

DATED

2020

HB (SOUTH CALDECOTTE) LIMITED (1)

-and-

THE LANDOWNERS (2)

-and-

MILTON KEYNES COUNCIL (3)

PLANNING AGREEMENT

Pursuant to Section 106 Town and Country Planning Act 1990
relating to employment uses development on
land at Brickhill Street, South Caldecotte, Milton Keynes.

Planning Application Reference: 19/01818/OUT



3 The Osiers Business Centre
Leicester
LE19 1DX
PH/190647.484

MKC Legal Reference:PE-PFB-022625

BETWEEN:

1. **HB (SOUTH CALDECOTTE) LIMITED** (Company Registration Number 10653145) whose registered office is Towerfield 66 Derngate, Northampton, England, NN1 1UH ("the Developer");
2. **THE LANDOWNERS** whose names and addresses are for ease reference set out in the Appendix hereto and who are collectively referred to hereafter as the "Owners";
3. **MILTON KEYNES COUNCIL** whose registered office is situated at Civic Offices, 1 Saxon Gate East, Central Milton Keynes, MK9 3EJ ("the Council").

RECITALS

- A. The Council is the Local Planning Authority for the purposes of the 1990 Act and local highway authority for purposes of the 1980 Act for the area within which the Land is situated and is an authority by whom the obligations hereby related area enforceable.
- B. The Owners are the freehold owners of part of the Land registered at the land registry under the title numbers set out in the Appendix which comprises the land bound by this deed.
- C. The Developer has entered into option agreements dated 10 July 2018, 1 August 2018, 2 August 2018 and 3 September 2018 with the Owners to acquire those parts of the Land which are not within its ownership or control.
- D. The Application 19/01818/OUT was submitted to the Council by the Developer for planning permission for the Development on 17 July 2019 and validated on the same date.
- E. The Council resolved to refuse to grant planning permission pursuant to the Application on 2nd February 2020 and the Appeal has been submitted to the Secretary of State.
- F. The Developer and Owners by entering into this Deed do so to create planning obligations in respect of the Land in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants Deeds conditions and stipulations hereinafter contained on the terms of this Deed.

1 DEFINITIONS

1.1 In this Deed the following words and phrases have the following meanings unless the context demands otherwise:

“1990 Act”	Means the Town & Country Planning Act 1990 (as amended)
“1980 Act”	Means the Highways Act 1980 as amended
“Deed”	Means this deed
“Appeal”	Means the appeal with reference APP/70435/W/20/3241121
“Appendix”	Means the appendix to this Deed
“Application”	Means the outline application under reference number 19/01818/OUT for planning permission for the development of the site for employment uses, comprising of warehousing and distribution (Use Class B8) floorspace (including mezzanine floors) with ancillary office space (Use Class E(g)(i), general industrial (Use Class B2) floorspace (including mezzanine floors) with ancillary office space (Use Class E(g)(i)), a small standalone office (Use Class E(g) (i)) and small café (Use Class E(b)) to serve the development; car and HGV parking areas, with earthworks, drainage and attenuation features and other associated infrastructure, a new primary access off Brickhill Street, alterations to Brickhill Street and provision of Grid Road reserve to Brickhill Street with appearance, landscaping, layout and scale to be determined as reserved matters
“BCIS Index”	Means the All in Tender Price Index published by the Building Costs Information Services of the Royal Institution of Chartered Surveyors or such similar index as may from time to time be published to replace such index

“CIL Regulations”	Means the Community Infrastructure Levy Regulations 2010 (as amended) or any subsequent proposed legislation to fund the delivery of infrastructure known as the 'community infrastructure levy' or known by any other name
“CIL Tests”	means the tests set out in paragraph 56 of the NPPF and Regulation 122(2) of the CIL Regulations
“Charging Schedule”	Means a charging schedule as detailed in Regulation 2(1) of the CIL Regulations
“Commencement of Development”	Means the date upon which the Development shall commence by the carrying out on the Land but pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act save that the terms “material operation” shall not include operations in connection with any work of or associated with demolition, site clearance and preparatory groundworks, remediation works, environmental and archaeological investigation, site and soil surveys, erection of contractors work compound, erection of site offices, erection of fencing around the site boundary, laying of any access road or service media or the display of site notices or advertisements and “Commence the Development”, “Commencement” and “Commenced” shall be construed accordingly
“Commercial Unit”	Means a unit to be constructed at the Development for use Class B8, Class B2, Class E and ancillary uses pursuant to the Use Classes Order 1987 (as amended)
“Consumer Price Index”	Means the index published by the Office for National Statistics for Consumer Prices or such similar index as may from time to time be published to replace such index

