
**AGREEMENT UNDER SECTION 106 OF
THE TOWN AND COUNTRY PLANNING
ACT 1990 (AS AMENDED) RELATING
TO LAND ON THE NORTH-EAST OF
J10 M42**

- North Warwickshire Borough Council** (1)
- Warwickshire County Council** (2)
- David Hodgetts** (3)
- David William Hodgetts, Edward James Hodgetts and Georgina Jane
Hodgetts** (4)

CONTENTS

Clause	Heading	Page
1	DEFINITIONS AND INTERPRETATIONS	4
2	CONSTRUCTION OF THIS DEED	8
3	LEGAL BASIS	9
4	CONDITIONAL AGREEMENT	9
5	THE OWNER'S SUBSTANTIVE COVENANTS.....	10
6	THE COUNCIL AND COUNTY COUNCIL'S COVENANTS	10
7	STATUTORY AUTHORITIES AND CONDITIONALITY	10
8	GENERAL PROVISIONS	11
9	DISPUTE RESOLUTION	12
10	NOTICES.....	13
11	CHANGE OF OWNERSHIP	13
12	DELIVERY	13
13	VAT.....	13
14	INTEREST.....	14
15	INDEXATION.....	14
16	RELEASE AND WAIVER	14
17	FUTURE PERMISSIONS	14
18	JURISDICTION	14
	SCHEDULE 1	15
	SCHEDULE 2.....	22
	SCHEDULE 3.....	24
	APPENDIX 1	27



THIS DEED OF AGREEMENT is dated on

BETWEEN:-

- (1) **North Warwickshire Borough Council** of The Council House, South Street, Atherstone, Warwickshire CV9 1DE ("**the Council**");
- (2) **Warwickshire County Council** of Shire Hall, Market Place, Warwick, CV34 4RL ("**the County Council**");
- (3) **David Hodgetts** of Hall End Farm, Dordon, Tamworth, Warwickshire B78 1SZ ("**the First Owner**"); and
- (4) **David William Hodgetts, Edward James Hodgetts and Georgina Jane Hodgetts** of Hall End Farm, Dordon, Tamworth, Staffordshire B78 1SZ ("**the Second Owner**")

WHEREAS:-

- (A) The Council is the local planning authority for the area in which the Site and the Mitigation Land are situated.
- (B) The County Council is a local planning authority, the local highway authority and traffic authority for the area in which the Site and the Mitigation Land are situated.
- (C) The First Owner is the freehold owner of that part of the Site registered at the Land Registry under Title Number WK292568 and the Mitigation Land registered at the Land Registry under Title Numbers WK292568 and WK284476.
- (D) The Second Owner is the freehold owner of that part of the Site registered at the Land Registry under Title Number WK339411.
- (E) The Council did not determine the Application within the timetable required by statute and accordingly the Appeal has been submitted for determination by an Inspector on behalf of the Secretary of State.
- (F) The Owner considers that it is necessary in planning terms to enter into this Deed to mitigate the impact of the Development and make it acceptable in the event that the Planning Permission is granted].
- (G) The Owner considers that the provisions in this Deed are relevant planning considerations, are directly related to the Development, fairly and reasonably related in scale and kind to the Development and are reasonable in all other aspects.
- (H) The Parties are authorised to enter into this Deed on the terms and conditions set out below.

IT IS AGREED as follows:-

1 DEFINITIONS AND INTERPRETATIONS

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

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

"Appeal" means the appeal to the Secretary of State following non-determination of the Application by the Council given appeal reference APP/R3705/W/24/3336295;

"Application"	means the application for planning permission submitted to the Council in respect of land north-east of Junction 10 of the M42 motorway and bearing the reference number PAP/2021/0663;
"Birmingham Intermodal Freight Terminal"	means the terminal of the same name located to the immediate south-east of the Site;
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010, as amended from time to time;
"Commencement Notice"	means a written notice given by or on behalf of the Owner to the Council stating the date of Commencement (which date if disputed by the Council shall be determined by a Legal Expert under Clause 9 of this Deed);
"Commencement"	means the date on which any material operation (as defined in Section 56 (4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, archaeological investigations, demolition work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and re-routing of services, laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence" shall be construed accordingly
"Committed"	means (a) allocated by the County Council for expenditure within a budget relevant to the purpose for which the contribution was paid and such budget has been authorised by the relevant committee, or County Council member or County Council officer or (b) subject to a payment obligation under a relevant contract where such contract provides for payment contingent on the provision of works and/or services and/or supplies
"Decision Letter"	means the decision letter issued by the Inspector confirming whether or not the Appeal is allowed
"Development"	means the development of the Site pursuant to the Planning Permission

