have first (unless otherwise agreed):

- (a) entered into such provisions as the Agency may reasonably require to ensure that such works are carried out in such a way as to reduce any disruption damage or inconvenience to a reasonable minimum including:
  - (i) provision of warranties in favour of the Agency;
  - (ii) guaranteed access over the completed works and adoption as public highway (where applicable) as soon as reasonably practicable;
  - (iii) agreed programme as to the carrying out of the works;
  - (iv) details of any intended contractors' compounds;
  - (v) specification and design of proposed works;
  - (vi) provisions ensuring adequate maintenance of the works at no cost to the Agency; and
  - (vii) indemnification of the Agency in respect of all reasonable legal and other reasonable technical costs properly incurred
- (b) complied with all requirements whether statutory or those of the Agency relating to health and safety which the Agency may reasonably require;
- (b) ensured that the design of the works is as consistent as reasonably practicable with the any Development taking place on that Land and consistent in all respects with any relevant approved Design Code and/or Reserved Matters approval relating to any relevant part of the Development;
- (c) entered into a provision to make good any damage caused as soon as possible to the reasonable satisfaction of the Agency; and
- (d) entered into a provision not to interfere with or obstruct access to the Land by the Agency.

4.3 The Agency covenants with the Landowner(s) and/or Council that it will allow members of the public and their vehicles at all times to pass and repass on roads constructed on land within the Agency's ownership or control from the date on which the road is suitable for use by vehicles until the date on which the road is adopted as a highway maintainable at the public expense.

- 4.4 The Agency covenants to use its reasonable endeavours to procure that the following obligations on behalf of the Council and/or the Landowners are included in all Site Specific Agreements (where appropriate):
- (a) The Council and/or the Landowners covenant(s) with the Agency and the Landowner(s) that if that the Agency and/or the Landowner(s) require access to any land within the Council's and/or a Landowner(s) ownership or control to carry out any works directly or indirectly associated with the installation of Infrastructure the Council and/or the Landowner(s) shall permit such access at nil cost and upon reasonable notice permit the Agency and/or the Landowner(s) (as the case may be) and their respective agents officers employees or similar such rights and licences as are reasonably required by the Agency and/or the Landowner(s) in order to facilitate the carrying out of those works.
  - (b) (The Council and/or the Landowners covenant(s) with the Landowner(s) that they will allow members of the public and their vehicles at all times to pass and repass on roads constructed on land within the Council's and/or the Landowners' ownership or control from the date on which the road is suitable for use by vehicles until the date on which the road is adopted as a highway maintainable at the public expense.

## **5. Carbon Rebate**

- 5.1 Following receipt of Post Construction Review Certificates for a quarter accompanied by a form which indicates that a number of Residential Units attained Eco Homes Excellent Rating in that quarter the Agency will confirm to the Landowner the number of Residential Units the Agency considers achieved Eco Homes Excellent Rating based on the number of Post Construction Review Certificates provided to the Agency and the amount of Residential Unit Carbon Rebate which can be offset against future Per Unit Contributions, if any.
- 5.2 Following receipt of Post Construction Review Certificates accompanied by a form which indicates that a Commercial Unit or number of Commercial Units attained BREEAM Employment Excellent the Agency will confirm to the Landowner the amount of Commercial Unit Carbon Rebate which can be offset against future Employment Land Contributions based on the Post Construction Review Certificates provided to the Agency, if any.
- 5.3 Subject to Paragraph 5.4 of this Schedule 4 if the Agency certifies that the relevant Residential Unit or Units achieve the Eco Homes Excellent Rating or Commercial Unit or Units achieve the BREEAM Employment Excellent Rating the Agency covenants to off-set the Residential Unit Carbon Rebate and/or Commercial Unit Carbon Rebate against the Pro Rata Contribution payable by the Landowner PROVIDED ALWAYS that any such credit shall be made against the next Final Instalment payable by the Landowner following the certification described in Paragraph 5.1 or 5.2 of this Schedule 4 and PROVIDED FURTHER that should the Residential Unit Carbon Rebate or Commercial Unit Carbon Rebate exceed that Final Instalment any excess shall be off-set against the next Final Instalment payable by the Landowner.
- 5.4 The Residential Unit Carbon Rebate is only payable in respect of Residential Units additional to the ten percent (10%) of Residential Units which Landowners covenant to construct to the Eco Homes Excellent Rating.