“Development”	Means the development of the Land in accordance with the Planning Permission
“Head of Planning”	Means the Head of Planning of the Council for the time being or such other Officer of the Council nominated by them for the purpose of the Deed
“Index Linked”	<p>Means the recalculation of any financial contribution or component part to be made by the Owners under this Deed by applying the following formula (and Indexation shall be construed accordingly)</p> $(A \times B/C) + (D \times E/F) = G$ <p>Where:</p> <p>A = 50% of the payment specified in this Deed</p> <p>B = the figure shown in the Consumer Price Index for the period last published immediately prior to the due date for payment of such sum under the provisions of this Deed</p> <p>C = the figure shown in the Consumer Price Index for the period last published immediately prior to the date of this Deed</p> <p>D = 50% of the payment specified in this Deed</p> <p>E = the figure shown in the BCIS Index for the period last published immediately prior to the due date, including estimates, for payment of such sum under the provisions of this Deed</p> <p>F = the figure shown in the BCIS Index for the period last published immediately prior to the date of this Deed.</p> <p>G = the recalculated sum payable under this Deed</p>
“Infrastructure”	Means the meaning ascribed in Section 216(2) of the Planning Act 2008
“Inspector”	Means the planning inspector appointed by the Secretary of State to determine the Appeal
“Interest”	Means interest at 3 per cent above the based lending rate of Barclays Bank Plc from time to time

“Land”	Means all the Land shown edged red on Plan 1 and which is registered at HM Land Registry under the title numbers set out in the Appendix but which for the avoidance of doubt does not include the land which is adopted public highway
“Monitoring Fee”	Means the sum of Eight Thousand and Two Hundred Pounds (£8,200) payable to the Council in accordance with the terms of this Deed for the purposes of monitoring compliance with the obligations contained herein
“Occupation”	Means the first beneficial occupation of the Development but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and reference to “Occupy” or “Occupied” shall be construed accordingly
“Occupiers”	Means the occupiers of the Development
“Plan 1”	Means the plan attached to this Deed marked “Plan 1”
“Planning Obligations”	Means the planning obligations set out in Schedules 1, 2, 3, 4, 5, 6, 7 and 8
“Planning Permission”	Means the outline planning permission conditionally granted pursuant to the Appeal
“Reasonable Endeavours”	Means that it is agreed that the party under such an obligation shall not be required to take proceedings (including any appeal) in any court, public inquiry or other hearing (unless specified to the contrary) until the dispute provisions contained in Clause 2.5(b) and (c) herein have been exhausted but subject to these and to other terms of this Deed such party shall be bound to attempt to fulfil the relevant obligations by the expenditure of such effort and/or sums of money

and the engagement of such professional advisors as in all circumstances may be reasonable to expect

“Reserved Matters Approval”	Means a reserved matter approval issued by the Council pursuant to a Reserved Matters Application and “Reserved Matters Approvals” shall be construed accordingly
“Reserved Matter Application”	Means an application or applications for the approval of matters reserved under the Planning Permission
“Secretary of State”	Means the Secretary of State for Housing, Communities and Local Government

Clauses headings are for reference only and shall not affect the construction of this Deed.

- 1.2 The expressions the “Developer” and the “Owners” and the “Council” shall include their respective successors in title and assignees and/or any successor body.
- 1.3 Where more than one person is included in the expressions the Developer and the Owners obligations expressly made or assumed by such party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally.
- 1.4 Any covenants by the Developer and the Owners not to do any act or thing shall be deemed to include a covenant not to permit or suffer the doing of that act or thing.
- 1.5 The masculine and feminine and neutral gender shall include each of the other genders and extend to include a corporation sole or aggregate and the singular includes the plural and vice versa.
- 1.6 A reference to an Act of Parliament refers to the Act as it applies at the date of this Deed and any later amendment or re-enactment of it and any regulations or statutory instrument made under it.
- 1.7 A reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule contained in this Deed.
- 1.8 The obligations herein relate to the Land and each and every part thereof.

2 **Operative Provisions**

- 2.1 This Deed is a planning obligation made pursuant to Section 106 of the 1990 Act and all other powers so enabling and may be enforced by the Council against the Developers and the Owners and any persons deriving title from them and to the extent that the obligations are not planning obligations within the 1990 Act they are entered into pursuant to powers

contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

- 2.2 The Owners covenant with the Council to comply with its obligations in Schedules 1, 2, 3, 4, 5, 6, 7 and 8.
- 2.3 The Council covenants with the Developer and the Owners to comply with their respective obligations contained in Schedule 9.
- 2.4 This Deed shall not become effective until the following conditions are satisfied:
- (a) The Planning Permission has been granted; and
 - (b) Save for clauses 2, 3, 4, 5, 6 and 7 and paragraph 1.1 of Schedule 1 and paragraph 1.1 of Schedule 2 and paragraph 2 of Schedule 3 and paragraph 1.1 of Schedule 5 and paragraph 1.1 of Schedule 6 and paragraph 1.2 of Schedule 7 and paragraphs 1.1 and 1.5 of Schedule 8 the Commencement of Development.
- 2.5 It is agreed and declared as follows:
- (a) Any dispute arising between the parties in connection with this Deed shall be referred in accordance with clause 2.5(b) and (c) below to the determination of an independent chartered surveyor.
 - (b) any reference to an independent chartered surveyor in accordance with clause 2.5(a) above shall be to a reputable chartered surveyor unconnected to any of the parties hereto and with no less than 10 years recent and relevant experience in commercial development matters who shall be agreed between the parties to the dispute or appointment on the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such independent chartered surveyor shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error) and if the parties to the dispute agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any chartered surveyor act as expert pursuant to the terms of this clause 2.5(b) then each of the parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible.
 - (c) the independent chartered surveyor's costs will be borne in equal proportions by the parties to the dispute and each party will bear its own costs in the reference and determination of the dispute.
 - (d) nothing in this clause 2.5 shall be taken to fetter the ability of the Council to carry out its statutory functions as local planning authority with powers to enforce breach of planning control arising from any breach of any of the obligations entered into by the parties in this Deed or any other planning breach in respect of the Land.
- 2.6 Where any notice or notification of confirmation is to be served on the Council under the terms of this Deed such notice or confirmation shall be in writing and shall either be delivered personally or sent by registered post or recorded delivery service to the Head of Planning quoting reference 19/01818/OUT.