"Dispute Resolution"	means the procedure for resolving disputes under Clause 9 of this Deed
"Expert"	means a person with no less than 10 years recent and relevant experience
"Financial Contributions"	means the monies payable by the Owner to the County Council pursuant to Schedule 2 of this Deed
"Index"	<p>(a) in respect of all Financial Contributions payable to the County Council pursuant to Schedule 2 of this Deed, the 'General Index of Retail Prices' compiled and published by the Office of National Statistics or any other such index that substitutes the 'General Index of Retail Prices'; or</p> <p>(b) in respect of all other Financial Contributions payable to the Council, the 'Building Costs Information All-In Tender Price Index' published by the Royal Institution of Chartered Surveyors or any official publication substituted for it.</p>
"Index-Linked"	means the sum is to be adjusted by reference to the amount of any increase in the Index over the period from the date of this Deed to the month immediately prior to payment
"Inspector"	means the inspector appointed by the Secretary of State to determine the Appeal;
"Interest"	means interest at 4% above the base lending rate of the National Westminster Bank Plc from time to time;
"Improvements Scheme"	means improvements to the public rights of way and proposed permissive paths identified in the scheme submitted pursuant to paragraph 2.1 of Part 2 of Schedule 1 of this Deed.
"Legal Expert"	means a qualified barrister or solicitor with not less than 10 years recent and relevant experience
"Management Entity"	means a limited company registered at Companies House which may already be in existence or which may be formed by the Owner for the purpose of carrying out future maintenance and management of the Mitigation Land and which is incorporated in

England or Wales and which has its registered office in England and whose primary objects permit it to maintain manage and renew the Mitigation Land;

“Monitoring Fee”	means the sum of £1,250 (One Thousand Two Hundred and Fifty Pounds) payable to the County Council in relation to the monitoring of compliance with the terms of this Deed;
“Mitigation Land”	means the land edged blue on Plan 1;
"Occupation"	means the occupation of any part of the Development for its designated planning use but does not include occupation by the Owner or any contractor or other occupier for the purposes of security, construction, fitting out, decoration, marketing or display and "Occupy" and "Occupier" shall be construed accordingly;
“OS1”	means Open Space Transfer Location 1 identified as site OS1 and OS2 in the North Warwickshire Local Plan (adopted September 2021);
“Owner”	means the First Owner and the Second Owner;
"Owner Obligations"	means the obligations of the Owner contained in this Deed;
"Parties"	the Council, the County Council and the Owner and their successors in title or duties as appropriate and "Party" shall mean any one of them;
“Phase”	means a phase of the Development shown on a phasing plan or plan approved in relation to the Planning Permission or from time to time approved pursuant to a condition of the Planning Permission;
"Plan 1"	means the plan attached to this Deed at Appendix 1 marked "Plan 1" showing the Site, Mitigation Land and areas of public open space and publicly accessible open space proposed;
”Plan 2”	means the plan attached to this Deed at Appendix 1 showing the routes of existing and proposed public rights way and permissive paths;
“Plan 3”	means the plan attached to this Deed at Appendix 1 showing the areas of landscape mitigation confirmed through the approved Landscaping Scheme on the Mitigation Land;

“Plan 4”	means the plan attached to this Deed at Appendix 1 showing the proposed layout of plots;
"Planning Permission"	means the planning permission to be granted pursuant to the Application together with any modification thereof by way of an application pursuant to section 73 of the 1990 Act and any other planning permission granted after the date of this Deed that is for development of the Site (or any part of it) of a similar nature as development authorised by the Planning Permission
"Secretary of State"	means the Secretary of State for Levelling Up, Housing and Communities (or such successor Secretary of State or minister of state who shall assume the same decision-making powers from time to time);
"the Site"	means the red line area relating to the Planning Permission shown edged red on Plan 1;
“Travel Plan”	means the Vision Based Travel Plan dated December 2023 together with any Sustainable Travel Plan approved pursuant to Condition [] of the Planning Permission;
"Working Day(s)"	means any day apart from Saturday and Sunday and any bank holiday or public holiday
“Unit”	means []

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any Clause, paragraph or Schedule such reference (unless the context otherwise requires) is a reference to a Clause, paragraph or Schedule in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 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 person deriving title through or under that Party and in the case of the Council and the successors to their statutory functions.
- 2.6 The headings and contents list are for reference only and shall not affect construction.
- 2.7 Nothing in this Deed shall be construed as restricting the exercise by the Council or the County Council of any power or discretion exercisable by them under an act of Parliament nor prejudicing or affecting their rights, powers duties and obligations in any capacity as a local or public authority.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other powers so enabling.
- 3.2 The obligations, covenants and undertakings on the part of the Owner in this Deed are planning obligations insofar as they are capable of being lawfully made pursuant to and for the purpose of section 106 of the 1990 Act and are given so as to bind the Owner's interests in the Site and the Mitigation Land and with the intent that they shall be enforceable by the Council and the County Council not only against the Owner but also against any successors in title to or assigns of or transferees of the Owner and/or any person claiming through or under the Owner an interest or estate in the Site and the Mitigation Land as if that person had been an original covenanting party and insofar as any such obligations, covenants or undertakings are not capable of falling within section 106 of the 1990 Act the same are entered into as obligations, covenants or undertakings in pursuance of any other such enabling power.