## **6. Reserve Sites**

- 6.1 The Agency covenants to manage and maintain any Reserve Site or Sites transferred to it in a good standard which avoids causing a nuisance (whether statutory or otherwise) or annoyance to any occupiers or prospective occupiers of any Residential Units built nearby, which for the avoidance of doubt includes anything arising from the state, condition or appearance of such land that adversely affects, or might reasonably be likely to cause any adverse effects to the residential amenity of any occupier or future occupier of Residential Units built nearby to a good standard as described in this Paragraph.
- 6.2 If a Reserve Site is to be transferred to the Community Foundation or Nominee at its request the Agency shall procure covenants from the party receiving such land in the same form as

Paragraph 6.1 of this Schedule 4 necessary to ensure the land will be maintained in a satisfactory state.

- 6.3 The duties specified in Paragraph 6.1 of this Schedule 4 shall not apply in respect of Community Uses or Voluntary Community Uses.

## **Schedule 5 – Indicative list of Local and Strategic Infrastructure**

### **1. Education**

- (a) Primary Schools
- (b) Secondary Schools
- (c) Early Years Provision
- (d) Post-16 Provision in Schools

### **2. Open Space, Sport and Recreation**

- (a) Playing Fields
- (b) Local Play Facilities including locally equipped areas for play, neighbourhood equipped areas for play and Multi Use Games Areas (MUGAs)
- (c) Community Halls /Sports Pavilions
- (a) Local and District Parks
- (d) Swimming Pool
- (e) Allotments
- (f) Provision of Public Open Space
- (g) Maintenance of Public Open Space

### **3. Social Infrastructure**

- (a) Libraries
- (b) Museums/Archives
- (c) Social/Day Care
- (d) Children's Homes
- (e) Community Houses
- (f) Crematorium/Burial Grounds
- (g) Adult Continuing Education
- (h) Public Art
- (i) Waste Management
- (j) Care accommodation for the elderly with on-site facilities (land only)

### **4. Road Schemes \* (as shown on attached Delivery Plan and Plan 2)**

- (a) Interim and/or permanent schemes to provide improvements to major approach roads to Milton Keynes
- (b) Grid Road Junction improvements (including A5 Junctions)

- (c) H7 Bridge works including works to Chaffron roundabout and associated diversions of redways
- (d) Off site footpath improvements
- (e) Off site cycleway provision

**5. Public Transport \***

- (a) Infrastructure to support “diameter” bus routes
- (b) Public Transport Spine
- (c) Bus subsidy for new bus services to serve the Expansion Areas as they are developed.
- (d) Travel information packs containing information regarding all public transport services servicing related developments

**6. Health Facilities**

- (a) Primary (GP surgeries, integrated health centres, etc)
- (b) Provision of on-site hospital infrastructure to facilitate the expansion of Acute, Maternity and Mental Health services.

**7. Other Strategic items \***

- (a) Higher and Further Education
- (b) Flooding and drainage (Internal Drainage Board) which includes adoption and maintenance of balancing and attenuation ponds
- (c) Voluntary Sector contribution
- (d) Inward Investment
- (e) Carbon offset fund (Policy D4)
- (f) Emergency Services (Ambulance Station(s))

**8. Administration \***

- (a) Project management including appraisal processes, monitoring compliance, supervising works and assessing and reporting costs.

**\* These items are covered by Employment Land Contributions and Per Unit Contributions. Items with no asterisk are covered by only Per Unit Contributions.**

## Schedule 6 – Draft Planning Conditions

### General

1. Approval of the details of the siting, design and external appearance of the buildings, the means of access and the landscaping (hereinafter called "the reserved matters") for each development parcel of the development shall be obtained from the Local Planning Authority prior to commencement of that development parcel

Reason: Outline planning permission only is granted in accordance with the application submitted

2. The development shall be carried out in accordance with Development Brief relevant to the development save for any deviations there from which the Local Planning Authority shall approve provided that such deviations shall not cause any significant environmental effects

Reason: Outline Planning Permission only is granted in accordance with the application submitted