- 2.7 If the Planning Permission shall expire before Commencement of Development or shall at any time be modified (without the consent of the Developer and the Owners) quashed or revoked (save for those clauses referenced under clause 2.4) this Deed shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Deed from the Register of Local Charges.
- 2.8 Save insofar as legally or equitably permitted nothing in this Deed shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Acts of Parliament nor prejudicing or affect the Council's rights, powers, duties and obligations in any capacity as a local or public authority.
- 2.9 Subject to Clause 2.19 nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with any alternative planning permission whether granted before or after the date of this Deed and nothing shall prevent any subsequent Deed or undertaking being entered into or given under Section 106 of the 1990 Act in respect of the Land that might vary or supersede this Deed.
- 2.10 The obligations hereby created shall be registered as a Local Land Charge by the Council within 5 days of the date of this Deed.
- 2.11 All parties to this Deed acknowledge that they are under a duty to act reasonably and (without prejudice to generality) wherever this Deed requires approval, deed, determination or consent of the Council or the Developer or the Owners such approval, deed, determination or consent is not to be unreasonably withheld or delayed.
- 2.12 No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law or whom is a successor in title to any of the parties of this Deed.
- 2.13 The failure of any party to enforce at any time or for any period any one or more of the terms and/or obligations of this Deed including those contained in any Schedule or appendix hereto shall not be a waiver of those terms and/or obligations or of the right at any time subsequently to enforce all terms of this Deed.
- 2.14 No party shall be bound by the terms of this Deed or be liable for the breach of any covenants, restrictions or obligations contained in this Deed occurring after it has parted with its interest in the Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest).
- 2.15 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.
- 2.16 Nothing in this Deed shall require performance by the Developer or the Owners of any obligation whatsoever in upon or over land outside of the ownership and control of the Developer and/or the Owners.
- 2.17 It is agreed that if any part of this Deed shall be declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the remainder of the Deed shall continue in full force and effect.
- 2.18 This Deed is governed by and interpreted in accordance with the law of England and Wales.

- 2.19 If the parties shall so agree in writing in relation to any planning permission granted as a result of any application under section 73 of the 1990 Act affecting the Planning Permission the parties shall comply with the terms of this Deed as if the definition of the Planning Permission in this Deed had been replaced by the description of the said planning permission granted as a result of any application under section 73 of the 1990 Act affecting the Planning Permission with the intention that the provisions of this Deed were the new planning permission granted as a result of such application and a memorandum of that agreement shall be endorsed on the face of the Deed which is recorded on the planning register PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to Section 106 of the 1990 Act.
- 2.20 The obligations in this Deed shall not be enforceable against any statutory undertaker whose apparatus may be situated within the Land or any other person who acquires any part of the Land or interest therein for the purpose of the supply of electricity, gas, water, drainage, telecommunications services or public transport services.
- 2.21 The obligations in this Deed shall not be enforceable against any person benefitting only from an easement or licence in relation to the Land.
- 2.22 It is acknowledged and declared that this Deed has been entered into by the Owners and the Developer with the intent that the planning obligations shall be binding on the Land and that the security of any future mortgage/charge over the Land shall take effect subject to this Deed PROVIDED THAT any mortgagee/chargee of that part of the Land to which a breach relates shall only be liable for any breach that itself has caused whilst mortgagee in possession and shall not be liable for any pre-existing breach but FOR THE AVOIDANCE OF DOUBT any successor in title to any mortgagee/chargee will subject to clause 2.20 & 2.21 be responsible as successor in title to the Owners for (i) any obligation(s) still to be performed and (ii) any obligation(s) which has not been satisfied in full because there has been a breach which has not been remedied or only partially remedied.
- 2.23 In the event that the Secretary of State or the Planning Inspector grants the Planning Permission for the Development then if at the date of the grant of the Planning Permission a Charging Schedule has been approved by the Council and has come into effect any contribution payable under the terms of the Deed which is for an Infrastructure project or type of Infrastructure set out in the Charging Schedule shall cease to be payable under this Deed.

3 Indexation

- 3.1 Any contribution/sum and component parts referred to in the Schedules shall be Index Linked and for the avoidance of doubt Indexation shall not result in any decrease in the Contribution or component parts payable under this Deed.

4 Interest

- 4.1 If any payment due under this Deed is paid late then interest will be payable from the date payment is due to the date of payment as the case may be.