4 CONDITIONAL AGREEMENT

- 4.1 The Owner's obligations in this Deed are conditional upon:

- (a) the grant of the Planning Permission pursuant to the Appeal;
- (b) Commencement of the Development pursuant to the Planning Permission

SAVE FOR the provisions of Clauses 8.7, 9, 11, 12, 18 and 19 (legal costs, dispute resolution, change of ownership, delivery, counterparts and jurisdiction clauses) which shall come into effect immediately upon completion of this Deed.

- 4.2 In the event that the Inspector;

- (a) declares in the Decision Letter that that one or more of the provisions of this Deed are not compliant with regulation 122 of the CIL Regulations and/or
- (b) imposes a condition upon the Planning Permission that the Inspector in their Decision Letter declares has the same effect as one or more of the planning obligations in this Deed and therefore does not need to be secured via planning obligation;

then the said provisions of this Deed which the Inspector declares in their Decision Letter are either not compliant with regulation 122 of the CIL Regulations or can be secured via planning condition instead shall thereafter have no legal effect but the remainder of the planning obligations in this Deed shall remain legally effective and binding.

5 THE OWNER'S SUBSTANTIVE COVENANTS

5.1 Subject to Clauses 4, and 7 of this Deed:-

- (a) the Owner for and on behalf of itself and its heirs assigns and successors in title with the intention that the following provisions shall bind its interest in the Site and Mitigation Land and every part of it into whosoever's hand it may come covenant with the Council that it will comply with the Owner Obligations (including but not limited to the provisions contained in Schedules 1 and 2 annexed to this Deed); and
- (b) the Owner for themselves and their successors in title consent to the Site and Mitigation Land being bound by the terms of this Deed.

5.2 The Owner shall serve a Commencement Notice on the Council and County Council within 5 Working Days of the date of Commencement of the Development.

6 THE COUNCIL AND COUNTY COUNCIL'S COVENANTS

6.1 The Council covenants with the Owner that it will comply with the covenants on the part of the Council contained in this Deed (including but not limited to the provisions contained in Schedule 3).

6.2 The County Council covenants with the Owner that it will comply with the covenants on the part of the County Council contained in this Deed (including but not limited to the provisions contained in Schedule 3).

7 STATUTORY AUTHORITIES AND CONDITIONALITY

7.1 The obligations on the part of the Owner are planning obligations for the purposes of section 106 of the 1990 Act and are jointly and severally enforceable against the Owner by the Council and/or the County Council (as the case may be).

7.2 This Deed shall have no further effect:-

- (a) in the event of the revocation of the Planning Permission; or
- (b) from the date upon which the Planning Permission is quashed as a result of judicial review proceedings or other legal challenge but without prejudice to any liability which may have arisen pursuant to this Deed consequent upon the Commencement of Development pursuant to the Planning Permission prior to being quashed

only to the extent such revocation or quashing leaves behind no implementable Planning Permission.

8 GENERAL PROVISIONS

- 8.1 It is agreed and declared that the covenants on behalf of the Owner contained in this Deed shall be local land charges and the Council shall procure that the same are registered as such.
- 8.2 Subject to Clause 4 the covenants, obligations and restrictions agreed by the Owner contained in this Deed shall be enforceable against the Owner and its successors in title during the period when this Deed remains in force.
- 8.3 This Deed shall not bind nor be enforceable against the following:-
- (a) a mortgagee or chargee of the Owner unless and until and except to the extent that any breach of the obligations contained in this Deed is committed or continuing at a time when it has become a mortgagee in possession of that part of the Site in which it has an interest or has exercised its power of sale under its security or has appointed a receiver or has foreclosed in respect of all or any part of it;
 - (b) any statutory undertaker or other person who has or who acquires any part of the Site or any interest therein for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport services nor any mortgagee or chargee of any such persons;
 - (c) a Management Entity which is set up or appointed to manage and maintain any mitigation works except in respect of the restrictions and obligations relating to the part or parts of the Site or Mitigation Land which are transferred to the Management Entity.
- 8.4 The Owner shall not be liable to the Council for a breach of an obligation relating to any part of the Site which occurs whilst they have no interest therein or once they have parted with their interest relating to that part of the Site but without prejudice to the liability of the Owner for any subsisting breach occurring prior to their parting with such interest and PROVIDED THAT the reservation of any rights of access and/or to lay or maintain equipment shall not constitute an interest for the purposes of this Clause 8.
- 8.5 The Owner and the Council covenant with each other that where in this Deed any further information is to be provided or decisions made all such steps shall be taken promptly and not unreasonably withheld or delayed.
- 8.6 The Owner and the Council agree that they will act reasonably, properly, diligently and in good faith in exercising their discretion and observing and performing their covenants and obligations under this Deed (subject always to the proviso set out below). In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of this Deed, the Council and the Owner will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement, expression of satisfaction or other similar affirmation **PROVIDED ALWAYS**