3. Application for approval of all the reserved matters must be made to the Local Planning Authority before the expiration of [ten (10)] [fifteen (15)] years from the date of this permission

Reason: To comply with Section 92(2) of the Town and Country Planning Act 1990

4. The development hereby permitted shall be begun no later than whichever is the later of the following dates:

(a) five (5) years from the date of this permission; or

(b) the expiration of two (2) years from the date of approval of the last reserved matters to be approved

Reason: To comply with Section 92(2) of the Town and Country Planning Act 1990

5. Prior to the submission of the first reserved matters application a programme for phasing of the proposed development, including sub-phases and development parcels, shall be submitted to and approved by the Local Planning Authority. Any variation to the approved phasing programme shall be agreed in writing by the Local Planning Authority. Development shall proceed in accordance with the approved phasing programme.

Reason: In order to clarify the terms of this permission and to ensure that the development proceeds in a planned and phased manner.

### Highway / Traffic Management

6. No development on any development parcel shall commence until details of the estate roads, footways and cycleways to be adopted in a development parcel and details as to how these fit within the strategic network have been approved in writing by the Local Planning Authority in consultation with the Local Highway Authority and no dwelling or building shall be occupied until the estate roads which provide access to it from the existing adopted highway have been laid out and constructed in accordance with the approved details.

Reason: In order to minimise danger, obstruction and inconvenience to users of the highway and of the development

7. The details to be submitted for the approval in writing of the Local Planning Authority pursuant to Condition 1 above shall unless otherwise agreed in writing include a scheme for parking, garaging and manoeuvring and the loading and unloading of vehicles in respect of each [dwelling] [or other building] forming part of the development parcel thereof in accordance with Milton Keynes Council's adopted Parking Standards Supplementary Planning Guidance or any

alternative standards approved by Milton Keynes Council as Highway Authority. The approved scheme shall be implemented and the areas approved for parking, garaging and the manoeuvring, loading and unloading of vehicles pursuant to Condition 1 shall be made available for use before the development hereby permitted on the relevant development parcel thereof is occupied and those areas shall not thereafter be used for any other purpose

Reason: To ensure that adequate turning space, parking space and loading and unloading space are available to minimise danger, obstruction and inconvenience to users of the adjoining highway

#### Environmental Management and Drainage

8. No development shall take place until the Landowner has carried out a [detailed] [further] <sup>1</sup>assessment of ground conditions to determine the likelihood of any ground, groundwater or gas contamination of potentially contaminated areas of the site (the location of which shall be agreed between the Landowner and the Local Planning Authority) in accordance with BS 10175:2001 Investigation of Potentially Contaminated Sites - Code of Practice. The results of this survey, together with any proposed remedial action deemed necessary, shall be submitted to and approved by the Local Planning Authority before works commence. Any remediation deemed necessary shall be fully carried out in accordance with the approved scheme prior to the commencement of any development on the affected part of the site as identified from the results of the survey work

Reason: To ensure that the site is safe and suitable for its proposed use and to prevent the increased risk of pollution to the environment

9. Prior to the commencement of any development, a scheme for the phased provision and implementation of surface water drainage, incorporating pollution control and the principles of 'sustainable urban drainage systems' shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be constructed and completed in accordance with the approved plans and specification at such time(s) as may be specified in the approved scheme. No building shall be occupied until the works for the disposal of surface water in that phase have been constructed in accordance with the approved details.

Reason: To ensure a satisfactory method of surface water drainage and to prevent the increased risk of pollution and flooding to the water environment

10. Prior to the commencement of any development in any phase or parcel, a scheme for the phased provision and implementation of foul water drainage, incorporating pollution control shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be constructed and completed in accordance with the approved plans and specification at such time(s) as may be specified in the approved scheme. No building shall be occupied until the works for foul water drainage in that phase have been constructed in accordance with the approved details.

Reason: To prevent the increased risk of pollution to the water environment

#### Archaeological & Cultural Heritage

11. Prior to the commencement of work on any phase an archaeological contractor shall prepare the details of an archaeological investigation and mitigation strategy. The investigation and mitigation strategy shall be submitted to and agreed in writing by the Local Planning Authority in consultation with the Milton Keynes Council's Archaeological Officer. Any mitigation deemed necessary shall be fully carried out in accordance with the approved phased mitigation strategy prior to any construction work in that phase.<sup>2</sup>

<sup>1</sup> If there is material contamination then the ES should contain the relevant material. The condition should then simply cover a detailed strategy or a solution.