5 Notification

- 5.1 The Developer and the Owners covenant to notify the Council in writing no less than thirty (30) days prior to Commencement of Development and no less than thirty (30) days prior to the date of Commencement of each phase or Commercial Unit and no less than thirty (30) days of intended first Occupation of each phase or Commercial Unit (including the details of those occupiers of the Commercial Units).
- 5.2 The addresses for service of any other notice or communication given pursuant to this Deed on any of the Parties shall be those stated in this Deed or any other such address in England as the Parties to be served may have previously notified in writing.

6 CIL Tests

- 6.1 Any obligation contained in this Deed shall not apply and not have any force nor effect if the Secretary of State or the Inspector finds in his/her decision that a particular obligation or part thereof is not in accordance with the CIL Tests or attaches no weight to that obligation in determining the Appeal or should the Inspector find in his/her decision that a particular contribution as defined in this Deed or payment obligations should be amended so as to ensure compliance with the CIL Tests and that weight can be attached to that obligation in determining the Appeal (whether in terms of amount, description, triggers or delivery) such contribution and obligation in this Deed shall be treated as amended in accordance with the Inspector's decision.

7 Legal Costs and Monitoring Fee

- 7.1 If not before, then on completion of this Deed, the Developer shall pay to the Council the Council's reasonable legal costs properly incurred in connection with the negotiation preparation and completion of this Deed in the amount of Three Thousand Pounds (£3,000).
- 7.2 Prior to Commencement of any part of the Development the Owners shall pay the Monitoring Fee.

In witness whereof the parties hereto have executed this Deed the day and year first before written.

SCHEDULE 1

BIODIVERSITY OFFSETTING

DEFINITIONS AND CLAUSES

The following definitions relating to biodiversity offsetting shall have the following meanings throughout this Deed:

- “Biodiversity Offsetting Contribution”** Means the estimated sum of One Million Two Hundred Thousand (£1,200,000) exclusive of VAT (if applicable) Index Linked or the sum of One Million Three Hundred and Seventy Thousand Pounds (£1,375,000) exclusive VAT (if applicable) Index Linked as determined by the Secretary of State or Inspector pursuant to his/her determination of the Appeal to be paid to the Council or Nominee by the Owners to be used toward the creation of new habitats to offset the loss of habitats on site in accordance with the Biodiversity Offsetting Scheme
- “Biodiversity Offsetting Scheme”** Means a scheme to be approved by the Council which will deliver biodiversity enhancements which shall not be less than 113.28 Biodiversity Units and which shall include the following details:
1. Whether the Biodiversity Offsetting Contribution is proposed to be paid to the Council or to its Nominee and details of the Nominee in the event it is proposed to be paid to the Nominee which FOR THE AVOIDANCE OF DOUBT will be at the Council’s discretion
 2. The Onsite Biodiversity Compensation including its score in Biodiversity Units
 3. The identity of an appropriate receptor site at which the Biodiversity Offsetting Contribution is to be expended
 4. Details of the provision of contractual terms to secure the delivery of the offsetting measures
- “Biodiversity Units”** Means the measure that represents the biodiversity impact of the scheme using the Defra Biodiversity Metric 2.0
- “Onsite Biodiversity Compensation”** Means the onsite biodiversity enhancement and compensation that shall equate to the provision of habitats with a score of at least 134.29 Biodiversity Units in accordance with the Biodiversity Offsetting Scheme

“Nominee” Means the Environment Bank or other body approved by the Council who is capable of delivering the Biodiversity Offsetting Scheme

1. BIODIVERSITY OFFSETTING CONTRIBUTION

1.1. The Owners covenant with the Council to:

- 1.1.1. Submit the Biodiversity Offsetting Scheme to the Council prior to Commencement of Development, not to Commence the Development until the Biodiversity Offsetting Scheme is approved by the Council and to thereafter comply with the Biodiversity Offsetting Scheme as approved by the Council;
- 1.1.2. Not to first Occupy cause or permit to be first Occupied 80,000 sqm of floorspace of the Development unless and until fifty percent (50%) of Biodiversity Offsetting Contribution has been paid to the Council; and
- 1.1.3. Not to first Occupy cause or permit to be first Occupied 160,000 sqm of floorspace of the Development unless and until the remaining fifty percent (50%) of the Biodiversity Offsetting Contribution has been paid to the Council.

SCHEDULE 2
OPEN SPACE

DEFINITIONS AND CLAUSES

The following definitions relating to Open Space Land shall have the following meanings throughout this Deed:

- “Initial Maintenance Period”** Means in respect of the Open Space Works the initial maintenance period of twelve (12) months from the date of completion of the Open Space Works to the Council’s reasonable satisfaction as provided for in paragraph 1.4 of this Second Schedule;
- “Open Space Commuted Sum”** Means a contribution of eight hundred and ninety four thousand two hundred and ninety one pounds (£894,291) Index Linked to be paid to the Council and used by the Council solely for the maintenance of the Open Space Land;
- “Open Space Land”** Means the areas of informal public open space to be provided within the Land broadly in accordance with the area shown shaded light green and annotated “Green Link/open space” on the plan entitled ‘Land Use Areas – MP23’ with reference 16-048-01-SGP-XX-00-DR-A-1008-P13 attached to this Deed;
- “Open Space Specification”** Means the specification and phasing programme for the carrying out of the Open Space Works including landscaping proposals on the Open Space Land which shall be submitted to the Council for approval;
- “Open Space Works”** Means the works to be carried out to the Open Space Land in accordance with the Open Space Specification as approved by the Council;