THAT where it is expressly provided that a matter will be in the absolute discretion of a Party this Clause 8.6 shall have no application.

8.7 The Owner shall pay to the Council and the County Council prior to the completion of this Deed the reasonable fees of the Council and the County Council incurred in the negotiation, preparation and execution of this Deed.

8.8 The Owner shall pay to the County Council the Monitoring Fee prior to Commencement of the Development.

9 DISPUTE RESOLUTION

9.1 In the event of any dispute arising between the Parties as to the construction or meaning of this Deed or their respective rights, duties and obligations under this Deed or as to any matter arising out of or in connection with the subject matter of this Deed the Parties will attempt to resolve that dispute amicably including holding a meeting or meetings attended by at least one representative from each Party.

9.2 Subject to Clause 9.1 any dispute between the Council or County Council and the Owner (or any number of them) in relation to the terms of this Deed (other than a dispute touching or concerning the meaning or construction of this Deed) shall be referred to an Expert appointed jointly by the Parties to the dispute or in default appointed by the President or the Vice-President (or in either case their nominated deputy) for the time being of the Royal Town Planning Institute on the application of any Party to the dispute.

9.3 Subject to Clause 9.1 any dispute between the Council or County Council and the Owner (or any number of them) touching or concerning the meaning or construction of this Deed shall be referred to a Legal Expert appointed jointly by the Parties to the dispute or in default appointed by the President or the Vice President (or in either case their appointed deputy for the time being) of the Law Society of England and Wales on the application of any Party to the dispute.

9.4 It is further agreed that:-

- (a) the Parties to the dispute will be entitled to make representations and counter representations in accordance with such timetable as the Expert or the Legal Expert shall direct;
- (b) the Expert or the Legal Expert shall give written reasons for his decision;
- (c) the Expert's or the Legal Expert's costs will be borne in equal proportions by the Parties to the dispute or in such other proportions as the Expert or the Legal Expert may direct; and
- (d) the Expert or the Legal Expert shall comply with any time limit or other directions agreed by the Parties to the dispute on or before his/her appointment PROVIDED ALWAYS THAT if the Expert or the Legal Expert fails to comply with the time limits any Party to the dispute may

apply prior to the making of the Expert's or the Legal Expert's decision for a fresh appointment to be made.

9.5 Nothing in this Clause 9 of this Deed shall be taken to fetter the ability of the Council to carry out their statutory functions as local planning authority with powers to seek appropriate remedy in respect of any breach of any of the obligations entered into by the Owner in this Deed.

9.6 Nothing in this Clause 9 of this Deed shall be taken to fetter the ability of the Council to carry out their statutory functions with powers to enforce a breach of planning control under the 1990 Act arising from any breach of the conditions subject to which any Planning Permission is granted.

10 NOTICES

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

10.2 Each notice served in accordance with this Clause 10 of this Deed shall be deemed to have been given or made and delivered if by hand delivery when left at the relevant address provided that this is prior to 5.00 pm on a Working Day or if after 5.00 pm then on the next Working Day if not or if by letter 48 hours after posting.

11 CHANGE OF OWNERSHIP

11.1 The Owner covenants with the Council to give the Council written notice of any change in ownership of their interests or the grant of any other interests in the Site and the Mitigation Land or part thereof occurring before all the obligations under this Deed have been discharged, such notice to be served within 20 Working Days following the change and to give details of the transferee's or other interested party's full name and registered office (if a company) or usual address (if not a company), together with a plan showing the area of the Site and the Mitigation Land to which the disposal relates.

12 DELIVERY

12.1 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.