<sup>2</sup> condition subject to any ES requirements

Reason: To ensure that archaeological matters are adequately considered in each phase of the development in a manner that is pursuant to PPG16 – Archaeology and Planning.

#### Site and Finished Floor Levels,

12. The details to be submitted for the approval in writing of the Local Planning Authority pursuant to Condition 1 above shall for each development parcel of the development include full details of finished floor levels and finished site levels (for all hard surfaced and landscaped areas) in relation to existing site levels. The development shall thereafter be carried out strictly in accordance with the approved level details

Reason: To ensure satisfactory form of development and means of access and to provide reasonable protection against flooding

#### Landscape & Open Space

13. No development shall take place on any development parcel until detailed drawings showing which trees are to be retained and which trees are proposed to be felled or lopped in each case within that development parcel have been submitted to and approved by the Local Planning Authority. None of the trees shown to be retained shall be felled or lopped without the prior consent in writing of the Local Planning Authority.

Reason: To protect significant trees, safeguarding the character of the area and preserving habitat for tree-dwelling species.

14. No demolition, site clearance or building operations shall commence on a development parcel until chestnut pale fencing, or an alternative as otherwise agreed, to a height of not less than 1.2 metres has been erected around each tree or group of trees to be retained in that development parcel in accordance with details to be submitted and approved by the Local Planning Authority. The areas thus enclosed shall be kept clear at all times of all excavated material, building materials, plant and rubbish.

Reason : To adequately safeguard the trees on site.

15. The landscaping scheme required by condition 1 above shall include provision for the planting of trees and shrubs, and shall be submitted to and approved by the Local Planning Authority for any development phase or parcel before any part of the work on that parcel or phase of the development is commenced. The scheme shall show the numbers, types and sizes of trees and shrubs to be planted and their location in relation to proposed buildings, roads, footpaths and drains. The planting to be carried out in accordance with the scheme shall be carried out in phases to be agreed in writing with the Local Planning Authority. Any trees or shrubs removed, dying, severely damaged or diseased within five years of planting shall be replaced in the next planting season with trees or shrubs of such size and species as may be agreed by the Local Planning Authority.

Reason: To protect the appearance and character of the area and to minimise the effect of development on the area.

16. Before the occupation of any development parcel a scheme giving details of the provision made for maintenance of all incidental open amenity areas in that development parcel, as may be proposed as part of the reserved matters applications required to be submitted pursuant to condition 1 above or proposed as part of the landscaping scheme required by condition 13 above, shall be submitted to and approved by the Local Planning Authority. The said open amenity areas shall thereafter be maintained in accordance with the approved scheme.

Reason: To ensure adequate maintenance of the amenity areas provided.

17. A Landscape Protection Action Plan for each phase or sub phase shall be prepared and submitted to the Local Planning Authority prior to development commencing within that Phase or sub phase where such a requirement for a Landscape Protection Action Plan is identified in relation to an approved Development Brief. The Plan shall highlight all existing wildlife

conservation features to be protected and shall address measures to be carried out to ensure their physical protection. No development on any development parcel within that Phase or Sub Phase shall commence until the Landscape Protection Action Plan has been approved by the Local Planning Authority.

Reason: To ensure important landscape features are protected and maintained on site.

#### Servicing

18. Unless otherwise agreed in writing by the local planning authority, no permanent overhead lines, wires or cables, whether for the purpose of telephones, electricity, wired television or any other purpose whatsoever shall be erected on, over or across any part of the application site.

Reason: To protect the amenities of the locality

19. No aerials shall be erected on the exterior of any dwelling without first obtaining the written approval of the Local Planning authority.

Reason: To protect the amenities of the locality

#### Site Operation

20. No development shall take place on any development parcel until vehicle wheel cleansing facilities have been provided to the satisfaction of the Local Planning Authority. Such facilities shall be used by all construction vehicles leaving the site and shall be permanently maintained in working order throughout the construction period.