OPEN SPACE LAND

1. The Owners hereby covenant with the Council as follows:
 - 1.1 Prior to the Commencement of Development the Owners shall submit to the Council for its approval details of the proposed location of the Open Space Land and the Open Space Specification.
 - 1.2 The Owners shall carry out and complete the Open Space Works on the Open Space Land in accordance with the approved Open Space Specification.
 - 1.3 The Owners shall notify the Council of completion of the Open Space Works and invite the Council to inspect the Open Space Land and the Owners shall carry out any remediation works identified by the Council acting reasonably before making the Open Space Land or part thereof available for public use.
 - 1.4 Upon the completion of the Open Space Works on the Open Space Land to the reasonable satisfaction of the Council the Owners shall during the Initial Maintenance Period:-

- 1.4.1 Procure that there is full and unfettered public access to the Open Space Land from the date of completion of the Open Space Works; and
 - 1.4.2 Be responsible for the management and maintenance of the Open Space Works and the Open Space Land free of defects.
- 1.5 The Owners shall transfer the Open Space Land to the Council as soon as reasonably practicable following the expiry of the Initial Maintenance Period for the sum of £1 free from any encumbrances which would prevent the use of the land as Open Space Land (including financial charges) and the reservation of such rights and easements for the benefit of the Site and/or any adjoining land retained by the Owners as are reasonably necessary and required in connection with the Development and/or the Owner's retained land TOGETHER WITH such rights and easements as are reasonably necessary and required for the use and enjoyment of the Open Space Land PROVIDED THAT the Owners shall have maintained the Open Space Land and carried out any remedial works that may reasonably be required by the Council to the reasonable satisfaction of the Council prior to such transfer.
- 1.6 The covenants contained in the transfer referred to at paragraph 1.5 above on the part of the Council shall include the following:
- 1.6.1 Not to use the Open Space Land for any purpose other than for the provision of public open space for the benefit of members of the public;
 - 1.6.2 To maintain the Open Space Land in a clean and tidy condition at all times; and
 - 1.6.3 Not to build or allow or suffer to be built any building on the relevant part of the Open Space Land.
- 1.7 Upon the transfer of the Open Space Land to the Council then the Owners shall pay to the Council the Open Space Commuted Sum in respect of the future maintenance of the Open Space Land.
- 1.8 For the avoidance of doubt the Owners may complete the Open Space Works on the Open Space Land in phases where the Open Space Specification permits the same and transfers of the Open Space Land can likewise be made in phases as the Open Space Works are completed in which case the Open Space Commuted Sum shall be paid proportionately in accordance with the phased transfer of the Open Space Land PROVIDED THAT the Owners will pay the Council's reasonable legal fees properly incurred in connection with each transfer.
- 1.9 Where the Open Space Works on the Open Space Land is completed in phases as described in paragraph 1.8 above, "the Owner" shall mean the owner of the relevant phase such that the obligations in relation to the Open Space Works and the Open Space Land shall be enforced against the Owner of that phase only.

SCHEDULE 3

PUBLIC TRANSPORT

DEFINITIONS AND CLAUSES

The following definitions relating to public transport shall have the following meanings throughout this Deed:

“Public Transport Contribution”	Means a contribution of nine hundred and seventy two thousand eight hundred and eighty seven pounds (£972,887) Index Linked payable to the Council by the Owners to be used by the Council for the Public Transport Improvement Scheme.
“Public Transport Improvement Scheme”	Means the scheme for improvements to public transport to serve the Occupiers of the Development to include but not limited to the extension of the existing 11 (Caldecotte-Open University-Monkston-Central Milton Keynes) and/or 12 bus service (Caldecotte-Open University-Kents Hill-Monkston-Central Milton Keynes).
“Travel Plan Monitoring Fee”	Means the sum of five thousand pounds (£5,000) to be paid to the Council by the Owners and used by the Council to ensure that the framework travel plan referenced SCD-BWB-GEN-XX-RP-TR-002 S2 P7 has been implemented, monitored and reviewed.

1 **Public Transport Contribution**

- 1.1 The Owners covenant with the Council to pay the Public Transport Contribution prior to first Occupation; and
- 1.2 The Owners further covenant that it shall not allow first Occupation prior to the payment of the Public Transport Contribution.

2 **Travel Plan Monitoring Fee**

- 2.1 The Owners covenant to pay the Travel Plan Monitoring Fee prior to the Commencement of any part of the Development; and
- 2.2 The Owners further covenant that it shall not Commence the Development unless and until it has paid the Travel Plan Monitoring Fee.

SCHEDULE 4

PEDESTRIAN AND CYCLE CONTRIBUTION

DEFINITIONS AND CLAUSES

The following definitions relating to the Pedestrian and Cycle Contribution shall have the following meanings throughout this Deed:

“Pedestrian and Cycle Improvement Contribution” Means the contribution of seven hundred and fifteen thousand two hundred and fifty seven pounds (£715,257) Index Linked or sixty eight thousand three hundred and eighty four pounds (£68,384) Index Linked as determined by the Secretary of State or Inspector pursuant to his/her determination of the Appeal payable to the Council to be used towards the enhancement and expansion of the existing V10 Redway to a super route and/or new pedestrian and cycle improvements in the vicinity of the Land and which are necessary as a result of the Development.