13 VAT

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

13.2 Notwithstanding the intention of the Parties expressed in Clause 13.1 where one party ("the supplier") makes or is deemed to make a supply to another party ("the recipient") for VAT purposes under this Deed, whether the supply is for a monetary consideration or otherwise, the recipient shall pay to the supplier an amount equal to the VAT in addition to the sums payable under this Deed at the earlier of:

- (a) the date on which the recipient recovers the VAT element as input tax whether by credit or repayment; and
- (b) five days prior to the date on which the supplier is required to account for the VAT on the payments to HM Revenue and Customs PROVIDED ALWAYS THAT the supplier has first provided the recipient with a valid VAT invoice in respect of the supply.

14 INTEREST

- 14.1 If any payment due to the County Council under this Deed is not paid on the date on which it is due, the Owner shall pay Interest on the whole or any part of such payment from the date when the payment became due until actual payment.

15 INDEXATION

- 15.1 Where in this Deed any sum or value is to be paid or is otherwise referred to then unless stated to the contrary such sum or value shall be increased (as the case may be) by the percentage change in the relevant Index from the date of grant of the Planning Permission until the date each payment is due (or the date that it becomes necessary to calculate such sum or value) to be calculated by reference to the most recently published figures for the Index prior to the date of the Planning Permission and prior to each payment date.

16 RELEASE AND WAIVER

- 16.1 No waiver (whether express or implied) by the Council or the County Council of any breach or default in performing or observing any of the obligations contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council and/or the County Council (as the case may be) from enforcing any of the said obligations or from acting upon any continuing or subsequent breach or default thereof.

17 FUTURE PERMISSIONS

- 17.1 Nothing in this agreement prohibits or limits the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission) granted after the date of the Planning Permission.

18 JURISDICTION

- 18.1 This Deed is governed by and interpreted in accordance with the Laws of England.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

Schedule 1

Part 1: Off-Site Landscape Mitigation Works

In this Schedule the following words and expressions shall unless the context requires have the meaning set out below:-

- “Biodiversity Gain Plan”** means the approved scheme submitted and approved by the Council to ensure post-development net biodiversity gain pursuant to the discharge of Condition [26] of the Planning Permission
- “Birchmoor Parking Scheme”** means a scheme of proposed controls and management measures for parking in Birchmoor and managing associated impacts on said parking emerging from the Development to include details of any proposed measures and the proposed timetable for their delivery and, if necessary, details of the Birchmoor Parking Contribution;
- “Birchmoor Parking Contribution”** means a financial contribution as described in the Birchmoor Parking Scheme to be spent on measures to control or manage parking in Birchmoor including but not limited to any Traffic Regulation Order(s) and/or associated improvements which the County Council considers to be reasonably necessary;
- “HMMP”** means a habitat management and monitoring plan to be submitted to and which may be approved by the Council pursuant to Schedule 1, Part 4 which shall set out as far as is relevant to the Biodiversity Gain Plan approved by the Council:
- a plan to manage the off-site gains and/or significant on-site enhancements,
 - arrangements for monitoring habitats;
 - arrangements for monitoring and reporting the progress of habitat enhancement to the Council;
 - arrangements for reviewing management proposals; and
- arrangements for restoration of habitats if the management plan and/or existing arrangements fail.
- "Landscape Strategy"** means a strategy for the provision and maintenance of offsite landscape mitigation in perpetuity on the land shaded green on Plan 1 and shaded gold and pink on Plan 3 within the Mitigation Land (**“Works”**) including the following elements:
- a) Description and evaluation of features to be managed.

- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organisation proposed to carry out the Works.
- h) Ongoing monitoring and remedial measures.
- i) Details of the legal and funding mechanisms to secure the implementation of the Landscape Strategy in perpetuity.
- j) How contingencies and/or remedial action will be identified, agreed and implemented so that the Development continues to deliver the biodiversity objectives of the approved scheme.
- k) A plan showing the proposed planting scheme and the location of the Works within the areas shaded pink on Plan 1;
- l) A detailed specification for the future operation, management and maintenance of the Mitigation Land and the Works following their completion (“**Management Scheme**”), with the objective to maintain the Mitigation Land and the Works on the Mitigation Land to their respective completed standards; and
- m) The responsibilities of the Management Entity for management and maintenance of the Works on the Mitigation Land and compliance with the Management Scheme and how the Management Entity will be funded in perpetuity utilising service charges.