Reason: To ensure the safe and efficient use of the highway and protect the amenity of the surrounding residential areas.

21. No building or other site works likely to cause nuisance to adjoining occupiers shall be carried out before 8.00 am or after 6pm Mondays to Fridays, nor before 8.00 a.m. or after 1pm on Saturdays, or at any time on Sundays or Bank Holidays.

Reason: To protect the amenity of the surrounding residential areas.

22. No development shall commence until the developer has prepared and agree in writing with the Local Planning Authority a Construction Environmental Management Plan (CEMP) which sets out site procedures to be adopted during the course of construction, including inter alia construction traffic routeing, how the developer will control dust and other emissions, construction noise and vibration from the development in each case so as to cause minimum disturbance to residents in the surrounding area. The development shall be carried out in accordance with the agreed CEMP

Reason: To protect the amenity of the surrounding residential areas.

**Schedule 7 – Delivery Plan**

## Schedule 8 – Construction Standards Guidance

- 1 The process described in this schedule is current at the date of this Agreement and subject to change. The process is set out here for the purpose of guidance.
- 2 All Reserved Matters applications shall be accompanied by a Construction Standards Report including details of (but not limited to) energy efficiency, renewable energy, carbon emissions, water, building materials and waste, this may take the form of the BREEAM pre-assessment estimator.
- 3 The Eco Homes Very Good Rating will already achieve a significant proportion of the credits towards Ene1. Part L of Building Regulations requires improvement in insulation and U values in relation to construction of residential properties, hence if these requirements are designed in at the outset there will be very little, if any, cost impact on top of the baseline Milton Keynes energy requirements. Wat1 requirements are also becoming standard for new build dwellings and the additional requirements should be minimal. The more effective all these measures are in reducing building specific energy consumption the lower the absolute level of renewable energy which will need to be achieved, so this element should be seen as working with the requirement for renewables.
- 4 In relation to Ene1 and Wat1 the requirements to achieve these credits will apply unless the Government introduces a minimum standard on carbon emissions or water targets which is lower (i.e. more stringent) than that specified for Ene1 and Wat1. In relation to Pol4 the requirements to achieve these credits will apply unless the Government introduces a minimum standard on the provision of energy from renewable or low emission sources which is higher (i.e. more stringent) than that specified.
- 5 To achieve 2/3 credits on renewable energy Pol4 (2006 standard) will require specific measures, either on an area basis or building specific. Area based approaches can include wind turbines, biomass heating, anaerobic gas, and must be achieved as part of the development within the Expansion Area they serve, and will be the responsibility of the relevant Landowner in relation to implementation and long term maintenance and management. The aim is to be more sustainable and cost effective in the long term.
- 6 In the absence of any planned area based approach then Development will need to apply building specific measures such as solar panels, orientation, photovoltaics etc or a combination thereof.
- 7 The approach to be adopted for a Development Site (i.e. area based or building specific) should be identified as early on in the process as possible, preferably in the Design Code, to avoid unnecessary cost and delay in the development process.
- 8 It is accepted by the Council and the Agency that the renewable energy element of Policy D4 could be satisfied by the provision of solar panels on approximately one-third ( $\frac{1}{3}$ ) of the new Residential Units or by any other method that produces an equivalent amount of energy, which will achieve the appropriate credits.
- 9 It is anticipated by the Agency, the Council and the Landowners that the renewables element should cost no more than an average of one thousand five hundred pounds (£1500) per Residential Unit (Index Linked) across the whole Development Site (over and above the base standard which is Eco Homes Very Good Rating). This will be established at the Reserved Matters application stage. Should this prove to be an under-estimate, the Agency will review expenditures required under Policy D4 and agree works that limit the cost at One thousand Five hundred pounds (£1,500) per Residential Unit, until the first (1st) Review of the Agreement pursuant to Schedule 3.
- 10 All Parties will investigate the feasibility of area-based solutions and the effectiveness and marketability of micro-generation will be kept under review and re-evaluated at the first (1st) Review of the Agreement in accordance with Schedule 3.