1. PEDESTRIAN AND CYCLE CONTRIBUTION

- 1.1. The Owners covenant with the Council to pay the Pedestrian and Cycle Improvement Contribution prior to first Occupation; and
- 1.2. The Owners further covenant that they shall not allow first Occupation prior to the payment of the Pedestrian and Cycle Improvement Contribution.

SCHEDULE 5

HIGHWAYS

DEFINITIONS AND CLAUSES

The following definitions relating to highways shall have the following meanings throughout this Deed:

“Grid Road Reserve Land”	Means the land adjacent to Brickhill Street as shown shaded dark green and annotated ‘Grid Road Reserve’ on the drawing entitled ‘Land Use Areas – MP23’ with reference 16-048-01-SGP-XX-00-DR-A-1008-P13 attached to this Deed which is proposed to be utilised for the upgrading of Brickhill Street to grid road standard to the extent that it does not already form part of the public highway
“Highways Agreement”	Means an agreement with the Council under section 278 of the 1980 Act and such other legislative provisions as may be applicable in relation to the provision of offsite improvements to a) Tilbrook Roundabout and b) Brickhill Street
“Highways Contribution”	Means the sum of two hundred thousand pounds (£200,000) Index Linked payable to the Council to be used towards the provision of improvements to the Walton Park Roundabout

1. The Owners covenant with the Council as follows:

HIGHWAYS CONTRIBUTION

- 1.1. Not to first Occupy cause or permit to be first Occupied any part of the Development unless and until it has paid to the Highways Contribution to the Council

TRANSFER OF GRID ROAD RESERVE LAND

- 1.2. The Owners covenant to commence negotiations with the Council and thereafter transfer the Grid Road Reserve Land within six (6) months of completion of the Highways Agreement free from any encumbrances that would prevent the use of the land for highways purposes upon such terms as agreed between the Owners and the Council but which transfer shall include the such provisions, covenants, exceptions, reservations of rights and easements for the benefit of the Land and/or any adjoining land retained by the Owners as are reasonably necessary and required in connection with the Development and/or the Owner’s retained land and shall include a covenant not to use the Grid Road Reserve Land for any purpose other than the upgrading of Brickhill Street to grid road status for its subsequent adoption as public highway and associated landscaping unless otherwise agreed between the Owners and the Council and for the avoidance of doubt the land shown as visibility splay on drawing number SCD-BWB-GEN-01-DR-TR-001 S2 P12 shall be retained as such.

SCHEDULE 6

CARBON OFFSET CONTRIBUTION

DEFINITIONS AND CLAUSES

The following definitions relating to the Carbon Offset Contribution shall have the following meanings throughout this Deed:

“Carbon Offset Contribution”

means the estimated sum of one million sixty six thousand three hundred and ninety four pounds (£1,066,394) for the whole Development to be paid to the Council in accordance with the Council's sustainable Construction Supplementary Planning Document (2007) and Policy SC1 of Plan:MK calculated at a rate of two hundred pounds (£200) Index Linked per tonne of carbon dioxide anticipated to be produced by each phase or part of the Development in one year (to include but not limited to all energy use for space heating and cooling, hot water, lights, appliances and processes but not including embodied energy and transport) and to be used towards the carbon offsetting fund to be spent within the borough of Milton Keynes.

CARBON OFFSET CONTRIBUTION

1. The Owners covenant with the Council as follows:
 - 1.1. Not to Commence Development for each phase or part or Commercial Unit of the Development unless and until it has submitted to the Council for its approval, such approval not to be unreasonably withheld or delayed, in writing a report setting out the method of calculation and the amount of the Carbon Offset Contribution payable in respect of that phase or part of the Development in accordance with Policy SC1 on Plan:MK.
 - 1.2. Not to Occupy cause or permit to be Occupied each phase or part of the Development unless and until it has paid the Carbon Neutrality Contribution in respect of that phase or part of the Development as set out in paragraph 1.1 of this Schedule 6 above.

SCHEDULE 7

OTHER FINANCIAL CONTRIBUTIONS

DEFINITIONS AND CLAUSES

The following definitions relating to other financial contributions shall have the following meanings throughout this Deed:

“Arts and Public Art Strategy”	Means a strategy for the provision of public art and cultural activity the total expenditure which shall be equivalent to the Public Art Contribution to be submitted to the Council for its approval that will enhance the cultural offer or appearance of the Development and the surrounding area and which shall accord with the MK Creative and Cultural Strategy (2018-2027) and with Policy CC1 of Plan:MK
“Emergency Services Contribution”	means the contribution of sixty four thousand five hundred and ninety pounds (£64,590) Index Linked payable to the Council to be used by Thames Valley Police for the delivery of ANPR (number plate recognition) cameras and/or the provision of mobile ICT (information and communication technology) for neighbourhood officers within the vicinity of the Development
“Public Art Contribution”	means the sum of two hundred and fifty thousand pounds (£250,000) Index Linked payable to the Council to be spent in accordance with the MK Creative and Cultural Strategy (2018 – 2027) specifically on a public art project within the vicinity of the Development in accordance with Policy CC1 of Plan:MK
“Community Contribution”	means the sum of two hundred and fifty thousand pounds (£250,000) Index Linked payable to the Council to be used towards in accordance with Policy CC4 of Plan:MK towards the provision of the enhancement and expansion of educational facilities at the Hazard Alley Safety Centre, Carters Lane, Milton Keynes to provide young people with greater awareness of the risks dangers and hazards in their environment or in the event that the Secretary of State or Inspector pursuant to his/her determination of the Appeal concludes that the Community Contribution is not compliant with the CIL Tests if paid only towards the provision of the enhancement and expansion of educational facilities at Hazard Alley Safety Centre any other community facility in the locality capable of providing amenity to occupiers and employees of the Development

1. The Owner Covenants with the Council as follows:

EMERGENCY SERVICES CONTRIBUTION

- 1.1 Not to first Occupy cause or permit to be first Occupied any part of the Development unless and until the Emergency Services Contribution is paid to the Council.

PUBLIC ART CONTRIBUTION

- 1.2 Not to Commence the Development unless and until the Owner has submitted the Arts and Public Art Strategy to the Council for its approval and upon first Occupation to comply with the Arts and Public Art Strategy as approved by the Council unless the Owner has paid the Public Art Contribution in accordance with paragraph 1.3 of this Schedule in which case it shall not be obliged to carry out the Arts and Public Art Strategy.
- 1.3 In the event that the Owner elects to pay the Public Art Contribution to the Council not to first Occupy cause or permit to be first Occupied any part of the Development unless and until the Public Art Contribution has been paid to the Council and upon payment the obligation under paragraph 1.2 shall cease to have further effect.

COMMUNITY CONTRIBUTION

- 1.4 Not to first Occupy cause or permit to be first Occupied any part of the Development unless and until the Community Contribution has been paid to the Council.

SCHEDULE 8

ARCHAEOLOGICAL PROTECTION

DEFINITIONS AND CLAUSES

The following definitions relating to archaeological protection shall have the following meanings throughout this Deed:

“Archaeological Protection Area”	Means the area shown hatched black and labelled “Archaeology Area 2” on the ‘Land Use Areas – MP23’ with reference 16-048-01-SGP-XX-00-DR-A-1008-P13 attached to this Deed
“Scheme of Archaeological Monitoring”	means a scheme to be submitted to the Council for approval which shall detail the proposed monitoring of the Archaeological Protection Area during the construction of the Development and which shall include proposed mitigation in the event that the monitoring identifies significant changes to the hydrological condition of the Archaeological Protection Area and any proposed mitigation will for the avoidance of doubt will be at the Owner’s expense

1. The Owners covenant with the Council:

Archaeological Protection Area

- 1.1 prior to Commencement of Development to erect a means of enclosure which shall be constructed in such a manner to exclude ground disturbance around the Archaeological Protection Area in accordance with details submitted to and approved by the Council which shall include provision for its maintenance and repair which for the avoidance of doubt will be at the Owner’s expense;
- 1.2 to retain the means of enclosure around the Archaeological Protection Area until the final Commercial Unit is ready for Occupation;
- 1.3 to exclude all plant movement across the Archaeological Protection Area unless otherwise agreed in writing with the Council;
- 1.4 to keep the Archaeological Protection Area free from development unless otherwise agreed in writing with the Council;

Scheme of Archaeological Monitoring

- 1.5 to submit to the Council prior to the Commencement of Development the Scheme of Archaeological Monitoring and not to Commence Development until the Scheme of Archaeological Monitoring has been approved by the Council; and
- 1.6 to comply with the Scheme of Archaeological Monitoring as approved by the Council.

SCHEDULE 9

COUNCIL'S COVENANTS

The Council covenants with the Owners as follows:

1. To accept transfer of the Open Space Land in accordance with the provisions of Schedule 2 of this Deed.
2. To use all sums received from the Owners under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purpose as the Owners and the Council shall agree.
3. The Council shall apply or expend the amounts received in respect of all financial contributions paid under this Deed exclusively for the purposes respectively for which the same were paid as specified under this Deed.
4. The Council shall pay to the person who made the payment such amount of any payment made to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose or if the Council has received a fully costed scheme but without prejudice to the obligations in paragraph 2 and paragraph 3) within ten (10) years of the date of receipt by the Council of such payment together with Interest for the period from the date of payment to the date of refund.
5. The Council shall provide or procure at the Owner's reasonable request no more than once in each year a statement to the Owners of the sums received, the sums applied and the use to which the money has been put.
6. Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith affect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
7. At the written request of the Owners the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed and mark appropriately all related entries in the Register of Local Land Charges.

