

Dated

2024

[REDACTED]

and

[REDACTED]

and

[REDACTED]

and

[REDACTED]

and

[REDACTED]

to

**WIRRAL BOROUGH COUNCIL**

---

**S106 UNILATERAL UNDERTAKING**

pursuant to Section 106 of the Town and Country  
Planning Act 1990 (as amended) in respect of  
Noctorum Field, Noctorum and [REDACTED]  
[REDACTED]

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**This Deed of Undertaking** is given the

day of

2024

**By**

- (1) [REDACTED] ("the Owner"); and
- (2) [REDACTED]
- (3) [REDACTED]
- (4) [REDACTED] "the Mortgagee"); and
- (5) [REDACTED]

Together known as "**the Parties**".

**To**

- (6) **WIRRAL BOROUGH COUNCIL** of Town Hall, Brighton Street, Wallasey, Wirral, CH44 8ED ("**the Council**").

**Background**

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and is the authority by whom the obligations hereby created are enforceable.
- (B) The Owner is the freehold owner of Noctorum Field registered at HM Land Registry with title number MS251606 and also of the McAllester Cricket Square Land registered at HM Land Registry as part of title numbers MS480532 and MS480534.
- (C) [REDACTED] is the freehold owner of the [REDACTED] Site registered at HM Land Registry with title number MS598701.
- (D) [REDACTED] is the freehold owner of the [REDACTED] Site registered at HM Land Registry with title number MS597139.
- (E) The Mortgagee has the benefit of a legal charge over the [REDACTED] Site dated 11 December 2013.
- (F) [REDACTED] is the freehold owner of the [REDACTED] Land which comprises part of the title registered at HM Land Registry with title number MS342562.
- (G) The Owner submitted the Application in respect of Development of Noctorum Field to the Council on 29 March 2023, it was refused under delegated powers on 28 June 2023 and the Owner has made an Appeal.

- (H) The Parties have agreed to enter into this Deed in order to secure the planning obligations secured in this Deed in advance of the Secretary of State's decision in respect of the Appeal with the intention that the obligations contained in this Deed may be enforced by the Council against the Owner, [REDACTED] and [REDACTED] and their successors in title in relation to their interests (respectively) in Noctorum Fields, the [REDACTED] Site, the [REDACTED] Site and [REDACTED] Land.
- (I) Subject always to clause 11.6, the obligations contained in this Deed comply with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No.948 as amended) and the advice set out at paragraph 57 of the NPPF and the planning obligations it contains are:
- (i) necessary to make the Development acceptable in planning terms;
  - (ii) directly related to the Development; and
  - (iii) fairly and reasonably related in scale and kind to the Development.

**It is agreed:**

**1. Definitions and Interpretation**

1.1. For the purposes of this Deed the following expressions shall have the following meanings:

<b>"Act"</b>	the Town and Country Planning Act 1990 (as amended);
<b>"Affected Unit"</b>	means any Affordable Rented Unit or Shared Ownership Unit that the Owner is unable to dispose of to a Registered Provider and in lieu of the onsite provision of which an Off-Site Affordable Housing Contribution is to be paid to the Council in full accordance with the provisions of paragraph 1 of Part 1 of Schedule 2 hereof;
<b>"Affordable Housing"</b>	housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any successor policy or legislation in respect of affordable housing);
<b>"Affordable Housing Units"</b>	means those dwellings designated as Affordable Housing by the Affordable Housing Scheme;
<b>"Affordable Housing Scheme"</b>	means a scheme for the provision of Affordable Housing within the Development to be approved in writing by the Council;
<b>"Affordable Rented Unit"</b>	means Affordable Housing to be let at an Affordable Rent;
<b>"Affordable Rent"</b>	means a rent which is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80% of the

local market rent or such other rent that may be permitted by Regulator of Social Housing (or any successor body to which the function of regulation of registered providers is transferred) including target rents;