## **Registration**

- 11 To register for BREEAM assessment purposes a form is to be completed and sent to the BREEAM Office before assessment commences in order to ensure that the appropriate level of Quality Assurance can be initiated. Registration is valid for three (3) years from date of registration.

## **Design stage assessment**

- 12 The Landowner provides design and specification information to the assessor who checks that the relevant information has been provided, and determines the rating. The assessment is then sent to BRE for quality assurance and certification. All Eco Homes assessments are covered by BRE's quality management procedures to ensure a consistent approach and level of service.
- 13 The assessment process is carried out in three stages:
- 13.1 Stage 1 – Specification assessment
- Many issues, such as materials, can be assessed from the general building specification, provided they are applicable to an entire Development.
- 13.2 Stage 2 – House type assessment
- For standard house types, other issues are assessed, such as energy efficiency and water use.
- 13.3 Stage 3 – Development assessment
- This stage completes the assessment and covers remaining issues, such as a Development Site's ecological value and transport.

## **Post Construction Review and Post Construction Review Certificates**

- 14 This review confirms that the design stage assessment has been achieved and that all the features specified at the design stage have been implemented. It is carried out when the Residential Units have been completed and can be performed as they are released for sale. It is not recommended to wait until a whole Development Parcel, Phase or Development Site has been completed before carrying out a Post Construction Review. A copy of the Post Construction Review should be provided to the Agency.

## **Assessment**

- 15 For the purposes of assessment the Agency will use best endeavours to agree pre-accreditation so that credits are allocated as if items of infrastructure are in place, when they may not yet be delivered.

## SCHEDULE 10 – WORKS IN KIND GUIDANCE

### 1 Background

- 1.1 Conventional procedures for satisfying planning obligations involve landowners signing a section 106 Agreement with the relevant local planning authority, in which the works (and associated costs) are defined. The works are generally carried out by the landowner.
- 1.2 Because of the scale and number of developments associated with the Designated Area, an alternative procedure has been developed in Milton Keynes. This involves Landowners making financial contributions to a 'tariff' fund. The associated works are then organised on behalf of all affected Landowners by a series of Joint Delivery Teams (e.g. the Joint Delivery Team which deals with transport projects). However, this Agreement also allows Landowners to undertake selected works themselves, in the conventional way, under the guidance and supervision of the Joint Delivery Teams.

### 2 Procedures

For transport-related schemes, the following steps are involved, and procedures are in place:

- 2.1 the Landowner agrees the general scope and extent of Works in Kind during planning negotiations, in consultation with the Agency and the Council.
- 2.2 Following signing of the Site Specific Agreement, the Landowner (or more usually his consultant) draws up outline designs for approval of the Agency in consultation with the relevant Highway Authorities (the Council and, if relevant, the Highways Agency). This may then be subject to further planning application for transport infrastructure.
- 2.3 Following approval of the outline design, the Landowner (or his consultant) will undertake detailed design and seek technical approvals from the relevant highway authorities. At the end of this process, a Section 278 Agreement will be signed between the Landowner and the highway authority. This allows the Landowner to undertake work on the public highway.
- 2.4 At the same time the Agency (as guardian of the tariff funds) is required to audit and approve the cost estimate for the work. This is currently being undertaken by a framework consultant appointed for English Partnerships' Engineering Panel. A formal record of the agreed estimate will be notified to the Landowner, and kept on record within the Agency's Strategic Team. Funding approval within English Partnerships will also be sought at this time for the amount involved (if this has not already been agreed). If there is any co-financing for a third party (e.g. the Council or government grant), this will also be agreed.
- 2.5 The Landowner will then proceed to implement the work on site, in accordance with the Section 278 Agreement. The first step will be to tender the works through competitive bidding to a reputable engineering contractor. The cost estimate agreed between the Agency and the Landowner will be used to inform this process. Alternatively, a framework contractor may be involved, in which case cost estimates based on framework rates will need to be Landowner and agreed. In either case, the Agency (or its appointed auditor) will need to review the contractor's tender price prior to works commencing.
- 2.6 A consulting engineer will also be appointed by the Landowner to supervise the works and certify payments to the contractor. Technical/regulatory supervision will also be provided by the relevant highway authority(ies).
- 2.7 The cost of undertaking the works (including design, supervision and all related fees) will initially be borne by the Landowner. However, once the next Final Instalment becomes due, the Works in Kind Costs will be credited to the Landowner. In order to determine

the Works in Kind Costs it will be necessary for the Agency (or its auditor) to have access to the contractor's payment records, as well as evidence of any other expenditures legitimately incurred in the course of project delivery (e.g. design and supervision fees, and any commuted sums or legal fees payable to the highway authority).