“Pasture Land”

means land identified as Pasture within the land shaded green on Plan 3 in details approved pursuant to paragraph 3.1 of Part 3 of Schedule 1 of this Deed (“**Approved Pasture Details**”) subject always to the requirements of OS1

1 LANDSCAPE STRATEGY

1.1 The Owner shall:

- (a) submit the Landscape Strategy to the Council for approval prior to the Commencement of the Development;
 - (b) not Commence or permit or suffer Commencement of the Development until the Council has provided its written approval of the Landscape Strategy; and
 - (c) maintain and manage the Mitigation Land in accordance with the approved Landscape Strategy in perpetuity.
- 1.2 The Owner shall implement the approved Landscape Strategy in the first full planting season following Commencement of the Development save as otherwise agreed in the programme included in the Landscape Strategy
- 1.3 The Owner shall carry out planting, seeding or turfing comprised in the Landscape Strategy in accordance with the programme included in the Landscape Strategy
- 1.4 Any trees or plants within the approved Landscape Strategy which die, are removed or become seriously damaged or diseased shall be replaced by the Owner in the next planting season with others of similar size (as planted – Standard or Heavy Standard) and species unless otherwise approved in writing by the Council.
- 1.5 The Owner shall permit the public to have unfettered access at all times (save in cases of temporary closure or emergency, or as otherwise agreed from time to time in writing between the Owner and the Council) to each of the areas hatched green on Plan 1.
- 1.6 The parties may agree amendments to the Landscape Strategy in writing including amendments in order to address and accommodate for a future transfer of land which may be reasonably required in relation to OS1 hatched purple on Plan 1 and the parties note for the avoidance of doubt that said transfer of the land identified hatched purple on Plan 1 is anticipated at a future date.

Part 2: Off-Site Public Rights of Way Improvements

- 2.1 The Owner shall not Commence or permit or suffer the Commencement of the Development unless and until:
- (a) a scheme of pedestrian and cycleway improvements for the land identified in khaki on Plan 2 on the Site and Mitigation Land (such details not to include street furniture signage information boards or outdoor gym equipment) is submitted to and approved in writing by the Council.
- 2.2 The Owner shall not Occupy or permit or suffer the Occupation of any part of the Development unless and until:

- (a) the public rights of way and permissive paths identified as khaki on the Site and Mitigation Land within Plan 2 have been provided in accordance with the Improvements Scheme to the reasonable satisfaction of the Council; and
- (b) the approved Improvements Scheme has been implemented in its entirety to the satisfaction of the Council;

SUBJECT ALWAYS TO paragraphs 2.4 and 2.5 below.

- 2.3 The Owner shall manage and maintain public rights of way and permissive paths identified as khaki within the Mitigation Land on the Footpath Plan to the standard identified in the approved Improvements Scheme SUBJECT ALWAYS TO paragraphs 2.4 and 2.5 below.
- 2.4 it is agreed between the parties that in the event of non-compliance by the Owner with paragraphs 2.2 and/or 2.3 of this Part 2 due to the Owner not obtaining sufficient interest or control in the relevant public right of way to carry out, manage or maintain the land (as appropriate) then in respect of any such public right of way or permissive path said obligations shall have no effect and in each case a financial contribution shall be payable to the County Council within 21 days in the following sums:

Public Right of Way or Permissive Path	Financial Contribution
AE46	
AE48	

- 2.5 the County Council may notify the Owner in writing that, in respect of any public right of way for which a financial contribution has been paid pursuant to paragraph 2.4, the County Council may instead require the Owner to carry out alternative and equivalent public right of way improvements (within the Site and/or Mitigation Land as appropriate). Upon receipt of notice:
 - (i) The Owner shall use reasonable endeavours to carry out those improvements in accordance with a specification and timetable which will be agreed with the County Council in writing; and
 - (ii) The County Council shall refund the contribution paid pursuant to paragraph 2.4 within 21 days of notification.

Part 3: Pasture Land

3 PASTURE

- 3.1 The Owner shall not Commence or permit or suffer the Commencement of any part of the Development unless and until:

- (a) details of land within the Site and Mitigation Land within the area shaded green on Plan 3 to be converted to pasture are submitted to and approved in writing by the Council; and
 - (b) details of proposals for the ongoing management and maintenance of the proposed pasture are approved in writing by the Council.
- 3.2 The Owner shall deliver the Pasture Land in accordance with the Approved Pasture Details and in accordance with the timetable approved as part of the Approved Pasture Details.
- 3.3 The Owner shall use reasonable endeavours to manage and maintain the Pasture Land following the delivery of the Pasture Land as pasture, in accordance with the requirements of the Approved Pasture Details;
- 3.4 SAVE THAT the obligations in Part 3 of this Schedule 1 may be varied waived or removed by agreement between the Owner and Council in writing AND THAT the parties may agree amendments to the Approved Pasture Details in writing including amendments in order to address and accommodate for a future transfer of land which may be reasonably required in relation to OS1 hatched purple on Plan 1 and the parties note for the avoidance of doubt that said transfer of the land identified hatched purple on Plan 1 is anticipated at a future date.