**"Appeal"**

the appeal lodged in respect of the refusal by the Council of the Application given appeal reference APP/W4325/W/23/3329105;

**"Application"**

the outline planning application for the demolition of the existing pavilion and erection of up to 33 dwellings (Use Class C3) and associated infrastructure (all matters are reserved with the exception of access) at Noctorum Field validated by the Council 29 March 2023 and allocated reference number OUT/23/00478;

**"Appropriate Percentage"**

means 10% (ten per centum) of the total number of Dwellings **UNLESS** the Secretary of State or his nominated representative pursuant to clause 11.6 hereof expressly concludes that paragraphs 4.1.3 to 4.1.8 of Part 1 of Schedule 2 hereof are incompatible with any one of the tests for planning obligations set out at regulation 122 of the CIL Regulations, and accordingly makes a finding that no weight should be attached to the said obligations in determining the Application, then the Appropriate Percentage shall be taken to mean 20% (twenty per centum) of the total number of Dwellings;

**"Assured Tenancy"**

**Shorthold**

means an assured shorthold tenancy for a fixed term of not more than 2 (two) years;

**"BNG Land"**

the area of non-adopted land within the Development identified and described in the BNG Plan and outside of residential curtilage, open space, pedestrian and cycle links areas;

**"BNG Plan"**

a written scheme detailing the following in relation to the biodiversity net gain associated with the Development:

- (a) The percentage of biodiversity net gain associated with the Development together with all relevant and pertinent evidence with regard thereto;
- (b) The area to which the biodiversity net gain is to relate; and
- (c) The mechanism by which any associated habitat creation or enhancement associated with such biodiversity net gain is to be maintained and the minimum period over

which such maintenance shall be secured together with the means by which the said measures are so secured;

**"BNG Contribution"**                      **Monitoring** means the sum of £3,000.00 (Three Thousand Pounds) subject to Indexation towards monitoring the biodiversity offsetting scheme and reviewing the biodiversity audit reports for the BNG Land;

**"CIL Regulations"**                      means the Community Infrastructure Regulations 2010 (as amended);

**"Commencement of Development"**                      **of** the date on which development pursuant to a relevant planning permission is commenced on a part of the Site (and where for the avoidance of doubt "planning permission" as defined for the purposes herein comprises more than one such Planning Permission the earliest date after the date hereof on which any such said planning permission is commenced on the Site) and/or the carrying out of any material operation in accordance with Section 56(4) of the Act (whichever is the earlier) provided that the following shall not amount to a material operation:

- (a) operations consisting of site clearance;
- (b) demolition work;
- (c) archaeological investigations;
- (d) investigations for the purpose of assessing ground conditions;
- (e) remedial work in respect of any contamination or other adverse ground conditions;
- (f) diversion and laying of services;
- (g) erection of any temporary means of enclosure; and
- (h) the temporary display of site notices or advertisements;

and "Commence" and "Commence Development" shall be construed accordingly;

**"Decision Letter"**                      means the decision letter issued by the Secretary of State in determination of the Appeal and includes any conclusions and recommendations contained within any report issued by an Inspector appointed by the Secretary of State to the extent that such conclusions and