- 2.8 In the unlikely event that at any stage costs cannot be agreed between the Agency and the Landowner, either party has the right to take their claim to an independent expert in accordance with the Dispute Resolution provisions. In this case it is likely that the Expert in this case would be appointed by the Institution of Civil Engineers. The outcome of such Dispute Resolution should be accepted as final by all parties, and the costs borne as set out in the Dispute Resolution provisions (borne equally or as otherwise directed by the Expert).

### **3 Works normally required as works to a highway**

- 3.1 Where a Landowner wishes to carry out works to the Public Transport Spine as Works in Kind, the usual approval process set out in the appropriate Part of Schedule 1 and explained in Paragraph 2 of this Schedule will be adopted.
- 3.2 It is agreed that the Works In Kind Costs will be the difference in cost between providing a highway with Public Transport Spine and providing an ordinary highway without Public Transport Spine provision and further guidance is set out in Paragraphs 3.3 and 3.4 below.
- 3.3 Indicative cross sections of a primary street – urban link designed to serve approximately one thousand three hundred (1,300) Residential Units which connects into the existing dual carriageway grid road network are annexed to this Schedule as guidance as to what may be expected as ordinary highway without Public Transport Spine provision PROVIDED THAT the design will vary from Development to Development.
- 3.4 Items which may constitute the difference between providing an ordinary highway and a highway with Public Transport Spine are:
- Additional carriageways, footpaths, cycleway, central reservations, (median strip), parking bays, service (slip roads), crossing refuges;
  - Additional associated earthworks and landscaping;
  - Additional costs associated with signalised junctions;
  - Additional highway drainage and associated surface water attenuation, ducts, street lighting, signage, road markings, utility provision, diversions and connections;
  - Additional preliminaries and overheads, design, supervision and technical approval fees, commuted sums, bonding costs;
  - Additional costs of maintaining the additional works prior to adoption;
  - Additional costs associated with repairs necessary prior to adoption of the carriageway; and
  - Additional costs associated with investigative work i.e. Geotechnical Reports.

## **Annex 1      Public Transport Spine Guidance**

### **Design of City Streets**

The design of the city streets in the expansion areas will be accordance with the Modifications to the Local Plan formally agreed by the Council on 8 November 2005. The Local Plan was adopted on 21 December 2005. There are two basic conditions:

- the street outside the high street / retail area
- the high street / retail area

These conditions should be read in conjunction with the supporting city street sections and plans.

Outside the high street / retail area

In the non-high street lengths of the city street the road will be designed as four lane carriageway 13.5m wide. The inside lanes on either side will be 3.1m wide and dedicated for bus use only. There can be variations to that fundamental design as follows:

- the road will be designed to provide crossing points with an elongated median strip outside schools and protected central refuges in other required locations
- where residential areas front onto the street there are four options which can be used interchangeably along the length of the city street:
  - (i) the provision of a one-way service (slip) road adjacent, and parallel, to the city street (on both sides of the street) providing that it is at least 2.5 metres away from the street. Parking will be provided in the access road.
  - (ii) parking bays may be provided alongside both sides of the street in residential areas if access roads are not provided. Where this occurs the statutory bus lane will cease alongside the parking bays, and therefore there will be no solid delineating white line, but the surface treatment will be continued through.
  - (iii) a service road could be provided on one side of the street and parking bays on the other
  - (iv) no on-street parking or service roads
- where employment areas front the street a two-way service road adjacent to the city street with parking both besides may be provided

The number of transitions between different street sections should be minimised. Major transitions should only occur at locations such as major road junctions, 'places' / squares or other events, or where land-use changes are reflected in the built form.

The provision of service roads and parking bays along the city street will need to avoid road junctions, pedestrian crossing points, bus stops and other sensitive locations. No more than one section of parking bays (not to exceed 6 cars), or one service road, should be provided between side streets.

The positioning of side streets needs to be designed so as to support appropriate development block sizes, to allow regular and easy access to the city street and discourage rat-running in estate roads. The spacing of side streets must be no less than 90m and ideally a maximum of 150m (this can be varied at the discretion of the council, if it is impossible to achieve within the site layout / existing context).

Within the maximum distance, there could be additional side streets that allow pedestrian and cycle access but not vehicular access to the city streets, or that feed into service roads parallel to the city street.

#### High street / retail area

The conditions for the high street will vary considerably depending on the size of catchment area and the likely level of activity. Developers will submit designs in accordance with the established principle of creating a vibrant and successful retail and pedestrian environment that gives bus priority over private vehicles. Provision should be made for on-street parking. The spacing of side streets should be between 60-90m. These proposals will be considered on individual basis.

Within these principles the details will be subject to engineering design approval and a safety audit to ensure that the resulting designs are safe for all highway users

**Plan 1 – Growth Area and Land Ownerships**

**Plan 2 – Infrastructure**

**Plan 3 – Linear Park**

**In Witness** whereof this document has been executed as a Deed by the Parties but is not intended to have legal effect until it has been unconditionally delivered and dated.

**Signed by** )  
duly authorised for and )  
on behalf of )  
**the Agency** ) \_\_\_\_\_

**Signed by** )  
duly authorised for and )  
on behalf of )  
**Gallagher Estates Limited (Landowner One)** ) \_\_\_\_\_

**Signed by** )  
duly authorised for and )  
on behalf of )  
**William Davis Limited (Landowner Two)** ) \_\_\_\_\_

**Signed by** )  
duly authorised for and )  
on behalf of )  
**Wilcon Homes Midlands Limited** )  
**(Landowner Three)** ) \_\_\_\_\_

**Signed by** )  
duly authorised for and )  
on behalf of )  
**Genesis Land Limited (Landowner Four)** ) \_\_\_\_\_

**Signed by** )  
duly authorised for and )  
on behalf of )  
**Hallam Land Management Limited** )  
**(Landowner Five)** ) \_\_\_\_\_

**Signed by** )  
duly authorised for and )  
on behalf of )  
**Fen Farm Developments (Landowner Six)** )

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**Signed by** )  
duly authorised for and )  
on behalf of )  
**Jane Fitton Williams and Thomas Allan** )  
**Williams (Landowner Seven)** )

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**Signed by** )  
duly authorised for and )  
on behalf of )  
**Milton Keynes Council (Landowner Eight)** )

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**Signed by** )  
duly authorised for and )  
on behalf of )  
**The Commission for New Towns** )  
**(Landowner Nine)** )

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**Signed by** )  
duly authorised for and )  
on behalf of **Redlawn Land Limited** )  
**(Landowner Ten)** )

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**Signed by** )  
duly authorised for and )  
on behalf of **David Eric Long, Adam Smail,** )  
**Peter Horrocks and George Duncan** )  
**(Landowner Eleven)** )

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**Signed by** )  
duly authorised for and )  
on behalf of **Nicholas Charles Hedges and** )  
**Richard Charles Willcock (Landowner** )  
**Twelve)** )

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Signed by )  
duly authorised for and )  
on behalf of **Bletchley Turf Supplies Ltd** )  
**(Landowner Thirteen)** )

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Signed by )  
duly authorised for and )  
on behalf of **George Richard Fontaine** )  
**Fen Farm Developments (Landowner** )  
**Fourteen)** )

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Signed by )  
duly authorised for and )  
on behalf of **Tudor George Cowley** )  
**(Landowner Fifteen)** )

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Signed by )  
duly authorised for and )  
on behalf of **Charles Harry Sherwood, Sylvia** )  
**Ann Mander, Sir Beville Douglas Stanier** )  
**and David Hill (the Trustees of Elmers** )  
**Charity) (Landowner Sixteen)** )

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Signed by )  
duly authorised for and )  
on behalf of **Patricia Ann Hooper, Diane** )  
**Lavina West, Charles Harry Sherwood and** )  
**Martin James Lockett (the Trustees of the** )  
**Unknown Donor of Calverton) (Landowner** )  
**Seventeen)** )

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