Part 4: Biodiversity Net Gain

4 BIODIVERSITY NET GAIN

- 4.1 The Owner shall not Commence the Development until the Biodiversity Gain Plan and HMMP have been submitted to and approved by the Council.
- 4.2 The Owner shall carry out and comply with the provisions of the Biodiversity Gain Plan and HMMP unless otherwise agreed in writing with the Council.
- 4.3 The Owner may from time to time submit a revised Biodiversity Gain Plan and/or HMMP to the Council and if approved by the Council in writing the revised Biodiversity Gain Plan and/or HMMP shall then be the Biodiversity Gain Plan and/or HMMP (as appropriate) for the purposes of this Deed.

Part 5: Management Entity

5 MANAGEMENT ENTITY

- 5.1 The Owner shall not cause or permit any Unit to be Occupied or to sell or cause or permit any Unit to be disposed of other than by way of a transfer or lease:
- (a) Which includes a covenant from the transferee or lessee of the Unit to become a member of the Management Entity and contribute a fair and reasonable proportion by way of a service

charge towards the cost of maintaining and managing the Mitigation Land in perpetuity accordance with [] and this Deed;

- (b) In which the Owner or Management Entity (as appropriate) covenants with the transferee or leasee of the Unit to maintain and manage, or to procure the maintenance and management of the Mitigation Land in perpetuity through the Management Entity in accordance with [] and this Deed and to use any service charge received from the transferee or lessee of a Unit for such management and maintenance; and
- (c) Which requires an application to be made to the Chief Land Registrar to place a Restriction on the Land Registry Proprietorship Register for that Unit stating that except under an order of the Registrar any future disposal of the Title interest in the Unit shall only be registered if accompanied by a Certificate from the Management Entity (or its solicitors) confirming compliance with paragraphs [] and [] above

5.2 For the avoidance of doubt the Owner must ensure that the Management Entity is appropriately funded in the event of periods of vacancy

Part 6: Parking Control Scheme

6 PARKING CONTROLS

- 6.1 The Owner shall not Occupy or permit or suffer the Occupation of any part of the Development unless and until the Birchmoor Parking Scheme has been submitted and approved by the County Council.
- 6.2 If the Birchmoor Parking Scheme includes details of the Birchmoor Parking Contribution, then:
 - (a) The Owner shall make the Birchmoor Parking Contribution available to the County Council for a period of ten years starting from first Occupation of the Development; and
 - (b) Upon receipt of a written request from the County Council at any time within the ten-year period referred to in (a) above, the Owner shall make payment of all or part of the Birchmoor Parking Contribution (as requested) within 21 Working Days of receipt.

Part 7: Birmingham Intermodal Freight Terminal

7 PROMOTION

- 7.1 The Owner covenants to:
 - (a) Provide any and all Occupiers of the Development with:
 - (i) Details of all existing rail freight facilities and services provided at Birmingham Intermodal Freight Terminal (insofar as details of these are known to the Owner); and

- (ii) Details of changes to rail freight services provided at Birmingham Intermodal Freight Terminal together with any changes to relevant timetables which the Owner becomes aware of.

together the “**Service Details**”.

- (b) Promote the use of rail freight facilities and services which are available at Birmingham Intermodal Freight Terminal together with the Service Details as part of all relevant promotional materials as required to any and all Occupiers and/or prospective Occupiers of land at Plot A1 on Plan 4;
- (c) Actively and proactively promote the rail freight facilities and services available at Birmingham Intermodal Freight Terminal together with the Service Details during the preparation and implementation of any Travel Plan;
- (d) Actively and proactively promote the rail freight facilities and services available at Birmingham Intermodal Freight Terminal together with the Service Details to each successive Occupier of any Unit.

7.2 The Owner covenants to regularly promote measures to facilitate the use of the Birmingham Intermodal Freight Terminal including as appropriate information to be incorporated into all applicable publicity materials and by making copies of the Service Details and Travel Plan available to Occupiers, staff, visitors and customers to the Development.

Schedule 2

Financial Contributions

In this Schedule the following words and expressions shall unless the context requires have the meaning set out below:-

“Birchmoor Highway Signage Contribution”	means the sum of [TBC] to be spent on the provision and improvement of signage and road markings for HGVs and associated improvements in the locality of Birchmoor.
“Bus Improvement Contribution”	means the sum of £1,080,000 (One Million and Eighty Thousand Pounds) to be spent on the provision and maintenance of a bus service between the Development, Tamworth, Atherstone and Nuneaton.
“Bus Shelter RTI Replacement Screen Commuted Sum”	means the sum of £2,500 (Two Thousand Five Hundred Pounds) to pay for a replacement real time information screen on the new bus shelter.
“Bus Shelter RTI Maintenance Contribution”	means the sum of £4,000 (Four Thousand Pounds) to be spent on the maintenance of the real time information equipment installed on the new bus shelter for 5 (five) years.
“Bus Shelter Maintenance Contribution”	means the sum of £5,000 (Five Thousand Pounds) to be spent on the maintenance of the new bus shelter for 5 (five) years

1 CONTRIBUTIONS

- 1.1 The Owner covenants to pay the Birchmoor Highway Signage Contribution to the County Council prior to Occupation of the first Phase of the Development.
- 1.2 The Owner covenants to pay 20% of the Bus Improvement Contribution totalling £216,000 (Two Hundred and Sixteen Thousand Pounds) to the County Council prior to Occupation of the first Phase of the Development.
- 1.3 The Owner covenants to pay 20% of the Bus Improvement Contribution totalling £216,000 (Two Hundred and Sixteen Thousand Pounds) to the County Council prior to the first anniversary of the date of first Occupation of the first Phase of the Development.
- 1.4 The Owner covenants to pay 20% of the Bus Improvement Contribution totalling £216,000 (Two Hundred and Sixteen Thousand Pounds) to the County Council prior to the second anniversary of the date of first Occupation of the first Phase of the Development.
- 1.5 The Owner covenants to pay 20% of the Bus Improvement Contribution totalling £216,000 (Two Hundred and Sixteen Thousand Pounds) to the County Council prior to the third anniversary of the date of first Occupation of the first Phase of the Development.

- 1.6 The Owner covenants to pay 20% of the Bus Improvement Contribution totalling £216,000 (Two Hundred and Sixteen Thousand Pounds) to the County Council prior to the fourth anniversary of the date of first Occupation of the first Phase of the Development.
- 1.7 The Owner covenants to pay the Bus Shelter RTI Replacement Screen Commuted Sum within 5 (five) Working Days of installation of the real time information equipment at the new bus shelter.
- 1.8 The Owner covenants to pay the Bus Shelter RTI Maintenance Contribution within 5 (five) Working Days of installation of the real time information equipment at the new bus shelter.
- 1.9 The Owner covenants to pay the Bus Shelter Maintenance Contribution within 5 (five) Working Days of the completion of the new bus shelter.

Schedule 3

The Council and County Council's Covenants

In this Schedule the following words and expressions shall unless the context requires have the meaning set out below:-

The County Council covenants with the Owner as follows:

1 EXPENDITURE OF CONTRIBUTIONS

1.1 The County Council covenants with the Owner to:

- (a) ensure that Financial Contributions paid to it shall only be applied as set out in this Deed.
- (b) provide such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed PROVIDED THAT such request shall be made in writing to the County Council's Infrastructure Delivery Manager and that the Owner shall each only make one such request in any twelve month period.
- (c) to return any monies received by them pursuant to this Deed which are not expended or Committed on the tenth anniversary following Occupation of the Development.

The Council covenants with the Owner as follows:

2 MANAGEMENT AND MAINTENANCE PROPOSALS

2.1 The Council covenants to give written notice of its approval (such approval not to be unreasonably withheld or delayed) or refusal (together with reasons) of the Landscape Strategy submitted under paragraph 1 of Schedule 1 no later than 60 (sixty) Working Days from the date of receipt of the Owner's proposals or such longer period as may be agreed in writing.

Signed as a deed by **DAVID HODGETTS** in the presence of

Signature: _____

Signature of witness: _____

Name (in BLOCK CAPITALS): _____

Address: _____

Signed as a deed by **DAVID WILLIAM HODGETTS** in the presence of

Signature: _____

Signature of witness: _____

Name (in BLOCK CAPITALS): _____

Address: _____

Signed as a deed by **EDWARD JAMES HODGETTS** in the presence of

Signature: _____

Signature of witness: _____

Name (in BLOCK CAPITALS): _____

Address: _____

Signed as a deed by **GEORGINA JANE HODGETTS** in the presence of

Signature: _____

Signature of witness: _____

Name (in BLOCK CAPITALS): _____

Address: _____

EXECUTED as a **DEED** (but not)
delivered until dated) by affixing)
the Common Seal of)
NORTH WARWICKSHIRE BOROUGH COUNCIL)
in the presence of:-)

EXECUTED as a **DEED** (but not)
delivered until dated) by affixing)
the Common Seal of)
WARWICKSHIRE COUNTY COUNCIL)
in the presence of:-)

Appendix 1

PLANS

"Plan 1"	Plan 1
"Plan 2"	Plan 2
"Plan 3"	Plan 3
"Plan 4"	Plan 4