		recommendations are adopted by the Secretary of State in the decision letter;
<b>"Development"</b>		the development of Noctorum Field pursuant to the Planning Permission;
<b>"Dwellings"</b>		units of residential accommodation to be constructed pursuant to the Planning Permission and reference to "Dwelling" shall mean any one of the residential units;
<b>"██████ Land"</b>		means that part of the Site edged red and shaded yellow on Plan 3;
<b>"Habitat Contribution"</b>	<b>Regulation</b>	means the sum of £280.26 (two hundred and eighty pounds twenty six pence) per Dwelling to be constructed on Noctorum Field pursuant to the Planning Permission subject to Indexation to be used by the Council to mitigate the impact of recreational pressure at Wirral Coastal Zone;
<b>"Index"</b>		means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation  and "Indexation" and "Index Linked" are to be construed accordingly;
<b>"Interest"</b>		means interest at 4% (four per centum) per annum above the Bank of England base rate from time to time;
<b>"Market Rent"</b>		means the rent calculated in accordance with the definition of "Market Rent" at Practice Statement 4 of the Royal Institution of Chartered Surveyors' Red Book 2017 or any subsequent document which amends or replaces it;
<b>"McAllester Cricket Square Land"</b>		means that part of the Site shown edged red on Plan 4;
<b>"NPPF"</b>		means the National Planning Policy Framework published in December 2023 as amended and updated or such policy document as supersedes or replaces it;
<b>"Noctorum Field"</b>		means that part of the Site edged red on Plan 1;
<b>"Occupation"</b>		occupation for the purposes permitted by the Planning Permission 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 "Occupy" and "Occupied" shall be construed accordingly;

**"Off-Site Affordable Housing Contribution"** means such an amount to be agreed in writing by the Council such agreement not to be unreasonably withheld or delayed;

**"[REDACTED] Site"** means that part of the Site edged red on Plan 2;

**"[REDACTED] Works"** means the installation, management and maintenance of a pipe drainage scheme at the [REDACTED] Site in accordance with the report authored by Professional Sportsturf Design (NW) Ltd dated 23 March 2023 (reference number O/005/OPRUFC/1571/R/230324) appended to this Deed at Appendix 2;

**"Open Market Dwelling"** means those Dwellings that do not comprise Affordable Housing Units;

**"Open Space Contribution"** means the cost per Dwelling for open space which is the total number of Dwellings multiplied by £3,422 (cost of provision of 74sqm of open space + cost of provision of 6sqm for children's play) and reduced by the cost of equivalent open space provision to be provided on site to be constructed on Noctorum Field pursuant to the Planning Permission towards the cost of new provision of open space and/or improvements to the quality and/or accessibility of existing provision;

**"Open Space Land"** means the areas of open space associated with the Development as detailed in the Open Space Management Plan;

**"Open Space Management Plan"** means a written scheme including details of who is responsible for maintaining the Open Space Land, the details of maintenance pertaining to the Open Space Land and the basis on which the Open Space Land is to remain open to members of the public;

**"Sports Contribution"** means the total sum of £1,435.00 (one thousand four hundred and thirty five pounds) per Dwelling to be constructed on Noctorum Field pursuant to the Planning Permission subject to Indexation consisting of:

- (a) £1,164.00 (one thousand one hundred and sixty four pounds) per Dwelling to be constructed on Noctorum Field pursuant to the Planning Permission towards improvements at Beechwood Skateboard Park Birkenhead; and

(b) £271.00 (two hundred and seventy one pounds) per Dwelling to be constructed on Noctorum Field pursuant to the Planning Permission towards improvements at the fitness suite at Europa Pools Leisure Centre Birkenhead;

<b>"Plan 1"</b>	the plan marked "Plan 1" appended to this Deed at Appendix 1;
<b>"Plan 2"</b>	the plan marked "Plan 2" appended to this Deed at Appendix 1;
<b>"Plan 3"</b>	the plan labelled "BIR099.1 Rev 1" appended to this Deed at Appendix 1;
<b>"Plan 4"</b>	the plan marked "Plan 4" appended to this Deed at Appendix 1;
<b>"Planning Permission"</b>	the planning permission to be granted by the Secretary of State pursuant to an Appeal;
<b>"Practical Completion"</b>	the date upon which a certificate of practical completion is issued by the Owner's architect or such other person who is monitoring the development to which the term relates on behalf of the Owner  and "Practically Completed" shall be construed accordingly;
<b>"████████ Application"</b>	means the application for planning permission for the formation of a turf playing pitch, associated drainage and the installation of six no. floodlights submitted to the Council with reference number APP/23/00601;
<b>"████████ Permission"</b>	means the planning permission granted pursuant to the ██████████ Application;
<b>"████████ Site"</b>	means that part of the Site edged red and shaded green on Plan 3;
<b>"████████ Works"</b>	means the works permitted pursuant to planning permission granted by the Council further to the ██████████ Application on the required parts of the Site and the ██████████ Land;
<b>"Qualifying Rent to Buy Household"</b>	means a household where at least one of household members meet such eligibility criteria as set out in the approved Affordable Housing Scheme;
<b>"Rent to Buy Landlord"</b>	means the landlord of a Rent to Buy Tenancy and its successors in title;

**“Rent to Buy Tenancy”** means in relation to a Rent to Buy Unit any Assured Shorthold Tenancy entered into between a Rent to Buy Landlord and a Rent to Buy Tenant in respect of that Rent to Buy Unit at a monthly rent (approximately 80% of the Market Rent for similar dwellings in the locality of the Development);

**“Rent to Buy Tenant”** means a person to whom a Rent to Buy Unit is let pursuant to the approved Affordable Housing Scheme;

**“Rent to Buy Unit”** means those Affordable Housing Units to be let pursuant to a Rent to Buy Tenancy and Occupied solely by a Qualifying Rent to Buy Household;

**"Protected Tenant"** means as the case may be:

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

AND FOR THE AVOIDANCE OF DOUBT any person or body and/or their mortgagee deriving title through or from any of the parties mentioned in paragraphs above;

**"Registered Provider"** means a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 who is registered with the Regulator of Social Housing and has not been removed from the register;

<b>"S106 Monitoring Officer"</b>	means the Council's section 106 monitoring officer for the time being or their successor post or any other officer to whom they delegate their section 106 monitoring functions;
<b>"Secretary of State"</b>	means the Secretary of State for Levelling Up, Housing and Communities;
<b>"Shared Ownership Lease"</b>	means such lease as shall from time to time be substantially in accordance with Homes England model form of shared ownership lease or such other successor bodies model form of lease;
<b>"Shared Ownership Unit"</b>	means the Affordable Housing Units that are to be owned and managed by a Registered Provider such that they shall be occupied on the basis of a Shared Ownership Lease;
<b>"Social Rented Housing"</b>	means Affordable Housing let by a Registered Provider at a Target Rent to tenants eligible for Affordable Housing;
<b>"Substantially Complete"</b>	shall be interpreted in accordance with section 171B of the Act and relevant case law under that section  and "Substantial Completion" shall be construed accordingly;
<b>"Target Rent"</b>	means target rents for social rented housing (or its equivalent) as determined by the National Rent Regime;
<b>"Site"</b>	the parcels of land against which the obligations within this Deed may be enforced as shown edged red on Plan 1, Plan 2, Plan 3 and Plan 4 and described in Schedule 1.

## 2. **Construction of this Deed**

- 2.1. Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed (unless the context otherwise requires).
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

- 2.5. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.6. The headings and contents list are for reference only and shall not affect construction.
- 2.7. Any covenant by any party not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.8. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

### 3. **Legal Basis**

- 3.1. This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all powers so enabling and (in relation to Affordable Housing matters) Section 609 of the Housing Act 1985 and all other enabling powers.

The covenants, restrictions and requirements imposed upon the Owner, [REDACTED], [REDACTED] and [REDACTED] under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner, [REDACTED] and [REDACTED] as further particularised in clause 5 of this Deed.

### 4. **Conditionality**

- 4.1. This Deed shall come into effect on the date hereof save for the obligations contained in the Schedules which shall come into effect as follows:
  - 4.1.1. those obligations which expressly require something to be done prior to the Commencement of Development shall come into effect on the date of the Planning Permission; and:
  - 4.1.2. all remaining obligations shall come into effect on Commencement of Development PROVIDED THAT nothing shall absolve the Owner from complying with the obligations made under this Deed in relation to the Development or part of it which need to be complied with prior to the implementation of the same

### 5. **Covenants**

- 5.1. The Owner covenants so as to bind Noctorum Field to fully observe and perform the obligations in Part 1 of Schedule 2 of this Deed and hereby agrees that Noctorum Field shall be subject to the obligations, restrictions and covenants herein, such obligations being planning obligations for the purposes of Section 106 of the Act.
- 5.2. [REDACTED], [REDACTED] and [REDACTED] covenant separately to observe and perform the obligations in this Deed including those obligations set out in Part 2 of Schedule 2 as they separately affect their respective parts of the Site within their ownership.
- 5.3. The Parties covenant that they will not encumber or otherwise deal with their interest in the Site or any part or parts thereof in any manner whatsoever whereby the

obligations, covenants and undertakings imposed by this Deed are rendered impossible to carry out;

5.4. The Parties covenant they will notify the Council's S106 Monitoring Officer prior to Commencement of Development and within ten Working Days of the occurrence of the following dates:

5.4.1. Commencement of the Development;

5.4.2. Occupation of the first Dwelling

5.5. The Parties confirm that there are no interests (legal or equitable) required for the purposes of this Deed in the Site other than detailed in this Deed.

## 6. **Local Land Charge**

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

6.2. Following the performance and satisfaction of all the obligations contained in this Deed the Owner shall request that the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

## 7. **Change in Ownership**

7.1. The Parties agree with the Council that save in the case of a disposal to a plot purchaser of a Dwelling to give the Council within 5 working days written notice of any change in ownership of any of their interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

## 8. **Notices**

8.1. In this Clause:

8.1.1. "**The Council's address**" means the address of the Council shown on the first page of this Deed or such other address as the Council may from time to time notify to the Owner and its successors as being its address for service for the purposes of this Deed

8.1.2. "**The addresses of the Parties**" means the addresses shown on the first page of this Deed of the relevant party or such other address as it relevant party may have from time to time notified to the Council as being its address for service for the purposes of this Deed.

8.2. Any notice or other communication given or made in accordance with this Deed shall be in writing and:

8.2.1. may (in addition to any other effective mode of service) be delivered personally or sent by registered or recorded delivery or its equivalent;

8.2.2. shall in the case of a notice or other communication to the Council be served on the Council at the Council's address addressed to "Head of Legal Services" and reference 7457808 and copied to the "S106 Monitoring Officer"; and

8.2.3. shall in the case of a notice or other communication to the Owner be served on the Owner at the address of the Owner.

8.3. Notices shall not be sent by email or DX.

9. **Termination of this Deed**

9.1. This Deed shall cease to have effect (insofar only as it has not already been complied with):

9.1.1. if the Planning Permission shall be quashed, revoked or otherwise withdrawn (without the consent of the Owner) before Commencement of Development;

9.1.2. or it is modified by any statutory procedure or expires prior to the Commencement of Development.

10. **The Contracts (Rights of Third Parties) Act 1999**

10.1. Save as provided in respect of successors in title to the Site or any successor to the relevant statutory function of the Council this Deed shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit, rights or claims whatsoever thereto.

11. **Liabilities**

11.1. No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Deed after it shall have parted with all of its interest in the Site (or the part of the Site to which the breach relates) but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

11.2. Save as provided for in clause 11.3, no purchaser or tenant of any Dwelling to be constructed on the Site or any mortgagee thereof shall be liable for any of the obligations contained in this Deed.

11.3. Subject always to clause 20 the Affordable Housing provisions within paragraph 1 of Schedule 2 shall be enforceable against the owners and occupiers of the Affordable Housing Units.

11.4. No statutory undertaker shall be liable for any of the covenants contained in this Deed.

11.5. Save in the case of the implementation of the planning permission granted pursuant to the [REDACTED] Application on the [REDACTED] Site and [REDACTED] Land, nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission granted after the date of this Deed.

11.6. If the Secretary of State or his nominated representative in a Decision Letter expressly concludes that any of the planning obligations set out in this Deed are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the CIL Regulations (as amended), and accordingly makes a finding that no weight should be attached to that obligation in determining the Application, then the relevant obligation shall, from the date of the Decision Letter, cease to have effect and the Owner shall be under no obligation to comply with the said relevant

obligation HOWEVER the remainder of this Deed and the planning obligations hereof shall remain in full force and effect.

12. **Interest**

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

13. **Mortgagee's Consent**

- 13.1. The Mortgagee acknowledges and declares that this Deed has been entered into by [REDACTED] with its consent and that the [REDACTED] Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the [REDACTED] Site shall take effect subject to this Deed

PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the [REDACTED] Site in which case it too will be bound by the obligations as if it were a person deriving title from [REDACTED].

14. **Waiver**

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

15. **Dispute Provisions**

- 15.1. In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred by any party to the dispute or difference to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error or fraud and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine.
- 15.2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 15.1 or as to the appropriateness of the professional body then such question may be referred by any party to the dispute or difference to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error or fraud and his costs shall be payable by the Owner.
- 15.3. Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute or difference and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 15.4. The expert shall be required to give notice to each of the said parties requiring them to submit to him within fifteen working days of notification of his appointment written

submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

16. **Indexation**

16.1. Any sum referred to in this Deed as being subject to Indexation or being Index Linked shall be increased by an amount equivalent to the increase in the Index from the date of this Deed until the date on which such sum is payable.

17. **Jurisdiction**

17.1. This Deed is governed by and interpreted in accordance with the law of England and Wales.

18. **Delivery**

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

19. **Future / Amended Planning Permission(s)**

19.1. In the event that an application is made pursuant to Section 73 of the Act for an amendment to the Planning Permission and planning permission is granted:

19.1.1. the obligations in this Deed shall relate to and bind any subsequent planning permission(s) in respect of the Site granted pursuant to Section 73 of the 1990 Act and the Site itself without the need to enter into any subsequent deed of variation or a new agreement pursuant to Section 106 of the 1990 Act;

19.1.2. the definitions of Application, Development and Planning Permission in this Deed shall be construed to include reference to any such application under Section 73 of the 1990 Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s);

PROVIDED THAT nothing in this clause 19 shall restrict or fetter the discretion of the Council when determining such application submitted under Section 73 of the 1990 Act relating to the Site from requiring any consequential obligations of an appropriate nature and/or quantum (so far as they are materially different to those contained in this Deed) be secured by way of a new deed, supplemental deed or deed of modification as the case may be pursuant to Section 106 (or Section 106A) of the Act.

20. **Exemptions**

20.1. Subject to clause 20.2 below from the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing in accordance with the Affordable Housing Scheme.

20.2. Clause 20.1 of this Deed shall not be binding on a Protected Tenant or a chargee (or any receiver (including an administrative receiver) appointed by such chargee or any other person appointed under any security documentation to enable such chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable

Housing Units or any persons or bodies deriving title through such chargee or Receiver

PROVIDED THAT (in the case of a Receiver):

- 20.2.1. such chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider for a reasonable consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 20.2.2. if such disposal has not completed within the three month period, the chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the provisions in this Deed which provisions shall determine absolutely.

21. **Legal & Monitoring Fees**

21.1. The Owner covenants to pay to the Council:

- 21.1.1. A sum representing the Council's reasonable and properly incurred legal costs incurred in connection with their review of this Deed as soon as reasonably practicable after the date hereof; and
- 21.1.2. The sum of £3,000.00 (three thousand pounds) towards the Council's reasonable costs of monitoring compliance with the obligations in this Deed no later than Commencement of the Development.

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

### **Schedule 1 – The Site**

The Site comprises four parcels of land comprising:

1. Noctorum Field, which lies east of Noctorum Road, Prenton and west of Noctorum Lane, Prenton, and shown edged red on Plan 1;
2. [REDACTED] Site, which lies north of Holm Lane, Prenton and shown edged red on Plan 2;
3. [REDACTED] Site, which lies south of Prenton Dell Road, Prenton and shown edged red and shaded green on Plan 3;
4. [REDACTED] Land, which lies west of and adjoins the [REDACTED] Site, shown edged red and shaded yellow on Plan 3; and
5. McAllester Cricket Square Land, which lies at McAllester Memorial Playing Fields, Bidston Rd/B5151, Prenton and shown edged red on Plan 4.

## **Schedule 2 – Planning Obligations**

### **Part 1 – The Owner's Covenants**

The Owner covenants to the Council as follows:

#### **1. Affordable Housing**

- 1.1. Prior to Commencement of Development on Noctorum Field the Owner shall submit an Affordable Housing Scheme to the Council for approval which shall deal with the provision of Affordable Housing Units pertaining to the Development and which shall include the following:
  - 1.1.1. The numbers, type, size and location of the Affordable Housing Units save that nothing shall require the total number of dwellings to be provided as Affordable Housing Units across the whole of the Site to be greater than the Appropriate Percentage (rounded up to the nearest whole number) of the total number of Dwellings;
  - 1.1.2. Arrangements for the marketing of the Affordable Housing Units;
  - 1.1.3. The timing of the construction of the Affordable Housing Units in relation to the Occupation of the Open Market Dwellings;
  - 1.1.4. Details of arrangements the Council may reasonably require to ensure that the Affordable Housing Units remain as Affordable Housing to first and all subsequent occupiers including (but not limited to) details of any restrictions on title to secure affordable housing provisions in perpetuity save where the exemptions in clause 20 of this Deed apply;
  - 1.1.5. The basis on which any of the Affordable Housing Units may be occupied whether in respect of their first becoming occupied and/or in relation to subsequent occupations or disposals to include the occupancy criteria to be used for determining the initial and subsequent Occupiers of the Affordable Housing Units;
- 1.2. The Owner shall not Commence Development on Noctorum Field until the Affordable Housing Scheme submitted to the Council for approval in accordance with paragraph 1.1 hereof has been approved by the Council in writing.
- 1.3. The Owner shall carry out the Development in accordance with the terms of the Affordable Housing Scheme as approved by the Council for the purpose of paragraph 1.1 of this part AND FOR THE AVOIDANCE OF DOUBT shall comply with clause 20.1 .
- 1.4. To the extent that the Affordable Housing Scheme is approved in a form that authorises the construction and delivery of Affordable Rented Units or Shared Ownership Units or Social Rented Units or Rent to Buy Units, all such Affordable Housing shall be disposed of to a Registered Provider.
- 1.5. Where, despite having used reasonable endeavours over a continuous period of six (6) months proceeding from the Commencement of the Development to transfer any of the Affordable Housing for the purposes of paragraph 1.4 hereof to a Registered Provider the Owner has been unable to secure such disposal then the Owner shall be entitled to pay the Off-Site Affordable Housing Contribution to the Council in lieu of the on-site provision of Affordable Housing by way of those Affected Units

PROVIDED THAT the Owner has first supplied to the Council evidence of the Owner's reasonable attempt to secure the disposal of the Affected Units to a Registered Provider pursuant to paragraph 1.4 of this part and that the Owner's attempt has been unsuccessful, such evidence to include but not be limited to:

- 1.5.1. Email exchanges or written feedback from discussions with Registered Providers and/or their agents; and
- 1.5.2. Offers made by Registered Providers and/or their agents.
- 1.6. Upon payment of the Off-Site Affordable Housing Contribution the Owner shall be free to dispose of any Affected Units free from the restrictions in this paragraph 1 of Part 1 of this Schedule 2 of this Deed and the Affordable Housing Scheme.

2. **██████████ Works**

- 2.1. The Owner shall not cause or permit the Commencement of Development on Noctorum Field unless and until the ██████████ Works are Substantially Complete in full accordance with the ██████████ Permission.

3. **██████████ Works**

- 3.1. The Owner shall not cause or permit Commencement of Development on Noctorum Field unless and until:
  - 3.1.1. The ██████████ Works are Substantially Complete,
  - 3.1.2. A maintenance scheme for the ██████████ Works including management responsibilities, a maintenance schedule and a mechanism for review shall be submitted to and approved in writing by the Council; and
  - 3.1.3. The ██████████ Works are brought in to use in full compliance with the measures set out in the approved scheme for the purposes of paragraph 3.1.2 hereof.

4. **Financial Contributions**

- 4.1. The Owner covenants:
  - 4.1.1. To pay the Habitat Regulation Contribution to the Council prior to Commencement of Development on Noctorum Field.
  - 4.1.2. Not to Commence Development on Noctorum Field unless and until the Habitat Regulation Contribution has been paid in full to the Council.
  - 4.1.3. To pay the to the Council the BNG Monitoring Contribution prior to Commencement of Development on Noctorum Field.
  - 4.1.4. Not to Commence Development on Noctorum Field unless and until the BNG Monitoring Contribution has been paid in full to the Council.
  - 4.1.5. To pay the Open Space Contribution to the Council prior to Commencement of Development on Noctorum Field.

- 4.1.6. Not to Commence Development on Noctorum Field unless and until the Open Space Contribution has been paid in full to the Council.
- 4.1.7. To pay the Sports Contribution to the Council prior to Commencement of Development on Noctorum Field.
- 4.1.8. Not to Commence Development on Noctorum Field unless and until the Sports Contribution has been paid in full to the Council.

5. **Open Space**

5.1. The Owner covenants:

- 5.1.1. To submit to the Council the Open Space Management Plan for approval and;
- 5.1.2. That the Development shall not Commence on Noctorum Field until such approval is given by the Council, such approval not to be unreasonably withheld..

5.2. The Owner covenants to carry out the Development and to manage and maintain the Open Space Land thereafter in accordance with the terms on which the Council have approved the Open Space Management Plan for the purposes of paragraph 5.1 hereof

6. **Biodiversity Net Gain**

6.1. The Owner covenants:

- 6.1.1. To submit to the Council the BNG Plan for approval; and
- 6.1.2. That the Development shall not Commence on Noctorum Field until such approval is given by the Council, such approval not to be unreasonably withheld.

6.2. The Owner covenants to carry out the Development and to manage and maintain the BNG Land for a period of 30 (thirty) years beginning on the date of Practical Completion in accordance with the terms on which the Council have approved the BNG Plan for the purposes of paragraph 6.1 hereof

7. **McAllester Cricket Square Land**

- 7.1. The Owner covenants to retain the McAllester Cricket Square Land for the purpose of holding games of cricket and other related uses from the date hereof.
- 7.2. The Owner covenants not to Commence the Development on Noctorum Field unless and until the McAllester Cricket Square Land has been retained for the purposes set out in paragraph 7.1 hereof.

Part 2 – [REDACTED] and [REDACTED] Covenants

1. **[REDACTED] Works**

- 1.1. [REDACTED] covenants to the Council to Substantially Complete the [REDACTED] Works upon the [REDACTED] Site prior to Commencement of Development. on Noctorum Field.

1.2. [REDACTED] covenants to the Council to Substantially Complete the part of the [REDACTED] Works located upon the [REDACTED] Land prior to Commencement of Development on Noctorum Field.

2. [REDACTED] **Works**

2.1. [REDACTED] covenant to the Council as follows:

2.1.1. To Substantially Complete the [REDACTED] Works on the [REDACTED] [REDACTED] Site prior to Commencement of Development on Noctorum Field.

2.1.2. That the measures set out in the approved scheme for the purposes of paragraph 3.1.2 of Part 1 hereof shall be complied with in full, with effect from commencement of use of the [REDACTED] Works.

**Appendix 1 – Plans**

**Appendix 2 – PSD Agronomy Report**