APPENDIX

Land Ownership Index

	Title Number	Description	Owner
1.	BM239493 - Freehold Title	Dropshort Farm, Watling Street, Little Brickhill, Milton Keynes.	MR RICHARD GARNET UNWIN of Dropshort Farm, Watling Street, Little Brickhill, Milton Keynes, MK17 9JJ
2.	BM249231 - Freehold Title	Two parcels of land at Dropshort Farm, Watling Street, Fenny Stratford.	MR RICHARD GARNET UNWIN of Dropshort Farm, Watling Street, Little Brickhill, Milton Keynes, MK17 9JJ
3.	BM177905 - Freehold Title	Cross Road Farm, Brickhill Road, Bow Brickhill, Milton Keynes.	MR RICHARD DEREK DUNN and MRS ANDREE DUNN Of Cross Road Farm, Brickhill Road, Bow Brickhill, Milton Keynes.
4.	BM357750 - Freehold Title	Land on the West Side of Station Road, Bow Brickhill, Milton Keynes.	MR ROGER WILLIAM NORMAN Of New Middle Field Farm, 15 Church Street, Ringstead, Kettering, NN14 4DH
5.	BM403693 - Freehold Title	Land Lying to the East of A5, Bow Brickhill, Milton Keynes.	MR ROGER WILLIAM NORMAN Of New Middle Field Farm, 15 Church Street, Ringstead, Kettering, NN14 4DH. MR ANDREW ROBERT NORMAN Of 6 Orchard Cottage, Oakhill Road, Shenley Church End, Milton Keynes, MK5 6AE.
6.	BM288810 - Leasehold Title	Land on the South East Side of Woburn Sands Road, Bow Brickhill, Milton Keynes.	BEDFORD ESTATE NOMINEES LIMITED

			<p>(Companies Registration Number: 03743508)</p> <p>Of The Bedford Office Woburn, Milton Keynes, MK17 9PQ</p> <p>WOBURN ESTATE COMPANY LIMITED</p> <p>(Companies Registration Number: 01608381)</p> <p>Of The Bedford Office Woburn, Milton Keynes, MK17 9PQ</p>
7.	<p>BM345179</p> <p>- Freehold Title</p>	<p>Land on the South East Side of Woburn Sands Road, Bow Brickhill, Milton Keynes.</p>	<p>BEDFORD ESTATE NOMINEES LIMITED</p> <p>(Companies Registration Number: 03743508)</p> <p>Of The Bedford Office Woburn, Milton Keynes, MK17 9PQ</p> <p>WOBURN ESTATE COMPANY LIMITED</p> <p>(Companies Registration Number: 01608381)</p> <p>Of The Bedford Office Woburn, Milton Keynes, MK17 9PQ</p>
8.	<p>BM403344</p> <p>- Freehold Title</p>	<p>Land lying to the north-west of Cross Roads Farm, Brickhill Road, Bow Brickhill, Milton Keynes MK17 9FE</p>	<p>BEDFORD ESTATE NOMINEES LIMITED</p> <p>(Companies Registration Number: 03743508)</p> <p>Of The Bedford Office Woburn, Milton Keynes, MK17 9PQ</p> <p>WOBURN ESTATE COMPANY LIMITED</p>

			(Companies Registration Number: 01608381) Of The Bedford Office Woburn, Milton Keynes, MK17 9PQ
9.	BM345388 - Freehold Title	Land lying on the West side of Woburn Sands Road, Bow Brickhill, Milton Keynes.	BEDFORD ESTATE NOMINEES LIMITED (Companies Registration Number: 03743508) Of The Bedford Office Woburn, Milton Keynes, MK17 9PQ WOBURN ESTATE COMPANY LIMITED (Companies Registration Number: 01608381) Of The Bedford Office Woburn, Milton Keynes, MK17 9PQ
10.	BM288801 - Leasehold Title	Land lying on the West side of Woburn Sands Road, Bow Brickhill, Milton Keynes.	BEDFORD ESTATE NOMINEES LIMITED (Companies Registration Number: 03743508) Of The Bedford Office Woburn, Milton Keynes, MK17 9PQ WOBURN ESTATE COMPANY LIMITED (Companies Registration Number: 01608381) Of The Bedford Office Woburn, Milton Keynes, MK17 9PQ

In WITNESS whereof this Instrument has been executed as a Deed by the Parties hereto

The **COMMON SEAL** of **MILTON KEYNES COUNCIL**

was hereunto affixed)

in the presence of:-)

SIGNED as a Deed by)

HB (SOUTH CALDECOTTE) LIMITED)

in the presence of:

Director

Director/Secretary

SIGNED as a Deed by)

WOBURN ESTATE COMPANY LIMITED)

in the presence of:

Director

Director/Secretary

SIGNED as a Deed by)

BEDFORD ESTATE NOMINEES LIMITED)

in the presence of:

Director

Director/Secretary

SIGNED by **MR ROGER WILLIAM NORMAN** as a **DEED** in the presence of:

Witness's signature:

Name:

Address:

Occupation:

SIGNED by **MR ANDREW ROBERT NORMAN** as a **DEED** in the presence of:

Witness's signature:

Name:

Address:

Occupation:

SIGNED by **MRS ANDREE DUNN** as a **DEED** in the presence of:

Witness's signature:

Name:

Address:

Occupation:

SIGNED by **MR RICHARD DEREK DUNN** as a **DEED** in the presence of:

Witness's signature:

Name:

Address:

Occupation:

SIGNED by **MR RICHARD GARNET UNWIN** as a **DEED** in the presence of:

Witness's signature:

Name:

Address:

Occupation: