



Homes  
England

Date: 15 September 2021

Our Ref: RFI3536

Tel: 0300 1234 500

Email: [infogov@homesengland.gov.uk](mailto:infogov@homesengland.gov.uk)

Making homes happen

██████████  
By Email Only

Information Governance Team  
Homes England  
Windsor House – 6<sup>th</sup> Floor  
50 Victoria Street  
London  
SW1H 0TL

Dear ██████████

**RE: Request for Information – RFI3536**

Thank you for your request for information which was processed in accordance with the Freedom of Information Act 2000 (FOIA).

You requested the following information:

*I am writing to you under the Freedom of Information Act 2000 to request the following information from Homes England regarding a property development scheme involving Morris Homes (Midland) Limited which is part of the Morris Homes Group and the Homes and Communities Agency which is now known as Homes England. The property development and property marketing ran in phases from 2012 - 2016.*

*Please may you provide me with:*

- 1) Complete unredacted copies of all documents related to contracts and agreements made between Morris Homes (Midland) Limited and the Homes and Communities Agency regarding the Vista Peterborough property development. The development was also known as Cripple Sidings and the Carbon Challenge.*
- 2) Complete unredacted copy of the Vista Peterborough scheme appraisal report produced following completion of the Vista Peterborough development.*
- 3) Complete unredacted copies of the minutes of any meetings, and/or any agreement reached, held with the Homes England, and/or its predecessor agency, and Morris Homes, relating to the property development scheme, transfer of property Freehold under the scheme and division of profits from the Vista Peterborough development scheme.*

We wrote to you on 13 August to advise that a qualified exemption applied to the information held that fell within the scope of your request and that we were considering the arguments for and against disclosure. In response you provided the following arguments which we have taken into account when considering our response:

- 1. Recent global weather and natural disaster events demonstrate the harm that current modes of living are causing the environment. Members of the public are very interested to know the outcome of schemes such as Vista Peterborough that seek to address environmental issues related to carbon emissions from people's homes.*

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Consumers need good quality information to avoid confusion: <https://www.bbc.co.uk/news/science-environment-58320578>

2. *Members of the public purchased eco-friendly properties from the Vista Peterborough scheme but there is no information publicly available to them regarding the ecological objectives of the Vista Peterborough development and whether the scheme was successful in reaching objectives agreed with HCA.*
3. *Members of the public, who purchased Vista Peterborough properties, were given information regarding the HCA/Morris Homes scheme and agreement during the sales process which formed the basis of consumers' purchasing decisions. Without the requested information regarding the scheme those consumers cannot determine whether the information provided by sales advisors was correct. For example, Morris Homes sales advisors told potential buyers that the properties had to be sold as leasehold tenure due to an agreement between HCA and Morris Homes. Buyers were also advised that the eco-friendly property features were stipulated by the HCA. Without full details of the scheme agreed between HCA and Morris Homes, it is not possible for members of the public to confirm whether information provided to them at the point of sale was correct.*
4. *The public has an interest in knowing the full results of a scheme to provide eco-friendly housing to help them identify good quality and well operated eco-friendly housing schemes now and in the future.*
5. *Present owners of the Vista Peterborough properties, members of the public, were invoiced 2017-2020 for items in the estate Annual Service Charges which refer to "Travel Coordination". The Property Management company advised Vista property owners that this charge is for a travel coordination web site for Vista Peterborough residents which was never set up by Morris Homes. Without the full information about the HCA and Morris Homes scheme for the Vista development, it is impossible for members of the public to query whether a "Travel Coordination" web site was an HCA requirement for the Vista scheme, whether the requirement was met by Morris Homes and what benefits Vista property owners and estate residents have missed out on due to the web site not being provided.*
6. *Members of the public who own Vista properties seek to purchase their freehold. During that process it is necessary to review, understand and possibly challenge any restrictive covenants or other obligations associated with the freehold title deeds. Without the full information about the agreement between HCA and Morris Homes it will be more difficult for leaseholders seeking to purchase their property freehold to confirm whether restrictive covenants are a form of "fleecehold" or whether they truly benefit neighbours and the estate as requested by HCA and should be allowed to remain attached to the freehold title deed.*

### **Response**

We can confirm that we do hold some of the requested information. For clarity, we will address each of your original points in turn.

- 1) ***Complete unredacted copies of all documents related to contracts and agreements made between Morris Homes (Midland) Limited and the Homes and Communities Agency regarding the Vista Peterborough property development. The development was also known as Cripple Sidings and the Carbon Challenge.***

Please find attached the following annexes which constitute the recorded information that Homes England holds in scope of this part of your request:

Annex A – Unilateral Undertaking dated 16 March 2011

Annex B – Lease dated 25 March 2011

Annex C – Deed of Variation to Lease dated 20 December 2012



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#### Section 40 – Personal information

We have redacted information on the grounds that it constitutes third party personal data and therefore engages section 40(2) of the FOIA.

To disclose personal data, such as names and signatures could lead to the identification of third parties and would breach one or more of the data protection principles.

Section 40 is an absolute exemption which means that we do not need to consider the public interest in disclosure. Once it is established that the information is personal data of a third party and release would breach one or more of the data protection principles, then the exemption is engaged.

The full text in the legislation can be found on the following link:

<https://www.legislation.gov.uk/ukpga/2000/36/section/40>

#### **2) *Complete unredacted copy of the Vista Peterborough scheme appraisal report produced following completion of the Vista Peterborough development.***

We can confirm that we do hold the information requested. However we are withholding the document from disclosure under the following FOIA exemption:

#### Section 43 - Commercial interests

Under section 43(2) Homes England is not obliged to disclose information that would, or would be likely to, prejudice the commercial interests of any party.

The appraisal held (Project Review Report) engages section 43(2) of the FOIA as it is commercial in nature and its release would be likely to prejudice the commercial interests of Homes England and other interested parties to the information.

Homes England has identified that the information requested, if released, would be likely to prejudice Homes England's commercial and reputational position as a partner in the market and affect the ability of our partners to operate in a commercial market.

Section 43 is a qualified exemption. This means that once we have decided that the exemption is engaged, Homes England must carry out a public interest test to assess whether or not it is in the wider public interest for the information to be disclosed.

#### Arguments in favour of disclosure:

- Homes England acknowledges there is a general public interest in promoting accountability, transparency, public understanding and involvement in how Homes England undertakes its work and how it spends public money; and
- Homes England acknowledges there is an interest in the financial outcomes of spending of public money.



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Arguments in favour of withholding:

- The withheld document has been produced by a third party who has been procured to undertake works by Homes England. To release the content of a document produced relatively recently (2018) would inform other suppliers of similar services of the content of a competitor's output. This would be likely to negatively impact our ability to procure services at market value from future partners. If organisations felt the content of work undertaken would be available to their competitors, they would be unlikely to want to provide these services to Homes England. This would mean that Homes England would not be able to procure and engage the best services. Both value for money and quality of applicant could be adversely affected. It would not be in the public interest for Homes England to have limited access to procured or engaged services;
- Disclosure would also undermine confidence in Homes England by the wider industry, which would deter partners and developers from approaching us with proposals if they felt their sensitive commercial information would be released. If revealed to a wider audience, it would affect future negotiations for the same or similar services. Homes England needs to attract the developers who will apply the funding we have provided to deliver the homes that the market needs. Developers would be deterred from working with us and accessing our funding if they thought that their sensitive commercial and financial information would be disclosed, which would not be in the public interest;
- Releasing the information would be likely to negatively impact future development processes and proposals as interested parties may feel unable to provide all the relevant information necessary for fear of disclosure. This would impact the ability of Government officials to make effective, informed decisions regarding allocation of public funds;
- Releasing the information could reveal financial information of a third party which may in turn affect their commercial interests. The consequences of releasing data that is part of a wider ongoing matter could damage our relationships with partners and put other potential funding allocations at risk. This would not be in the public interest as this could put potential homes in jeopardy and affect Homes England's ability to deliver against its objectives in our strategic plan; and
- Homes England has been unable to identify a wider public interest in disclosing the information requested.

Having considered the arguments for and against disclosure of the information, we have concluded that at this time, the balance of the public interest favours non-disclosure.

The full text of the legislation can be found on the following link:

<https://www.legislation.gov.uk/ukpga/2000/36/section/43>

Section 41 - Information provided in confidence

The information requested also engages section 41(1)(b) of the FOIA as its release would be likely to constitute a breach of confidence.

Section 41 is a qualified exemption. This means that in order to withhold information under this exemption, we must consider the public interest in disclosure.



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#### Arguments in favour of disclosure

- Homes England is compliant with the government agenda of transparency and recognises the benefit of publishing the information, particularly when it concerns how Homes England undertakes its work.

#### Arguments in favour of withholding

- Homes England believes that it should not disclose the information held as to do would constitute as a breach of confidence as the report was commissioned via one of our procurement frameworks and produced by a third party. To release the information would be in breach of the confidentiality clauses contained within the framework. To disclose the information held would set a detrimental precedent and would prejudice the trust between Homes England and partners on our frameworks.

After careful consideration we have concluded that at this time, the balance of the public interest favours the non-disclosure of the report in its entirety.

The full text of the legislation can be found on the following link:

<https://www.legislation.gov.uk/ukpga/2000/36/section/41>

#### Advice and Assistance

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. As such, we can advise that although the Project Review Report itself cannot be released for the reasons detailed above, we have reviewed the content in so far as it applies to the context and justifications of your request. Therefore we can confirm that the only reference in the report to freeholds is the receipt amount received in relation to the freehold sales. Regarding any ecological scheme objectives agreed or reached, the report does not address these matters. The report was procured as an independent check/validation only that the accounts provided by the developer were accurate:

“Review and comment on end of project appraisal and accounts produced by the Developer for determination of Overage including commentary on the accuracy and completeness of total project costs comprising construction, professional fees and impact of phasing, as prepared by the developer.”

#### **3) Complete unredacted copies of the minutes of any meetings, and/or any agreement reached, held with the Homes England, and/or its predecessor agency, and Morris Homes, relating to the property development scheme, transfer of property Freehold under the scheme and division of profits from the Vista Peterborough development scheme.**

We can confirm that we do not hold information that falls within the scope of this part of your request.

To conclude that the information is not held, we have searched with our responsible project management team who would have the requested information if held.

The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty under section 1(1) is only to provide the recorded information held.

The full text of section 1 in the legislation can be found here:

<https://www.legislation.gov.uk/ukpga/2000/36/section/1>



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#### Advice and Assistance

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. To comply with this duty we are able to confirm that we have reviewed all information held in relation to this development (minutes of all meetings, legal documents) and do not hold any information in relation to the Freehold/division of profits other than which is contained in the documents provided as Annex A, B & C.

Peterborough City Council were responsible for the 'Carbon Challenge' scheme and therefore may hold information that may be relevant to you. You can submit a request to them via the following link: [Freedom of Information - Peterborough City Council](#).

Furthermore, although Morris Homes are not a public body bound by the Freedom of Information Act, they may choose to provide information to you on a voluntary basis and therefore you may wish to contact them for any further information they may hold.

#### Discretionary Statement:

We are also able (outside of the FOIA) to provide the following statement regarding the scheme:

In order to support Morris Homes to incorporate various of the energy saving provisions and to allow them the ability to work with occupiers in support of these measures, Homes England permitted the disposal of houses through the grant of 999 year leases. Homes England usually ensures housing developers dispose of houses (as opposed to flats) through a freehold disposal to the occupier. However on this occasion the freehold of each house plot was transferred to Morris at the same time as the occupier was granted a 999 year lease. By granting a very long lease the scheme allowed for a balance between the need to enable the developer to implement the management and energy saving elements of this scheme with the need to ensure that the occupiers are put in the position that is more akin to that of a freeholder.

The land disposal took place following a competitive bidding process which assessed both price and quality having regard to the particular aspirations for this to be an exemplary development with respect to energy usage. The site was advertised both in the UK property press and in the Official Journal of the European Union. Following this process the Morris Homes consortium were selected as the winning bidder. This process ensured that the best bid was selected as the winning bidder. This process ensured that the best bid was selected that reflected the specific extraordinary costs to develop the site along with the anticipated receipts. The agreement includes a provision that ensures that at completion if the overall development profitability exceeds the anticipated then any surplus in net revenues would be shared between Homes England and the developer.

#### Right to Appeal

If you are not happy with the information that has been provided or the way in which your request has been handled, you may request an internal review. You can request an internal review by writing to Homes England via the details below, quoting the reference number at the top of this letter.

Email: [infogov@homesengland.gov.uk](mailto:infogov@homesengland.gov.uk)

The Information Governance Team  
Homes England – 6<sup>th</sup> Floor  
Windsor House



Homes  
England

Making homes happen

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50 Victoria Street  
London  
SW1H 0TL

Your request for review must be made in writing, explain why you wish to appeal, and be received within 40 working days of the date of this response. Failure to meet this criteria may lead to your request being refused.

Upon receipt, your request for review will be passed to an independent party not involved in your original request. We aim to issue a response within 20 working days.

You may also complain to the Information Commissioner's Office (ICO) however, the Information Commissioner does usually expect the internal review procedure to be exhausted in the first instance.

The Information Commissioner's details can be found via the following link:

<https://ico.org.uk/>

Please note that the contents of your request and this response are also subject to the Freedom of Information Act 2000. Homes England may be required to disclose your request and our response accordingly.

Yours sincerely,

**The Information Governance Team**  
For Homes England

OFFICIAL

DATED 16<sup>TH</sup> MARCH

2011

THE COUNCIL OF THE CITY OF PETERBOROUGH

(Landowner)

*and*

HOMES AND COMMUNITIES AGENCY

(Landowner)

EAST OF ENGLAND DEVELOPMENT AGENCY

(Landowner)

*and*

MORRIS HOMES EAST MIDLANDS LIMITED

(Developer)

*and*

MORRIS HOMES LIMITED

UNILATERAL UNDERTAKING

Relating to land at Southbank London Road Peterborough

In favour of

Version 5

THE COUNCIL OF THE CITY OF PETERBOROUGH

s. 40(2)

Solicitor to the Council

Town Hall

Peterborough

PE1 1HG

REF MB RSN 5303



16<sup>th</sup> MARCH

**THIS DEED OF UNILATERAL UNDERTAKING** is made the      day of      2011

- (1) BY **THE COUNCIL OF THE CITY OF PETERBOROUGH** of Town Hall Bridge Street Peterborough PE1 1HG in its capacity as Landowner **HOMES AND COMMUNITIES AGENCY** of Central Business Exchange II 414-428 Midsummer Boulevard Central Milton Keynes MK9 2EA and **EAST OF ENGLAND DEVELOPMENT AGENCY** of Victory House Vision Park Chivers Way Histon Cambridge CB24 9ZR ("the Owners")
- (2) **"MORRIS HOMES (EAST MIDLANDS) LIMITED"** (Company Registration Number 184652) whose registered office is at Moreland House Altrincham Road Wilmslow Cheshire SK9 5NW ("the Developer")
- (3) **MORRIS HOMES LIMITED** (Company Registration Number 03593639) whose registered office is at Moreland House aforesaid ("Morris Homes")

**IN FAVOUR OF**

**THE COUNCIL OF THE CITY OF PETERBOROUGH** of Town Hall Bridge Street Peterborough PE1 1HG in its capacity as local planning authority ("the Council")

**RECITALS**

- (1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 as amended (the "1990 Act") for the area within which the Land (as hereinafter defined) is situated and is the authority by whom the planning obligations contained in this Deed are enforceable
- (2) The Owners are the registered proprietors with title absolute of the Land which is registered at Peterborough District Land Registry under Title Numbers CB300177; CB71646; CB82983; CB182217; CB182218; CB182219; CB24833, CB181424 and part of CB8271080 and hold the Land subject as stated on the Register
- (3) Morris Homes has the benefit of an option to take a lease of the Land under an option agreement dated 26 March 2010 made between (1) the Owners and (2) Morris Homes and intends that the Development shall be carried out by the Developer

- (4) The Developer has submitted the Application in the expectation that the Council is satisfied that the Development is such as may be permitted by the Council under Part 3 of the 1990 Act and may be minded to grant Permission subject to the further provisions of this Deed

**1 NOW THIS DEED WITNESSETH as follows:-**

- 1.1 This Unilateral Undertaking is a Deed and is made pursuant to:-
- (a) Section 106 of the 1990 Act
  - (b) Section 111 of the Local Government Act 1972
  - (c) all other enabling powers (including the Well-Being provisions of the Local Government Act 2000)
- 1.2 This Unilateral Undertaking is a planning obligation pursuant to the Act and shall be binding and enforceable against the Developer and Owners and their respective successors in title

**2 DEFINITIONS AND INTERPRETATION**

- 2.1 In this Deed the following words and expressions shall where the context admits have the following meanings:-

“the Application”	means the application for planning permission dated 14 <sup>th</sup> September 2010 under reference 10/01267FUL
“Community Facilities”	means facilities to be constructed to provide for the recreational needs of the inhabitants of the Development and its immediate vicinity.
“Community Infrastructure Levy”	Means a levy of that name or called by any other name charged by a competent authority under the Planning Act 2008 or other statutory powers on any person in respect of the development of land to fund the provision of infrastructure to support the development of an area
“Contribution”	means a capital contribution towards the provision upgrading or improvement by the Council or a third party of such off-site facilities or other matters as further

described in any schedule to this Deed. Any payment clearly intended as a contribution towards administrative costs (whether or not this is expressly stated) shall not be subject to the requirements of this Deed regarding Contributions

“Deed”	means this Deed of planning obligation
“the Development”	means the erection of 295 Residential Units, A1 Food Store and associated infrastructure in accordance with the Application.
“Due Date”	means the date that the Contributions are due to be paid as determined by the relevant Schedule to which that Contribution relates in this Agreement.
“Implementation”	means the carrying out on the Land pursuant to the Permission of a Material Operation and “Implement” shall be construed accordingly
“the Land”	means the land at Southbank London Road Peterborough which forms the subject of the Application and is for the purposes of identification shown edged red on Plan 1 annexed hereto.
“Material Operation”	means a material operation as defined in Section 56(4) of the 1990 Act save that for the purposes of this Deed the following shall not constitute a material operation:- <ul style="list-style-type: none"><li>(a) site clearance</li><li>(b) earthworks</li><li>(c) demolition of existing buildings</li><li>(d) archaeological investigation</li><li>(e) assessment of ground conditions and/or contamination</li></ul>

- (f) remedial action in respect of contamination or other adverse ground conditions
- (g) the erection of fences or other means of enclosure for site security
- (h) the diversion and laying of services
- (i) the erection of a site compound or site office or temporary buildings or structures
- (j) interim landscape works
- (k) formation of site accesses

“Occupation”

means occupation for the purposes permitted by the Permission but not including occupation by personnel engaged in construction, fitting out to decoration or occupation for marketing or display or occupation in relation to the security operations and “Occupy” and “Occupied” shall be construed accordingly.

“Permission”

means the planning permission for the Development in the form of the draft permission annexed to this Deed.

“Residential Units”

means together the Affordable Housing Dwellings and the Open Market Dwellings in the Development as defined in the First Schedule of this Deed.

“Pooled”

means that individual Contributions paid under this Deed may be amalgamated or pooled with similar contributions paid or to be paid to the Council under the provisions of any alternative planning obligation agreement as agreements so far as permitted by statute and circular 05/05 or any revision or replacement thereof for the time being in force.

“Spending Authority”

means either the Council or a third party having responsibility for the provision of any element of

necessary infrastructure in respect of which a Contribution is paid under the terms of this Deed and for the avoidance of doubt this can include a developer of other land who has provided or will provide such infrastructure upon terms which recognise that this is necessary to enable the proper development of the wider area which includes both the land of that developer and also the Land

2.2 Words and expressions defined in this part of this Deed and words and expressions defined in any schedule hereto shall have the defined meaning wherever used unless the contrary intention is expressly stated

2.3 Wherever the context so admits the following words and phrases in this Deed shall have the meanings herein attributed to them:-

- (a) The singular shall include the plural and vice versa
- (b) The masculine gender shall include the feminine and vice versa
- (c) Any words denoting natural persons shall include legal persons and vice versa
- (d) The reference to any statute or section of a statute includes any statutory re-enactment or modification
- (e) "Working Day" means any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday

2.4 Save where provided to the contrary by this Deed the expressions the Council the Owners and the Developer shall include their respective successors in title and assigns and the expression the Council shall include successors to its statutory functions

2.5 Any covenant given or made in this Deed shall be deemed to:-

- (a) Be given or made by the covenantor on behalf of itself and its successors in title, and
- (b) where such covenant is given or made by a party consisting of two or more natural persons be deemed to be given or made jointly and severally

2.6 Any approval or agreement required under this Deed shall not be unreasonably withheld or delayed

### **3 OPERATIVE EFFECT AND GRANT OF PERMISSION**

3.1 With the exception of this Clause 3 and any provision of this Deed which requires action by the Owners or the Developer prior to the granting of the Permission none of the terms or provisions in this Deed will have operative effect unless and until:-

- (a) the Permission has been granted, and
- (b) Implementation has taken place

PROVIDED ALWAYS that the obligations in this Deed are subject to the condition set out in clause 14 hereof

### **4 LIMITS OF ENFORCEABILITY**

4.1 Notwithstanding the provisions of Clause 3 no obligations or liabilities arising under this Deed shall be enforceable against:

purchasers lessees or occupiers of individual Dwellings constructed as part of the Development nor the mortgagee or mortgagee in possession of any such persons or receiver appointed by a mortgagee or mortgagee of such persons SAVE THAT this sub-clause shall not apply to the restrictions on the use of the Affordable Housing Dwellings as separate provisions on enforceability relating to the Affordable Housing Dwellings are contained in the First Schedule

a statutory undertaker after the transfer of statutory apparatus and/or any land upon or in which the statutory apparatus is situated by the Owners or the Developer to that statutory undertaker

4.2 No person shall be liable for any breach of this Deed occurring after he has parted with his interest in the Land or any part of the Land in respect of which such breach occurs without prejudice to liability for any breach subsisting prior to parting with such interest.

### **5 DEVELOPERS COVENANTS**

5.1 THE DEVELOPER HEREBY COVENANTS with the Council:-

- (a) to observe and perform all the provisions of this Deed
- (b) to comply with the obligations contained in the various schedules to this Deed

- (c) To give written notice of Implementation to the Council no later than five working days after such Implementation

5.3 Morris Homes acknowledges and declares that this Deed has been entered into by the Developer with its consent and that the Land shall be bound by the obligations contained in this Deed.

5.2 The Owners hereby separately covenant with the Council that if the Owners shall themselves Implement or permit any third party other than the Developer to do so the Owners shall observe and perform all the provisions of this Deed which remain to be observed and performed and shall comply with the provisions of the Schedules hereto as though reference herein to the Developer is a reference to the Owners and the party carrying out or permitting or procuring the Implementation shall give written notice to the Council no later than five working days after such Implementation

5.3 Each Owner covenants with the other Owners that it will not Implement or permit any third party other than the Developer to do so without the written consent of all the Owners (such consent not to be unreasonably withheld or delayed)

## **6 REGISTRATION AS LOCAL LAND CHARGE**

6.1 This Agreement is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registered as such

## **7 LEGAL CHALLENGE**

7.1 In the event that any part of this Deed may be subject to challenge review deletion or otherwise rendered null/void or voidable the balance of the said Deed shall remain in full force and effect

## **8 CONTRIBUTIONS AND MAINTENANCE PAYMENTS – PAYMENT, POOLING AND REFUND**

8.1 The Developer shall pay all Contributions on the Due Date (regardless of whether or not any formal demand for payment has been made by the Council) and in the event that payment of any Contribution is late interest shall be added to such Contribution until payment is made on a daily basis at the rate of 3% per annum above the standard base rate of Barclays Bank

8.2 All Contributions received by the Council as Spending Authority under this Deed may be Pooled

8.3 All Contributions are paid on the condition that they are applied only to the purposes for which they are stated in this Deed and in the event that any Contribution or part of a Contribution received by the Council as Spending Authority pursuant to this Deed or any interest accrued remains unexpended or uncommitted to an identified project or proposal within 10 years of the date of the final payment such unexpended Contribution or part of a Contribution and interest accrued thereon shall be returned to the person who paid the Contribution to the Council or to such other person as he may direct

**PROVIDED** that there shall be no liability on the Council to refund any Contribution or part of a Contribution properly passed by the Council to a third party being the Spending Authority for the Contribution in question

## **9 NOTICES AND PAYMENT OF CHEQUES**

9.1 Any notice required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or facsimile transmission

(a) in the case of the Owners to the Head of Shared Transaction Services Peterborough City Council at 1<sup>st</sup> Floor Manor Drive House Manor Drive Paston Parkway Peterborough PE4 7AJ and the Head of Legal Services Homes and Communities Agency at Central Business Exchange II, 414-428 Midsummer Boulevard, Central Milton Keynes MK9 2EA and the East of England Development Agency at Victory House Vision Park Chivers Way Histon Cambridge CB24 9ZR marked for the attention of The Chief Executive and with a separate copy to the Head of Legal at the same address

(b) In the case of the Developer to s. 40(2) Group Land Director at Morland House Altrincham Road Wilmslow Cheshire SK9 5NW

(c) in the case of the Council to the Head of Planning Services at Stuart House East Wing St John's Street Peterborough PE1 1DD or for legal notices and processes only to the Solicitor to the Council at Town Hall Peterborough PE1 1HG

(d) and in the case of Affordable Housing Dwellings notices to Housing Strategy Manager Stuart House East Wing St John's Street Peterborough PE1 5DP



or such other address as any party may notify to the other in writing from time to time

9.2 Any notice under this Deed shall be deemed to have been served as follows:-

- (a) if personally delivered at the time of delivery
- (b) if by post at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom
- (c) if sent by facsimile transmission at the time of successful transmission
- (d) and in proving such service it shall be sufficient to prove that personal delivery was made and a receipt obtained or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded delivery envelope and a receipt obtained or that the facsimile was successfully transmitted on a tested line and acknowledged in writing as having been received by the addressee as the case may be

9.3 Any cheque payable to the Council for any contribution consideration or other matter arising under this Deed shall be made payable to Peterborough City Council and shall be sent or delivered to the Head of Planning Services as provided in clause 9.1 (c)

9.4 Within five Working Days of the completion of the transfer of any interest in the Land the Owners or the Developer (as the case may be) shall serve notice upon the Solicitor to the Council together with a copy to the Head of Planning Services giving details of the transferees name and address together with details of the site to which the interest applies SAVE THAT this sub-clause shall not apply to the disposals of individual Residential Units

9.5 The requirement to serve notice upon the Council as stipulated in clause 9.4 shall cease as soon as all of the obligations under this Deed have been complied with and the Council has so acknowledged in writing

## **10 INDEXATION**

10.1 Unless otherwise stated to the contrary all Contributions and other sums payable under the terms of this Deed by the Developer to the Council or otherwise due to the Council under the provisions of this Deed will subject to the provisions of this clause be subject to increase by application of the principles of indexation as set out in the following parts of this clause.

- 10.2 For the purposes of applying indexation the index will mean the Building Cost Information Service All-in Tender Price Index (TPI) (SE England excl London) as published by the Royal Institution of Chartered Surveyors (or in the event that such index ceases to be published then in its place such reasonably equivalent index as the Council shall specify)
- 10.3 Indexation will commence on the completion of this Deed and will end on the date or dates the said Contributions or other sums are actually paid in full
- 10.4 The relevant Contribution will be increased by an amount equivalent to the percentage difference between the published TPI (or relevant indices) current at the date of this Deed and the published TPI (or relevant indices) current at the date of payment

## **11 WARRANTY OF TITLE**

- 11.1 The Owners confirm and warrant that the information contained in Recital (2) is correct in every detail

## **12. DISPUTE RESOLUTION**

- 12.1 Any dispute or disagreement arising under this Deed which has been identified in writing by the Owners, the Developer or the Council (as the case may be) and which has not been resolved within 20 Working Days may be referred at the instance of the Owners the Developer or the Council (as the case may be) for determination by a single expert (the "Expert") whose decision (except in cases of manifest error or fraud) shall be final and binding on the parties.
- 12.2 The following provisions and terms of appointment shall apply to such disputes or disagreements:
- 12.2.1 the Expert shall have at least 10 years post-qualification experience in the subject matter of the dispute;
- 12.2.2 the Expert shall be agreed between the parties or in default of agreement within 10 Working Days of expiry of the period referred to in clause 12.1 above appointed by the President of the Royal Institution of Chartered Surveyors at the request of any party to the dispute;
- 12.2.3 if any party so requires (and notifies the other parties within 3 Working Days of the Expert's appointment) the matter shall be dealt with by oral hearing

such hearing to take place within 20 Working Days of the Expert's appointment (or other timescale agreed between the parties);

- 12.2.4 if no party requires the matter to be dealt with by oral hearing;
- 12.2.5 the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 Working Days of the Expert's appointment;
- 12.2.6 the other parties shall have 20 Working Days from the receipt of such written submission (or such extended period as the Expert shall allow) to respond;
- 12.2.7 the Expert shall disregard any representations made out of time;
- 12.2.8 the Expert shall make his decision within 20 Working Days of the close of the oral hearing or period referred to in clause 12.2.5 or 12.2.6 above as appropriate;
- 12.2.9 the Expert's decision shall be in writing and give reasons for his decision; and
- 12.2.10 the Expert's fees shall be in the determination of the Expert.

### **13 THIRD PARTY RIGHTS**

- 13.1 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

### **14. COMMUNITY INFRASTRUCTURE LEVY**

The obligations in this Deed are conditional on compliance by the Council with the following provision so as to avoid any double recovery of funds pursuant to planning legislation:

- 14.1 If an application under Section 73 of the 1990 Act in relation to the Permission has been approved by the Council and Community Infrastructure Levy is paid to the Council under the said S73 application for such purposes which are already covered by this Deed then any such payments ("the s106 Payments") which are to be covered by the Community Infrastructure Levy which have already been made under this Deed shall be repaid by the Council to the person who has made the s106 Payments (or such other person as he may direct) within 28 Working Days of written demand for repayment PROVIDED THAT such sums shall not exceed the amount paid under the Community Infrastructure Levy

**IN WITNESS** whereof this Unilateral Undertaking is executed by the parties as a Deed but is not intended to have legal effect until it has been unconditionally delivered and dated.

**FIRST SCHEDULE**  
**AFFORDABLE HOUSING**

The following definitions relating to Affordable Housing Dwellings shall have the following meanings throughout this Deed

"Access"	Means the provision of roads footpaths and cycleways to a base course level together with all such rights and easements as are necessary to facilitate the construction and/or occupation of any Affordable Housing Dwelling unless and until the said roads footpaths and cycleways have been adopted as public highway
"Affordable Housing Dwellings"	Means 120 Dwellings to be provided on the Affordable Housing Site comprising a) 84 Social Rented Housing consisting of i) 48 two bed apartments ii) 15 three bed houses - plots 158, 159, 160, 161, 103, 102, 101, 100, 190, 206, 207, 212, 213, 27, 28. iii) 21 two bed houses – plots 167, 168, 173, 174, 188, 187, 169, 170, 110, 109, 108, 197, 196, 195, 198, 199, 200, 29, 30, 25, 24 b) 36 Intermediate Affordable Housing consisting of i) 1 four bed house - plot 176 ii) 17 three bed houses - plots 99, 189, 19, 20, 21, 22, 48, 47, 46, 45, 49, 79, 78, 77, 76, 75, 74 iii) 18 two bed houses - plots 120, 121, 23, 50, 51, 52, 53, 54, 83, 82, 81, 80, 55, 56, 57, 58, 59, 60 or such alternative Dwellings and or plots as may be agreed in writing with the Council
"Affordable Housing Contribution"	Means a sum of money representing the value of the Affordable Housing Site as determined by the Site Valuation Exercise

"Affordable Housing Scheme"	Means a detailed scheme approved by the Council for the provision of Affordable Housing Dwellings on the Development which includes a timetable and programme for its implementation.
"Affordable Housing Site"	Means such part or parts of the Land shown coloured yellow on Plan 2 annexed hereto.
"Affordable Housing Unit"	Means a self contained house or apartment constructed upon the Affordable Housing Site pursuant to the Permission which is to be Occupied as Affordable Housing Dwellings
"Clean Condition"	Means free from any contamination which would (in the reasonable opinion of the Council) prejudice the use of the Affordable Housing Site for the purposes of providing Affordable Housing Dwellings
"Completed"	Means that the Dwellings are fit for immediate human habitation.
"Dwelling"	Means a self contained house or apartment constructed upon the Land pursuant to the Permission and "Dwellings" shall be construed accordingly
"Homes and Communities Agency"	Means the Homes and Community Agency or the Tenant Services Authority as may be applicable
"Intermediate Affordable Housing"	Means Shared Ownership Housing and intermediate rented dwellings at rents above those of Social Rented Housing but below market rents as permitted by the Homes & Communities Agency and any other form or forms of intermediate affordable housing which comply with the definition of "intermediate affordable housing" in PPS3 Annex B and any other forms which may be agreed in writing with the Council

“Open Market Dwelling”	Means any Dwelling upon the Land which is not in an Affordable Housing Unit.
“Peterborough Strategic Partnership”	Means the partnership arrangement now in force or any replacement thereof between the Council as Local Housing Authority and certain Registered Providers to facilitate the provision of Affordable Housing throughout the Council’s administrative area.
“Registered Provider”	Means a body recognised by the Tenant Services Authority (which will include any successor in title) as a non profit registered provider of Affordable Housing Dwellings in accordance with the provisions of the Housing and Regeneration Act 2008.
“Services”	Means (without prejudice to the generality of this expression) domestic electricity telephone water foul drainage surface water drainage all of a capacity suitable to serve the Affordable Housing Dwellings.
“Service Installations”	Means (without prejudice to the generality of this expression) all sewers drains culverts channels outlets mains wires cables ducts flues soakaways substations regulator valves and all other infrastructure requirements whatsoever necessary for the supply of Services.
“Shared Ownership Housing”	Means Affordable Housing Dwellings provided by or under arrangements with a Registered Provider for lease on a shared equity basis to individual occupiers who have the right subject to statute and/or rules of such Registered Provider to acquire the freehold of the unit by the purchase of further shares over time.
“Site Valuation Exercise”	Means an exercise undertaken in accordance with the provisions of paragraph 4 of this First Schedule to

determine the value of the Affordable Housing Site at the time of the giving of the notice referred to in paragraph 3 on the assumption that the Affordable Housing Site is at the time of the Site Valuation Exercise fully Serviced and with Access all in accordance with the requirements of this Schedule and is to be sold for the purpose of Open Market Dwellings

“Social Rented Housing”

Means those Affordable Housing Units provided as subsidised rented accommodation by Registered Providers at rents in line with those permitted by the Homes and Communities Agency

1. There shall be no Implementation unless and until the Affordable Housing Scheme has been approved by the Council (approval not to be unreasonably withheld or delayed) and thereafter the Affordable Housing Scheme shall be complied with in full unless the Council agrees otherwise in writing.
2. The Developer shall transfer the Affordable Housing Dwellings to a Registered Provider in accordance with the following timetable unless the Council agrees otherwise in writing.:-
  - 2.1 No more than 42 Open Market Dwellings shall be occupied until such time as the Developer has Completed and transferred to a Registered Provider 23 Affordable Housing Units together with all Services Service Installations and Access provided up to at least the boundary of the Affordable Housing Site.
  - 2.2 No more than a further 26 Open Market Dwellings shall be occupied until such time as the Developer has Completed and transferred to a Registered Provider a further 48 Affordable Housing Units together with all Services Service Installations and Access provided up to at least the boundary of the Affordable Housing Site.
  - 2.3 No more than a further 40 Open Market Dwellings shall be occupied until such time as the Developer has Completed and transferred to a Registered Provider a further 26 Affordable Housing Units together with all Services Service Installations and Access provided up to at least the boundary of the Affordable Housing Site.

- 2.4 No more than a further 67 Open Market Dwellings shall be occupied unless and until such time as the Developer has Completed and transferred to a Registered Provider a further 23 Affordable Housing Units together with all Services Service Installations and Access provided up to at least the boundary of the Affordable Housing Site.
3. If after 12 months of Implementation the Developer is unable to Contract with a Registered Provider for the transfer of any or all of the Affordable Housing Dwellings and the Developer provides reasonable written evidence of its attempts (which shall include negotiations with any or all current members of the Peterborough Strategic Partnership or such members as the Developer and Council may specify) and the Council is reasonably satisfied after making any reasonable inquiries that the failure to so comply is due to either
- 3.1 the non-availability of a Registered Provider willing to enter into arrangements as described in paragraph 2 or any necessary funding and is in no respect attributable to any act or default of the Developer or
- 3.2 the unreasonable delay or default of the Registered Provider in entering into or completing arrangements as described in paragraph 2

the Council may notify the Developer in writing within 21 Working Days of service of the Developer's reasonable written evidence that the Affordable Housing Site can be used for the provision of Open Market Dwellings and the provisions of paragraphs 4 to 7 shall apply and FOR THE AVOIDANCE OF DOUBT the restrictions on Occupation of Open Market Dwellings in paragraph 2 shall cease to apply

- 4 Within 20 Working Days following the giving of the notice referred to in paragraph 3 the Council may with the agreement of the Developer appoint an independent valuer to conduct a Site Valuation Exercise or in the absence of agreement as to such appointment each party shall appoint their own valuer to conduct the Site Valuation Exercise by negotiation
- 5 The Site Valuation Exercise shall be completed within 20 Working Days of the appointment notice referred to in paragraph 4 and if in the opinion of the independent valuer or the valuer appointed by either party as appropriate any failure to complete the Site Valuation Exercise within this period is due to the unreasonable delay or obstruction of either party or their valuer any increased costs (as determined by the independent valuer or parties valuer



as appropriate) incurred by the innocent party shall be a debt due to the innocent party recoverable by action if necessary

- 6 Within 20 Working Days of the completion of the Site Valuation Exercise the Developer shall pay to the Council the Affordable Housing Contribution together with the Council's reasonable costs of the Site Valuation Exercise
- 7 The Affordable Housing Contribution is paid on the condition that it shall be used or applied by the Council for or towards the provision by the Council or a Registered Provider of Affordable Housing within the administrative area of the Council
- 8 The Social Rented Housing shall be occupied only by virtue of assured tenancies pursuant to the Housing Act 1988 and Housing Act 1996 (or such other form of tenancy as may from time to time be prescribed or allowed by statute as offering residential tenants of Registered Providers a similar measure of security of tenure) or on such other basis as is commonly used by Registered Providers for the provision of general needs accommodation in accordance with best practice or on such other basis as may from time to time be approved in writing by the Council
- 9 The Intermediate Affordable Housing shall be occupied only by virtue of the Homes and Communities Agency approved shared ownership lease or assured shorthold tenancies pursuant to the Housing Act 1988 as amended by the Housing Act 1996 or such other form of tenancy as may from time to time be prescribed by statute shall replace them (or on such other basis as may from time to time be approved in writing by the Council)
- 10 The Dwellings to be built upon the Affordable Housing Site shall be constructed:-
  - 10.1 externally in accordance with the Permission
  - 10.2 in accordance with the building regulations and with the benefit of NHBC certificate
  - 10.3 in the case of Social Rented Housing internally in accordance with at least such specifications and standards as may from time to time be published by the Homes and Communities Agency unless waiver is secured
  - 10.4 shall meet Lifetime Homes standard

- 11 Subject to the foregoing paragraphs and paragraph 12 below the Affordable Housing Dwellings to be constructed on the Affordable Housing Site shall at all times be occupied and managed in accordance with the objectives of a Registered Provider and in respect of the Social Rented Housing in accordance with such published housing waiting list and allocation system as may be adopted by such Registered Provider from time to time
- 12 It is hereby agreed and declared that the obligations contained in this Deed shall:
- 12.1 With the exception of the obligations contained in this present schedule not be enforceable against any Registered Provider being the owner of the Affordable Housing Site or any part thereof or the successors in title of such Registered Provider, or
  - 12.2 Not be enforceable against any mortgagee or chargee of a Registered Provider or any receiver appointed by any such mortgagee or chargee or any person or persons deriving title to or an interest in the whole or any part of the Affordable Housing Site from such mortgagee chargee or receiver and
  - 12.3 Not be enforceable against any owner or occupier of an Affordable Housing Dwelling who acquires a freehold or leasehold interest in such unit by virtue of any statutory entitlement and
  - 12.4 Not be enforceable against any owner or occupier of any Affordable Housing Dwelling demised or to be demised by way of shared ownership lease once "staircasing out" has been effected whereby the leaseholder acquires a 100% equity share in the Dwelling and either takes a transfer of the freehold reversion or directs that the freehold reversion is transferred to someone else and
  - 12.5 Be suspended in respect of any Affordable Housing Dwelling demised or to be demised by way of shared ownership lease where the shared ownership lessee wants to transfer his interest has complied with the nomination provisions (if any) of the shared ownership lease and has first offered to sell his interest to a nominee of the Registered Provider and the Registered Provider has been unable or unwilling to provide a nominee within the time period specified in the shared Ownership lease or such nominee has not exchanged contracts to acquire the lessee's interest within the time period specified within such shared Ownership lease

- 12.6 Not to be enforceable against the mortgagee or chargee of a shared ownership lessee or any receiver appointed by such mortgagee or chargee or any person deriving title from such mortgagee or chargee

**SECOND SCHEDULE**  
**COMMUNITY OR EDUCATION PROVISION**

- 1 The Developer shall pay to the Council a contribution of £500,000 (five hundred thousand pounds) to be utilised by the Council in the provision of education needs arising from the Development and or Community Facilities which will inter alia benefit the Development in the following manner
- (a) £125,000 payable prior to the Occupation of the first Open Market Dwelling within the Development.
  - (b) £125,000 payable prior to the Occupation of the 60<sup>th</sup> Open Market Dwelling within the Development
  - (c) £125,000 payable prior to the Occupation of the 120<sup>th</sup> Open Market Dwelling within the Development
  - (d) £125,000 payable prior to the -Occupation of the 180<sup>th</sup> Open Market Dwelling within the Development

THE COMMON SEAL of THE

COUNCIL OF THE CITY OF

PETERBOROUGH was hereunto

affixed in the presence of:-

**s. 40(2)**

Authorised Signatory



THE COMMON SEAL of

HOMES AND COMMUNITIES AGENCY was  
hereunto

affixed in the presence of:-

**s. 40(2)**



Authorised Signatory

THE COMMON SEAL of

THE EAST OF ENGLAND DEVELOPMENT  
AGENCY was hereunto

affixed in the presence of:-

**s. 40(2)**



Authorised Signatory

~~THE COMMON SEAL of THE~~

~~MORRIS HOMES (EAST MIDLANDS) LIMITED~~

~~was hereunto~~

~~affixed in the presence of:-~~

~~OR~~



EXECUTED as a DEED by MORRIS

HOMES (EAST MIDLANDS) LIMITED

acting by its Secretary and a Director (or 2  
Directors)

**s. 40(2)**

Director

**s. 40(2)**

Company Secretary/Director

~~THE COMMON SEAL of THE~~

~~MORRIS HOMES LIMITED was hereunto~~

~~affixed in the presence of:-~~

~~OR~~

EXECUTED as a DEED by MORRIS HOMES  
LIMITED acting by its Secretary and a Director  
(or 2 Directors)

**s. 40(2)**

Director

**s. 40(2)**

Company Secretary/Director



## ANNEXURES

s. 40(2)

A7714

THE SITE

s. 40(2)

s. 40(2)

2671

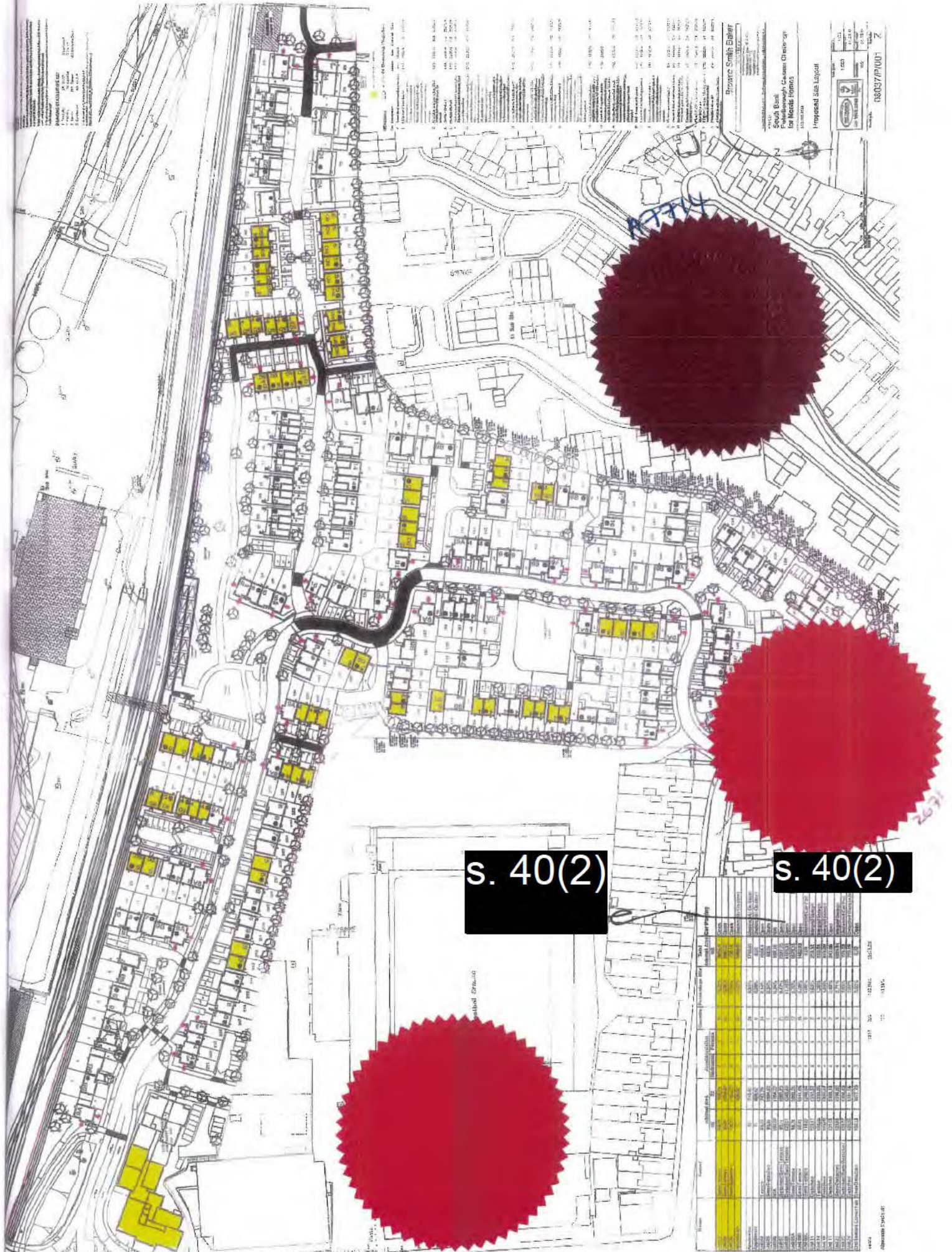


S106 AGREEMENT 10/01267/FUL

Carbon Challenge Site, Glebe Works, Glebe Court, Fleitoni

Scale 1:2500 Date 28/1/2011 Name MKB Department Planning Services

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**Proposed Site Layout**

**South East, Chatham County for Mobile Homes**

**Drawn: Smith Baker**

**Scale: 1/8" = 1'-0"**

**Project No: 18037/P/001**

**Sheet No: 2**

**Date: 10/24/18**

Lot No.	Area (sq. ft.)	Area (sq. ft.)	Area (sq. ft.)	Area (sq. ft.)
1	1000	1000	1000	1000
2	1000	1000	1000	1000
3	1000	1000	1000	1000
4	1000	1000	1000	1000
5	1000	1000	1000	1000
6	1000	1000	1000	1000
7	1000	1000	1000	1000
8	1000	1000	1000	1000
9	1000	1000	1000	1000
10	1000	1000	1000	1000
11	1000	1000	1000	1000
12	1000	1000	1000	1000
13	1000	1000	1000	1000
14	1000	1000	1000	1000
15	1000	1000	1000	1000
16	1000	1000	1000	1000
17	1000	1000	1000	1000
18	1000	1000	1000	1000
19	1000	1000	1000	1000
20	1000	1000	1000	1000
21	1000	1000	1000	1000
22	1000	1000	1000	1000
23	1000	1000	1000	1000
24	1000	1000	1000	1000
25	1000	1000	1000	1000
26	1000	1000	1000	1000
27	1000	1000	1000	1000
28	1000	1000	1000	1000
29	1000	1000	1000	1000
30	1000	1000	1000	1000
31	1000	1000	1000	1000
32	1000	1000	1000	1000
33	1000	1000	1000	1000
34	1000	1000	1000	1000
35	1000	1000	1000	1000
36	1000	1000	1000	1000
37	1000	1000	1000	1000
38	1000	1000	1000	1000
39	1000	1000	1000	1000
40	1000	1000	1000	1000
41	1000	1000	1000	1000
42	1000	1000	1000	1000
43	1000	1000	1000	1000
44	1000	1000	1000	1000
45	1000	1000	1000	1000
46	1000	1000	1000	1000
47	1000	1000	1000	1000
48	1000	1000	1000	1000
49	1000	1000	1000	1000
50	1000	1000	1000	1000

s. 40(2)

s. 40(2)



**DRAFT**

x

Planning Services  
Stuart House East Wing St John's Street  
Peterborough PE1 5DD  
**DX 12310 Peterborough 1**  
**Telephone: 01733 747474**

**NOTICE OF PLANNING PERMISSION**

Town and Country Planning Act 1990

Reference: **10/01267/FUL**

Decision Date:

<b>Proposal</b>	<b>Construction of 295 residential units, A1 Food Store, and associated infrastructure</b>
<b>At</b>	<b>Carbon Challenge Site Glebe Works Glebe Court Fletton</b>
<b>Applicant</b>	<b>Morris Homes Limited</b>
<b>Received</b>	<b>14 September 2010</b>

**PERMISSION IS GRANTED for this application in accordance with the following plans, drawings and documents:**

<b>Title</b>	<b>Reference - Drawing No.</b>	<b>Version No.</b>	<b>Dated</b>
Existing Site Layout	08037/P/004	A	
Proposed Floor Plans-Elevations	08037/P/29	REV A	
Proposed Floor Plans-Elevations	08037/P/31	REV A	
Proposed Elevations	08037/P/32	REV A	
Existing and Proposed Elevations	08037/P/33	REV A	
Proposed Floor Layout	08037/P/38	REV A	
Proposed Elevations	08037/P/39	REV A	
Proposed Floor Layout	08037/P/41	REV A	
Proposed Elevations	08037/P/42	REV A	
Proposed Floor Plans-Elevations	08037/P/44	REV A	
Proposed Floor Plans-Elevations	08037/P/45	REV A	
Proposed Floor Layout	08037/P/46	REV A	
Proposed Elevations	08037/P/47	REV A	
Proposed Floor Layout	08037/P/48	REV A	
Proposed Elevations	08037/P/49	REV A	
Proposed Floor Plans-Elevations	08037/P/59		
Proposed Ground Floor Plan	08037/P/11	REV F	
Proposed First Floor Plan	08037/P/12	REV G	
Proposed Floor Layout	08037/P/13	REV F	
Proposed Floor Layout	08037/P/14	REV F	
Proposed Floor Layout	08037/P/54	REV E	
Proposed Elevations	08037/P/15	REV F	
Proposed Elevations	08037/P/16	REV F	
Proposed Elevations	08037/P/17	REV D	

**Reason for decision:**

Subject to the imposition of the attached conditions, the proposal is acceptable having been assessed in the light of all material considerations, including weighing against relevant policies of the development plan and specifically:

- The amendments to the layout and design of the development have enhanced the visual appearance of the scheme and provided a better quality public realm and environment for residents. This is in accordance with Policies DA1 and DA2 of the Peterborough Local Plan (First Replacement) 2005.
- Whilst there would be an impact on the current privacy and amenity enjoyed by neighbouring sites, it is not considered unacceptable. It is therefore considered the development is in accordance with Policy DA2 of the Peterborough Local Plan (First Replacement) 2005.
- A safe and convenient vehicle access to the site would be provided and the highway network could accommodate the traffic generated by the development without any adverse impact on highway capacity or road safety. This is in accordance with Policy T1 of the Peterborough Local Plan (First Replacement) 2005.
- Subject to the agreement of additional information to support the Flood Risk Assessment by the Environment Agency, the scheme would accord with the requirements of PPS25 'Development and Flood Risk'.
- Subject to the agreement of additional information to support the contamination report by the Environment Agency, the scheme would accord with Policy U9 of the Peterborough Local Plan (First Replacement) 2005.
- The detailed layout can be designed around the existing trees on the edge of the site in accordance with policies LNE9 and LNE10 of the Peterborough Local Plan (First Replacement).
- The impact of the proposed development upon the ecology of the site is considered to be acceptable. It, therefore, accords with policy LNE19 of the Peterborough Local Plan (First Replacement).
- The community needs arising from the development would be met by the planning obligation in accordance with policy IMP1 of the Peterborough Local Plan (First Replacement).

**Permission is granted subject to the following conditions and reasons:**

- C 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- C 2 Prior to the commencement of development, or within another such period as may be agreed in writing with the Local Planning Authority, details of all materials to be used in the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: For the Local Authority to ensure a satisfactory external appearance, in accordance with Policy DA2 of the Peterborough Local Plan (First Replacement).

- C 3 Temporary facilities shall be provided clear of the public highway for the parking, turning, loading and unloading of all vehicles visiting the site during the period of construction. These facilities shall be in accordance with details which have been approved in writing by the Local Planning Authority.

Reason: In the interests of Highway safety, in accordance with Policy T19 of the Peterborough Local Plan (First Replacement).

- C 4 Notwithstanding the submitted information and prior to the commencement of the development, unless otherwise agreed in writing by the Local Planning Authority, a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include amongst other matters:

- (a) A phasing scheme and schedule of the proposed works;
- (b) Provisions to control construction noise and vibration emanating from the site;
- (c) A scheme for the control of dust arising from building works and site works;
- (d) A scheme of chassis and wheel cleaning for construction vehicles and cleaning of affected public highways;
- (e) A scheme of working hours for construction and other site works
- (f) A scheme for construction access; including details of haul routes to and across the site and associated health and safety protection measures and details of measures to ensure that all construction vehicles can enter the site immediately upon arrival;
- (g) The site compound (including site huts) and parking for contractors and other employee vehicles;
- (h) Details of the number and nature of vehicles visiting the site during the construction period, and
- (i) A traffic management strategy for the access points to the site.

The development shall be carried out in accordance with the approved construction management plan.

Reason: In the interests of highway safety and residential amenity in accordance with policies T1 and DA2 of the Peterborough Local Plan (First Replacement).

- C 5 No occupation shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. Development shall be carried out in accordance with the approved details and shall be completed before first occupation.

Reason: In order to protect and safeguard the amenity of the area, in accordance with Policies DA2 and DA11 of the Peterborough Local Plan (First Replacement).

- C 6 Details of lighting shall be submitted to and approved in writing by the Local Planning Authority before first occupation of the residential units. Development shall be carried out in accordance with the approved details.

Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that the development complies with approved details in the interests of Human Health and Controlled Waters, in accordance with planning Policy Guidance (PPG23 Planning and Pollution Control).

- C12 The remediation scheme shall be implemented in accordance with the approved timetable of works. Within 3 months of the completion of measures identified in the approved remediation scheme, unless otherwise agreed in writing by the Local Planning Authority, a validation report (that demonstrates the effectiveness of the remediation carried out) must be submitted to the Local Planning Authority.

Reason: To ensure that the development complies with approved details in the interests of Human Health and Controlled Waters, in accordance with planning Policy Guidance (PPG23 Planning and Pollution Control).

- C13 In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing within 14 days to the Local Planning Authority, unless otherwise agreed in writing, and once the Local Planning Authority has identified the part of the site affected by the unexpected contamination development must be halted on that part of the site.

Where remediation is necessary a remediation scheme, together with a timetable for its implementation, must be submitted to and approved in writing by the Local Planning Authority in accordance with the requirements of condition 11.

The measures in the approved remediation scheme must then be implemented in accordance with the approved timetable. Following completion of measures identified in the approved remediation scheme a validation report must be submitted to and approved in writing by the Local Planning Authority in accordance with condition 12.

Reason: To ensure that the development complies with approved details in the interests of Human Health and Controlled Waters, in accordance with planning Policy Guidance (PPG23 Planning and Pollution Control).

- C14 Prior to the occupation of any of the flats a scheme to provide communal access for each flat to satellite and/or television reception will be submitted to and approved in writing by the Local Planning Authority and the approved scheme shall be implemented in full and retained as such thereafter.

Reason: In order to prevent a proliferation of such equipment to the detriment of the visual appearance of the development, in accordance with Policies DA1 and DA2 of the Peterborough Local Plan (First Replacement).

- C15 All residential units hereby approved shall be constructed to Code Level 6 of the Code for Sustainable Homes, and 40% shall be affordable housing (as

defined by the Peterborough Local Plan Policy H21) and shall thereafter be maintained as such.

**Reason:** This is because the planning obligation has been negotiated on this basis, in accordance with Policy IMP1 of the Peterborough Local Plan (First Replacement).

- C16 Prior to the occupation of any dwelling a phasing plan for the provision of the public open space areas on site shall be submitted to and agreed in writing with the Local Planning Authority. The public open space shall thereafter be provided in accordance with the approved phasing details unless otherwise agreed in writing by the Local Planning Authority, and these areas shall not thereafter be used for any purpose other than as public open space.

**Reason:** In order to provide adequate open space facilities for occupiers of the site and in the vicinity in a manner that is not detrimental to the amenity of the area, in accordance with Policies LT1, DA2 and DA11 of the Adopted Peterborough Local Plan (First Replacement).

- C17 Prior to the construction of each phase of development details of the proposed noise mitigation measures for each dwelling shall be submitted to and agreed in writing by the Local Planning Authority. These measures shall be fully implemented prior to the occupation of each dwelling and thereafter retained as such.

**Reason:** In order to protect the amenity of residents, in accordance with Policy DA2 of the Adopted Peterborough Local Plan (First Replacement).

- C18 Prior to the commencement of any development hereby approved or within another such period as may be agreed in writing with the Local Planning Authority, plans showing a scheme of enhancements to the main spine road through the site to ensure vehicle speeds are constrained shall be submitted to and approved by the Local Planning Authority. The spine road shall be implemented in accordance with these approved plans.

**Reason:** In the interests of the safety of users of the roads in accordance with Policy T1 of the adopted Peterborough Local Plan (First Replacement).

- C19 Prior to the commencement of any development hereby approved or within another such period as may be agreed in writing with the Local Planning Authority, plans showing revised road widths between plots 80 and 86 shall be submitted to and approved by the Local Planning Authority. The road shall be implemented in accordance with these approved plans.

**Reason:** In the interests of the safety of users of the roads in accordance with Policy T1 of the adopted Peterborough Local Plan (First Replacement).

- C20 Prior to the commencement of any development hereby approved or within another such period as may be agreed in writing with the Local Planning Authority, plans showing a minimum width of 6.5m for the road and turning head serving plots 99-113 shall be submitted to and approved by the Local Planning Authority. The road shall be implemented in accordance with these approved plans.

**Reason:** In the interests of the safety of users of the roads in accordance with Policy T1 of the adopted Peterborough Local Plan (First Replacement)

- C21 Prior to the commencement of any development hereby approved or within another such period as may be agreed in writing with the Local Planning Authority, plans showing the layout of the bus stops adjacent to the open space including hard-standing for passenger waiting areas, shelters, information poles and RTPI provision shall be submitted to and approved by the Local Planning Authority. The bus stops shall be implemented in accordance with these approved plans.

**Reason:** In the interests of the safety of users of the roads in accordance with Policy T1 of the adopted Peterborough Local Plan (First Replacement).

- C22 Prior to the commencement of any development hereby approved or within another such period as may be agreed in writing with the Local Planning Authority, plans showing vehicle-pedestrian visibility splays of 2m x 2m either side of dropped vehicular crossings serving shared accesses/roads where they meet the primary roads/footways and 1.5m x 1.5m either side of single vehicular accesses/parking spaces where they meet the primary roads/footways shall submitted to and approved by the Local Planning Authority. The splays shall be implemented in accordance with these approved plans and thereafter be kept clear of any obstructions over 600m in height.

**Reason:** In the interests of the safety of users of the roads in accordance with Policy T1 of the adopted Peterborough Local Plan (First Replacement).

- C23 Prior to the commencement of any development hereby approved or within another such period as may be agreed in writing with the Local Planning Authority, plans showing vehicle-vehicle visibility splays of 2.4m x 27m at the junctions of all roads/shared drives with the main spine road shall submitted to and approved by the Local Planning Authority. The splays shall be implemented in accordance with these approved plans and thereafter be kept clear of any obstructions over 600m in height.

**Reason:** In the interests of the safety of users of the roads in accordance with Policy T1 of the adopted Peterborough Local Plan (First Replacement).

- C24 Prior to the commencement of any development hereby approved or within another such period as may be agreed in writing with the Local Planning Authority, plans showing a minimum width of 4.5m for the private access parking court serving plots 33-36, 46-54, 81-85 and 108-110 and a minimum width of 5m for the private accesses serving plots 8-13, 15-26, 27-32, 194-201, 218-221 and 185-190 shall submitted to and approved by the Local Planning Authority. The accesses shall be implemented in accordance with these approved plans.

**Reason:** In the interests of the safety of users of the roads in accordance with Policy T1 of the adopted Peterborough Local Plan (First Replacement).

- C25 Prior to the commencement of any development hereby approved, or within another such period as may be agreed in writing with the Local Planning

Authority, details shall be submitted to the Local Planning Authority showing the road levels, form of construction, surface materials, drainage, street lighting street furniture, highway structures and the tying on the new roads to the existing public highway. The highways shall be constructed in accordance with the approved plans.

**Reason:** In the interests of the safety of users of the roads in accordance with Policy T1 of the adopted Peterborough Local Plan (First Replacement).

- C26 Prior to the occupation of any of the dwellings the footway linking that dwelling to the existing adopted footways shall be completed to binder course level and the carriageway linking that dwelling to the existing adopted carriageways shall be completed to base course level.

**Reason:** In the interests of the safety of users of the roads in accordance with Policy T1 of the adopted Peterborough Local Plan (First Replacement).

- C27 Prior to the commencement of any development hereby approved or within another such period as may be agreed in writing with the Local Planning Authority, revised plans showing parking bays perpendicular to the highway being minimum of 5m in length (clear of the adoptable highway) and bays parallel to the highway being a minimum of 6m in length shall be submitted to and approved by the Local Planning Authority. The parking spaces shall be implemented in accordance with these approved plans.

**Reason:** In the interests of the safety of users of the roads in accordance with Policy T1 of the adopted Peterborough Local Plan (First Replacement).

- C28 Prior to the commencement of any development hereby approved or within another such period as may be agreed in writing with the Local Planning Authority, revised plans showing the parking bays serving plots 218-219 repositioned 2m towards the southern site boundary shall be submitted to and approved by the Local Planning Authority. The parking spaces shall be implemented in accordance with these approved plans.

**Reason:** In the interests of providing adequate turning facilities and in the interests of the safety of users of the roads in accordance with Policy T1 of the adopted Peterborough Local Plan (First Replacement).

- C29 Prior to the commencement of development or within another such period as may be agreed in writing with the Local Planning Authority, a scheme for the landscaping of the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out as approved no later than the first planting season following the occupation of any building or the completion of development, whichever is the earlier, or in accordance with the implementation programme.

The scheme shall include the following details:

- Proposed finished ground and building slab levels
- Planting plans including retained trees, species, numbers, size and density of planting
- An implementation programme (phased developments)

**Reason:** In the interests of the visual appearance of the development and the enhancement of biodiversity in accordance with policies DA1, DA2, LNE9 and LNE10 of the Peterborough Local Plan (First Replacement).

- C30 A landscape management plan shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development. The management plan shall be implemented in accordance with a timetable contained therein and as approved unless changes are first agreed in writing by the Local Planning Authority.  
The Plan shall include the following details:  
Long term design objectives  
Management responsibilities  
Maintenance schedules

**Reason:** In the interests of the visual appearance of the development and the enhancement of biodiversity in accordance with policies DA1, DA2, LNE9 and LNE10 of the Peterborough Local Plan (First Replacement).

- C31 Prior to the commencement of development or within another such period as may be agreed in writing with the Local Planning Authority, an Arboricultural Method Statement shall be carried out (As per section 7.2 BS5837-2005) and shall be submitted to and agreed in writing with the Local Planning Authority. This detail to cover any proposed works within the RPA of a tree – to include construction, parking and landscaping within gardens. All works shall thereafter be carried out in accordance with the Arboricultural Method Statement.

**Reason:** In the interests of the visual appearance of the development and the enhancement of biodiversity in accordance with policies DA1, DA2, LNE9 and LNE10 of the Peterborough Local Plan (First Replacement)

- C32 No development shall take place or within another such period as may be agreed in writing with the Local Planning Authority, until an assessment of the nature and extent of contamination has been submitted to and approved in writing by the Local Planning Authority to adequately characterise the potential impact from landfill gas. This assessment must be undertaken by a competent person, and shall assess any contamination on the site whether or not it originates on the site. Moreover, it must include:  
(i) a survey of the extent, scale and nature of contamination,  
(ii) an assessment of the potential risks to:  
• human health,  
• property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,

**Reason:** To ensure that the development complies with approved details in the interests of Human Health and Controlled Waters, in accordance with planning Policy Guidance (PPG23 Planning and Pollution Control).

- C33 Prior to the construction of each phase of development details of the proposed vibration mitigation measures for each dwelling shall be submitted to and agreed in writing by the Local Planning Authority. These measures shall be fully implemented prior to the occupation of each dwelling and thereafter retained as such.



**Reason:** In order to protect the amenity of residents, in accordance with Policy DA2 of the Adopted Peterborough Local Plan (First Replacement)

- C34 Prior to the commencement of development or within another such period as may be agreed in writing with the Local Planning Authority, full details of the gabion wall shall be submitted to and agreed in writing by the Local Planning Authority. The gabion wall shall thereafter be constructed in accordance with the approved details prior to the occupation of any dwelling

**Reason:** In order to protect the amenity of residents, in accordance with Policy DA2 of the Adopted Peterborough Local Plan (First Replacement)

- C35 No development shall commence on any dwelling until details of the proposed surface water drainage scheme and any accompanying sustainable drainage scheme (SUD's) plus the arrangements for the long term management of the schemes have been submitted to and approved in writing by the local planning authority. For the avoidance of doubt the drainage and long term management schemes shall include precise details of the following:
1. Maintenance Schedule, including tasks, frequency, level of competence of operatives which will combine with the water company, highway and public open space maintenance schedules.
  2. Responsibilities of SUDS management authority, or private maintenance company, to include financial arrangements (commuted sum by developer to cover costs in long term and/or local drainage levy on all residents/businesses with suitable plan or bond to protect against insolvency).
  3. Responsibilities to cover emergency response to asset failure.
  4. Trigger points for agreements and implementation for each phase of the development and schemes.
  5. Remedial procedure to cover failure of maintenance company or adopting authority to act.
  6. Arbitration arrangements in the event of dispute.

**Reason:** In order to protect and safeguard the amenity of the area and of the water environment in accordance with Planning Policy Statement (PPS23 Planning and Pollution Control) and Policies U1, U2 and U9 of the Peterborough Local Plan (First Replacement)

The notes on the following sheet should be read in conjunction with this decision notice.

.....  
Head of Planning Transport and Engineering Services

**Counterpart Lease for the construction and sale of dwellings  
and other buildings upon land at Southbank, London Road,  
Peterborough**

Dated 25 March 2011

**Homes and Communities Agency**

**Peterborough City Council**

**Morris Homes (East Midlands) Limited**  
(Developer)

**Morris ~~Homes~~ Limited**  
(Surety) *Group*

*MP2*

**HEWITSONS  
SHAKESPEARE HOUSE  
42 NEWMARKET ROAD  
CAMBRIDGE  
CB5 8EP**

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**Lease**

LR1. Date of lease

LR2. Title number(s)

LR2.1 Landlord's title number(s) CB300177 CB71646 CB271080 CB24833 CB182218  
CB182219 CB181424 CB182217 CB82983 CB352565 CB360343

LR2.2 Other title numbers

None

LR3. Parties to this lease

Landlord

Homes and Communities Agency (HCA)

Tenant

**Morris Homes (East Midlands) Limited** (Company Number 184652) whose registered office is at Morland House, Altrincham Road, Wilmslow, Cheshire, SK9 5NW (**Developer**)

Other parties *MP2*  
*Group*

*MP2*  
*05026617*

**Morris Homes Limited (Surety)** (company number ~~03595533~~) whose registered office is at Morland House Altrincham Road Wilmslow Cheshire SK9 5NW (**Surety**)

**Peterborough City Council** of Town Hall Bridge Street Peterborough PE1 1HE (**PCC**)

LR4. Property

**In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.**

The land demised by this lease is known as Phase 1 Southbank, London Road, Peterborough defined as the **Land** in Clause 1 and more fully described in that definition.

LR5. Prescribed statements etc.

None.

**LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.**

None.

You must set out here any statement prescribed under rules 179, 180 or 196 mentioned above, or refer to the clause number in this lease which contains the statement.

Although LR5 must not be deleted, LR5.1 may be deleted if it is not relevant. But LR5.2 must NOT be renumbered.

Clause LR5.2 may be deleted if none of the listed legislation applies.

**LR6. Term for which the Property is leased**

The term as specified in this lease at Clause 3.1.

**LR7. Premium**

[£1 plus VAT of £\*\*<sup>1</sup> ]

If VAT is payable on the premium, it must be stated, including how much. State for example, "£100,000 plus VAT of £17,500" or "£117,500 inclusive of VAT". Do NOT simply refer to VAT generally for example, "£100,000 plus VAT".

**LR8. Prohibitions or restrictions on disposing of this lease**

This lease contains a provision that prohibits or restricts dispositions.

You must include whichever of these two statements is appropriate. Do NOT refer to the relevant clauses in the lease.

**LR9. Rights of acquisition etc.**

**LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land.**

None.

**LR9.2 Tenant's covenant to (or offer to) surrender this lease**

None.

**LR9.3 Landlord's contractual rights to acquire this lease**

None.

**LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property LR2.2 above.**

None.

**LR11. Easements**

**LR11.1 Easements granted by this lease for the benefit of the Property**

See Schedule 1 Part 1.

Refer to the schedule number which sets out easements granted. NB all relevant burdened title numbers should be inserted into clause LR2.2 above.

**LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property**

See Schedule 1 Part 2.

<sup>1</sup> HCA to produce election on PCC and EEDA Land.

Refer to the schedule number which sets out easements reserved. NB all relevant benefiting title numbers should be inserted into clause LR2.2 above.

**LR12. Estate rent charge burdening the Property**

None.

**LR13. Application for standard form of restriction**

The full text of the standard form of restriction and the title against which it is to be entered must be set out (not forgetting to put any additional title number into clause LR2.2 above).

If more than one standard form of restriction is required, then use this clause to apply for each of them, repeating the introductory words below for each restriction.

If a non-standard form of restriction is required, this should NOT be referred to in this clause. A separate application must be made on Form RX1.

Clause LR13 may be deleted in its entirety if it is not relevant. But LR14 must not be renumbered.

**LR14. Declaration of trust where there is more than one person comprising the Tenant**

Clause LR14 may be deleted in its entirety if it is not relevant.

Not applicable.

**PARTICULARS**

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<b>ESTATE NAME:</b>	Phase 1 Southbank, Peterborough
<b>AREA:</b>	17 acres approximately
<b>NUMBER OF DWELLINGS:</b>	295 comprising: 120 Affordable Units 36 Affordable Shared Ownership Units 84 Rental Units 175 Private
<b>NUMBER OF OTHER BUILDINGS</b>	<b>ONE</b> Commercial Unit
<b>PRICE:</b>	£1 (One Pound)
<b>DEVELOPMENT END DATE:</b>	Seven years from the date of this Lease subject to extension in accordance with Schedule 2 paragraph 6
<b>BID SUBMISSION</b>	The submission dated February 2008 made by the Developer in response to the tender by EP of the Land contained in the disc annexed as Appendix 1 (including any variations or additions thereto)
<b>CODE LEVEL</b>	<b>6</b>
<b>CEEQUAL AWARD CERTIFICATE</b>	<b>"Very Good"</b>
<b>FINAL CERTIFICATE</b>	<b>"Excellent"</b>

---



## Lease

### Dated

### Between

- (1) **The Homes and Communities Agency** (a statutory body) (which expression shall where the context so admits include the person for the time being entitled to the reversion immediately expectant upon the determination of the term hereby agreed to be granted) of Central Business Exchange 414 Midsummer Boulevard Milton Keynes MK9 2EA (**HCA**);
- (2) **Peterborough City Council** of Town Hall, Bridge Street, Peterborough PE1 1HE (**PCC**);
- (3) **Morris Homes (East Midlands) Limited** (Company Number 0184652) whose registered office is at Morland House, Altrincham Road, Wilmslow, Cheshire, SK9 5NW (**Developer**); and
- (4) **Morris ~~Homes~~ Limited** (company registration number ~~0184652~~ <sup>05026617</sup>) whose registered office is at Morland House Altrincham Road Wilmslow Cheshire SK9 5NW; (**Surety**)

### Recitals

The parties hereto have agreed to the grant of this Lease with a view to the creation of a new zero carbon community in line with the Carbon Challenge Generic Brief

### It is agreed:

#### 1 Definitions

In this Lease the following definitions apply:

**Access Deed** means the Deed of Release and Grant of today's date and made between (1) HCA and (2) PCC

**Adjoining Land** means the land belonging to Peterborough City Council shown coloured pink on the Plan.

**Adoptable Common Services** means all Common Services which are intended to become adopted or maintainable at the public expense or by any public or statutory authority.

**Adoptable Highways** means Highways intended to be adopted as maintainable by the highway authority

**Affordable Flat** means any Flat comprised in a Leasehold Building and which is to be disposed of by the Association under a Shared Ownership Lease or Tenancy Agreement (or as otherwise permitted by the Planning Permission).

**Affordable Unit** means a Dwelling which is not an Affordable Flat and which is to be disposed of by the Developer to the Association for further disposal by the Association under a Shared Ownership Lease or Tenancy Agreement (or as otherwise permitted by the Planning Permission).

**Affordable Unit Lease** means a lease for a term of not less than 150 years to be granted by HCA at the request of the Developer to the Association in such form as the Developer shall reasonably require and the intention is that it shall include an acknowledgement by the lessee that the estate has been developed as an environmentally sustainable development.

**Alternative Solution** means a solution that is acceptable to both the Developer and HCA:

- (a) to enable the Dwellings to be constructed to the Code Level or Revised Code in the discretion of the Developer; and
- (b) is not materially more expensive than the proposed Off Site Energy Solution or On Site Energy Solution; and
- (c) that in the opinion of the Developer will be acceptable to potential Dwelling purchasers and their mortgagees; and
- (d) that can be fully implemented on the Land

**Alternative Solution Period** means the period of three months (or such other period that the Developer and HCA may agree in writing) commencing on the second anniversary of the date of this Lease

**Approved Plans** means the drawings, layout plan, the landscaping layout and scheme, the house types and building specifications, programme of works and any other plans and specifications relating to the Development which have been approved by the Planning Permission

**Association** means Cross Keys Homes Limited (company no. 04557701) whose registered office is at Shrewsbury Avenue Woodston Peterborough PE2 7BZ or such other independent housing organisation registered with the Tenants Services Authority as a registered provider and approved by HCA acting reasonably and without delay

**Building for Life Award** means the award by the Building for Life Scheme of a Building for Life with a minimum of Gold Standard for the Development

**Carbon Challenge Inspector** means the appropriate member of the HCA multi-disciplinary panel (who must have no conflict of interest) appointed by the Developer to monitor the implementation of the Development Strategies by the Developer in accordance with the requirements and obligations of the Developer under the Lease

**Carbon Challenge Generic Brief** means the document published by HCA on 7<sup>th</sup> December 2007 setting out the requirements to be met by developers on certain development sites

**Category D and E Specifications** means any specification or process which is rated as Category D or E within the Green Guide

**CEEQUAL** means Civil Engineering Environmental Quality Assessment and Award Scheme

**CEEQUAL Award Certificate** means a post construction assessment certificate in respect of the whole of the Development confirming that the appropriate elements of the Development have been so constructed as to achieve the rating of "Very Good"

**CEEQUAL Manual** means a manual to be kept by the Developer for inspection by the CEEQUAL inspectors

**Challenge Period** means the period of three months from the date of the Planning Permission or Revised Planning Permission or Energy Planning Permission provided that if Judicial Proceedings are begun within such period of three months time the Challenge Period will be automatically extended to be the date on which such Judicial Proceedings being Finally Determined.

**Code** means the Government's Code for Sustainable Homes as published in October 2007 or if HCA agrees (such agreement not to be unreasonably withheld or delayed) as subsequently varied

**Code Final Certificate** means an assessment certificate of post-construction compliance with the Code issued by a company sanctioned by the Building Research Establishment in respect of a Dwelling confirming that such Dwelling has been constructed so as to achieve not less than the Code Level

**Code Level** means Level 6 under the Code

**Commencement Date** means the date of this Lease

**Commercial Unit** means a single unit of commercial accommodation (whether or not on one floor) constructed on the Land and which is intended for use exclusively for non-residential purposes together with any land forming the curtilage thereof and identified as such in the Approved Plans

**Common Areas** means:

- (i) those parts of the Land not included in any Dwelling or in any Commercial Unit
- (ii) those Highways and Common Services not intended to be adopted as maintainable at public expense;
- (iii) Open Space Land not intended to be transferred to PCC and which it is intended shall be transferred to the Management Company as shown on the Approved Plans

**Common Services** means sewers, drains, channels, pipes, watercourses, gutters, wires, cables, pillars, turrets, amplifiers, poles, soakaways and any other apparatus for the supply, transmission or distribution of water, gas, electricity or telephone, radio or television signals or for the disposal of soil, foul water rainwater or surface water, which are not to be adopted as maintainable at public expense other than the Energy Centre Services.

**Conditions** means:

- (a) the production by the Developer to HCA of a completed pre-assessment estimator in respect of the proposed Development achieving the Code Level
- (b) the production by the Developer of each of the listed Development Strategies in detail and in a form acceptable to HCA acting reasonably and without delay
- (c) the production by the Developer to HCA of a Process Efficiency Statement acceptable to HCA acting reasonably and without delay
- (d) the production by the Developer to HCA of an Open Book Costing Estimate for the Development in a form acceptable to HCA acting reasonably and without delay
- (e) the production by the Developer to HCA of an Initial Certificate in respect of the Commercial Units (if any) with the Development
- (f) the production by the Developer to HCA of completed pre-assessment estimator for a CEEQUAL Assessment in respect of the proposed Development or relevant Phase of it

**Considerate Constructors Scheme** means the Code of Considerate Practice promoted by the construction industry a copy of which is to be found on the Considerate Constructors Scheme website

**Customer Satisfaction Survey** means the customer satisfaction survey to be conducted by the Developer at the times and in the manner as set out in Appendix 3

**Deed of Covenant and Charge** means a deed in the form set out in Schedule 12 together with such amendments as the Developer may require and HCA approves acting reasonably and without delay

**Deleterious Materials** means any materials or substances which:

- (a) are not in accordance with the report entitled "Good Practice in the Selection of Construction Materials" (published under the auspices of the steering group representing the British Council for Offices and the British Property Federation and prepared by Ove Arup at the date of this Lease and/or the relevant British and/or European Standards and/or codes of practice or which are generally known within the construction industry at the time of specification or use to be deleterious to the durability and/or to the health and safety of buildings and/or structures and/or finishes and/or plant and machinery in the particular circumstance in which they are specified to be used; or
- (b) are (or fall within) a Category D or E Specification

**Detailed Access Statement** means a certificate by an NARC consultant that the Development has been built in accordance with the Approved Plans insofar as it relates to access to and within the Development and the Dwellings

**Developed Land** means each and every part of the Land on which the Developer has from time to time constructed a Dwelling or a Commercial Unit to at least foundation level (excluding floor slab) together with the curtilage and Common Parts associated with all such Dwellings or Commercial Unit and all appurtenant roads sewers services and other facilities and infrastructure serving or benefiting or intended to serve or benefit the same

**Developer** includes every person who is at any time the developer under this Lease.

**Development** means the erection and completion on the Land of all buildings, erections, structures, Highways, drainage, infrastructure and other works in accordance with the Carbon Challenge Generic Brief and the Approved Plans including site preparation and the demolition of any existing buildings and the redevelopment of the Land as permitted by the Planning Permission

**Development Strategies** means the individual detailed development strategies prepared by the Developer with the approval of HCA (and specified in Schedule 9).

**District Energy Centre** means apparatus for the production and supply of the Energy Centre Services

**Dwelling** means any house, bungalow, flat, maisonette or other single unit of residential accommodation constructed on the Land together with any land forming its curtilage and any other appurtenant structures.

**EEDA** means East of England Development Agency of Victory House Vision Park Chivers Way Histon Cambridge CB24 9ZR

**Enactment** means statute, statutory instrument, statutory guidance, treaty, regulation, directive, byelaw, code of practice, guidance note, circular, common law and any notice, order, direction or requirement given or made pursuant to any of them for the time being in force.

**Energy Centre Services** means all pipes wires cables and ancillary apparatus for the supply of hot water and (if required by the Developer) electricity to the Development

**Energy Planning Permission** means a planning permission granted to PCC pursuant to clause 29.1 which is satisfactory to the Developer acting reasonably and that has become Immune from Challenge for the provision of a District Energy Centre in the Moyes Stand

**Environment** means all or any of the following media, alone or in combination: the air (including the air within buildings and the air within any other natural or man-made structures above or below ground), water (including water under or within land or in pipes or sewerage systems), soil, land and any ecological systems and living organisms supported by those media and buildings.

**Environmental Law** means all European Community, national and local statutes, and the common law, from time to time in force concerning:

- (a) pollution of, damage to or protection of the Environment or health and safety and/or the provision of remedies in respect of or compensation for damage or harm to the Environment or to health and safety and/or
- (b) emissions, discharges, releases or escapes into the Environment or the presence in the Environment of Hazardous Substances or the production, processing, management, treatment, storage, transport, handling or disposal of Hazardous Substances

and any bylaws, regulations or subordinate legislation, judgments, decisions, notices, orders, circulars, codes of practice and permits from time to time issued or made thereunder having force of law.

**Estate Layout Plan** means a plan showing the layout and boundaries of the Dwellings and the Commercial Units to be comprised in the Development such plan being suitable for lodging as an estate layout plan at the Land Registry

**Estate Management Scheme** means the scheme to secure the long-term stewardship and maintenance of the Common Areas and the Open Space Land within the Development to the Code Level and to address wider community responsibility and environmental objectives in accordance with the Estate Management Scheme Principle

**Estate Management Scheme Documents** means those documents described in Schedule 10 which shall be in accordance with the Estate Management Scheme Principles

**Estate Management Scheme Principles** means the principles for the sustainable on-going management of the Development in accordance with the Code as set out in Schedule 11

**Final Certificate** means in the case of a Commercial Unit a post construction assessment certificate issued by a company sanctioned by the Building Research Establishment in respect of a Commercial Unit confirming that such Commercial Unit has been constructed so as to achieve the rating of "Excellent"

**Final Completion Certificate** means a certificate issued pursuant to clause 6

**Finally Determined** means in respect of all Judicial Proceedings initiated within the Challenge Period that they have been finally determined meaning the later of:-

- (a) the date a court has made a decision upon those proceedings and no further appeal to a higher court has been or can be made; or
- (b) the date the Judicial Proceedings have been withdrawn without remission to the Local Planning Authority or the Secretary of State.

**Flat** means a single unit of residential accommodation (whether or not on the same floor) constructed on the Land which:

- (a) forms a part only of a building; and
- (b) is divided horizontally from some other part of that building.

**Football Club Leases** means the leases dated 24 December 2009 and 2 April 2008 (as varied by a Deed of Variation dated 24 December 2009) both made between Peterborough City Council and Peterborough United Football Club Limited relating to Peterborough United Football Ground, London Road, Peterborough, PE2 8AL.

**Grant** means grant monies paid to the Developer pursuant to the Affordable Housing Grant Agreement dated [25 March 2011]; and/or the PCC Grant Agreement dated [ ] for rental units; and/or the Regeneration Grant Agreement dated [ ] LADAL  
L 25 March 2011 25 March 2011

**Green Guide** means the environmental rating scheme for building specifications being part of BREEAM (BRE Environmental Assessment Method) ratings are set out as an A+ to E ranking system where A+ represents the best environmental performance/least environmental impact and E the worst environmental performance/most environmental impact

**Hazardous Substances** means any wastes, pollutants, contaminants and any other natural or artificial substance, including, for the avoidance of doubt, radioactive material (in each case whether in the form of a solid, liquid, gas or vapour, and whether alone or in combination) which is capable of causing harm or damage to the Environment or to the health and safety of persons.

**Highways** means roads, cycleways, footpaths, pavements, accessways, squares, courtyards, driveways, forecourts, entranceways and ancillary verges, landscaped areas, lighting, street furniture, drains, other utilities and associated works.

**Immune from Challenge** means in respect of the relevant planning permission:-

- (a) any Challenge Period with regard to any decision (including but not limited to a decision upon appeal or by a Court or pursuant to any application or Appeal under Section 73 of the Act) has expired without Judicial Proceedings being initiated
- (b) all Judicial Proceedings initiated within any Challenge Period have been finally determined (meaning the later of):-
  - (i) the date a court has made a decision upon those proceedings and no further appeal to a higher court has been or can be made; or
  - (ii) the date the Judicial Proceedings have been withdrawn without remission to the Local Planning Authority or the Secretary of State; and
- (c) where Judicial Proceedings have been fully determined (as above defined) and the planning application the subject of those proceedings has been remitted to the Local Planning Authority or the Secretary of State it or he has made a decision with regard to such matters so remitted; or
- (d) all such proceedings initiated within any Challenge Period having been finally determined (meaning no further Judicial Proceedings or appeal can be made)

**Inspection Stage** means the stage in construction of the relevant Dwelling or Commercial Unit when second fix has been completed

**Interest** means interest at the rate of three per cent per annum above the base lending rate from time to time of Barclays Bank PLC (or of such other UK clearing bank as HCA may designate from time to time by giving notice to the Developer) both before and after any judgment, calculated on a daily basis from the date on which the payment is due under this Lease to the date on which such payment is made.

**Interim Client Design Award** means an interim assessment certificate issued by a company sanctioned by CEEQUAL Limited

**Interim Completion Certificate** means in relation to a Dwelling or a Commercial Unit a certificate given by the Carbon Challenge Inspector certifying that:-

- (i) the Dwelling or Commercial Unit has been erected to Inspection Stage in accordance with the Approved Plans
- (ii) that the Highways reasonably necessary to give access to the Dwelling or Commercial Unit have been constructed to base course level and the sewers drains and other services ancillary to and reasonably necessary for the proper enjoyment of the Dwelling or Commercial Unit are ready for use by the occupiers thereof
- (iii) no Category D or E Specifications have been used in (or affect) the construction of the Dwelling or Commercial Unit (or any of the materials used in such construction)
- (iv) the relevant Dwelling or Commercial Unit has been built to Inspection Stage in accordance with the Development Strategies so far as they directly relate to the relevant Dwelling or Commercial Unit at Inspection Stage and having regard to the progress of the Development and the Dwelling / Commercial Unit's position in the Developer's programme for the Development
- (v) that the relevant Dwelling or Commercial Unit has been built in compliance with the Carbon Challenge Generic Brief so far as it directly relates to the relevant Dwelling or Commercial Unit at Inspection Stage and having regard to the progress of the Development and the Dwelling / Commercial Unit's position in the Developer's programme for the Development
- (vi) the Carbon Generic Challenge Brief so far as it directly relates and is appropriate to the relevant Dwelling or Commercial Unit (as the case may be) has been materially complied with having regard to the stage of the overall Development then reached and the Dwelling / Commercial Unit's position in the Developer's programme for the Development
- (vii) that the Carbon Challenge Inspector (acting as a Code Assessor) has recommended or the Carbon Challenge Inspector has received confirmation from the Code Assessor that the Code Assessor has recommended to the Building Research Establishment that the Code Level certification should be given in respect of the relevant Dwelling or an "Excellent" rating should be given in respect of the Commercial Unit (as the case may be) once practically complete and once the Energy District Centre is complete

**PROVIDED THAT** where HCA has confirmed its approval in writing to the Developer or the Carbon Challenge Inspector to any element of the Development Strategies and / or Carbon Generic Challenge Brief the Carbon Challenge Inspector shall accept (without liability) such approvals for the purposes of issuing any Interim Completion Certificate

**Initial Certificate** means a provisional stage assessment report issued by a company sanctioned by the Building Research Establishment in respect of the Commercial Units to be erected on the Land pursuant to the Lease confirming that the design of such Commercial Units is such that the Commercial Units are capable of achieving the requirements of the Building Research Establishment Environmental Assessment Method (BREEAM) stipulated standard of assessment of "Excellent"

**Judicial Proceedings** means any application for Judicial Review and all ensuing proceedings until the Judicial Review has been finally determined and no further proceedings or appeal has been or can be made

**Judicial Review** means judicial review under the Civil Procedure Rules 1998 Schedule 1, RSC Order 53 (Applications for Judicial review) and any complementary rules, Practice Direction and protocols and any amendments to the foregoing issued by the Lord Chancellor's Department or successors in function

**Land** means all that land situate at Southbank, London Road, Peterborough (comprising the Area and shown edged red on the Plan (and references to "Land" shall include any part or parts of it).

**Landowners** means HCA

**Landscape Works Specification** means the specification relating to landscaping approved pursuant to the Planning Permission

**Lease** means this Lease and any variation agreed by the parties in writing and any deed or document supplemental to this Lease.

**Leasehold Building** means a building comprising Flats (including any land forming the curtilage of the building) and may include Commercial Units at ground floor level

**Lifetime Homes Certificate** means a certificate issued by a suitably qualified person endorsed by either Habinteg Housing Association or the Joseph Rowntree Foundation confirming that all 16 Lifetime Home standards have been met

**Local Planning Authority** means Peterborough City Council or such other authority, as shall from time to time authority to deal with town and country planning matters.

**Management Company** means such company that the Developer will incorporate for the management of the Development in accordance with the Estate Management Scheme.

**Moyes Stand** means the stand in Peterborough Football Club's stadium shown marked on the Plan as "Moyes Stand".

**New Planning Agreement** means any agreement obligation or undertaking to be made pursuant to the following or similar legislation Section 106 of the Act, Sections 38 and/or 278 of the Highways Act 1980, Section 104 of the Water Industry Act 1991, Section 111 Local Government Act 1972, Electricity Act 1989, Gas Act 1980, Water Act 1989 or any provision of similar intent with any appropriate authority as to the water supply to or drainage of surface water and effluent from the Land or other services or access and any subsequent variations to a planning agreement but excluding the Planning Agreement

**Off Site Energy Solution** means the grant of the Energy Planning Permission, the Developer entering into all relevant documents with an energy provider for the supply of the Energy Centre Services and a lease of part of the Moyes Stand in Peterborough Football Club granted to the Developer or such other party as the Developer may specify to accommodate the District Energy Centre in all such cases satisfactory to the Developer acting reasonably

**On Site Energy Solution** means the Revised Planning Permission and the Developer entering into all relevant documents with an energy provider for the supply of the Energy Centre Services in all cases satisfactory to the Developer acting reasonably

**Open Book Costing Estimate** means a costing estimate of the various components comprising the Development to be prepared by the Developer on an open book basis

**Open Space Land** means that part of the Land being the open spaces, play areas, amenity areas and landscaping areas including open space, community play spaces and allotments, community greenhouses and sheds, fenland zone and wildlife habitat, sustainable urban drainage system, green limb/canopy walkway to connecting bridge and car park (if any) identified as such in the Approved Drawings for use by residents within the Development or for general public use.

**Option for Lease** means the option agreement dated 26 March 2010 made between The Homes and Communities Agency, East of England Development Agency, Peterborough City Council and Morris Homes Limited pursuant to which this Lease has been granted.



**Overage** means the overage payments (if any) specified in the Option for Lease

**Particulars** means the details appearing in the page of this Lease so headed.

**Party** means a party to this Lease and **Parties** means more than one Party.

**PCC** means Peterborough City Council.

**PCC Transfer** means the transfer of today's date made between (1) PCC and (2) HCA of part of the Land

**Perpetuity Period** means the period of eighty years from the date of this Lease.

**Phase** means a phase of the Development designated as such in the Approved Plans

**Plan** means the plan annexed hereto

**Planning Acts** means all Enactments relating to town and country planning.

**Planning Agreement** means a unilateral undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 dated 16 day of March 2011 and made between HCA (1) EEDA (2) and PCC (3) and Morris Homes (East Midlands) Limited (4) and all approvals consents discharges and variations thereunder and substituted agreements therefore.

**Planning Considerations** means:

- (a) that the requirements of the Local Planning Authority, the County Council or Highway Authority or any other public authority or undertaker or company or other like body and their officers, representatives or agents;
- (b) the terms of the local development framework or similar document and any proposed provisions or modifications thereto;
- (c) good planning and development practice;
- (d) the advice of the Developer's planning consultants or Planning Counsel or other expert; and
- (e) planning policy guidance issued by HM Government current at the relevant time; and/or
- (f) the anticipated market for the Dwellings proposed.

**Planning Counsel** means counsel of at least 10 years call specialising in Town and Country planning and development

**Planning Permission** means full planning permission reference 10/01267/FUL dated day of 23 March 2011 together with the Planning Agreement and all approvals consents discharges and variations thereunder and substituted permissions

**Prescribed Rate** means interest at 4% over the base lending rate from time to time of Barclays Bank Plc

**Private Unit** means a Dwelling to be disposed of by the Developer to a Purchaser and which is neither a Rental Unit nor a Shared Ownership Unit

s. 40(2)

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### PROJECT

**South Bank  
Peterborough Carbon Challenge  
for Morris Homes**

### DRAWING TITLE

**Lease Plan**

 <b>ISO 9001:2000</b>		Scale @ A0	Drawn By
		1:500	MRS
		Checked By	Date Drawn
			21.03.11
			Date Checked
			21.03.11

Drawing No.

Revision

**08037/P/120**

**Private Unit Lease** means a lease for a term of 999 years at a premium to be granted by HCA at the request of the Developer to a Purchaser in such form as the Developer shall reasonably require and the intention is that it shall include an acknowledgement by the lessee that the estate has been developed as an environmentally sustainable development.

**Purchaser** means any person (including the Association) who shall take (or enter into a contract with the Developer to take) a transfer or lease (or any other disposal) of any Dwelling or Commercial Unit

**Quality Standards** means standards which:

- secure the required Building for Life Award
- satisfy the Secured by Design requirements
- in terms of design would satisfy the requirements of the Code Initial Certificate
- would achieve the Code Level

**Reimbursement** means in relation to the Undeveloped Land (where a New Lease is granted) or in relation to the Land (where a New Lease is not granted) the market value of the infrastructure and servicing works undertaken by the Developer at the date of the termination forfeiture or repudiation of this Lease

**Rental Unit** means a Dwelling for which a Tenancy Agreement is to be disposed of by the Developer or the Association (as the case may be)

**Revised Code Level** means at the discretion of the Developer either:-

- (a) Level 6 under the Code as published in October 2007; or
- (b) Level 6 under the Code as published as at the date of service of the Revised Code Level Notice

**Revised Code Level Notice** means the notice that may be served by the Developer pursuant to clause 29.5.2 of its intention to implement the Planning Permission and build the Development to the Revised Code Level

**Revised Planning Permission** means a planning permission granted to the Developer pursuant to clause 29.2 which is satisfactory to the Developer and that has become Immune from Challenge

**Safer Parking Scheme Certificate** means a certificate or written confirmation issued by the relevant local Constabulary in which the Land is situated confirming accreditation by the local Constabulary in accordance with ODPM Public Service Agreement (current at the Bid Submission)

**Secured by Design Certificate** means a certificate or written confirmation issued by the relevant local constabulary in which the Land is situated confirming accreditation by that local constabulary in accordance with [ODPM] Public Service Agreement (current at the date of the Bid Submission)

**Shared Ownership Lease** means a shared ownership lease as defined by Section 106 of the Housing Associations Act 1985 in such form as the Developer shall reasonably require but to include a covenant by the lessee to respect the aim to achieve zero carbon emissions from the Development

**Shared Ownership Unit** means a Dwelling for which a Shared Ownership Lease is to be disposed of by the Developer or the Association (as the case may be) to a Purchaser.

**Termination Notice** means the notice that may be served by HCA or the Developer to terminate the Lease after the Alternative Solution Period in accordance with the provisions of clause 29.5.1

**Tenancy Agreement** means an agreement to let a Rental Unit under an assured tenancy substantially in such form as the Developer shall reasonably require but to include a covenant by the lessee to respect the aim to achieve zero carbon emissions from the Development

**The Secretary of State** means the Secretary of State or other minister or authority for the time being having or entitled to exercise the powers now conferred upon The Secretary of State by sections 77, 78 and 79 of The Town and County Planning Act

**Title Date** means 15 June 2009 save for title number CB71646 where it means 30 November 2010 and CB300177 where it means 12 November 2010

**Title Matters** means the matters contained or referred to in (or in the documents contained or referred to in) the entries on the register of the title(s) under which the Landowners hold the Land as at the Title Date.

**Transfer (Affordable Unit)** means a transfer of the freehold reversion to an Affordable Unit Lease substantially in the annexed form but with such amendments as the Developer shall reasonably require but including in any event the relevant provisions set out in Schedule 6

**Transfer (Private Unit)** means a transfer of the freehold reversion to a Private Unit Lease substantially in the annexed form but with such amendments as the Developer shall reasonably require but including in any event the relevant provisions set out in Schedule 6

**Transfer (Leasehold Building)** means a transfer of a Leasehold Building substantially in the annexed form but with such amendments as the Developer shall reasonably require but including in any event the relevant provisions set out in Schedule 6

**Undeveloped Land** means any part of the Land which from time to time is not Developed Land

**VAT** means value added tax charged under the Value Added Tax Act 1994.

**Working Day** means any day except Saturday, Sunday or any public holiday in England.

## 2 Interpretation

- 2.1 Terms specified in the Particulars shall have the meanings there given to them.
- 2.2 Where a Party includes two or more persons, the covenants made by that Party are made by those persons jointly and severally.
- 2.3 Words implying one gender include all other genders; words implying the singular include the plural and vice versa and words implying persons include any person or entity capable of being a legal person.
- 2.4 A covenant not to do any act or thing includes a covenant not to permit or suffer such act or thing to be done.
- 2.5 A reference to any Enactment includes all modifications, extensions, amendments and re-enactments of such statute in force for the time being and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under them or deriving validity from them.

- 2.6 Provisions are to be construed independently and, if any provision is void or wholly or partly unenforceable, then that provision, to the extent that it is unenforceable, shall be deemed not to form part of this Lease, but the validity and enforceability of the remainder of that provision or of the Lease shall not be affected.
- 2.7 A reference to a numbered clause, schedule appendix or paragraph is a reference to the relevant clause, schedule appendix or paragraph in this Lease.
- 2.8 Headings to clauses, schedules and paragraphs are for convenience only and do not affect the meaning of this Lease.
- 2.9 The words including and in particular shall be construed as being by way of illustration or emphasis only and shall not limit the generality of the preceding words.
- 2.10 References to the completion of a transfer or other disposal mean the execution and delivery of the necessary assurances, not contracts to enter into such transfers or other disposals or their subsequent registration.
- 2.11 Any right or exception granted or excepted in favour of HCA or the Landowners shall be deemed to be granted or excepted in addition in favour of any other person authorised by HCA or the Landowners.
- 2.12 Where the consent or approval of HCA is required such consent or approval must be in writing and be signed by the Area Director (or such other officer as shall have been notified in writing by HCA to the Developer as being the appropriate officer for such purposes).
- 2.13 References to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both of the functions and responsibilities of such public organisation.

### **3 Demise**

- 3.1 For the Price and the Overage (if any) referred to in the Option for Lease payable by the Developer to HCA of which the sum of £1 (being part thereof and which includes the sum payable under the Option for Lease) has been paid on the date of this Lease (receipt whereof HCA acknowledges ) and any other sums payable under this Lease and the covenants on the part of the Developer and the Surety contained in this Lease HCA HEREBY DEMISES to the Developer ALL THAT the Land TOGETHER with the benefit of the rights set out in Part I of Schedule 1 (so far as HCA can grant the same) and in common with HCA and all others now or hereafter enjoying or entitled to the like rights but EXCEPT AND RESERVING to HCA and where applicable to PCC for the benefit of the Adjoining Land (and those authorised by it) and its successors in title and the owners and occupiers thereof the rights, easements and privileges set out in Part 2 of Schedule 1 TO HOLD the same unto the Developer from the date hereof for the term of NINE HUNDRED AND NINETY-NINE YEARS (determinable nevertheless as hereinafter mentioned) SUBJECT to all Title Matters and to all rights, easements and privileges affecting the Land or any part thereof PAYING THEREFOR the yearly rent of ONE POUND (if demanded) on the anniversary of the date of this Lease.
- 3.2 PCC hereby grants to the Developer and all those authorised by it the rights for the benefit of the Land set out in Part 1 of Schedule 1 for the term of this Lease and to end on the expiry or earlier determination of this Lease

### **4 Covenants relating to the Development**

- 4.1 The Developer covenants with HCA to comply with the Developer's obligations contained in the Schedules.

- 4.2 HCA covenants with the Developer to comply with HCA's obligations contained in the Schedules
- 4.3 Prior to commencement of any work on the first Dwelling on the Land by the Developer it shall comply with Condition (a)
- 4.4 Prior to the completion of the sale and purchase of the first Dwelling to be sold on the Land the Developer shall comply with each of the following:-
- Condition (b)
- Condition (c); and
- Condition (d);
- 4.5 Prior to the sale or grant of a Lease of each Commercial Unit the Developer shall comply with Condition (e)
- 4.6 Prior to each Phase of the Development the Developer will comply with Condition (f) in respect of that Phase

## 5 Interim Completion Certificate

- 5.1 The Developer will as soon as reasonably practicable after receipt of an Interim Completion Certificate in respect of a Dwelling or Commercial Unit the Developer will send a copy to HCA
- 5.2 If at any time during construction of any Dwelling or Commercial Unit (as the case may be) (or upon any inspection by HCA of such Dwelling or Commercial Unit) Category D or E Specifications are discovered to have been used (or affect the Dwelling or Commercial Unit) then the same shall forthwith be removed and replaced with non Category D or E Specifications and until such removal and replacement has occurred to the reasonable satisfaction of the Carbon Challenge Inspector the Carbon Challenge Inspector shall be entitled to withhold the issue of the Interim Completion Certificate relating to such Dwelling
- 5.3 The Developer will use its reasonable endeavours to provide to HCA:-
- (a) as soon as reasonably practicable after practical completion of each Dwelling or Commercial Unit a Code Final Certificate in respect of that Dwelling and a Final Certificate in respect of that Commercial Unit;
- (b) on or before practical completion of 50 per cent (by number) of the Dwellings intended to be constructed as part of the Development an Interim Client Design Award in respect of the Development; and
- (c) as soon as reasonably practicable after practical completion of each Dwelling (if not already obtained) a Lifetime Homes Certificate in respect of that Dwelling or dwelling type
- 5.4 The Developer hereby covenants with HCA:
- (a) not to send out any notice to a Purchaser requiring completion of the sale of a Dwelling or Commercial Unit unless and until the Interim Completion Certificate for that Dwelling or Commercial Unit has been issued;

- (b) not to permit any person to occupy any Dwelling or Commercial Unit (provided that this clause does not prevent Dwellings from being used as show homes in connection with the sale of Dwellings on the Land for so long as it is reasonable to do so) nor to purport to complete the sale of any Dwelling or Commercial Unit until and unless the Interim Completion Certificate for that Dwelling or Commercial Unit has been issued by the Carbon Challenge Inspector
- (c) to use its reasonable endeavours to enter into all requisite agreements with the highway authority pursuant to section 38 Highways Act 1980 in respect of the construction and adoption of the Adoptable Highways comprising or relating to the Development and all requisite agreements with the highway authority pursuant to section 278 of the Highways Act 1980 (as appropriate) in respect of the construction of any Highways comprising or relating to the Development and procure any bond or guarantee required by the highway authority in connection with any such agreement as soon as reasonably practicable;
- (d) to use its reasonable endeavours to enter into an agreement or any reasonable with the relevant water authority pursuant to section 104 of the Water Industry Act 1991 in respect of the construction and adoption of the sewers serving the Development and procure any bond or guarantee required by such water authority in connection with such agreements as soon as reasonably practicable;
- (e) not to complete the grant of any lease of a Dwelling without simultaneously completing the transfer of the freehold reversion to such Lease from HCA to the Developer

and it is agreed that failure by the Developer to comply with any part of this covenant shall entitle HCA to withhold the issue of all further Interim Completion Certificates in respect of the Development until the breach has been rectified to the reasonable satisfaction of HCA Provided That HCA must first have served not less than three months prior written notice on the Developer of such failure and notwithstanding such breach has not been so rectified by expiry of such notice

- (f) to confirm to HCA as soon as reasonably practicable after the grant of this Lease that the Land Registry has approved an Estate Layout Plan in respect of the Scheme or the next phase of it

5.5 The Developer shall procure that in any contract for the sale of a Dwelling or Commercial Unit there shall be inserted into such contract (in a type size and character no less prominent than the remainder of the contract) the following wording:

"The [Purchaser] [Buyer] hereby acknowledges that the lease of the [Property] (which is to be made by the freeholder) will not be released until satisfaction of the requirements set out in the building lease relating to the [Development] [Estate] granted to the Developer and that the [Purchaser] [Buyer] has been advised to obtain (before it completes the purchase of the [Property] from the Developer) written confirmation from the solicitors acting for the Developer that the Interim Completion Certificate for the [Property] has been issued"

5.6 Without prejudice to the generality of clause 19.2 it is agreed that the issue by the Carbon Challenge Inspector of an Interim Completion Certificate (or a Final Completion Certificate) does not imply any warranty or representation by HCA in respect of any Dwelling or anything else upon or relating to the Development or the manner or quality of construction or design or fitness for purpose or absence of defect of anything on the Development nor that any particular standard has been achieved and HCA shall have no liability to any person to whom any such certificate is issued.

5.7 The Developer and the Surety hereby agree to indemnify and keep indemnified HCA against any costs claims actions proceedings and liability arising directly or indirectly from HCA being party (as lessor) to any lease to any Purchaser or Management Company or Association of any part of the Development of any Dwelling or Commercial Unit

## 6 **Final Completion Certificate**

Prior to issue of Interim Completion Certificates for the last 10 Dwellings the Developer shall:

- (a) produce to the Carbon Challenge Inspector a CEEQUAL Award Certificate in respect of the Development achieving a minimum standard of rating of "Very Good"
- (b) produce to the Carbon Challenge Inspector a Detailed Access Statement in respect of the Development

and the Carbon Challenge Inspector shall immediately after the issue of the last Interim Completion Certificate issue a certificate that he has received the documents referred to in (a) and (b) above (**Final Completion Certificate**).

## 7 **Leases and transfers of Dwellings and Commercial Units**

The Developer and the HCA covenant with each other to comply with their respective obligations contained in the Schedules.

## 8 **Transfer of Open Space Land**

- 8.1 HCA covenants to transfer at any time or times following the completion by the Developer of its obligations in relation to the same and if the Developer requests in writing within 15 Working Days of such request the whole or any part of the Open Space Land and / or the Common Areas to the Management Company or such other persons as the Developer may reasonably require in each case for a consideration of £1.00.
- 8.2 The transfer(s) shall be in such form as the Developer shall reasonably require and HCA acting reasonably shall approve
- 8.3 The Developer shall procure that simultaneously with the completion of any such transfer the transferee (other than the local authority if the Open Space Land is being adopted) enters into a deed with HCA in the form of the Deed of Covenant and Charge

## 9 **Transfer etc of Common Services and Highways**

HCA covenants to enter into, if the Developer so requests in writing within 15 Working Days of such request, any leases, transfers, easements, licences, agreements or other document with any public or statutory authority in connection with any Common Services or Highways or matters ancillary thereto in such form as the Developer shall reasonably require and HCA approves acting reasonably and each at their own cost provided that any costs payable to any third party pursuant to those agreements shall be met by the Developer.

## 10 **Transfer of remainder of Land**

- 10.1 Following the issue of the Final Completion Certificate the HCA shall transfer to the Management Company and the Developer shall procure that it will accept the same and if it does not then the Developer will do so in respect of the remainder of the Land (if any) the freehold of which is still vested in HCA and which is not the subject of any other provision for transfer under this Lease Provided that the Developer may by notice to HCA elect that the whole or part of those parts of such remainder land be transferred to the highway or other competent authority as highway public open space or other amenity land.
- 10.2 Each transfer shall be in such form as the Developer and HCA shall reasonably require.
- 10.3 HCA shall be entitled to instruct the Carbon Challenge Inspector not to issue Interim Completion Certificates for the last 5 Private Units until the provisions of clause 10.1 have been complied with by the Developer and the Developer shall procure that the Carbon Challenge Inspector shall comply with any such instruction.



## 11 **General provisions relating to transfers**

Notwithstanding the completion of any lease or transfer under this Lease, the provisions of this Lease shall remain in force in respect of anything remaining to be done by the Developer or HCA. In particular, such completion is not to be treated as an acknowledgment by HCA that all money due from the Developer to HCA in respect of the transfer has been paid or that the Developer has complied with any other obligations on its part.

## 12 **Estate Management Scheme**

The Developer agrees that:

- 12.1 the terms of the Estate Management Scheme Documents will be incorporated into each lease or transfer of every Dwelling or Commercial Unit such that the Purchaser of each Dwelling or Commercial Unit and any successor in title to a Purchaser or any person deriving title under a Purchaser will in turn become liable under the Estate Management Scheme Documents for the duration of their estate or interest
- 12.2 it will in settling the form of lease or transfer of each Dwelling or Commercial Unit require the Purchaser to become a member of the Management Company in accordance with the Memorandum and Articles of Association.
- 12.3 it will procure the incorporation of the Management Company prior to completion of the sale of the first Dwelling and supply a certified copy of the Certificate of Incorporation to HCA.
- 12.4 it shall not alter or amend the Memorandum and Articles of Association of the Management Company in any way which is inconsistent with the Estate Management Scheme or the Estate Management Scheme Documents
- 12.5 it will set up a Web page for the Management Company the format and content of which shall be first approved by HCA (such approval not to be unreasonably withheld or delayed).
- 12.6 it shall procure that HCA shall be entitled to have a representative on the board of the Management Company and will invite a representative of any other relevant stakeholder reasonably proposed by HCA to be a member of the board and that the Developer itself shall have a representative on such board.
- 12.7 shall ensure that every person who is a proprietor of a leasehold title or freehold title registered at the Land Registry of a Dwelling or Commercial Unit at the Development will become a member of the Estate Management Company.

## 13 **Developer's further covenants**

The Developer further covenants with the Landowners as follows:

- 13.1 To comply at all times with the Carbon Challenge Generic Brief
- 13.2 To pay (if demanded) the reserved rent on the days and in the manner aforesaid.
- 13.3 To pay Interest on any sum of money payable to HCA by the Developer under this Lease which is not paid when payment is due.
- 13.4 To pay all rates, taxes, claims, assessments and outgoings whatsoever in respect of the Land (except in relation to any Dwelling or Commercial Unit which has been disposed of to a Purchaser) now or hereafter imposed or charged upon the owner or occupier.

- 13.5 To indemnify and keep indemnified HCA from and against all claims, demands and liabilities howsoever arising from the use or occupation of the Land or its condition or in respect of the design of the Development or any part thereof and the materials and workmanship used by the Developer in the Development or any part thereof and any inaccuracies in the plan or other description of any Dwelling or Commercial Unit used in any transfer.
- 13.6 Not to use the Land other than for the Development.
- 13.7 Not to assign, underlet, transfer, charge, share or part with possession of or grant any licence or interest in respect of the Land or any part thereof except in accordance with the provisions of this Lease save that the Developer shall be permitted with the prior written consent of HCA (such consent not to be unreasonably withheld) to charge this Lease to a person, firm or company providing the development finance for the construction of the Development.
- 13.8 Within fourteen days after the date of every dealing charge or other devolution of this Lease to give notice thereof in writing to HCA and produce to it a certified copy of the instrument effecting the devolution.
- 13.9 To pay all expenses (including solicitors' costs and surveyor's fees) incurred by HCA of and incidental to and in connection with:
- (a) the preparation and service of any notice under Section 146 of the Law of Property Act 1925 and any proceedings under Sections 146 or 147 of that Act even if forfeiture is avoided otherwise than by relief granted by the Court
  - (b) any consents or approvals requested by the Developer pursuant to clause 13.7
  - (c) any supplemental documentation required by the Developer in respect of any matters relating to this Lease not envisaged at the date of this Lease
- 13.10 On the receipt of any notice, order, direction or thing from any competent authority affecting or likely to affect the Land whether the same shall be served directly on the Developer or the original or a copy thereof be received from any other person whatsoever the Developer will:
- (a) so far as such notice, order, direction or other thing or the Act regulations or other instrument under or by virtue of which it is issued or the provisions hereof require it so to do comply therewith at its own expense; and
  - (b) forthwith deliver to HCA a copy of such notice, order, direction or other thing.
- 13.11 At the end or sooner determination of the said term quietly to yield up the Land to HCA in accordance with the covenants on the part of the Developer contained in this Lease.
- 13.12 Not to do anything on the Land which may be or become a nuisance or cause damage to HCA or to the owners or occupiers of any adjoining or neighbouring land or cause or give rise to the significant possibility of significant harm to the health of living organisms and other interference with the ecological systems of which they form part or cause pollution of ground or surface water PROVIDED THAT to the extent that the Development is undertaken in accordance with this Lease it shall not be a breach of this Lease.
- 13.13 By way of indemnity only to comply with all Title Matters.

13.14 In the event of a default by the Developer to execute any documents required under the provisions of clauses 8, 9 or 10 of this Lease, the Developer irrevocably and by way of security appoints HCA as its attorney and in its name and on its behalf and as its act and deed and in such manner as the attorney may think fit to sign execute seal deliver and do all deeds instruments acts and things which it is required to do under clauses 8, 9 and 10 of this Lease. The Developer covenants immediately on the request of HCA to ratify and confirm all deeds, instruments, acts and things signed, executed, sealed, delivered and done under that appointment.

#### 14 HCA's and PCC's covenants

14.1 The HCA covenants with the Developer as follows:

- (a) That the Developer observing and performing the several covenants and stipulations on the part of the Developer herein contained shall peacefully hold and enjoy the Land during the said term without any interruption by HCA or any person rightfully claiming under or in trust for them.
- (b) If requested by the Developer, to enter into any of the agreements (excluding any guarantee or bond) referred to in paragraph 1.2 of Schedule 2 as landowner in so far as it is necessary to dedicate the land, sewer or other matter the subject of the agreement on terms approved by HCA (such approval not to be unreasonably withheld or delayed) subject to the Developer entering into an indemnity guaranteed by the Sureties (in a form reasonably required by HCA) indemnifying HCA against all liability for all costs, obligations and liabilities in connection or arising therefrom
- (c) If requested by the Developer to invoke the provisions of clauses ~~[here insert relevant numbers from Access Deed]~~ <sup>Clause 7.2 and 7.4, paragraphs a, b, c, d of Schedule 2</sup> of the Access Deed dated [ 25 March 2011 ] and ~~[here insert relevant numbers from PCC Transfer]~~ <sup>s. 40(2)</sup> of the PCC Transfer and to enter into any transfers, leases, easements, licences or other agreements with any public authority in connection with the Adoptable Common Services or any service media and any ancillary apparatus on terms approved by HCA (such approval not to be unreasonably withheld or delayed) subject to the Developer entering into an indemnity guaranteed by the Sureties (in a form reasonably required by HCA) indemnifying HCA against all liability for all costs, obligations and liabilities in connection or arising therefrom
- (d) On the receipt of any notice, order, direction or thing from any competent authority affecting or likely to affect the Land whether the same shall be served directly on HCA or the original or a copy thereof be received from any other person whatsoever HCA will as soon as reasonably practicable deliver to the Developer a copy of such notice, order, direction or other thing
- (e) Each Party shall pay its own and its own advisers' costs in relation to all agreements or the documents referred to in this clause 14.1 but the Developer shall be responsible for any costs payable to any third party pursuant to those agreements or other documents.

14.2 The PCC covenants with the Developer as follows:

- (a) That PCC shall at the reasonable request of the Developer enforce the reservations (including but not limited to the reservations in the PCC's favour in clause 3.5 of the Football Club Leases) that the PCC has the benefit of pursuant to the Football Club Leases so that any means of access or provision of services to the football ground on the Adjoining Land will align with the corresponding easements agreed pursuant to the Access Deed and PCC Transfer.

- (b) PCC will use its reasonable endeavours to do everything necessary to assist the Developer in exercising the reservations in the Football Club Leases (at nil cost to the Developer) in so far as they align with the corresponding easements agreed pursuant to the Access Deed and PCC Transfer.

## 15 Forfeiture

In this Lease the following expressions shall have the following meanings:

- “Breach Termination Notice”** means a written notice served by HCA on the Developer (copied to the Permitted Chargee) as described in clause 15.1 (b) referring to that clause and stating that failure to respond could lead to the termination of this Lease
- “Insolvency”** means, in relation to the Developer:
- (a) the apportionment of:
    - (i) an administrator; or
    - (ii) a receiver and/or manager to this Lease by a Permitted Chargee; or
    - (iii) a liquidator (whether compulsorily or voluntarily except for the purpose of a solvent reconstruction);
  - (b) the Permitted Chargee taking possession as mortgagee;
- (and **Insolvent** shall be construed accordingly);
- “Insolvency Termination Notice”** means a written notice served by HCA on the Developer (copied to the Permitted Chargee) as described in clause 15.1(a) referring to that clause and stating that failure to respond within 10 Working Days could lead to the termination of this Lease
- “IP”** means any of: a liquidator or administrator appointed to the Developer, or a receiver and/or manager appointed to the Lease of whom the HCA has written notice
- “Permitted Charges”** means any mortgagee of this Lease and/or holder of a floating charge over all or substantially all of the Developer’s business and assets approved by HCA pursuant to clause 13.7 and of whom the HCA has written notice
- “Suitable Substitute”** means a person, firm or company, approved by HCA (such approval not to be unreasonably withheld or delayed) with the technical ability, commercial expertise and adequate financial facilities to complete the Development on the terms contemplated by this Lease
- “Terminate the Lease”** means, in this clause the exercise by HCA of any of the rights listed in clause 15.2; and Termination of this Lease shall be construed accordingly

## 15.1 HCA'S Remedies on breach

### (a) Insolvency event

If:

- (i) an administration order is made in relation to the Developer
- (ii) the Developer shall enter into liquidation (whether compulsorily or voluntarily except for the purposes of amalgamation or reconstruction of a solvent company);
- (iii) a receiver or manager shall be appointed by the Developer
- (iv) the Developer becomes insolvent

then and in any such case HCA may serve an Insolvency Termination Notice. Following the service of any Insolvency Termination Notice under this sub-clause, the provisions of clause 16 shall govern the respective rights of HCA, the Developer Party and the Permitted Chargee

### (b) Fundamental Terms etc.

If there shall be a material breach, non performance or non-observance of any of the terms herein contained and on the part of the Developer to be performed or observed and the Developer shall have failed to remedy the same within a reasonable period from service of a written notice by HCA to the Developer specifying the breach, non performance or non-observance then and in any such case HCA may serve a Breach Termination Notice. Following the service of any Breach Termination Notice under this sub-clause, the provisions of clause 17 shall govern the respective rights of HCA, the Developer and the Permitted Chargee.

### (c) Failure to Carry out Works

In addition to HCA's remedies set out in clauses 15.1 (a) and 15.1 (b) above if the Developer or the Permitted Chargee (as appropriate) shall fail to carry out or complete any of the works required by this Lease in accordance with the terms of this Lease and the Developer shall have failed to carry out the same within a reasonable period of a written notice sent by HCA to the Developer specifying the breach and requiring the Developer to remedy the breach HCA its agents employees contractors and licensees shall at any time prior to such remediation be entitled to enter the Land and to carry out such works itself and the Developer or Permitted Chargee shall forthwith upon demand reimburse the proper costs fees and expenses incurred by HCA in connection therewith together with interest at the Prescribed Rate (such costs fees expenses and interest to be recovered by HCA as a debt).

## 15.2 Termination of the Lease

HCA may not:

- (a) re-enter and take possession of the Land; or
- (b) forfeit the Lease;

unless it has first served notice on the Developer (copied to the Permitted Chargee) and served an Insolvency Termination Notice in accordance with the terms of sub-clause 15.1 (a) or, as appropriate, a Breach Termination Notice in accordance with sub-clause 15.1 (b).

## 15.3 If the Lease is Terminated:

- (a) to the extent that the beneficial ownership of copyright, design right and any other intellectual property right in any documents, reports, investigations and designs submitted and approved as part of the Planning Permission is vested in it, the Developer grants to the HCA, any IP and the Permitted Chargee a royalty free, non exclusive and irrevocable licence to use and reproduce any and all of such documents and the designs contained in them in connection only with its ownership of the Development, any works carried out by the Developer and the Land and this licence shall be freely assignable to third parties and carry the right to grant sub-licences;
- (b) to the extent that beneficial ownership of copyright, design right or any other intellectual property right in any documents referred to in sub-clause 15.3 (a) above is vested in any person other than the Developer including (without limitation) any of the Consultants or the Contractor or other contractor or supplier the Developer shall use its reasonable endeavours to procure that the beneficial owner grants to the HCA non-exclusive and irrevocable licence to use and reproduce all and any of the documents and the designs contained in them, for any of the purposes and on the same terms as set out in sub-clause 15.3 (a) above

15.4 Neither the Developer nor HCA may vary or supplement (or attempt to vary or supplement) the Lease without the prior written consent of the Permitted Chargee, whose consent shall not be unreasonably withheld or delayed.

## 16 HCA's rights on Developer's Insolvency

16.1 Within 10 Working Days after the service of an Insolvency Termination Notice either:

- (a) the IP; or
- (b) if the Permitted Chargee has taken possession as mortgagee, the Permitted Chargee shall confirm in writing to HCA whether it:
  - (i) proposes to complete the Development in accordance with the terms of this Lease; or
  - (ii) proposes to seek a Suitable Substitute to complete the Development; or
  - (iii) proposes not to complete the Development

16.2 The IP or Permitted Chargee may indicate in a notice served under clause 16.1 that it proposes to take the action specified in 16.1 (i) pending 16.1 (ii) above. If the IP or Permitted Chargee has give such an indication and taken the action in 16.1(i) within the requisite time scale it will be entitled within a period of 6 months from the date of service of the Insolvency Termination Notice to seek a Suitable Substitute to complete the Development and the provisions set out in clause 16.4 (other than as to timescale where the provisions of this clause 16.2 will apply instead) will apply in relation to any Suitable Substitute proposed during that 6 month period.

16.3 Where the IP or Permitted Chargee informs HCA in writing pursuant to clause 16.1 that it will complete the Development then that IP (acting in its capacity for and on behalf of the Developer and without any personal liability) and/or the Permitted Chargee (as the case may be) shall be bound by the terms of this Lease from the date of that notification (and the Permitted Chargee shall take an assignment of both the benefit and burden of this Lease within a further 20 Working Days after serving that notification) and (subject to any arrangements for curing any antecedent breaches by the Developer and/or extending the terms of the Lease for a reasonable period in order to permit completion of the Development as the IP or Permitted Chargee and HCA shall agree, acting reasonably) (or in the absence of agreement as determined by an expert in accordance with clause 19) on any breach of the terms of this Lease by the IP or Permitted Chargee following that assignment the HCA's rights to forfeit as set out in this Lease will apply but not the obligations set out in clauses 16 and 17.

16.4 Where the IP or Permitted Chargee indicates to HCA in writing pursuant to clause 16.1 that it will seek a Suitable Substitute then within 6 months after serving that notification it must:

- (a) identify that Suitable Substitute;
- (b) obtain HCA's approval to that Suitable Substitute (such approval not to be unreasonably withheld or delayed); and
- (c) procure that the Suitable Substitute enters into an assignment of this Lease with new arrangements for curing any antecedent breaches by the Developer and such extension of the term in order to permit the completion of the Development as the Suitable Substitute and HCA shall agree, acting reasonably (or in the absence of agreement as determined by an expert in accordance with clause 19).

16.5 If:

- (a) the IP or Permitted Chargee fails to respond to an Insolvency Termination Notice within 10 Working Days of service; or
- (b) their response indicates that they do not wish to complete the Development; or
- (c) the Lease is not assigned within the timescale required by clauses 16.3 or 16.4 as the case may be;

HCA may on the earlier of:

- (d) the expiry of that 10 Working Day period; and
- (e) receipt of such response; and
- (f) on expiry of the period for assignment;

respectively Terminate the Lease.

16.6 In the circumstances contemplated by clauses 16.3, 16.4 and 16.1 (b)(iii), HCA may not set off against any Reimbursement payable by it pursuant to this Lease any sums due from the Developer to HCA otherwise than pursuant to this Lease.

16.7 If HCA Terminates the Lease then:

- (a) it will have regard to its common law obligation to mitigate against its loss; and

- (b) following any subsequent dealing by HCA with its estate or interest in the Undeveloped Land (or any part of it) or (if a New Lease is not granted) the Undeveloped Land and the Developed Land (or any part of them) it will pay the Reimbursement to the Developer (or the Permitted Chargee) from any sums which HCA receives in respect of such dealing within 20 Working Days of HCA receiving such sum; and
- (c) unless the Lease is Terminated as a result of a breach of the Quality Standards, HCA will grant a New Lease of the Developed Land to the Developer in accordance with clause 18.

**17 HCA's rights following material breach of this Lease**

17.1 Within 20 Working Days after the service of a Breach Termination Notice identifying a material breach of this Lease the Permitted Chargee shall confirm in writing to HCA whether it:

- (a) proposes to complete the Development in accordance with the terms of this Lease; or
- (b) proposes to seek a Suitable Substitute to complete the Development; or
- (c) proposes not to complete the Development.

17.2 Where the Permitted Chargee informs HCA pursuant to clause 17.1 they propose to either seek a Suitable Substitute or to complete the Development, then, within 6 calendar months of service of the Breach Termination Notice the Permitted Chargee or its IP must either:

- (a) where they have indicated an intention to seek a Suitable Substitute:
  - (i) identify that Suitable Substitute
  - (ii) obtain HCA's approval to that Suitable Substitute (such approval not to be unreasonably withheld or delayed); and
  - (iii) procure that the Suitable Substitute enters into an assignment of this Lease with such extension of the term as is reasonable in order to permit the completion of the Development and subject to any arrangements for curing any antecedent breaches by the Developer as the Suitable Substitute and HCA shall agree acting reasonably (or in the absence of agreement as determined by an expert in accordance with clause 19); or
- (b) where they have indicated an intention to complete the Development enter into an assignment of this Lease with such extension of the term as is reasonable in order to permit the completion of the Development and subject to any arrangements for curing any antecedent breaches by the Developer as the IP or Permitted Chargee and HCA shall agree acting reasonably (or in the absence of agreement as determined by an expert in accordance with clause 19).

17.3 Where the Permitted Chargee has responded within the period referred to in clause 17.1 confirming it will seek either a Suitable Substitute or will complete the Development, the HCA will not take any steps to Terminate the Lease for the reasons set out in clause 17.1 until after the expiry of the time periods permitted to allow for the assignment of this Lease set out in clause 17.2,

17.4 Where the Permitted Chargee does not respond within the requisite period referred to in clause 17.1 or has replied indicating it will not be taking any action the HCA shall be entitled forthwith to Terminate the Lease.



- 17.5 If the Permitted Chargee fails to complete the assignment of the Lease directly or to a Suitable Substitute in accordance with clause 17.3 then subject to clauses 17.7, 17.8 and 18 (which shall survive in the circumstances contemplated by clause 17.7) HCA may, without prejudice to any right of action or remedy which may have accrued in respect of any antecedent breach by either party of this Lease, Terminate the Lease.
- 17.6 If HCA Terminates the Lease then:
- (a) it will have regard to its common law obligations to mitigate against its loss; and
  - (b) following each subsequent dealing by HCA with its estate or interest in the Undeveloped Land (or any part of it) or (if a New Lease is not granted) the Undeveloped Land and the Developed Land (or any part of them) it will pay the Reimbursement to the Developer (or the Permitted Chargee) from any sums which HCA receives in respect of such dealing within 20 Working Days of HCA receiving such sums; and
  - (c) unless the Lease is Terminated as a result of a breach of the Quality Standards, HCA will grant a New Lease of the Developed Land to the Developer in accordance with clause 18.
- 17.7 If HCA shall Terminate the Lease as a result of a breach of the Quality Standards clause 18 shall not apply.
- 17.8 Pending completion of any assignment and or actual Termination of this Lease pursuant to this clause 17 the Developer shall remain liable for and shall continue to perform the provisions of this Lease unless HCA otherwise directs.

## **18 Developed and Undeveloped Land**

- 18.1 Where the circumstances in clause 17 arise and permit the grant of such a New Lease and following service of a Termination Notice there has been no assignment of this lease within the requisite time scale then within 10 Working Days after the forfeiture termination or repudiation of this Lease HCA will grant to the Developer ("the Lessee") who will accept a lease ("the New Lease") of the Developed Land on the same terms as the terms of this Lease (and the Commercial Conditions as defined in and set out in the Agreement for Lease shall apply to the grant of the New Lease) in so far as they are applicable to the Developed Land (including without limitation the provisions relating to payment of the Premium and the Overage applicable in each case to the Developed Land) with such changes as the parties acting reasonably shall agree having regard to the extent of the Developed Land and the necessary rights and easements to be granted and reserved to enable the Developed Land and the Undeveloped Land to be fully developed so as to be beneficially occupied and neither party will ransom the other when agreeing the extent of those rights.
- 18.2 The New Lease shall include (but not by way of limitation):
- Such of the following provisions but only to the extent they are necessary and on terms which are reasonable in relation either to the development and ongoing use of the Developed Land or the development and ongoing use of the Undeveloped Land:
- (a) The right for the Lessee to enter upon the Undeveloped Land to complete all roads sewers services common parts open space or other matters which relate to affect or would be used by the owner or occupier for the time being of any part of the Developed Land ("Infrastructure") both before during and after the completion of the Dwellings on it
  - (b) The right for the Developed Land and each and every part of it to use the Infrastructure

- (c) The obligation on HCA as freehold owner of the Undeveloped Land to join in any agreements or deeds for the adoption, dedication or transfer for the Infrastructure reasonably required by the Lessee
  - (d) Common obligations on both HCA and the Lessee to procure that on the sale or letting of all Dwellings (whether on the Developed Land or Undeveloped Land) the management arrangements to any non-adoptable common services and areas designed by the Developer are imposed
  - (e) Where the Infrastructure benefits both the Developed Land and the Undeveloped Land, provisions for:
    - (i) the fair and reasonable contribution by the parties (by reference to the benefit of the Infrastructure to their respective interests in the Developed Land and the Undeveloped Land) to the proper and reasonable cost of the construction of Infrastructure; and
    - (ii) the payment of the contribution referred to above which where due from the Lessee to the HCA shall be added to the Premium and where due from the HCA to the Lessee shall be paid from any sums the HCA receives following any subsequent dealing with its estate or interest in the Undeveloped Land.
- 18.3 The Agreed Transfer and the Agreed Lease shall be amended to ensure that each Dwelling is granted all such rights and easements as it shall reasonably require over both the Developed Land and the Undeveloped Land.
- 18.4 The Developer will itself accept and take up the New Lease and will execute a counterpart of it.

## 19 Disputes

- 19.1 Save where otherwise provided and subject to Clauses 17.2 and 17.3, any dispute arising between HCA and the Developer as to their respective rights, duties and obligations or as to any matter or thing in any way arising out of or in connection with the subject matter of this Lease shall be referred in accordance with the provisions of the Arbitration Act 1996 to the determination of a single arbitrator to be appointed (in default of agreement between the parties as to such appointment) by the President for the time being of the Law Society.
- 19.2 Any dispute arising between HCA and the Developer over any calculation or valuation to be made under this Lease shall be referred to an expert to be agreed upon by the parties, or failing agreement, to an expert nominated by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's determination of the calculation or valuation shall be conclusive and binding.
- 19.3 In so far as the provisions of this Lease require the form and contents of any document to be entered into between any of the parties hereto to be settled and the settling or conditions of such form shall not be agreed then the same shall be settled by counsel of at least 7 years call and experienced in property matters and regeneration schemes including public sector parties willing to act and in default of agreement as to his appointment to be appointed by the President for the time being of the Law Society.
- 19.4 Any costs payable by reason of the provisions of this Clause [19] shall be borne initially in equal proportions by HCA and the Developer and thereafter as may be adjusted by the award or awards pursuant to the provisions thereof.

## 20 Notices etc

- 20.1 Any notice, decision, direction, approval, authority, permission or consent to be given by HCA under this Lease must be in writing and shall be valid and effectual (unless express provisions be made to the contrary) if signed by the director or such other officer or agent as HCA may from time to time by resolution designate for the purpose.
- 20.2 no notice served on HCA's Solicitors shall be valid unless it quotes the reference for the recipient solicitor as set out in Clause 1 of this Agreement or such other reference as may have been notified in writing in accordance with the provisions of this Clause
- 20.3 any notice or document sent by fax to HCA's Solicitors shall only be validly given or delivered if transmitted to 01223 316511 or to such other number as may be expressly notified in writing for the purposes of this Clause
- 20.4 no notice or document served on the Developer's Solicitors shall be valid unless it quotes the reference for the recipient solicitor set out in clause 1 of this Agreement or such other reference as may have been notified in writing to the other parties in accordance with the provisions of this clause and at the same time a copy must be served on The Group Legal Director, Morris Homes, Morland House, Altrincham Road, Wilmslow, Cheshire SK9 5NW
- 20.5 any notice sent by fax to the Developer's Solicitors shall only be validly given or delivered if transmitted to 0121 234 0001 and 01625 526 095 or to such other numbers as may be expressly notified in writing for the purposes of this clause
- 20.6 any notice or document to be given or served on PCC must either be sent or delivered to Legal Services Peterborough City Council Town Hall Peterborough PE1 1HG marked for the attention of the Solicitor for the Council
- 20.7 any notice or document to be given or served upon HCA must either be sent or delivered to HCA's Solicitors in accordance with the provisions of this Agreement or sent or delivered (in accordance with the provisions of this Agreement) to HCA at Central Business Exchange 414 Midsummer Boulevard Milton Keynes MK9 2EA and marked "for the attention of the Regional Director" or such other address (or reference) as HCA may notify in writing to the Developer for such purpose and at the same time a copy must be sent or delivered to HCA's Solicitors (in accordance with the provisions of this Agreement)
- 20.8 any notice or document to be given or served upon the Developer must be sent or delivered in accordance with the provisions of this Agreement to the Developer at Morris Homes (East Midlands) Limited, Morland House, Altrincham Road, Wilmslow, Cheshire. SK9 5NW and marked "for the attention of the Legal Director or such other address (or reference) as the Developer may notify in writing to HCA and at the same time a copy must be sent or delivered to the Developer's Solicitors

## 21 HCA's powers and liability

- 21.1 Nothing herein contained or implied shall prejudice or affect HCA's rights, powers, duties and obligations in the exercise of its functions as a statutory body and the rights, powers, duties and obligations of HCA under all public or private statutes, byelaws, orders and regulations may be as fully and effectually exercised in relation to the Land and the Development as if HCA were not the owner of the Land and this Lease had not been executed by it.
- 21.2 HCA shall not be under any liability whatsoever in respect of any defect in the design of the Development by reason of HCA having approved the Approved Plans or otherwise and shall not be deemed to have made any representation or warranty as to the fitness or suitability of the Land for the purposes of the Development or any other representation or warranty and the Developer declares that:

- (a) no oral representation has been made to the Developer prior to the date hereof by any of the Landowners or their agents concerning the subject matter of this Lease which has influenced, induced or persuaded the Developer to enter into this Lease; and
- (b) it has been provided with all information necessary to assess the state and condition of the Land and has been afforded full opportunity to enter the Land to conduct such surveys as it wished.

## **22 Value Added Tax**

- 22.1 All monies payable under the terms of this Lease are paid exclusive of VAT.
- 22.2 In the event of VAT being chargeable on such monies the Developer will on receipt of a valid and proper VAT invoice pay the same to the HCA at the appropriate rate.

## **23 Acknowledgment**

- 23.1 The Parties to this Lease do not intend that any term of this Lease shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.
- 23.2 The Developer hereby acknowledges that this Lease and all documents made supplemental thereto or entered into prior thereto in relation to the Development and all information provided by the Developer (including the Bid Submission) shall be subject to the provisions of the Freedom of Information Act 2000 and the Developer hereby agrees to provide to HCA such assistance as may be reasonably requested to assist HCA to comply with its obligations under the Freedom of Information Act 2000 (but without being under any obligation to divulge commercially sensitive information under this clause).
- 23.3 No variation of this Lease shall be made other than by deed
- 23.4 Nothing in this Lease shall constitute a partnership or joint venture between the parties hereto or constitute the Developer as the agent of HCA for any purpose whatsoever

## **24 Surety Covenants**

- 24.1 The Surety jointly and severally covenants with HCA as a direct and primary obligation in the terms set out in Schedule 7.
- 24.2 HCA agrees to use reasonable endeavours to mitigate any losses in respect of which the Surety indemnifies HCA pursuant to the provisions of Schedule 7

## **25 Additional Standards**

- 25.1 The Developer shall use reasonable endeavours to obtain as soon as reasonably practicable following completion of the Development a Secured by Design Certificate in respect of the Dwellings and a Safer Parking Scheme Certificate in respect of the Commercial Units and shall promptly keep HCA informed as to the progress of its application for such certificate and shall promptly supply HCA with a copies of the same once they are issued.

25.2

- (a) The Developer shall use reasonable endeavours to obtain on or before practical completion of 50 per cent (by number) of the Dwellings intended to be constructed on the Development an Interim Client Design Award achieving a minimum standard of "Very Good" and following completion of the Development shall use reasonable endeavours to obtain a CEEQUAL Award and shall promptly keep HCA informed as to the progress of its application for such certificates
- (b) The Developer diligently complete and retain a CEEQUAL Manual in respect of the Development and shall on request produced to the Carbon Challenge Inspector the CEEQUAL Manual for inspection

25.3 The Developer shall promptly following practical completion of 50 per cent (by number) of the Dwellings intended to be constructed within the Development apply for a Building for Life Award and will thereafter diligently pursue the award of the same and shall promptly keep HCA advised of the progress of its application and promptly supply a copy of such award once made

25.4 The Developer shall use reasonable endeavours to obtain following practical completion of each Dwelling a Lifetime Homes Certificate

25.5 The Developer shall no later than practical completion of the first Dwelling [or Commercial Unit (as the case may be) prepare a suitably worded User Manual in respect of each Dwelling type and Commercial Unit and shall promptly supply HCA with copies of the same as soon as they are produced

## 26 **Considerate Constructors Scheme**

The Developer shall in carrying out the works comprising the Development comply with the provisions of the Considerate Constructors Scheme save that where there shall be any conflict between the provisions of this Lease and the provisions of the said Scheme the former shall prevail

## 27 **Development Strategies**

The Developer covenants with HCA to comply with the Developer's obligations contained in the Development Strategies

## 28 **Open Book Costings**

The Developer covenants with HCA to install and operate at its own cost [computerised audit systems approved by SMART Audit (BRE Consultancy package that provides a mechanism by which waste can be benchmarked and categorised by source type amount cause and cost) or WRAP (the 'Waste & Resources Action Programme' which encourages and enables businesses and consumers to be more efficient in their use of materials and recycle more things more often)] to monitor and calculate the costs incurred by the Developer in carrying out the Development and implementing the Development Strategies such costs and calculations to be delivered to HCA on a six monthly basis in a format to be approved by HCA (such approval not to be unreasonably withheld or delayed)

## 29 **Energy Solution**

29.1 The Developer shall use reasonable and commercially sensible endeavours having regard to the Planning Considerations to obtain the Energy Planning Permission and to obtain an Off Site Energy Solution.

- 29.2 Should the Developer be unable to secure an Off Site Energy Solution within 12 months of the date of this Lease or the Energy Planning Permission is subject to Finally Determined Judicial Proceedings that result in the Energy Planning Permission being revoked or declared invalid (whichever is earlier) then the Developer will use reasonable and commercially sensible endeavours having regard to the Planning Considerations to obtain a planning permission for an On Site District Energy Centre ("Revised Planning Permission") and to obtain an On Site Energy Solution PROVIDED THAT before submitting a planning application to the Local Planning Authority the Developer shall submit the same to HCA for approval such approval not to be unreasonably withheld or delayed.
- 29.3 If the Developer obtains an Off Site Energy Solution by the date twelve months after the date of this Lease the rights and obligations of the parties to this Lease will include and take account of the Off Site Energy Solution
- 29.4 If the Developer obtains an On Site Energy Solution by the date twenty-four months after the date of this Lease the rights and obligations of the parties to this Lease will include and take account of the On Site Energy Solution.
- 29.5 If the Developer has not obtained an Off Site Energy Solution in accordance with clause 29.3 or an On Site Energy Solution in accordance with clause 29.4 then the Developer and the HCA will during the Alternative Solution Period endeavour in good faith to investigate, financially appraise and agree the Alternative Solution.
- 29.5.1 If the Alternative Solution cannot be agreed within the Alternative Solution Period then unless the Developer has served the Revised Code Level Notice within the Alternative Solution Period the Developer or HCA may by not less than 10 working days written notice to the other terminate this Lease ("the Termination Notice") whereupon:
- 29.5.1.1 upon expiry of the Termination Notice the term granted by this Lease shall immediately cease and determine and this Lease shall have no further effect but without prejudice to the rights of either party against the other in respect of any breach of covenant; and
- 29.5.1.2 on determination of this Lease the Developer will give vacant possession of the Land leaving in place any remediation, construction or other work that the Developer or any person, party or entity authorised by the Developer has undertaken on the Land; and
- 29.5.1.3 Upon expiry of the Termination Notice the Developer shall forthwith apply to the Land Registry to close its leasehold title and to remove any entries that may have been made in relation to this Lease against the respective title numbers of the Land; and
- 29.5.1.4 To the extent that any monies that have been drawn down by way of Grant by the Developer either from HCA or from PCC and which have not been expended or the relevant cost not incurred by the date of service of Termination Notice such monies shall be refunded (without penalties or interest) to HCA or PCC as the case may be within 10 working days of service of the Termination Notice.
- 29.5.2 At anytime within the Alternative Solution Period the Developer may serve notice on the HCA of its intention to implement the Planning Permission and build the Development to the Revised Code Level ("the Revised Code Level Notice") whereupon:
- 29.5.2.1 all references to the Code shall be replaced with references to the Revised Code; and
- 29.5.2.4 the Development Strategies shall be modified accordingly.

29.6 HCA and PCC (acting in its capacity as owner of the Adjoining Land and without prejudice to any of its statutory powers) will:-

29.6.1 Use reasonable and commercially sensible endeavours to assist the Developer in obtaining an Off Site Energy Solution and/or an On Site Energy Solution and will at all times act in good faith towards the Developer;

29.6.2 Support any application or representation in respect of any relevant structure or local or other plan or any review that relate to the Off Site Energy Solution and/or On Site Energy Solution and oppose any planning applications submitted by any third party which may adversely affect or prejudice the prospects of obtaining an Off Site Energy Solution and/or On Site Energy Solution; and

29.6.3 Enter into any New Planning Agreement provided that:-

(a) the New Planning Agreement does not require the carrying out of any works on or restrict or regulate or otherwise impose any obligation (whether of a financial nature or otherwise other than the payment of fees) on:

(i) the development and/or the use or enjoyment of the Land prior to the date when for the purposes of section 56 of the Town and Country Planning Act 1990 the Development is taken to be implemented; or

(ii) any land retained by the Landowners and PCC other than the part of the Moyes Stand referred to in clause 29.1.11

(b) the New Planning Agreement provides that the Landowners and PCC will not be liable for any breach non-observance or non-performance of any obligations covenants or conditions in the New Planning Agreement occurring after they either no longer have an interest in the Land or an interest in the Land arising only from the grant or reservation of any easement or similar right or the benefit of any restrictive covenant; and

(c) the Developer indemnifies and keeps indemnified the Landowners and PCC against all liabilities whatsoever arising out of or in relation to a New Planning Agreement for the term of the Lease or until the Lease is terminated or in respect of any part of the Moyes Stand for the period of any lease (term)

29.7 PCC will use reasonable endeavours to procure that any tenant(s) of the part of the Moyes Stand will:

(a) enter into or grant (as appropriate) to the Developer or such other party as the Developer may specify a lease or sub lease (as appropriate) of that part of the Moyes Stand required for the off site District Energy Centre; and

(b) grant appropriate rights of access for the construction; laying, maintenance, inspection, replacement, cleaning, re-routing and enlargement of conduits required for the transmission of the Energy Centre Services from the District Energy Centre in the Moyes Stand to the Land and Dwellings; and

(c) grant appropriate rights to use the conduits referred to in clause 30.6.4 (c) for the transmission of the Energy Centre Services.

29.8 HCA and PCC (in its capacity as owner of the Adjoining Land) shall not:

29.8.1 Make or support any application for planning permission for the Land other than one submitted by the Developer; or

29.8.2 Object to any planning application or appeal lodged by the Developer; or

29.8.3 Otherwise do anything which would materially and adversely affect and/or materially prejudice the prospects of obtaining an Off Site Energy Solution and/or On Site Energy Solution for the Land including without limitation making representation to the Local Planning Authority.

### **30 Planning Permission – Termination of Lease**

30.1 If prior to expiry of the Challenge Period the Planning Permission has been the subject of Judicial Proceedings and such Judicial Proceedings have been Finally Determined resulting in the Planning Permission being revoked or declared void ("Revocation Date") then the Developer or HCA may by not less than three months written notice to the other to terminate this Lease ("Planning Termination Notice") and the following shall apply:

30.1.1 upon expiry of the Planning Termination Notice the term granted by this Lease shall immediately cease and determine and this Lease have no further effect but without prejudice to the rights of either party against the other in respect of any breach of covenant; and

30.1.2 on determination of this Lease the Developer will give vacant possession of the Land leaving in place any remediation, construction or other work that the Developer or any person, party or entity authorised by the Developer has undertaken on the Land.

30.2 Upon expiry of the Planning Termination Notice the Developer shall forthwith apply to the Land Registry to close its leasehold title and to remove any entries that may have been made in relation to this Lease against the respective title numbers of the Land

30.3 To the extent that any monies that have been drawn down by way of Grant by the Developer either from HCA or from PCC and which have not been expended or the relevant cost not incurred by the date of service of Developer's Notice such monies shall be refunded (without penalties or interest) to HCA or PCC as the case may be within 10 working days of service of the Planning Termination Notice

### **31 Law**

This Lease is governed by and shall be construed in accordance with English law and subject to the exclusive jurisdiction of the English courts.

**Executed** by the Parties as a deed and delivered on the day and year first above written



## Schedule 1 – Grants and reservations

### Part 1 - Rights easements and privileges

- 1 A right to enter the Adjoining Land to carry out the Development, such entry to be on the following terms:
  - (a) entry may take place only at times to be agreed with PCC acting reasonably and without delay;
  - (b) entry shall be free of charge but otherwise be subject to such conditions as PCC may reasonably require;
  - (c) entry may only be over such parts of the Adjoining Land as may be appropriate in order to carry out the Development and, in any event, may not be over any part of the Adjoining Land which has been built upon
- 2 The right for the Developer to use and deal with the Land or any part of it in any manner they may think fit notwithstanding any diminishment in light or air to the Adjoining Land or any inconvenience nuisance or annoyance caused by demolition development or any works carried out on the Land

### Part 2 – Exceptions and reservations

- 1 The right for the benefit of the Adjoining Land to free passage of water, soil, gas and electricity, telephone, radio or television signals through the Common Services now or at any time within the Perpetuity Period running through, in, under or over or attached, to the Land.
- 2 The right for the benefit of the Adjoining Land within the Perpetuity Period to use, clean, connect into and repair Common Services now or at any time within the Perpetuity Period in, under, over or attached to the Land and to enter upon such part of the Undeveloped Land as may be necessary (but excluding any parts which have permanent structures upon them or are within building lines ) for any of the foregoing the person so entering doing as little damage as possible and as soon as reasonably possible making good any damage done.
- 3 A right of entry on to the Undeveloped Land to carry out any works to the Adjoining Land.
- 4 A right of entry in to the Undeveloped Land and such parts of the Developed Land that shall form roads serving the Development to carry out works to the bridge struts adjoining the eastern boundary of the Land and to access the Network Rail Reservation Area that is adjacent to the eastern boundary within the Land.
- 5 All other rights of entry given to HCA referred to elsewhere in this Lease.
- 6 The right for PCC to use and deal with the Adjoining Land or any part of it in any manner they may think fit notwithstanding any diminishment in light or air to the Land or any inconvenience nuisance or annoyance caused by demolition development or any works carried out on the Adjoining Land

AND all such rights to be on the following terms:-

- (a) Entry may take place only at times agreed with the Developer acting reasonably and without delay
- (b) Entry shall be free of charge but otherwise be subject to such conditions as the Developer may reasonably require

- (c) Entry may only be over such parts of the Land as may be necessary
- (d) Entry shall only be over the Undeveloped Land for the time being within the Land
- (e) The Developer may at any time or times by written notice vary the route of all such rights provided that such alternative routes are not materially less beneficial

## **Schedule 2 – Developer's covenants and other provisions relating to the Development**

### **1 Pre-Development Matters Consents and Agreements**

1.1 No work of any nature forming part of the Development shall commence until:-

- (a) a pre commencement meeting has been held between the Developer and HCA's Development Control Officer (or other officer nominated for such purposes by HCA) (and it shall be the responsibility of the Developer to request and arrange such meeting and the parties agree to meet at a mutually convenient time following reasonable notice and shall act reasonably in agreeing such an appointment);
- (b) the Developer has given to HCA's Development Control Officer (or other officer nominated for such purpose by HCA) not less than ten Working Days' notice of its intention to commence the Development;
- (c) the Developer has complied with any other requirement to be complied with before the Commencement Date under the provisions of this Agreement;
- (d) the Developer has given to HCA's Development Control Officer a copy of the notice that it gives to the Health and Safety Executive under Schedule 1 of the CDM (as referred to in paragraph 11.5 of this Schedule)

### **1.2 Consents and agreements**

Subject to paragraph 1.3, the Developer shall as soon as is reasonably practicable (or such within extended period as the Developer and HCA may agree):

- (a) obtain all permissions and consents required pursuant to the Planning Permission or needed to enable it to carry out the Development;
- (b) obtain consent under the building regulations for the Development in accordance with the requirements of the Building Act 1984;
- (c) obtain all other permissions and consents required to carry out the Development;
- (d) enter into as developer (and the HCA will enter into as landowner on the terms set out in this Agreement) an agreement or agreements with the highway authority pursuant to section 38 and/or section 278 of the Highways Act 1980 (as appropriate) in respect of the construction and adoption of the Adoptable Highways and procure any bond or guarantee required by the highway authority in connection with any such agreement;
- (e) enter into as developer (and the HCA will enter into as landowner on the terms set out in this Agreement) an agreement or agreements with the water authority pursuant to section 104 of the Water Industry Act 1991 in respect of the construction and adoption of the sewers serving the Development and procure any bond or guarantee required by the water authority in connection with such agreement;
- (f) (save to the extent that such parts of the Land are intended to be transferred to the Management Company) enter into an agreement with PCC for the adoption by PCC of the Open Space Land and any other play areas, amenity areas and landscaping areas comprising a part of the Development;
- (g) enter into an agreement with a landscaping contractor upon such terms so as to ensure the completion of the landscaping works referred to in the Approved Plans.

- 1.3 Each of the matters referred in paragraph 1.2 shall be in accordance with the Approved Plans.
- 1.4 The Developer covenants with HCA to observe perform and comply with all the obligations on its part contained in any document referred to in paragraph 1.2.

## **2 Boundary fences**

- 2.1 Prior to commencement of any works on the Land (or if earlier within three months from the Commencement Date) the Developer will erect along all boundaries of the Land (including along such part of the Land as is a highway maintainable at public expense so as to create a safe pedestrian and vehicular access over the same and including vehicular gates appropriate for access to the football ground/club forming part of the Adjoining Land) appropriate fences and hoardings (but in any event being not less than 2 metres in height and being in accordance with the Health and Safety Executive's, or other competent body's, recommendations) and to maintain the same in position and good repair throughout the Development.
- 2.2 If the Developer shall be in breach of paragraph 2.1 which it does not make good within 28 days of written request from the HCA to do so then HCA shall have the right without further notice to enter upon the Land in order to erect any such fences along the boundaries of the Land (including the right to take down and erect any fences erected by the Developer in an incorrect position, whether on the Land or on adjoining land) and the reasonable cost of all such works undertaken by HCA (including any works of reinstatement to adjoining land) shall be paid by the Developer to HCA on demand.

## **3 Site Access**

- 3.1 Access to the Land for construction traffic and any other vehicles must be via the existing accesses to the Land and / or any access points agreed with the local planning or other competent authority and no other roadway and the Developer must ensure that anyone driving to the Land is aware of this.
- 3.2 The Developer must lay a sufficient length of access road of adequate construction to the reasonable satisfaction of HCA before commencing construction work on other aspects of the Development so as to facilitate compliance with the provisions of this Lease relating to protection and cleaning of roads.

## **4 Temporary vehicle parking /Site Compounds**

- 4.1 The Developer must provide at the Commencement Date and maintain during the Development to the reasonable satisfaction of HCA a temporary vehicle park for all vehicular traffic used in the course of construction including sub contractor's and operatives' private vehicles and a site compound for the secure storage of plant equipment and materials and shall remove the same and make good the Land at practical completion.
- 4.2 The proposed layout of the vehicle park and site compound together with construction details shall be provided by the Developer not later than the Commencement Date.
- 4.3 The Developer must not park or permit or suffer to be parked construction plant vehicles and private vehicles on highways and highway verges except with the express consent in writing of HCA.

## **5 Completion of Development**

- 5.1 The Developer must:

- (a) substantially commence the Development prior to 31 March 2011 (but without prejudice to any provision of this Lease containing any conditions to be met prior to commencement of the Development); and thereafter
  - (b) carry out and complete the Development in a good and workmanlike manner to the reasonable satisfaction of HCA in accordance with the Approved Plans at such rate of Development as shall be reasonable and commercially sensible
- 5.2 The Developer shall ensure that no Deleterious Materials are used in any works or materials used comprised in or relating to the Development.
- 5.3 In carrying out the Development the Developer shall comply with all Planning Agreements related to the Planning Permission affecting the Land including the payment of all sums payable thereunder and the discharge of all obligations thereunder at the times stated therein and shall indemnify and keep indemnified HCA against all actions proceedings claims demands losses costs expenses damages and liabilities arising directly or indirectly from any breach of the Planning Agreements.
- 5.4 The Developer must complete to base and wearing course level such part of the Development as comprises the long term vehicular and pedestrian access (in accordance with the Approved Plans) to the Adjoining Land of the Development to the reasonable satisfaction of PCC

## 6 Extensions of time

- 6.1 If the Developer is delayed in completing or proceeding with the Development solely by reason of any of the following:
- (a) outbreak of war or civil insurrection involving the United Kingdom;
  - (b) fire; tempest; frost;
  - (c) any strikes or lockout in the building trade or any kindred trades;
  - (d) any town planning or building licensing or building regulations refusal or restrictions;
  - (e) exercise by PCC or HCA of their rights under paragraph 19;
  - (f) an extension, variation or alteration made to the Development which shall have been approved by HCA pursuant to this Lease;
  - (g) other cause or accident beyond the reasonable control of the Developer,

then the Development End Date shall be extended from time to time by such period or periods as shall be reasonable

### 6.2 If the Developer:

- (a) has served written notice on HCA not less than three months prior to the Development End Date that the Developer has been unable despite using its reasonable and commercially sensible endeavours to dispose of all the Dwellings or proposed Dwellings on the Land (which for the avoidance of doubt shall not include any obligations on the Developer to commence construction of a Dwelling prior to exchange of contracts with a Purchaser for its Disposal); and
- (b) HCA (acting reasonably) is satisfied that the Developer has used its reasonable and commercially sensible endeavours to dispose of the Dwellings and proposed Dwellings.

then the Development End Date shall be postponed by such period as is reasonable in all the circumstances.

6.3 Until the first of the following occurs the Development End Date shall be postponed by such period as is reasonable in all the circumstances:-

- (a) the Developer obtains an Off Site Energy Solution in accordance with clause 29.1; or
- (b) the Developer obtains an On Site Energy Solution in accordance with clause 29.2; or
- (c) the Developer serves the Revised Code Level Notice in accordance with clause 29.5.

## **7 Approved Plans**

7.1 Subject to paragraph 7.2, the Developer must not erect or build or permit or suffer to be erected or built on the Land any building, structure or erection otherwise than in conformity with the Approved Plans without HCA's approval, such approval not to be unreasonably withheld or delayed

7.2 Within 28 days after the service of a notice requiring the Developer so to do the Developer must commence to take down and remove all work or materials which shall not be in accordance with paragraphs 7.1 and 7.2.

## **8 Substitute materials**

If the Developer proves to the reasonable satisfaction of HCA that it is necessary to use substitute materials in the Development then the Developer may use such substitute materials as are first approved by HCA in writing (such approval not to be unreasonably withheld) provided that such substitutions are of no less specification quality design suitability and fitness for purpose than the original materials and are consistent with the Approved Plans and do not comprise any Deleterious Materials.

## **9 HCA's rights to view etc and remedy breaches**

9.1 The Developer must permit HCA by its servants or agents to enter upon the Land at all reasonable times (or at any time in an emergency) for any reasonable purpose, including:

- (a) to view the state of progress of the Development and the materials used and intended for use in connection therewith;
- (b) ascertaining whether the obligation of the Developer under this Lease or any other document have been observed and performed; and
- (c) to exercise the rights excepted and reserved.

9.2 Within a reasonable period from service of written notice by HCA to the Developer specifying a breach by the Developer of the terms of this Lease the Developer to remedy such breach the Developer shall remedy such breach and if the Developer shall default in doing so it shall be lawful for HCA to enter the Land to remedy any such breach and all proper and reasonable costs and expenses thereby incurred shall be paid by the Developer to HCA on demand as a debt due to HCA.

## **10 Compliance with Enactments**

- 10.1 The Developer must do all acts and things required by, and conform in all respects with, the provisions of any Enactments applicable to the Development (which for the avoidance of doubt shall include the provisions of section 57 of and Schedule 22 to the Environment Act 1995) and in particular to comply with:
- (a) the lawful requirements of any statutory undertakers in respect of electricity, gas, water, telephone or other public services; and
  - (b) the conditions imposed by any agreements, licences, permissions and approvals for development or use granted in relation to the Land and the Development.
- 10.2 The Developer hereby indemnifies HCA against becoming liable to pay any penalty, damage, compensation, costs, charges or expenses arising out of the carrying out of the Development save where such liability arises from any negligent or other act default or omission of the HCA, its servants or agents and then only to the extent it does so.
- 10.3 In this paragraph:
- (a) "Competent Authority" means any government body, the Environment Agency, court, tribunal or other body deriving power under Environmental Law;
  - (b) the parties agree that the apportionment by a Competent Authority of any liabilities that may arise under Part IIA of the Environmental Protection Act 1990 (as amended) (Part IIA) in respect of pollution or contamination present in on or under or originating from the Land shall be undertaken on the basis that the Developer shall have full responsibility for any and all such liabilities;
  - (c) it is hereby acknowledged and intended by the parties that paragraph 10.3(b) is an agreement on liabilities for the purposes of Part IIA;
  - (d) the parties agree that in the event of a notification being served on any of them which indicates that the Land is or is likely to be determined "contaminated land" under Part IIA to notify the other as soon as is reasonably practicable.;
  - (e) the parties undertake to furnish the Competent Authority with a copy of this Lease as soon as is reasonably practicable after receiving a note from the Competent Authority or a notification under paragraph 10.3, and individually to agree to the application of paragraph 10.3(b) and to confirm such individual agreement in writing to the Competent Authority following receipt of such notice or notification;
  - (f) the parties hereby undertake to use all reasonable endeavours to ensure that the Competent Authority applies the agreement on liabilities set out in paragraph 10.3(b);
  - (g) for the avoidance of doubt HCA shall retain the right to appeal against a decision of a Competent Authority in accordance with Part IIA's appeal procedure.
- 10.4 The Developer hereby undertakes to indemnify HCA and keep HCA indemnified in respect of all and any fines, penalties, charges, actions, costs, claims, expenses, demands, duties, obligations, damages and other liabilities that HCA may suffer (i) as a result of any failure of the Developer to adhere to the provisions of paragraph 10.3; or (ii) arising from any pollution or contamination present in or under or originating from the Land.
- 11 CDM Regulations**
- 11.1 The Developer accepts that it is a client as defined by the Construction (Design and Management) Regulations 2007 (as amended from time to time) ("CDM") and warrants that it is and will at all times remain competent to carry out the role of a client under CDM.

- 11.2 The Developer accepts that it will act as the only client in respect of the Development and the Developer hereby elects to be the only client under CDM for the Development.
- 11.3 HCA agrees to the election of the Developer as the only client for the Development for the purposes of CDM.
- 11.4 The Developer shall comply fully with all the obligations of the client under CDM.
- 11.5 The Developer shall procure that as soon as practicable after the CDM Co-ordinator (as defined in the CDM) is appointed the CDM Co-ordinator notifies the Health and Safety Executive of the particulars specified in Schedule 1 of CDM and contemporaneously provides a copy of the notification to HCA. The Developer hereby agrees that no work shall commence on site until HCA has received this notification.
- 11.6 The Developer shall not seek to withdraw, terminate or in any manner derogate from such election without HCA's prior written consent, which HCA may in its absolute discretion withhold.
- 11.7 The Developer shall ensure that any and all parties engaged in respect of the procurement and/or undertaking of the works comprised in the Development are aware of the terms of the Developer's election as only the client for the purposes of CDM.

## 12 Health & Safety

- 12.1 The Developer shall at all times comply with all obligations, requirements and duties arising under Health and Safety legislation in connection with the works comprising the Development.
- 12.2 The Developer shall at all times procure the compliance with all obligations, requirements and duties arising under Health and Safety legislation by any and all parties appointed in connection with the works comprising the Development or allowed on the Land.
- 12.3 The Developer shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with the Development, and shall provide a report to HCA's Health & Safety Manager quarterly in the form set out in Schedule 8.
- 12.4 The Developer shall notify HCA's Health & Safety Manager immediately on the occurrence of any of the following events which arise out of or in connection with the Development:
- (a) a fatal accident to any worker or a member of the public;
  - (b) any injury to a member of the public requiring reporting under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time) ("RIDDOR");
  - (c) any dangerous occurrence, as defined by RIDDOR;
  - (d) the service of any improvement or prohibition notice under the Health & Safety at Work etc Act 1974;
  - (e) any incident having health & safety implications which attracts the attention of the police and/or the media;
  - (f) the commencement of any criminal prosecution under the Health & Safety at Work etc Act 1974.

## 13 Insurance

The Developer must:



- 13.1 insure, or cause to be insured, at all times during the carrying out of the Development any buildings erected on the Land (save any Dwellings disposed of to Purchasers or land disposed of to the Management Company) (Insurable Premises) in a sum sufficient to cover the cost of completely reinstating the same in the event of total destruction together with architects' and surveyors' fees and other expenses incidental thereto against loss or damage by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion in an insurance office to be approved by HCA (such approval not to be unreasonably withheld) and to ensure that HCA's interest is noted on the policy or policies of insurance;
- 13.2 pay or cause to be paid, all premiums and other monies necessary for effecting such insurance;
- 13.3 whenever required, produce to HCA evidence of the policy or policies of such insurance and the last receipt for every premium or other monies;
- 13.4 (in the event of the Insurable Premises or any part thereof being destroyed or damaged as aforesaid) secure that all monies payable by virtue of such insurance shall with all convenient speed be laid out and applied in rebuilding or otherwise reinstating the same in a good and substantial manner in accordance with the terms of this Lease and (in case the same shall be insufficient for that purpose) make up the deficiency out of its own monies;
- 13.5 not do, or permit to be done, upon the Land anything which may render the policy or policies of insurance void or voidable;
- 13.6 indemnify HCA (notwithstanding any supervision or approval of HCA or any person acting on behalf of HCA) and insure in an insurance office approved by HCA (such approval not to be unreasonably withheld) in the sum of £2,000,000 against any liability, loss, claim or proceedings in respect of any injury or damage whatsoever caused to any person or to any property real or personal in so far as such injury or damage arises out of, or in the course of, or by reason of, the negligent execution of the Development.

#### 14 **Protection of Highways**

##### 14.1 The Developer must:

- (a) comply with all reasonable instructions of the local highway authority and the police given to prevent any congestion of, or hazard to, traffic and in any event arrange for the delivery and removal of all materials to and from the Land with as little inconvenience to pedestrians and traffic as reasonably practicable;
- (b) at all times protect all Highways against damage by vehicles employed in connection with the Development and forthwith make good any such damage at the expense of the Developer in the event that the perpetrator of such damage does not maintain or repair the same;
- (c) at all times keep all Highways free from mud, dirt, debris and other deleterious matter arising from the Development to the reasonable satisfaction of HCA and ensure that all vehicles leaving the Land are clean and properly loaded;
- (d) to provide in any contract for the carrying out of the Development or any part or parts thereof a provision requiring the contractor under such contract to comply with the terms of paragraphs 14.1(a), 14.1(a) and 14.1(c).

14.2 If the Developer fails to carry out any work necessary for compliance with the provisions of this paragraph 14 within ten Working Days of having received written notification of such default HCA may undertake the same and the Developer must forthwith on demand repay to HCA the proper cost of so doing which cost shall be recoverable by HCA from the Developer as a liquidated debt.

**15 Maintenance of Highways**

The Developer must maintain all Highways constructed by the Developer until adoption by the highway authority or transferred to the Management Company.

**16 Defects Insurance**

16.1 The Developer must build every Dwelling so as to comply with the requirements of the National House Building Council (or any successor organisation) (NHBC) and so as to qualify for the insurance cover provided by it which the Developer must obtain.

16.2 The Developer will do all that is necessary to ensure that every Purchaser obtains the benefit of the insurance cover provided by NHBC.

**17 Sewers, drains and other conduits**

During the construction of the Development the Developer must:

17.1 lay out and construct sufficient for the Development to the reasonable satisfaction of HCA proper and sufficient branch and connecting sewers, drains, shafts, traps, gullies and gratings and to drain such branch and connecting sewers and drains into public sewers;

17.2 liaise with HCA in connection with the overall programming for the provision of services and comply with all reasonable instructions issued by it to ensure the smooth progress of the Development and appropriate interface with any works being carried out on any Adjoining Land;

17.3 protect all pipes, ducts, cables and statutory undertakers' apparatus against damage as a result of carrying out the works;

17.4 take all necessary precautions to ensure the protection of all streams, waterways, surface water, sewers and drains against pollution as a result of carrying out the works and any temporary diversions of existing streams, waterways, sewers or other works must be carried out so as not to reduce the capacity of that stream, waterway, sewer or other works and to the reasonable satisfaction of HCA;

17.5 ensure that the Common Services are not blocked and that any connection to a Common Service is effected with the approval of HCA such approval not to be unreasonably withheld or delayed or, where appropriate, the relevant statutory undertaker;

17.6 maintain all sewers, drains, pipes, ducts, cables and other conduits constructed by the Developer until adoption by the relevant statutory undertaker or transferred to the Management Company.

**18 Maintenance until completion**

18.1 Until completion of the Development, the Developer must keep and maintain the Land and all parts of the Development in a neat and tidy condition so far as may be reasonable.

18.2 Until the completion of the disposal of any Dwelling, the Developer must keep and maintain that Dwelling in good and marketable condition.

**19 Archaeology**

All fossils, coins, articles of value or antiquity and structures or other remains or things of prehistoric, geological or archaeological interest (archaeological finds) discovered on the Land during the Development shall be the property of PCC and the Developer must:

- 19.1 not conceal, remove or damage or permit to be concealed, removed or damaged any archaeological finds;
- 19.2 promptly on discovery of any archaeological finds the archaeology officer of PCC (or other local archaeology authority);
- 19.3 allow (upon such reasonable terms as may be agreed with the Developer) officers and agents of PCC (or other local archaeology authority) with or without workmen and plant to enter the Land for the purpose of appraising, recording and removing the archaeological finds;
- 19.4 reimburse to PCC (or other archaeological authority) or to any third party authorised by them costs incurred in the emergency recording of any significant archaeological find made during the Development.

**20 Trees**

Save in accordance with the Approved Plans and subject to the Developer obtaining all necessary consents, not to cut down or top any trees on the Land without the consent in writing of HCA such approval not to be unreasonably withheld or delayed.

**21 Gravel etc**

The Developer must not sell or dispose of any earth, clay, gravel or sand from the Land or permit or suffer any of the same to be removed (provided that the Developer may use for the purpose of the Development or dispose of and without making any payment therefore to HCA or to any person any substances which may be excavated in the proper execution of such works).

## Schedule 3 – Private Units

### Part 1 – Leases and transfers of Private Units

1. The Developer shall use its reasonable and commercially sensitive endeavours to sell each Private Unit to a Purchaser at arm's length, with vacant possession, by the Development End Date.
2. HCA need not take any step in relation to the grant of a Private Unit Lease until the Interim Completion Certificate has been issued in respect of that Private Unit but will execute each Private Unit Lease expeditiously and in any event within 20 Working Days of receipt of the same.
3. HCA need not take any step in relation to the leases of the last ten Private Units remaining to be sold until the Developer has substantially completed the construction of the Development as a whole (other than such ten Private Units) to HCA's reasonable satisfaction (having due regard to planting seasons and other matters beyond the Developer's reasonable control).
4. Subject to paragraphs 2 and 3 of this Part of this Schedule, HCA will grant the Private Unit Lease of each Private Unit to the Developer or, at the direction of the Developer, to a Purchaser who has entered into a Contract to Purchase the Private Sale Units from and at the direction of the Developer and transfer the freehold reversion on the following terms:-
  - (a) the form of lease shall be substantially in the form of the Private Unit Lease attaching a plan delineating the land to be demised by red edging (such plan to conform with the Estate Layout Plan previously approved by HCA and bearing no other red edging);
  - (b) the lease shall be executed by the parties as an original and counterpart;
  - (c) HCA need not deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person) save in relation to any matters arising or disclosed after the Title Date;
  - (d) the Developer shall send the following documents to HCA, executed by the Developer and the Purchaser (as the case may be), not less than 10 Working Days before the anticipated date for completion of the lease
    - (i) the lease and counterpart lease;
    - (ii) any relevant Estate Management Scheme documents
    - (iii) the transfer (which shall be substantially in the form of the Transfer (Private Unit)) of the freehold reversion to the lease of the Private Unit (in duplicate) to the Developer which shall be at a consideration of £1.00
    - (iv) a Tenant's Response to Landlord's Notice (in the form set out in Part II of the prescribed Form 3) pursuant to section 8 Landlord and Tenant (Covenants) Act 1995 duly signed by the Purchaser of such Dwelling or Commercial Unit confirming that HCA is released from the landlord covenants contained in the lease of such Dwelling or Commercial Unit
  - (e) HCA will return each document referred to in paragraph (d) (i) – (iii) above to the Developer's Solicitors within five Working Days of and including the date of receipt by HCA duly executed on behalf of HCA

- (f) Receipt by the Developer's Solicitors of the documents referred to in paragraph (d) (i) - (iii) shall be irrevocable authority from the HCA to the Developer and the Developer's Solicitors to complete such documents save where the HCA or its solicitors stipulate otherwise in writing to the Developer's Solicitors in the correspondence returning the relevant document to the Developer's Solicitors
  - (g) the Private Unit Lease shall be granted with vacant possession and the transfer of the freehold reversion to the Private Sale Unit shall be subject only to the Private Unit Lease save (in each case) where the Developer has allowed any occupation of the same by a third party
5. Within 5 Working Days after the completion of any lease and transfer the Developer must deliver to HCA's Solicitors a certified copy of the completed form of lease and transfer.
  6. Immediately following each completion the Developer will apply to register the transfer of the relevant freehold reversion at the Land Registry

## Schedule 4 – Affordable Units

### Leases and transfers of Affordable Units

1. The Developer shall use its reasonable and commercially sensible endeavours to procure the grant of an Affordable Unit Lease of each Affordable Unit to the Association, with vacant possession by the Development End Date.
2. The Developer shall procure that the Association enters into all relevant Estate Management Scheme documents on completion of each lease.
3. HCA need not take any step in relation to the lease of any Affordable Unit until the Interim Completion Certificate has been issued in respect of that Affordable Unit but will execute the lease of any Affordable Unit expeditiously and in any event within 20 Working Days of receipt of the same.
4. Subject to paragraphs 2 and 3 inclusive of this Part of this Schedule, HCA shall grant the lease in each Affordable Unit to the Developer or, at the direction of the Developer, to the Association and transfer the freehold reversion to the Developer on the following terms:
  - (a) the form of lease shall be substantially in the form of the Affordable Unit Lease attaching a plan delineating the land to be demised by red edging (such plan to conform with the Estate Layout Plan previously approved by HCA and bearing no other red edging);
  - (b) the lease shall be executed by the parties as an original and counterpart ;
  - (c) HCA need not deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person) save in relation to any matters arising or disclosed after the date of this Agreement;
  - (d) the Developer shall send the following documents to HCA, executed by the Developer and the Association (as the case may be), not less than 5 working days before the anticipated date for completion of the transfer and lease
    - (i) the lease in original and counterpart;
    - (ii) any relevant Estate Management Scheme documents
    - (iii) the transfer (which shall be in the form of the Transfer (Affordable Unit)) of the freehold reversion to the Affordable Unit Lease (in duplicate) to the Developer
    - (iv) a Tenant's Response to Landlord's Notice (in the form set out in Part II of the prescribed Form 3) pursuant to section 8 Landlord and Tenant (Covenants) Act 1995 duly signed by the Purchaser of such Dwelling or Commercial Unit confirming that HCA is released from the landlord covenants contained in the lease of such Dwelling or Commercial Unit
  - (e) HCA will return each document referred to in paragraph (d) (i) – (iv) above to the Developer's Solicitors within four Working Days of and including the date of receipt by HCA duly executed on behalf of HCA

- (f) Receipt by the Developer's Solicitors of the documents referred to in paragraph (d) (i) - (iv) shall be irrevocable authority from the HCA to the Developer and the Developer's Solicitors to complete such documents save where the HCA or its solicitors stipulate otherwise in writing to the Developer's Solicitors in the correspondence returning the relevant document to the Developer's Solicitors
  - (g) the transfer of the freehold reversion to the Developer shall be at a consideration of £1.00 and with vacant possession other than the Affordable Unit Lease and be completed simultaneously with the grant of the Affordable Unit Lease save (in each case) where the Developer has allowed any occupation of the same by a third party
  - (h) the Lease of the Affordable Unit shall be granted with vacant possession save (in each case) where the Developer has allowed any occupation of the same by a third party
6. Within 10 Working Days after the completion of any lease and transfer of an Affordable Unit, the Developer must deliver to HCA's Solicitors a certified copy of the completed lease and transfer.
7. Immediately following completion of the lease and transfer the Developer must register the transfer at the Land Registry or, if so requested by HCA, deliver to HCA's Solicitors the appropriate money, completed forms and all other appropriate documentation to enable HCA's Solicitors to apply for the registration and shall pay HCA's Solicitors costs of so doing.

## Schedule 5 – Transfer etc of Leasehold Buildings and Commercial Units

- 1** HCA shall transfer, and the Developer shall receive, the freehold interest in a Leasehold Building to the Developer on the following terms:
- (a) HCA is not obliged to transfer any Leasehold Building until the first Interim Completion Certificate has been issued in respect of a Flat in that Leasehold Building.
  - (b) the form of transfer shall be substantially in the form of the Transfer (Leasehold Building) attaching a plan delineating the land to be transferred by red edging (such plan to conform with the Estate Layout Plan previously approved by HCA and bearing no other red edging);
  - (c) the form of transfer shall be executed by the parties in duplicate;
  - (d) HCA shall not be required to deduce title (having already deduced title to the Developer before completion on this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person) save in relation to any matters arising or disclosed after the Title Date;
  - (e) the Developer shall send the following documents to HCA, executed by the Developer, not less than 10 working days before the anticipated date for completion of the transfer:
    - (i) the form of transfer (in duplicate)
    - (ii) the Housing Covenant in respect of the first Flat if it is an Affordable Flat
  - (f) HCA will return each document referred to in paragraphs (d) (i) and (d) (ii) above to the Developer's Solicitors within 4 Working Days of and including the date of receipt by HCA duly executed on behalf of HCA or if later 2 Working Days after the issue of the first Interim Completion Certificate in respect of a Flat in that Leasehold Building
  - (g) Receipt by the Developer's Solicitors of the documents referred to in paragraphs (d) (i) and (d) (ii) shall be irrevocable authority from the HCA to the Developer and the Developer's Solicitors to complete such documents save where the HCA or its solicitors stipulate otherwise in writing to the Developer's Solicitors in the correspondence returning the relevant document to the Developer's Solicitors
  - (h) the transfer of the freehold reversion to the Developer shall be at a consideration of £1.00 and with vacant possession other than the Private Unit Lease or Affordable Unit Lease (as appropriate) and save (in each case) where the Developer has allowed any occupation of the same by a third party be completed simultaneously with the grant of the Private Unit Lease or Affordable Unit Lease
- 2** HCA shall transfer and the Developer shall receive the freehold interest in a Commercial Unit (other than a Commercial Unit within a Leasehold Building) to the Developer on the following terms:
- (a) HCA is not obliged to transfer any Commercial Unit until the Interim Certificate has been issued in respect of that Commercial Unit



- (b) the consideration for the transfer shall be £1.00 and the transfer shall be with vacant possession save (in each case) where the Developer has allowed any occupation of the same by a third party
  - (c) the provisions of paragraphs 1(c) and 1(d) above have been complied with but in respect of the Commercial Unit
  - (d) The Developer shall send the following documents to HCA executed by the Developer not less than 5 working days before the anticipated date for completion of the transfer:
    - (i) the form of transfer (in duplicate)
  - (e) HCA will return each document referred to in paragraph (e) above to the Developer's Solicitors within 4 Working Days of and including the date of receipt by HCA duly executed on behalf of HCA or if later 2 Working Days after the issue of the Interim Completion Certificate in respect of the Commercial Unit
  - (f) Receipt by the Developer's Solicitors of the documents referred to in paragraph (e) shall be irrevocable authority from the HCA to the Developer and the Developer's Solicitors to complete such documents save where the HCA or its solicitors stipulate otherwise in writing to the Developer's Solicitors in the correspondence returning the relevant document to the Developer's Solicitors
- 3** HCA shall itself or by HCA's Solicitors each time provide to the Developer within [two] Working Days of receipt by HCA of a copy of the Interim Completion Certificate for each Dwelling within any Leasehold Building or each Commercial Unit such written consent as the Developer may reasonably require so as to be sufficient to permit the restriction referred to in Schedule 6 to be released in respect of the disposal of each such Dwelling or Commercial Unit
- 4** On the sale of the last Dwelling or Commercial Unit within such Leasehold Building or Commercial Unit HCA and the Developer shall procure the removal of the restriction on title referred to in paragraph 3 above

## Schedule 6 – Prescribed Clauses for Transfers

### Part 1 – All transfers

"Estate Lease" shall mean the Lease of the Estate dated the [ ] day of [ ] 200 [ ] and made between [(1) Homes and Communities Agency (2) Peterborough City Council (3) Morris Homes ~~Limited and Peterborough~~ Limited and (4) ~~General~~ Morris Group Ltd (East Midlands)]

s. 40(2)

- 1 The Transferee acknowledges that the Estate has been developed as an environmentally sustainable development

### Part 2 – Transfers (Private Units)

"Private Unit Lease" means the lease of even date with this transfer and entered into immediately prior to the completion of this transfer and made between the Transferor (1) [N.B. here insert name of buyer] (2) in respect of the Property

- 1 The parties intend that the terms of years granted by the Estate shall so far as it concerns the Property (only) merge and be extinguished in the reversion expectant thereon; and
- 2 The Transferee shall observe and perform the landlord covenants in the Private Unit Lease and shall indemnify and keep indemnified the transferor against any breach or non-observance thereof

### Part 3 – Transfers (Affordable Units)

"Affordable Unit Lease" means the Lease of even date with this Transfer and entered into immediately prior to the completion of this Transfer and made between the Transferor (1) and the Association (2) in respect of the Property

- 1 The parties intend that the term of years granted by the Affordable Unit Lease shall so far as it concerns the Property (only) merge and be extinguished in the reversion expectant thereon and the Transferor hereby releases the Property from the provisions for the payment of additional monies contained in the Lease and any vendor's lien created thereby
- 2 The Transferee shall observe and perform the landlord's covenants in the Affordable Unit Lease and shall indemnify and keep indemnified the Transferor against any breach or non-observance thereof

### Part 4 – Transfers (Leasehold Buildings)

The Transferee applies to the Chief Land Registrar to enter the following Restriction against the Title relating to the Property:-

RESTRICTION Form L: No disposition of the registered estate other than a charge by the proprietor of the registered estate is to be registered without a certificate from the Homes and Communities Agency of Central Business Exchange 414 Midsummer Boulevard Milton Keynes MK9 2EA or its conveyancer certifying that the provisions of Schedule 5 to the Lease dated [ ] made between (1) Homes and Communities Agency (2) Peterborough City Council (3) Morris Homes Limited [and (4) ~~General~~ Morris Group Limited] have been complied with (East Midlands)

s. 40(2)

## Schedule 7 – Covenants by the Surety

### 1 Developer's Covenants

In this Schedule **Developer's Covenants** means the covenants, terms, conditions, agreements, restrictions, stipulations and obligations falling to be complied with by the Developer under this Lease.

### 2 Indemnity by Surety

The Developer or the Surety shall while the Developer remains bound by the Developer's Covenants comply with the Developer's Covenants and the Surety shall indemnify the Landowners against all claims, demands, losses, damages, liabilities, costs, fees and expenses sustained by the Landowners by reason of or arising out of any default by the Developer in complying with the Developer's Covenants.

### 3 Surety jointly and severally liable with Developer

The Surety shall be jointly and severally liable (whether before or after any disclaimer by a liquidator or trustee in bankruptcy or any forfeiture of this Lease) for the fulfilment of all the obligations of the Developer under this Lease and agree that HCA in the enforcement of its rights under this Lease may proceed against the Surety as if the Surety were named as the Developer in this Lease.

### 4 Waiver by Surety

The Surety waives any right to require HCA to proceed against the Developer or to pursue any other remedy whatsoever which may be available to HCA before proceeding against the Surety.

### 5 No release of Surety

None of the following or any combination of them shall release, discharge or lessen or affect the liability of the Surety under this Lease:

- (a) any neglect, delay or forbearance of HCA in endeavouring to obtain payment of any sums due under this Lease or in enforcing compliance with the Developer's Covenants;
- (b) any refusal by HCA to accept any payment tendered by or on behalf of the Developer at a time when HCA is entitled (or would after the service of a notice under section 146 of the Law of Property Act 1925 be entitled) to re-enter the Land;
- (c) any extension of time given by HCA to the Developer;
- (d) save as provided for in the Landlord and Tenant (Covenants) Act 1995 any variation of the terms of this Lease or the transfer of the reversion to or the assignment of this Lease;
- (e) any surrender by the Developer of any part of the Land (in which event the liability of the Surety shall continue in respect of the part of the Land not so surrendered after making any necessary apportionments);

- (f) any other act, omission, matter or thing whereby but for this provision the Surety would be exonerated wholly or in part:-

## **6 Disclaimer or forfeiture of Lease**

6.1 If the Developer (being an individual) becomes bankrupt or (being a company) enters into liquidation and the trustee in bankruptcy or liquidator disclaims or surrenders this Lease or this Lease is forfeited then the Surety shall (if it gives written notice to the Landowners within 65 Working Days after such disclaimer or other event) accept from and execute and deliver to HCA a counterpart of a new lease of the Land (the proper and reasonable costs of which shall be borne by the Surety) and HCA shall grant such new lease to the Surety:

- (a) to take effect from the date of the disclaimer or other event;
- (b) for a term beginning on the date of the disclaimer and equal in length to the residue of the term granted by this Lease which would have remained had there been no disclaimer;
- (c) reserving by way of yearly rent an amount equal to the yearly rent payable immediately before the date of the disclaimer or other event such yearly rent to be payable from that date;
- (d) imposing on the Surety the same obligations as the Developer was subject to immediately before the disclaimer or other event; and
- (e) otherwise containing the same terms and provisions as this Lease, including the provisions relating to payment of money, except that the Surety shall not be required to procure that any other person is made a party to the new lease as Surety.

6.2 If the Surety does not require to take a new lease, the Surety shall nevertheless on demand pay to HCA a sum equal to the rents and other sums that would have been payable under this Lease but for the disclaimer or other event, from and including the date of such disclaimer or other event for a period of two years or (if sooner) until the date on which a lease or underlease of the Land to a third party is completed.

## **7 Supplemental documents**

The Surety shall at the request of HCA join in any document made supplemental or collateral to this Lease.

## **8 Address for service**

The Surety shall promptly notify in writing HCA in writing of any change in the Surety's address for service and until such notice has been given the Surety's address for service shall be the Surety's address for service most recently notified in writing to HCA.]

## **9 Remedies**

Regardless of any provision of this schedule and the guarantee given to the Landowners by the Surety the Landowners shall not have any greater rights against the Surety than it has against the Developer and the same defences set offs and/or counterclaims which are available to the Developer shall be available to the Surety

## Schedule 8 - Health and Safety Reports

- 1 The Developer shall provide to HCA on a quarterly-basis a Health and Safety Report containing the information relating to health and safety performance. As a minimum the Health and Safety Report will contain the following information:
  - 1.1 Accident incidence rates per 100,000 workers ("AIR") involved in the [works associated with the Approved Scheme of Development], listing by month and rolling annual frequency rate for the lifetime of the works comprising the Development:
    - 1.1.1 accidents resulting in greater than three days lost time
    - 1.1.2 major injuries
    - 1.1.3 fatalities
    - 1.1.4 reportable diseases

all as defined by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time), in accordance with the formula:

$$\text{AIR} = (A/N) \div 100,000$$

where: A = the number of accidents or incidents of the defined type during the period

N = the average number of workers on the site during the period
  - 1.1.5 reportable injuries to members of the public
- 1.2 A listing in respect of the works comprising the Development by month, and the rolling annual rate, showing the number of:
  - 1.2.1 days lost due to accidents occurring on the Land or ill-health incurred by workers directly from the said works on the Land
  - 1.2.2 dangerous occurrences as defined by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time)
  - 1.2.3 enforcement notices served by the regulatory authorities served by the Health & Safety Executive
- 1.3 A summary in respect of the works comprising the Development of:
  - 1.3.1 all accident investigations carried out in the relevant quarterly period
  - 1.3.2 all actions taken to rectify any identified health and safety deficiencies
  - 1.3.3 all initiatives to improve health and safety undertaken in the period (e.g. site inspections, tool box talks etc)
  - 1.3.4 all visits by the Health & Safety Executive, the Police or the Environment Agency to the Land undertaken in the relevant quarterly period

## **Schedule 9 – Development Strategies**

Air Pollutants Strategy

Community Engagement Strategy

Construction Quality Process

Customer Satisfaction Strategy

Demolition Strategy

Detailed Access Statement

Ecology Strategy

Health and Wellbeing Strategy

Management Strategy

Specification and Supply Chain Strategy

Overheating Strategy

Performance in Fire Strategy

Remediation Strategy

Surface Water Strategy

Transport Strategy

Waste Strategy

Water Use Strategy

Draft, and subject to further discussion, and negotiation and to be agreed within 2 months of the completion of the building lease.

**Wellbeing Strategy**  
**South Bank**  
**Morris Group**

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## **1.0 Introduction**

The approach from Morris group to well being at the Carbon Challenge development addresses housing-design, street-design and neighbourhood level interventions. The code for sustainable homes provides the framework for securing credits. Morris group has considered which aspects of the CSH fall within the remit of the Health and Wellbeing strategy and submit the following for consideration

## **2.0 Daylighting**

We have included a number of design principles and parameters that have been incorporated within the Pattern Book for Sustainable Homes. We are aware that daylighting is particularly significant for the non-residential buildings proposed for the development due to the deeper plan used in comparison to domestic properties and these principles have been extended to fit the limited number of commercial buildings proposed.

In addition to the master planning brief there are requirements that every resident has a 'green view' or a 'sky view' from all of the principal living rooms as we understand the physiological and therapeutic benefits and helping with the body clock.

## **3.0 Optimising Natural Light**

We have optimised the levels of natural light through the orientation and size of windows.

We have sought to maximise side-lighting [windows and curtain walls] through limited building depth and limited internal subdivision of the various domestic floor-plates. We have introduced larger and taller windows on the lower floors to respond to the availability of lighting, a typically Georgian proportioned approach that has many precedents within Peterborough. In areas where privacy is important, we have incorporated diffused light – for some areas this included low iron glass and single-sided frosted glass.

The outside views and views of the sky are facilitated by optimising the vertical sky component with the use of angled windows in locations with building or planting obstructions. Balcony design is being finalised and it is hoped to off-set and stagger these include to reduce over-shading.

Target glazing areas have been set and final window dimensions are being adjusted to meet minimum daylighting standards of 2% in kitchens & 1.5% in study, living & dining rooms

#### **4.0 Integrating Glazing and Shading**

Incorporation of a domestic scale, adjustable light shelf into façade shading and window detailing on north facing façades throughout the development and as part of the door covering / canopy [a requirement under Lifetime Homes]. This creates more comfort for the occupant by controlling glare and heat-gain. It brings daylight deeper into the occupied space and it collects the heat gain from the window. This has measurable benefits for even shallow plan domestic units and can almost double daylight levels in north facing rooms. The following feature will be used as appropriate:

- Options for the future-proofing of the external shelves to be controllable as external shuttering and opportunity for the future integration of photovoltaic cells panel as and when cost benefits allow for this.
- Use of atrium / skylights and sun pipes, making a particular feature of the control and diffusion of the light, with use of hazy glazing. Sun pipes or light pipes gather and concentrate incoming sunlight using lenses and mirrors and then transmit it to the building interior using a hollow duct with a highly reflective internal finish.
- Adjustment of the Solar Heat Gain Coefficient [SHGC] through the variable specification appropriate to the orientation of the window – including different glass coatings such as emissivity [low-e] glass. This achieves the correct balance between overheating, the attenuate of solar heat gain and the optimization of natural lighting levels.

#### **5.0 Considering Colour and Reflectivity**

We have given specific consideration to the reflectivity and colour of exterior surfaces for public realm and building exteriors within the proposed colour palette. The full details are contained within the Design and Access Statement. Each of the proposed elements of the colour palette for external use within the public realm [cladding / rendering of structures] is a muted light colour [off-whites, light blues, terracotta] with good levels of reflectivity.

Warmer and stronger primary colours are proposed for areas subject to stronger sunlight, particularly directly south facing facades, private courtyards, gardens and communal gardens; to provide a contrasting setting to strong green planting where good level of light penetration produces a true colour rendering. Where necessary we have combined specification for high reflectivity with material specification.

Internal finishes have high levels of reflectance, particularly on the most important interior light-reflecting surface, the ceiling [use of high reflective paint / tiles to provide 90% or higher for ceiling], to provide the benefits where we have proposed light shelves. We are aware we have little control over furnishings but guidance on maintaining optimal levels of day-lighting and how furnishings can influence this will be contained within our building user guide.

Thus, we have included a minimum specification levels of room surface reflectances are set at ceilings 80% and walls 50% - 70% with high reflective matte finishes for rear walls opposite windows.

### **6.0 Sound Insulation**

Protection from excessive noise has been an element of a healthy environment that has been promoted by the WHO for a number of years and has become more significant within the UK context of increasing levels of residential density.

Acoustic performance of the homes has performance at 8dB better than current building regulations.

### **7.0 Private Space**

The USP of the South Bank is the variety of external private, semi-private and public spaces throughout the development

### **8.0 Flexibility and Lifetime Homes**

We are committed to flexible and adaptable space suitable for accessibility requirements of future occupants; all Lifetime Homes principles have been included within the Pattern Book for Sustainable Homes and the standards of Lifetime homes are met with all units..

### **9.0 Outcomes**

The health and well being of the residents and visitors to the Carbon Challenge site will prosper through:

- Carefully designed properties and business units with
- Balanced glazing and positioning windows with sky views has potential benefits - studies in the healthcare sector have shown improved physiological and psychological states with reduced stress levels achieved through good levels of day-lighting and by maintaining uninterrupted external views for mental health and stress levels.
- Occupants are acceptable of variable lighting levels [daily and seasonally] when this is primarily day-light.
- Acoustic performance is 8 dB better than Part E.
- Pre-completion testing of early phase units for each unit typology.
- Minimum level of external private space for every property.
- Every house will have a private garden in addition to usable balcony.
- All principles of Lifetime Homes have been complied with.

## **10. Healthy Neighbourhood issues**

### **10.1 Life work balance**

We would seek to support and facilitate an appropriate work live balance within families by providing for effective home working.

## **10.2 Greenery and Parks – the opportunity for exercise**

We are providing the spaces, the parks and the pathways that in turn create the opportunity for formal and informal recreation.

This will include the extensive use of street trees throughout the street hierarchy and the extension of opportunities to address green facades – such as the promotion of the greenery of individual facades, balconies and front gardens / thresholds [specific control over future adaptation of thresholds to avoid loss of greenery to hard surface or car parking].

This is because we know urban residents are three times more likely to be physically active within high greenery neighbourhoods and that increased physical activity has a determining factor on the levels of premature death.

## **10.3 Designing for Children**

We know that any play streets have to be safe from traffic, immediate to the home [particularly for younger children] and well overlooked from a variety of properties. We wish to encourage a local culture where living outdoors is considered the norm and where children are able to go out on their own while being supervised 'from a distance' through good levels of natural surveillance.

## **10.4 Walkability and Bikeability**

The recommended amount of physical activity is thirty minutes of moderate-intensity activity for five days or more per week. Walking [and to a lesser extent cycling] is the most commonly promoted way of achieving this and we think that with appropriate elements within our masterplan we are able to get more people walking.

## **10.5 Changing movement priority**

Promotion of 'active' street design that places the priority over movement to pedestrians and cyclists with connection into and extension of unbroken city-wide connections.

This is one of the most important aspects of design where we can have a measurable impact on health but in order to do so, it has to be targeted, requiring a better understanding of the local communities than we have at present. We know our design of the public realm has to be both flexible and responsive to demands and requirements for different age / social groups.

Thus, as part of our approach to urban design we have a clear prioritisation of walking and cycling in public realm design. This will include street and junction prioritization for cycling [direct unbroken cycle lanes / routes with narrowed – typically 7m width - streets trees].

We would wish to include a specific proposal for a walking bus service to local primary school[s] – supported by development of safe route to schools, with any necessary off-site improvements.

### **10.6 External Lighting**

We know the quality of the external environment has an influence on how frequently it is used for walking. This is particularly true for improved lighting and associated perceptions of safety that have shown they can significantly increase the level of walking within a neighbourhood.

We know all of this walking and cycling is good for cardiovascular fitness. Walkers are exposed to significantly less air pollution than car drivers and passengers.

### **10.7 Road Safety**

The current rates of road injuries and deaths is significantly higher than the England average

### **10.8 Urban Gardens**

All homes have the opportunity to participate in food production with access to gardens, balcony gardens and micro-allotments

Draft, and subject to further discussion, and negotiation and to be agreed within 2 months of the completion of the building lease.

## **Inclusive Design & Access Statement**

**South Bank  
Morris Group**

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## **1.0 Introduction**

Morris group is committed to ensuring equality of access the South Bank development

## **2.0 Underlying Philosophy**

Morris aim is to deliver a development with an excellent quality of facilities designed and managed in an inclusive manner such that it generates acceptance and understanding amongst the people it serves. Ease of use by all potential users, including disabled people, parents and toddlers, older people and young people, is also considered to be essential.

Inclusive design can be described as an attitude and approach to design as much as substantive guidance. Following the principles<sup>1</sup> involve placing people at the heart of the design process [rather than the motor vehicle], acknowledge diversity and difference, offers choice rather than single solution and generates flexibility in use.

These principles are explicit in guidance on street design<sup>2</sup> that acknowledges streets have an important public realm function beyond traffic movement.

Morris are committed to a policy of delivering facilities that enable the end users to operate in an environment that promotes equality, inclusion and accessibility in the delivery of their services to members of the public and in the employment opportunities afforded to existing and future employees. Morris recognises the diversity of cultural, religious and individual abilities of the end users and is active in ensuring that any potential sources of discrimination are addressed in the physical attributes of the facilities it delivers.

Morris is committed to ensuring that the facilities it delivers affords its users and employees the opportunity to maximise their individual abilities and enjoy safe and, wherever possible, independent participation.

## **3.0 Influencing Legislation**

Morris acknowledges that the proposed development at South Bank, presents issues relating to accessibility and inclusion, which will need to be addressed if the obligations imposed by the Disability Discrimination Act 1995 [DDA] as employers [Part II], and services providers [Part III], are to be met.

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<sup>1</sup> 61 Adapted from; Commission for Architecture and the Built Environment [2006] *The principles of inclusive design: They include you* [CABE, London].

<sup>2</sup> Department for Transport, Department of Communities and Local Government Welsh Assembly Government [2007] *Manual for Streets* [Thomas Telford, London]; with additional guidance on meeting statutory requirements provided in, Disability Rights Commission [2006] *Planning, Buildings, Streets and Disability Equality: A Guide to the Disability Equality Duty and Disability Discrimination Act 2005 for Local Authority Departments Responsible for Planning, Design and Management of the Built Environment and Streets* [DRC, London].



The Designers of the development will be encouraged to work to the latest legislation and good practice guidance on accessibility available at the design and construction stages, which will include, for example, BS 8300 : 2009 [Design of buildings and their approaches to meet the needs of disabled people], The Building Regulations Part B [Fire Safety], Part M [Access to and use of Buildings], Part K [Protection from falling, collision and impact] and BS 5588 – Part 8 [Fire precautions in the design, construction and use of buildings].

How the design, the provision of features and facilities and the selection of materials will influence any obligations imposed by other legislation affecting the ongoing management of the facility [such as the Occupiers Liability Acts 1957 and 1984, the Human Rights Act: 1998 and the Equal Treatment Directive 1975 – Amended 2002], will also be taken into consideration.

Other good practice guidance to be considered will include: The Sign Design Guide – a guide to inclusive signage [JMU Access Partnership and The Sign Design Society], The Code for Lighting 2001 [Society of Light and Lighting – CIBSE], The Department for Transport [Inclusive Mobility], The DCLG [Planning and Access for Disabled People] and The DRC Codes of Practice. The Design Team will develop an accessibility manual. It will detail the use, testing and replacement of specialist equipment, suggested maintenance cycles and priorities and the reasons why particular designs, materials, finishes, equipment and colour schemes were chosen. The manual is seen as an important resource in the ongoing management of the facility.

#### **4.0 Consultation**

Morris are committed to a policy of obtaining information and first-hand experiences from users and potential users and those organisations representing them through direct engagement with end-users<sup>3</sup>.

Consultation will form an important part of the information gathering process at all stages of the development and the level to which it is being/will be used will be clearly identified in the development of the Access Statement at later stages.

Consultation with stakeholders is now taking place following the in principle agreement on the planning application.

Consultation is currently taking place and will continue with:

- Cross Keys Homes
  - Regular discussions with officers on the how to bring forward the CIC and residents representation, on the establishment and programme for the affordable homes, selection of tenants and the engagement strategy for the CIC
  - Initial meetings with prospective tenants groups

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<sup>3</sup> ; Heywood, F [2001] Money Well Spent: The effectiveness and value of housing adaptations [The Policy Press, Bristol].

- And a presentation is planned at the annual residents conference (scheduled for 22<sup>nd</sup> September 2011)
- Building societies
- Local estate agents
- Housing policy officers from PCC
- Local Wildlife Trust

Subject to confirmation of the date of the start of construction of the first phase consultation and information events will take place ( in advance of the release of the first phase) with local residents and stakeholders (who have previously been involved in the Carbon Challenge public events)

A media briefing strategy is being prepared by the Morris group PR consultants.

The detailed engagement of the general public will be dependent upon the extent to which plots are sold off plan and the need to generate sales and interest.

### **5.0 Representation**

Morris will ensure that appropriate consultants are employed to advise on the selection of materials, finishes and equipment that will have an impact on the long-term accessibility of the facility.

### **6.0 Operational Level**

Within its existing portfolio of buildings and environments, Morris are carrying out several structured programmes that are reviewing compliance with legislation related to health and safety and fire precautions. Morris are committed to developing and enforcing ongoing structured reviews of any issues relating to physical barriers, management practices and procedures, which may affect accessibility.

Morris is also committed to ensuring that the stringent levels of inspection, reporting, feedback and action associated with those areas of health and safety and fire regulations it is responsible for, are applied and linked to an ongoing accessibility strategy.

Morris is committed to ensuring that an independent access audit takes place together with securing approval from a consultant from National Register of Access Consultants {this consultant will be involved in the process of preparing the detailed plans prepared to discharge the conditions associated with the planning permission} These audits etc will include;

- walking / cycle audit<sup>4</sup>
- degree /absence of 'street clutter'<sup>5</sup>,
- adequate waste / bin storage.
- inclusive design considerations<sup>6</sup>

Approaches to Lifetime Homes and inclusive Design are being considered at the neighbourhood scale with the concept of Lifetime Neighbourhoods being promoted and discussed<sup>7</sup> - with a particular approach to 'age-proofing' developments and considering the health and longevity implications of site planning, layout and elements of community provision. This is in response to growing concerns over planning for an aging population<sup>8</sup> and some of the specific requirements arising from this.

### **7.0 Effective Ongoing Management through Community Engagement**

Inclusive design guidance<sup>9</sup> indicates the relationship not only with the development of a Design and Access Statement but in the project specific KPIs at each individual stage of design, starting with the production of an *Inclusive Design Strategy*<sup>10</sup>, through to delivery and post-completion / property management<sup>11</sup>.

Regular Access Audits linked to inspections for fire precautions, health and safety and risk assessments will be carried out by persons suitably qualified in accessibility and inclusion related issues.

Accessibility issues, which require ongoing review, will also be linked to the maintenance programme.

Feedback on matters relating to accessibility will be sought on a frequent and regular basis from the their visitors and other users of the site.

<sup>4</sup> Use of suitable access audit approaches, methods and tools may include; Audit Highways Agency [2005] HD42 Non-motorised User Audits – Volume 5 Sections 2 Part 5: Design Manual for Roads and Bridges [TSO, London]; Department for Transport [2002] Inclusive Mobility: A guide to best practice on access to pedestrian and transport infrastructure [Department for Transport, London]; Department of Transport and the Regions [1999] Guidance on the Use of Tactile Paving Surfaces [TSO, London].

<sup>5</sup> Joint Committee on Mobility of Blind and Partially Sighted People [2002] Policy Statement on Walking Strategies [JCMBPS, Reading].

<sup>6</sup> Typically this would ensure unobstructed circulation routes, and control of planting and overhanging trees, the use and upgrade of lighting and circulation surfaces.

<sup>7</sup> Harding, Ed [November 2007] Towards Lifetime Neighbourhoods: Designing sustainable communities for all – A discussion paper by International Longevity Centre UK for [Communities and Local Government, London].

<sup>8</sup> Harding, Ed and Edwards, Margaret [2006] Building our Future: Meeting the housing needs of an aging population [International Longevity Centre, London].

<sup>9</sup> 69 Newton, Rita and Ormerod, Marcus [2007] *English Partnerships Guidance Note: Inclusive Design* [SURFACE Inclusive Design Research Centre, University of Salford].

<sup>10</sup> Potentially integrated as a sub-section of the statutory Design and Access Statement but as a changing document, responsive to the separate review stages throughout the design and delivery of the project. DRC [2004] Access Statements: Achieving an inclusive environment by ensuring continuity through the planning, design and management of buildings and spaces, available from [www.drc-gb.org](http://www.drc-gb.org)

<sup>11</sup> Recommended Occupancy Access Statement; p24 in, Newton, Rita and Ormerod, Marcus [2007] *English Partnerships Guidance Note: Inclusive Design* [SURFACE Inclusive Design Research Centre, University of Salford].



Draft, and subject to further discussion, and negotiation and to be agreed within 2 months of the completion of the building lease.

**Overheating Strategy**  
**South Bank**  
**Morris Group**

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## **1.0 Introduction**

The approach from Morris group to ensuring there is no overheating is set out in this strategy. Cognisance should be taken of the content of the 'health and well being strategy'.

## **2.0 Climate Change**

The Morris group recognises the need to ensure that all buildings are fit for purpose and for their planned lifetime. With the prospect of changing climatic patterns the design response has been to ensure the future proofing the masterplan and the specific housing units to unpredictable and unexpected events.

The Pattern Book generates resilient 'buildings' and 'structures' based on a combination of locality specific issues and required technical performance standards. We have been inspired in this combination by the specific example for the United States Gulf Coast who established a regional pattern book to aid the rebuilding post Katrina<sup>1</sup>. This shows that rebuilding quickly, in cost efficient means has been possible while linking local vernacular forms with new flood proofing guidance from FEMA. We have included a number of design principles and parameters that have been incorporated within the Pattern Book for Sustainable Homes.

We have included some simple elements for our own 'kit of parts' based on this philosophy of linking identity with function

- Raised ground floor areas and the durability of specification of lower storey materials
- Replaceable 'panels' and 'pods' in the event of damage
- Future addition [externally] of shuttering and screening– linked to any shading effect of planting strategy

## **3.0 CIBSE Vol. A (2007)**

The NHER SAP software has been utilised for each unit: 'Plan Assessor' uses the SAP 2009 Appendix P model to calculate summer overheating. The software is BRE approved and carries out the calculations as set out in appendix P and is based on CIBSE Guidance.

The software provides evidence of Criterion 3 compliance through page 3 of L1A 2006 Regulation 3 s Analysis: Showing – "The dwelling has appropriate passive control measures to limit solar gains".

The CIBSE guidance has been used to assess the potential for the pilot Code 6 home at Plot M at the Hamptons. The results of this assessment are being used to inform the redesign of the building envelope, FEE, air permeability specifications etc for each of the house types at South Bank. The purpose of Plot M is to inform the development of the build system at South bank and further simulations using the

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<sup>1</sup> Urban Design Associates [2005] a pattern book for gulf coast neighbourhoods: Details and techniques for building and renovating Gulf Coast houses [Mississippi renewal forum].

CIBSE model will be carried out before the final build specifications are agreed for each house type and plot.

#### **4.0 Overheating Solutions**

The techniques used to ensure that overheating does not occur in any of the dwelling on the Southbank site will include:

- Mechanical ventilation (with heat recovery) – to ensure adequate ventilation and good air-quality without compromising airtightness
- External solar shading – (overheating calculations for all plots have not been concluded – as these will be affected by the landscaping scheme which is still being discussed with PCC. The fast response build system is expected to overcome overheating issues however External solar shading remains a design tool that may be employed to ensure control of overheating)
- Sun-pipes – Final plot by plot day-lighting calculations and Fabric energy efficiency calculations will inform the selection and need for sun tubes. It is expected that sun tubes may be required over some landings where there are no windows to those stairwells, bathrooms/ en-suites where there are no external walls.
- Other design features may be employed on individual plots to take account of plot by plot orientation/shading etc – i.e. enhanced/reduced south facing glazing, variable roof eave depths etc
- Overheating calculations – to verify how the above and other techniques will be successful in controlling overheating.

Incorporation of a domestic scale, adjustable light shelf into façade shading and window detailing on north facing façades throughout the development and as part of the door covering / canopy [a requirement under Lifetime Homes]. This creates more comfort for the occupant by controlling glare and heat-gain. It brings daylight deeper into the occupied space and it collects the heat gain from the window. This has measurable benefits for even shallow plan domestic units and can almost double daylight levels in north facing rooms. The following features will be used as appropriate:

- Options for the future-proofing of the external shelves to be controllable as external shuttering and opportunity for the future integration of photovoltaic cells panel as and when cost benefits allow for this.
- Use of atrium / skylights and sun pipes, making a particular feature of the control and diffusion of the light, with use of hazy glazing. Sun pipes or light pipes gather and concentrate incoming sunlight using lenses and mirrors and then transmit it to the building interior using a hollow duct with a highly reflective internal finish.
- Adjustment of the Solar Heat Gain Coefficient [SHGC] through the variable specification appropriate to the orientation of the window – including different glass coatings such as emissivity [low-e] glass. This achieves the correct balance between overheating, the attenuation of solar heat gain and the optimization of natural lighting levels.



### **5.0 Interior Streetscape**

Trees will be organized in single species lines, avenues and clusters, each street, Interior Street and courtyard will have a dominant tree species to help theme and give identity.

Tree size and number vary according to the opportunity within the streetscape, large spaces- large species, and small spaces- smaller species.

Along the central avenue where the streetscape has a double layering of tree planting both are used. Aesthetically the strong avenue is used to frame the streetscape with the smaller layer of tree planting behind within the front gardens, allowing the house frontage to feel personal and individual.

Almost all properties benefit from front gardens. Within all front gardens mature tree and hedgerow planting will form the base to the streetscape.

This layering of the street trees, front garden trees and hedgerow planting will animate the streetscape and provide shading and dust filtering.

### **6.0 Managing High Temperatures**

When developing the basic framework of the master plan the Morris group has considered orientation and building morphology as one of the principle building blocks to the form of the master plan.

The buildings are orientated so as to maximise the benefits of orientation whilst at same time using strongly define landscape infra structure to provide solar shading and cooling. Tying built form and organic form together in this manner gives rise to a pleasant and sustainable environment whose qualities will only be truly appreciated as the global warming condition worsens.

The buildings on South Bank are highly insulated and where necessary are "fitted" with simple timber solar shading devices.

The palette of materials is by its very nature assisting with the mitigation by being reflective (render) and generally cool (Fletton brick).

The site is highly landscaped with a large water body to the north. This strong environmentally positive infra structure will also assist with the general cooling of the site.

**Performance in Fire Strategy**  
**South Bank**  
**Morris Group**

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## **1.0 Introduction**

The approach from Morris group to ensuring there is no overheating is set out in this strategy. Cognisance should be taken of the content of the 'health and well being strategy'.

## **2.0 Fire Engineering**

Morris Homes are aware of the PSA Target 3 – Fire. The target "by 2010, reduce the number of accidental fire-related deaths in the home by 20% and the number of deliberate fires by 10%" is to be applauded. Arson is the largest cause of fires attended by the Fire and Rescue Service and. The effects of our urban design and secure by design processes should achieve significant reduction through a change in people's behaviour is a significant problem in some areas.

The ODPM Fire and Rescue Research Programme 2005/06 highlights that "Sprinklers built to existing standards are perceived as too expensive for the average house owner to install, but a lower cost version may make it a viable option in many more cases. This project is high profile and has the potential to assist significantly with the delivery of PSA3"

The intent of this fire safety advice is to satisfy the life safety requirement of the Building Regulations, to provide safe evacuation and effective fire fighting facilities. Guidance from the Approved Document B has been used, where possible and suited to the risk and design.

- Key elements addressed for the apartments include:
- Escape distances from common areas to outside the building
- Escape from the apartment to the common areas

## **3.0 Design Criteria**

### **3.1 Apartments**

The apartments have been designed in line with the fire safety recommendations of Approved Document B to the Building Regulations and BS 5588 Part 1. Automatic fire detection and alarm provisions will be provided to enhance the early warning of occupants in the event of a fire.

The use of sprinklers can provide relaxations to Approved doc B2 but has consequences for internal layout and escape doors etc. As such the intention of Morris is to enhance the protection of upper floor occupants through the installation of automatic sprinklers. However this is subject to detailed discussions with fire officers and building control officers. This provision would place less reliance on the standard passive fire protection components such as fire doors that are often compromised by the day to day activities of the occupants.

The Approved Document B states that residential sprinklers are only required in house with 4 or more storeys as an alternative to a fire escape – therefore the use in other houses is not under consideration – unless required to meet Building Regulations B4 (Space Separation), areas of unprotected wall.

, also Rolton to advise on installation issues

### **3.2 Terraced Houses**

The terraced houses have been designed in line with the fire safety recommendations of Approved Document B to the Building Regulations and BS 5588 Part 1. Automatic fire detection and alarm provisions will be provided to enhance the early warning of occupants of a fire. The provision of suitably sized escape windows at first floor level reduces the risk of occupants being trapped by a fire at lower floor level.

### **3.3 Sprinklers**

A number of apartments will be protected by automatic sprinklers and offered as an alternative within the terraced houses. This will ensure that fire spread and the subsequent extent of damage caused by fire within the houses / apartments is restricted to areas much less than those possible with 'standard' designs. Recent tests undertaken by BRE/FRS concluded that residential sprinklers can extinguish most fires in such buildings. This therefore places less reliance on the intervention of fire-fighters.

The provision of automatic sprinklers increases greatly the chances of survival of the occupants in the event of fire, by:

- Reducing risk of fire spreading throughout the building,
- Reducing heat from the fire,
- Reducing the volume of smoke and gases produced by the fire,
- Applying water directly on to the fire without the need for human intervention.

It should be noted that the risk of unwanted activation by automatic sprinklers is extremely rare and such risks are analogous to any risk posed by leaks from the domestic water services in any house or apartment. The incorporation of automatic sprinklers within the early stages of the design ensures that a robust and cost effective solution can be achieved. The potential rebuilding costs and time taken to re occupy the buildings after a fire can be significantly reduced by the provision of sprinklers.

### **4.0 Occupiers manual**

The occupier's manual will also cover a section on "how to deal with fire and how to escape from your home in the case of fire. This document will be developed in conjunction with the local fire brigade who will be requested to liaise with the CIC in

Draft, and subject to further discussion, and negotiation and to be agreed within 2 months of the completion of the building lease.

**Pollution Reduction Strategy**  
**South Bank**  
**Morris Group**

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## **1.0 Introduction**

This Pollution reduction strategy has been prepared by Morris Group for submission to the HCA

## **2.0 Pollution reduction - Integrated design**

### **2.1 Introduction**

This Pollution reduction strategy is an integrated element of the sustainable regeneration of the south bank site. In addition to providing zero carbon housing the development of the site will allow the sustainable renewal of the physical health of the site. In so doing it will allow the development to take place in ways that will minimise the embedded pollution arising as a result of the manufacture and processing of materials used in the development, the construction

The pollution reduction strategy addresses the pollution that indirectly and directly could be expected to be caused as a consequence of the **construction**, meeting the **mobility and transport** needs, and providing the **energy** for the development.

The pollution reduction strategy takes cognisance of the need at least meet current noise attenuation standards and to enable the well being of residents to be considered as part of the **noise** reduction strategy.

The pollution reduction strategy takes cognisance of the need to reduce **light** pollution to the extent that the development provides a safe and secure place to live but minimises the unnecessary use of energy

The pollution reduction strategy has emerged from a consideration by the consortium of a diverse range of evidence. The consortium has completed the analysis of the following:

- Relevant scientific best practice
- Empirical evidence from site investigations
- Review of the relevance and applicability of norms and standards to be applied
- Interests of landowners and stakeholders
- Relevant risk assessment procedures
- The assignment of consultant's research and conclusions.
- Commentary on the transport and other strategies recommended by the consultants appointed by English Partnerships
- Outstanding due diligence assessments required

### **2.2 Ambition and targets for the site**

This strategy addresses the final requirements for submission to the HCA. As such it includes details of the ambitions for the reduction in



*“Air pollutants that have known or suspected harmful effects on human health and the environment, including the products of combustion from space heating, power generation or from motor vehicle traffic....gaseous pollutants that have the global warming potential and that produce acid rain from the construction and operational phases of the built environment”*

*(English Partnerships Carbon Challenge brief)*

### **3.0 Construction**

#### **3.1 Introduction**

The polluting impacts of construction will be addressed by ensuring that the maximum credits are secured through the CSH. Interalia that

- All materials specifications on the Carbon Challenge sites will include materials classed between A+ and C (BRE, Green Guide to Housing Specification).
- A+, A and B rated materials will be used wherever practicable.
- 25% of all new build houses to use 100% MMC (material not value).

And that the consortium will (MAN3):

- Monitor, report and set targets for CO2 production or energy use arising from site activities
- Monitor and report CO2 or energy use arising from commercial transport to and from site
- Monitor, report and set targets for water consumption from site activities
- Adopt best practice policies in respect of air (dust) pollution arising from site activities
- Adopt best practice policies in respect of water (ground and surface) pollution occurring on the site
- 80% of site timber is reclaimed, re-used or responsibly sourced

#### **3.2 Using materials with recycled content**

The south bank development will include materials with a high recycled content. This is part of the integrated pollution reduction strategy. This will assist in reducing the emissions caused as a result of the processing and transport of primary materials environmental impact of new construction.

As a result of specifying the following materials with a recycled content (up to 100%) there will be a significant indirect reduction in the pollution caused by the construction on site

- bulk aggregates (sub-base, pipe bedding, fill, etc);
- ready-mix concrete (foundations, floor slabs, etc);
- asphalt;
- drainage products/pipes;
- pre-cast concrete products (paving, slabs);

- concrete tiles and reconstituted slate tiles;
- dense blocks;
- lightweight blocks;
- clay facing bricks;
- plasterboard;
- ceiling tiles;
- chipboard and other wood-based boards;
- insulation (floor, wall and roof); and
- floor coverings (carpet, underlay, etc).

### **3.3 Using reclaimed aggregates**

The south bank site will reuse all of the current concrete and hardstanding on the existing site. Reprocessing will be carried out on site to minimise vehicle movements. This will be conducted using modern machinery with emissions to air and noise attenuation that at least meets current regulations. Dust suppression will almost eliminate particulate emissions. The pre clearance audit has confirmed the suitability of the materials for construction and will advise the reprocessing method statements.

However it must be noted that from the various reports it can be seen that the made ground materials across the site have varying concentrations of TPH that are likely to be the drivers for classifying the materials for off site disposal. Where TPH is below 500mg/kg the soils would be classed as inert, between 500 and 1000mg/kg they would be classed as stable/non reactive hazardous waste and above 1000 mg/kg they could be classed as hazardous waste. Consequently, they will attract varying disposal costs.

We consider it is possible that, with some preconditioning on site by ex situ remediation, the waste classifications could be reduced. Further assessment of this will be required by intrusive investigation and this will inform the extent to which materials on site can be reclaimed and reused

Reclaimed aggregates will be used throughout the site in preference to primary sourced aggregates; these will be sourced from local construction/demolition sites to reduce the carbon footprint of the development. in accordance with MAN 3

### **3.4 Local sourcing of materials**

The south bank development recognises the contribution of local sourcing to reducing pollution. Efforts will focus on reducing transport movements and distances and sourcing products from local manufacturers as opposed to local distributors. Management systems will minimise the sourcing of materials with an unacceptable carbon footprint. (MAN3).

### **3.5 Sustainable sourcing of materials**

The south bank development recognises the contribution of materials from sustainable sources to reducing pollution, both locally and globally. Specifying

materials made from sustainably managed natural resources (e.g. natural insulation, certified timber FSC, PEFC, etc.) will reduce the emissions to air, land, sea and water. The Environmental Management system will allow the pollution implications of procurement decisions to be understood and optimised.

### **3.6 Life Cycle Impact of Materials**

The south bank design process has allowed an appraisal to be carried out of the BRE environmental profiles. Using INVEST2 the impact of the site construction and building manufacture on climate change, fossil fuel and ozone depletion, waste and pollution is now understood. Accordingly the selection of construction materials will minimise the emissions to air, land, sea and water.

### **3.7 Low polluting materials**

The south bank design process has allowed an appraisal to be carried out of the potential impact of emissions to air for building occupants arising from the use of conventional building materials and methods.

As a result of this appraisal the south bank development will minimise occupants exposure to chemical pollutants included in the installation and application of paints, solvents, plastics and composite timbers. The consequence of this will be to minimise local and global emissions to air, land, sea and water. It will also reduce the potential exposure of occupants to the range of health problems, such as asthma and headaches that they have been associated with.

Construction materials that use HFC's will be avoided. The use of paints and materials high in Volatile Organic Compound (VOC) content will be avoided. The use of insulation materials that with a high GWP will be avoided.

### **3.8 Modern Methods of Construction**

The south bank development recognises the contribution that Modern Methods of Construction and off site manufacture will make to reducing local emissions to air, land, sea and water.

Subject to final testing the Build System for South Bank will be based on the closed panel timber frame system (Stewart Milne Sigma II) currently being exhaustively tested at plot M. Changes to the system are likely to be to ensure air permeability is improved together with value engineering and CDM related adaptations.

Morris have indicated that they will continue to carry out research into traditional build system that may have the capacity to meet thermal requirements for code 6 whilst also maintaining NHBC standards

### **3.9 Disposal of materials - Designing for deconstruction (DfD)**

The South Bank development recognises that by adopting the principles of designing for deconstruction the long term emissions to air, land, sea and water will be reduced.

### **3.10 Excavation and Dewatering.**

Groundwater monitoring contained within the issued reports suggests a high water table, [in areas less than a metre below ground level], however the exploratory hole logs undertaken as part of the intrusive investigation, do not suggest a problem with significant water ingress in the short term or stability with excavations. Additional trial pitting on site will be necessary to ascertain the likelihood of significant dewatering or excavation support. The consortium will endeavour to minimise the polluting effects of excavation and dewatering.

### **3.11 Foundations**

The consortium is concerned to minimise the requirements for carbon intensive foundations. Negotiations have concluded that all concrete used in the development can be supplied with locally sourced recycled/reclaimed aggregates. This will significantly limit the polluting impacts of the construction. Dynamic compaction will be used wherever possible.

As a consequence the foundations will be designed to meet the needs of the buildings and respond to the localised soils and geological structures. The ground conditions indicated in the various reports appear similar and an initial general assessment for foundations by 3e concluded the following:

*Weak alluvial soils are present in the north eastern part of the site and in this area piled foundations will be required. With the information available in the various reports, it is difficult to estimate pile lengths but we consider that somewhere in the region of 10 to 15 metres should be anticipated.*

*Over the remainder of the site it is likely that strip and trench filled foundations will be appropriate but an assessment of bearing capacity is difficult without physically seeing the materials due to slight variations in the various descriptions contained in the reports.*

*However, in the northern part of the site, where levels are to be raised to alleviate flood implications, it may be more economic to use piled foundations at existing ground level to allow an elevated floor slab such that remedial capping could be placed over garden and hardstanding areas to minimise or eliminate the need to remove contaminated material from site.*

## **4 Transport**

### **4.1 Introduction**

The consortium recognises that the target of achieving zero carbon emissions relates to operational energy use in the proposed homes and does not directly relate to transport. The consortium recognises that the mobility of the site occupants and the transport demand that their use of the site creates will generate pollution.

The consortium is committed to providing a place where people can live and work in ways that reduce the emissions arising from their mobility and life style choices.

With an emphasis on sustainable mobility that does not produce damaging emissions the emphasis is on reducing dependence on car trips and increasing the use of walking cycling and public transport. This approach will reduce the local and global emissions to air, land, sea and water.

The existing road network around the site is at capacity and local air quality needs to be protected the emphasis of the pollution reduction strategy is on measures that will reduce the additional unsustainable traffic burden resulting from development.

The south bank development together with the management measures contained within the Green travel plan will result in the direct and indirect reduction of emissions from transport

#### **4.2 Reducing pollution from Transport – Site design & layout.**

The spatial design of the site reduces pollution through a reduction in car usage (particularly single occupancy journeys) generated by the development, this will be achieved through the

- high levels of permeability
- public transport through the site
- user friendly walking routes – defensible mobility routes
- cycling friendly routes - defensible mobility routes
- Connectivity with adjacent places
- Provision of home zones
- Provision of safe, secure cycle storage facilities – both inside and outside the houses.

Where cars are used the spatial design of the site will reduce the pollution caused by cars by reducing traffic speeds

#### **4.3 Reducing pollution from Transport – Green Travel Plan**

The implementation of the green travel plan will reduce the pollution arising from the mobility of occupants and the transport trips generated by deliveries and other vehicle movements to and from the site. The detailed measures to reduce pollution levels, together with targets are in the Green travel plan;

- Journey Sharing - reducing the total number of vehicle movements
- Car Club- reducing the total number of vehicle movements and providing low and zero emission choices -
- Buses – ensuring that the through site route is both attractive, efficient and effective in allowing it to replace private vehicle movements
- Rail – ensuring maximum use for intra regional and national travel
- Cycling – encouraging maximum use for local trips, with all homes having access to sufficient and secure cycle storage ( Ene8)
- Walking – ensuring all people can and want to walk
- Shopping trips – shared shopping trips and coordinated home deliveries

## **5.0 Light**

### **5.1 Light Pollution Strategy**

The consortium is committed to providing the necessary lighting for the safe and secure use of the site by residents and visitors. The consortium is concerned to reduce the energy used by lighting and to reduce the contribution of the site to the light pollution caused by the city of Peterborough. The consortium is concerned to minimise the adverse impacts of lighting on bats and other wildlife and proposes the development of a lighting strategy in close consultation with other stakeholders.

## **6.0 Noise & Vibration**

### **6.1 Vibration**

The submitted Site Noise and Vibration Survey includes an assessment of the effects of vibration on proposed buildings as a result of the close proximity of the site to a railway track to the North. Vibration levels were measured at increasing distances from the railway track to give an indication of how vibration levels decay through the ground. Annoyance caused to residents within proposed buildings by vibration effects is addressed as part of BS 6472. The assessment by the reports authors indicates that as a result of the surveys and analysis

*It can be stated that a low probability of adverse comments from people living in any building within 9m of the railway tracks is predicted. Buildings further away than 9m will not be affected by vibration that could cause annoyance". ( p21)*

As a result the consortium has been concerned to ensure that no building is located within the zone closer than 9m from the railway line. No other measures are proposed to reduce the polluting affects of vibration.

### **6.2 Noise**

The supplied report proves an assessment of the impacts of noise from a variety of sources arising during different phases of the project. Ambient noise levels at the site were measured over 24-hour periods and assessed using guidance in PPG24. A Noise Exposure Category rating for day and night periods has been assigned which will indicate how much noise mitigation is required in the buildings to achieve satisfactory noise levels for living environments.

Demolition and construction noise predictions have been using methodology in BS 5228, to understand and endeavour to minimise the impact on neighbouring residential properties.

Cognisance has been taken of the guidance within the Design Manual for Roads and Bridges that indicates that a traffic assessment is required if there is an increase in traffic flow of at least 25%. The supplied traffic noise assessment compares current noise levels with future noise levels calculated from predicted increases in traffic flow.

## **6.2 Reducing noise pollution**

### **6.2.1 PPG24 Assessment**

The measured noise levels at the Southbank site fall into NEC B category, with the exception of night time levels which fall into NEC A. In such cases noise needs to be taken into consideration on the design and construction of the scheme so that internal noise levels are acceptable.

Annex 2 of PPG 24 advises that

*"Because noise should be taken into account when determining planning applications in this NEC, it has been assumed that the minimum amelioration measure available to an occupant will be to close bedroom windows at night."*

And that:

*"Single glazed windows provide insulation of about 25 dB(A). Therefore, in order to achieve 35 dB(A) inside a bedroom the facade level should not be greater than 60 dB(A).*

However, double glazing will be required for thermal insulation by the Building Regulations and table 1 of Annex 6 of PPG 24 advises that

*thermal double glazing can provide up to 33 dBA noise reduction against road traffic noise. Consequently, with windows closed, the predicted internal noise levels are not likely to exceed the "good" values from BS 8233:1999.*

Notwithstanding the above Morris have elected to install into those houses with the possible exposure to excessive noise windows fitted with gas filled triple glazed units. Background ventilation is via MVHR system – i.e. no trickle vents. The green wall to the Northern boundary helps to further reduce any potential noise impact from the Embankment. This approach has been accepted by the local planning authority.

### **6.2.2 Construction Effects**

The consortium is committed to implement the recommendation of the supplied survey and to carry out a full construction noise impact assessment and the preferred method of working is available (to include timetable, plant, location of plant compound etc.). This will enable accurate noise prediction and recommendations to be made for of any noise mitigation measures (such as use of quieter plant, temporary noise barriers, restricted working, alternative methods of working etc.).

### **6.2.3 Traffic Noise**

Estimations for the increase in road traffic from the proposed site indicate that the impact from increased noise levels would be negligible. However, there is recognition of the need for a close consideration of the impact of the connecting road between Glebe Road and the site as there may be an impact on Glebe Road

residents. Predicted increase in traffic levels would be required before this could be assessed.

#### **6.2.4 Fixed Plant Noise**

A worst case noise level limit from fixed plant machinery, at the site boundaries, of 42 dB(A) has been set by the consortium. This will ensure that fixed plant noise will not cause annoyance to existing residents.

Light

### **7.0 Energy**

#### **7.1 introduction**

The south bank consortium recognises the importance of reducing the energy demand for the site as much as possible. And offsetting the remaining demands through use of low and zero carbon technologies.

The site is one of the large scale residential developments in the UK with homes built to the zero carbon standards. The consortium recognises that the site energy strategy will undergo rigorous review and will undoubtedly receive media attention. The strategy is robust and tested.

#### **5.2 Targets and ambition**

The key target is that all homes will be net zero carbon over the year, meeting Code for Sustainable Homes (CSH) level 6 standard for CO2 reduction (Ene 1).

Low and zero carbon technologies will be used to offset all the CO2 emissions from regulated and unregulated energy uses in the home so that :

- All homes will be constructed with advanced practice energy efficiency specification such that an appropriate heat loss parameter (HLP) of 0.8W/m2K is achieved.
- Homes will meet residents' requirements today and in the future therefore minimising potential summertime overheating – and this will be demonstrated with outputs from thermal simulation software
- There is a long term management strategy for the centralised energy generation technologies.
- There is integrated design approach for the energy generating technologies and energy centres
- All the CSH credits within the Energy section are secured, such that the overall CSH score is above 90% as required for CSH level 6.

Full details of the measures to reduce pollution from the production of energy are contained within the energy and carbon reduction strategy.



Draft, and subject to further discussion, and negotiation and to be agreed within 2 months of the completion of the building lease.

**Surface Water Drainage and Water Use Strategy**  
**South Bank**  
**Morris Group**

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## **1.0 Introduction**

This integrated water management strategy is founded on the precautionary principle in proposing sustainable measures for the supply and demand of potable water. It also proposes measures for the conservation of water resources that are based on the precautionary principle regarding water as part of the natural capital of the site.

## **2.0 Integrated water management**

### **2.1 Introduction**

The management of water within the south bank site requires an integrated and holistic approach. Locally and globally water is a scarce and valuable natural resources that requires a considered approach that is based on a clear understanding of the supply and demand characteristics of the site.

In addition to providing zero carbon housing the development of the site will allow the protection and conservation of water resources.

The strategy addresses the requirements of English partnerships for a **water use strategy** (S. 4.2 Carbon Challenge Brief) and **surface water drainage strategy** (S. 4.4 Carbon Challenge Brief)

The surface water management strategy has emerged from a consideration by the consortium of a diverse range of evidence. The consortium has completed the analysis of the following:

- Relevant scientific best practice
- Empirical evidence from site investigations
- Review of the relevance and applicability of norms and standards to be applied
- Interests of landowners and stakeholders
- Relevant risk assessment procedures
- The assignment of consultant's research and conclusions.
- Commentary on the PPS25 Flood risk Assessment and strategies recommended by the consultants appointed by English Partnerships
- Outstanding due diligence assessments required

### **2.2 Ambition and targets for the site**

The Morris Group acknowledges the importance of addressing the threat of global climate change in the development. It recognises the benefits of a sustainable approach to the conservation of water resources that reflects the potential risks associated with future global and local temperature and precipitation fluctuations.

The implications of these fluctuations for flood frequency, water supply and demand, urban surface runoff and the operation of sewage treatment works are both

uncertain and yet to be fully understood. However in line with the precautionary approach two adaptation measures will assist in delivering a safe and sustainable development: Water Conservation and Sustainable Urban Drainage Systems (SUDS) measures that

- **Reduce** consumption of potable water to  $\leq 80$  litres/person/day by
- **Reduce** surface water runoff in line with Sur 1 in the CSH
- **Raise** the awareness and understanding of occupants
- **Reuse** rainwater
- **Reuse** grey water
- **Recharge** natural hydrological systems
- **Realise** ecological and human health benefits

### **2.3 Outputs**

In accordance with the carbon challenge requirements this strategy includes:

- Outline water specifications for houses and flats including and proposed sanitary ware and rainwater/grey water systems and manufacturers specifications.
- Completed versions of the CLG water calculation data demonstrating that the proposed water strategy results in an internal water consumption rate  $\leq 80$  litre/person/day for all dwellings.
- Specifications and locations for the proposed tanks and rainwater systems.
- Strategic surface water drainage design proposals for the development
- Confirmation that the integrated water strategy will not allow flooding of the site even when the River Nene water levels are at their highest.
- Flood risk Assessment and supporting calculations and drawings.

### **3.0 Water specifications**

#### **3.1 Introduction**

The overall design for the site will integrate the concern for water conservation and management into all decision making and in the final performance specifications. This will include consideration of water runoff, consumption, management and providing information to residents that will help them to change their behaviour to improve water conservation.

Following a review of the proposed master plan and the completion of a preliminary assessment for the BRE water calculator it has been concluded that although certain house types have the potential to be supplied with just rain water and to achieve less than 80l/pp/d the site should be equipped with a site wide communal system to ensure that all dwellings comfortably meet the 80l/pp/d target.

#### **3.2 Grey water recycling**

Based on the assessment for the code for sustainable homes grey water recycling is not required to achieve the target of  $<80$  l/p/d

### **3.3 Rainwater recycling**

By collecting rainwater where it falls, rather than forcing it to drain away where it can add to flooding problems, the demand for treated mains water within a dwelling can be substantially reduced. A typical domestic dwelling uses approximately 30% of mains water supplied to flush toilets, with a further 6.6% used to water gardens, (Source: Waterwise UK).

By recycling rainwater for both these activities, the domestic demand for mains water can be reduced substantially whilst also reducing the volume of surface water run-off that would normally feed into the mains drainage system.

The solution proposed for South Bank features an underground tank within the garden to each house, that will store rainwater collected on the roof, which will in turn supply water to an external tap for garden watering.

The apartment building will be provided with roof garden/terraces to help reduce the amount of surface water flow. As these areas are to feature micro allotments / greenhouses, rainwater storage butts are also to be provided to allow watering of plants etc.

### **3.4 Sanitary ware**

The design of the water networks will be optimised to avoid water dead-legs and include high levels of pipe insulation to reduce heat loss and risks associated with lower mean temperatures as a result of climate change. All homes will be fitted with smart meters to allow the occupants to understand their consumption levels and make behavioural changes to reduce consumption.

#### **3.4.1 Low water use toilets**

The homes will be fitted with hydraulically efficient WC pans and Cisterns and uses 4 or 2 litres, and the pan is designed with a refined inlet and outlet angle, a reduced sump capacity and a tailored inlet to outlet dimension

#### **3.4.2 Low flow taps**

The water flow rates from taps supplying hand washing basins is included in the demand use calculations within the CSH.

The assumed average usage rate of 7.9 uses/person/day, with an average of 40 seconds per use will be met through the use of self-regulating flow restrictors to taps reducing pressure and flow rates and minimising wastage through splashing. With tap aerators this will reduce water consumption by around two thirds.

#### **3.4.3 Low flow showers**

Reduced flow showers will significantly reduce water consumption in the homes. The BRE calculation methodology assumes that where both a shower and a bath are installed, that these are used on average once per day and that the shower is used 60% of the time and for an average of 5 minutes.

Morris Group will build upon the BRE research that suggests that flow rates of 6 litres/minute or less are noticeable by users and perceived to give a reduction in comfort levels. The consortium recognises that showers with flow rates reduced to these levels are therefore susceptible to replacement, and this which would negate their benefit.

#### **3.4.4 Baths**

All homes will be provided with a bath. However the consortium recognises the fact that the average volume of water used per bath was found to be approximately 40% of the maximum volume of the bath as defined by the overflow point. The consortium will use baths with an overflow point capacity of 149 litres. The average capacity to overflow for a standard bath is 225 litres but the average amount of water used was 88 litres. Lowering the overflow point could therefore have benefits in reducing the volume of water used in a bath. Research suggests that most people shower or bath once a day and that the bath is used on 40% of occasions.

### **3.5 Appliances**

#### **3.5.1 Introduction**

Morris Group recognises the speed at which manufacturers are improving the specifications of their products and is committed to providing occupants with the most energy and water efficient white goods available. Morris Group is concerned also to ensure that the white goods are sourced from sustainable manufacturers and that where ever possible these manufacturers are local.

#### **3.5.2 Washing machine**

Washing machines account for 21% of annual household water use. All homes will be fitted with water efficient washing machines (A+); these will at least achieve the 49 litres per wash

#### **3.5.3 Dishwasher**

Dishwashers account for 6% of annual household water. The homes will be fitted with water efficient dishwashers (A+). The most efficient models use 9-13 litres per cycle. In contrast typical UK models use 30-50 litres per cycle.

### **3.6 Code for sustainable homes**

Throughout the house type WAT 1 calculator tools, we have included for the same fitting specification, however, some units perform slightly better than others as a result of the differing effective rainwater collection areas and numbers of occupants served by the Rainwater Harvesting system. The fitting specification is as follows:

WHB taps 6 litres/min

Baths 149 litres to overflow

Showers (individual & over bath) - 6 litres/min

WC's (dual flush) 4/2 Litres

Kitchen/Utility taps 6 Litres/min

No waste disposal unit specified  
No water softener in use  
Washing machines use rainwater

#### **Rainwater Calcs**

Intermediate approach followed from BS8515:2009

Rainwater collection area differs from unit to unit

Yield co-efficient 0.90 (confirmed that this is an acceptable figure to use from rainwater harvesting supplier)

Hydraulic filter efficiency 0.90 (confirmed that this is an acceptable figure to use from rainwater harvesting supplier)

Average Rainfall 625mm/yr (based on annual rainfall map of Britain)

With all of the above information included within the WAT 1 Calculator Tool, every Unit Type **excluding the 2No. Apartments** achieve an internal water use figure Of <80 Litres/person/day (CfSH mandatory level 6 value).

The 2No Apartments (2B/3P and 2B/4P) **did not achieve the <80 L/p/d figure**, using the above information. As a result we have had to reduce the following rates:

WHB taps 4 litres/min

Baths 140 litres to overflow

Showers (individual & over bath) 6 litres/min

WC's (dual flush) 4/2 Litres

Kitchen/Utility taps 4 Litres/min

No waste disposal unit specified  
No water softener in use  
Washing machines use rainwater

#### **Rainwater Calcs**

Intermediate approach followed from BS8515:2009

Rainwater collection area Approx. 1431m<sup>2</sup>

Yeild co-efficient 0.90 (confirmed that this is an acceptable figure to use from rainwater harvesting supplier)

Hydraulic filter efficiency 0.90 (confirmed that this is an acceptable figure to use from rainwater harvesting supplier)

Average Rainfall 625mm/yr (based on annual rainfall map of Britain)

No. of occupants served by the system Approx. 267.

With all of the above information included within the WAT 1 Calculator Tool, both the 3P and 4P apartments achieve an internal water use figure Of <80 Litres/person/day (CfSH mandatory level 6 value).

## **4 Surface water drainage design**

### **4.1 Introduction**

Morris group has commissioned a full Flood Risk Assessment and this has been submitted as part of the planning application. This section of the strategy includes extracts from the FRA but does not include hydrological calculations or reasoned justification for the detailed design.

### **4.2 Management train- ambitions and targets**

The key of the surface water design strategy are to control surface runoff control as close to source as possible and to complement this with effective site attenuation. The strategy is based on realising the potential site enhancement values that can accrue from water bodies being located close to developments. The detailed designs for the SUDS are based on realising the ecological and recreational potential of water bodies. In so doing the following measures are included

- Surface water treatment will remove and isolate contamination at source.
- Further attenuation will be provided by site control facilities
- Surface runoff peak flow rates are limited to better than existing ( i.e to pre-development greenfield rates)
- Swales and open channels are used where this is compatible with public safety and realising the required site development density.
- Impermeable fraction of development should be limited
- Flood routes for the extreme cases are included
- Community involvement and education are integral to the management of the SUDS ( see ecology strategy)

### **4.3 Source Control Techniques**

Treating and controlling surface runoff as near to source as possible will be through the reduction of impermeable areas and techniques to restrict runoff rates. Good housekeeping will assist minimise the contaminants entering the system from surface runoff. The contribution of rainwater harvesting as a source control measures is outlined above.

#### **4.3.1 Bio-retention**

The landscaping areas throughout the site will function as Bio-retention. These will include filtration capture and treat storm water runoff from frequent rainfall events. Within these landscaped areas surface runoff is mechanically filtered through careful design of drainage, soils and vegetation. A small proportion of the runoff volume will be removed through evaporation and plant transpiration.

#### **4.3.2 Filter drains**

The surface drainage strategy is to widely use filter drains to assist in filtering out pollutants including suspended solids, hydrocarbons, iron, copper and zinc. Their dual function of attenuating flows by reducing the rate of runoff is less important within the site due the lack of gradients. Filter drains are the principle measure used in the strategy for controlling runoff from the impermeable road and other surfaces.



Subject to agreement from the Highways and Drainage authorities filter drains will be used on the primary distribution roads but not in areas of residential side roads.

#### **4.3.2 Swales**

The scope for using swales within the development of the site is limited to those areas where there is appropriate space. They will allow the surface water to run through the vegetation whilst providing infiltration, detention and treatment of runoff. They will assist in ensuring that surface runoff suspended solids are deposited prior to discharge into watercourses or surface water systems.

#### **4.3.3 Pervious pavements and hardstanding**

Pavements and hard-standing areas will include a proportion of pervious surfaces. The limits of the permeability of pavements and hardstanding will be dictated by detailed discussions with Peterborough city council and will be required to be compatible with relevant adoption standards.

Pervious pavements which infiltrate water across their entire surface material, e.g. reinforced grass or gravel surfaces, porous concrete and porous asphalt will be specified for cycleways, paths and public open space areas where ground conditions are suitable.

Permeable sub bases will include recycled aggregates from the site. This will allow rainwater to infiltrate through the surface and into the underlying layers, where water is temporarily stored before being discharged into the drainage system. Permeable pavements will be specified for parking and other areas adjacent to housing areas. These will be constructed from setts and blocks that is impervious but will allow surface water falling onto the surface to infiltrate through the joints and voids.

The permeable pavements and hardstanding will contribute to the attenuation and remediation of the surface water runoff. The subsurface aggregates and membranes will trap suspended solids and chemicals allowing biodegrading.

### **4.4 Site Control**

#### **4.4.1 Attenuation ponds**

The surface drainage strategy includes a series of shallow depressions that will function as attenuation ponds. Designed to attenuate storm runoff and provide conditions for settlement of suspended solids they have been carefully crafted to maximise their ecological and amenity value.

#### **4.4.2 Below ground storage**

Although below ground storage lacks does not provide ecological benefits the consortium has included this form of attenuation as oversized pipes, storage tanks, gravel storage areas, and proprietary storage media including caissons and 'Stormcell'.

#### **4.5 Proposed Outfall**

The surface water flows from the site will flow into the existing surface water sewer system in Glebe Road to the south of the site.

#### **4.6 Construction and Maintenance Constraints**

##### **4.6.1 Construction**

Morris Group is committed to adopting the best working practices of the Environment Agency: Pollution Prevention Guidelines (PPG). This will include the early establishment of temporary drainage /siltation/control facilities and summer completion for soil stripping and re-spreading operations,

Phasing will commence with downstream sections connecting swales, filter drains etc. with source control SUDS features added in each development cell as appropriate. Contingent design standards will provide sufficient flexibility to respond to an early phase of limited incoming flow during the construction phase when sediment or other pollution may be a problem, and the final phase of maximum incoming flow.

The programme for the construction of the SUDS ponds will allow rapid establishment of translocated, planted and seeded areas commensurate with biodiversity interests.

Guidance from RoSPA has informed the design of the SUDS to allow the risks to be managed and to be made as safe as practicable. Public education and awareness of the facilities as described in the ecology strategy will assist in preventing accidents.

##### **4.6.2 Maintenance**

A post-construction review to audit the system will be undertaken. This will provide the opportunity to fine-tune the design during the first few years of operation and establishment of vegetation at each scheme. It is recommended that features are initially designed to have a greater capacity than is required so that siltation and infilling with vegetation can occur without reducing drainage and flow balancing capacity.

The management plan for the site will ensure that the SUDS to continue to function efficiently in removing pollutants and attenuating surface water runoff. The design of the ponds and other SUDS features has attempted to understand the complexity of the management that will be required and to minimise management requirements. Routine maintenance and planned remedial works a. Site specific maintenance requirements will need to be determined as the site is commissioned and after a period of operation.

#### **4.7 Ownership**

Morris Group is establishing a Community Interest Company that will have the capacity to take responsibility for the surface water drainage in partnership with Peterborough CC, Anglia Water and others.

#### **4.8 Attenuation**

Attenuation volumes are designed to completely drain at a rate dictated by the outlet structure. Generally, attenuation storage is not considered as contributing to improvement of the runoff water quality, although it may often deliver benefits. The attenuation volume is accommodated above the permanent pool volume.

Site control attenuation ponds will be lined and are designed in accordance with the SUDS Manual guidelines. The SUDS Manual recommends the use of the treatment volume (Vt) approach. The value is multiplied by a factor as described in the SUDS Manual to reflect the retention volume required for treatment in the retention ponds. According to SUDS Manual experience with the use of Vt has resulted in a pragmatic design rule of using a fixed rainfall depth. Typical values range from 11 to 15mm for England and Wales and these depths should be applied to the impermeable area of the catchment only. This provides a very simple method for determining the treatment volume required

The attenuation volume is based on greenfield discharge of 1.4 l/sec/ha. For the purpose of this design guidance, the attenuation volumes have been designed to cater for a 1 in 30 year runoff from the development with an appropriate freeboard designed to accommodate a 1 in 100 year event without flooding. In addition to the above storage, further volume within the pond would be required in order for the pond to cope with 1 in 100 year urban runoff when the flood water in the River Nene prevents discharge from the attenuation pond located in the development area.

#### **4.9 Flood Risk**

The flood risk assessment includes an allowance for climate change and recommends setting finished floor level for the development at about 6.2 metres AOD [0.9m to 1.0m from current ground levels in some areas]. This entails raising levels over the northern strip adjacent and south of the railway.

The site generally lies between 5.3m and 7m AOD, which based on the predicted flood level of 4.87m AOD at the Town Bridge should result in no flood water displacement.

Draft, and subject to further discussion, and negotiation and to be agreed within 2 months of the completion of the building lease.

**Waste Strategy and Site Waste Management Plan**  
**South Bank**  
**Morris Group**

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## **1.0 Introduction**

This comprehensive waste management strategy including the Site Waste Management Plan is an integrated element of the sustainable regeneration of the south bank site. In addition to providing zero carbon housing the development of the site will allow the sustainable renewal of the physical health of the site. In so doing it will allow the development to take place in ways that will minimise the consumption on non renewable resources and the environmental costs associated with the manufacture, processing and transport of materials used in the development. As such it will reduce the waste generated by the construction of the development and by its occupants.

## **2.0 Waste management strategy - Integrated design**

### **2.1 Introduction**

This strategy necessarily relates to and should be read in conjunction with the materials specification and supply chain strategy which has as its overriding objective the minimisation of waste with the consumption of natural renewable materials wherever possible.

The waste management strategy has emerged from a consideration by Morris Group of a diverse range of evidence covering both the site operation and post occupancy phase of the development, and follows the principles of the waste hierarchy:

- Prevention of waste by selecting materials and equipment that can be repaired and refurbished rather than replaced;
- Reducing the need for equipment and materials through design, specification and process improvement measures;
- Recycling materials by reprocessing for an alternative use;
- Recovering the energy in materials which cannot be reused or recycled;
- Disposal as the final solution and then only when there is no other solution.

### **2.2 Existing residential waste & recycling collection strategy**

Morris Group has considered the strengths and weaknesses of the Peterborough City Council waste and recycling collection scheme as does not propose to depart from participating in this excellent scheme.

However Morris Group is concerned to design the layout of the development site contingent on providing the residents with future opportunities to recycle and compost using different techniques and equipment.

### **2.2 Ambition and targets for the site**

This strategy includes details of the ambition to achieve a truly sustainable use of resources in the construction of the site and its occupancy so that:

- *The site contributes to achieving the Peterborough wide targets for household waste recycling and/or composting of 50% by 2010 and 70% by 2015*
- *The site secures maximum credits for Waste 1, 2, 3 Code for Sustainable achieve for Level 6:*

### **2.3 Pre-construction assessment of the scheme against the CSH Level 6.**

The principle build system is a closed panel timber frame system (Stewart Milne Sigma II as plot M). Morris is continuing to conduct research into the potential for traditional masonry build systems to meet the FEE etc requirements for code 6 whilst and meet NHBC standards. Morris wishes to reserve their position on the build system and subject o agreement with HCA etc may bring forward alternative build systems.

Reference should be made to the supply chain and specification strategy which includes as an annex a pre-construction assessment against the CSH. Section 3 relates to the way in which this relates to ways in which waste will be reduced by the:

- Considering the **Life cycle impact** of materials - materials have been selected based on their overall impact and corresponding rating in the 2010 version of the Green Guide
- Materials selection – materials have been selected based on their **whole life performance** with a focus on durability.
- **Sustainable timber accreditation;**
- **Expected lifetime and costs** implied;
- **Reusability and/or recyclability/end of life strategy;**
- Principles of **designing for deconstruction**
- Principle of **reducing the impact of transporting materials** used by sourcing materials locally.
- Reducing the embodied energy use in construction.

### **2.4 Composting strategy**

Morris Group has adopted a very simple composting strategy for the site, nothing that is organic and produced by householders within the site will be taken off –site. Facilities will be made available on site for residents to compost their organic waste.

Community composting schemes – in the form of a series of wooden compost bins will be provided for use by those living in apartments. Located and designed as an integral element of the open space associated with the apartments. Located within 50m of the external door of the dwellings served (i.e. flat block entrance) this provision will meet the requirements of Waste 3. These will be supervised and managed by the CIC with the compost being made available to residents. All householders will be provided with information and education concerning the 'do's and don'ts' of composting.

Composting of waste from commercial properties will be via collection scheme. A full appraisal of the alternatives available will be carried out on the commercial developments when tenants and occupants are confirmed.

### **3.0 Waste and recycling collection strategy**

#### **3.1 Introduction**

Morris Group will agree with Peterborough council the ways in which the physical infrastructure will be constructed and located as to maximise the take up of supplied and

#### **3.2 Houses**

For the present Morris Group has designed the development so that occupiers of all houses will participate in the Peterborough kerbside recycling collection scheme. As such the following waste streams will be collected in a single (240L) bin together; Aerosols, cartons, cans, cardboard, paper and plastic bottles are collected in one bin. Although provision will be made for a second (240L) bin for garden waste the householders will be provided with compost bins and access to community composting schemes. It is hoped that Peterborough Council will agree that this organic waste bin will not be required. A (240L) bin will be provided for waste that cannot be composted, recycled or reused.

These bins will be located within the gardens of each of the homes. The above provision will meet the requirements of Was1

On site glass recycling facilities for all householders for collection by Peterborough CC will be agreed.

#### **3.3 Apartments**

Morris Group will provide for the space for the installation of 2m<sup>3</sup> to 5m<sup>3</sup> underground containers to be filled via a trap door connected to the above ground waste disposal point. Space requirements will allow the container when full to be extracted from the ground and emptied by a crane vehicle.

The Apartments will be provided with a pair of 1,100 litre Euro-bins, one for general waste and one for recycling, for every 6 to 8 dwellings. This provision will meet the requirements of Was1

#### **3.4 Commercial developments**

Morris Group will carry out a feasibility study into the waste and recycling likely to be generated by the commercial developments on the site. In accordance with the commitment of Morris Group the tenants and occupiers will be required to adopt a low waste strategy based on using recyclable and reusable materials. As such the commercial collection of their wastes and recyclables will form part of the role of the CIC in conjunction with other partners. At this stage it is not possible to detail the wastes of recyclables likely to be produced.



### **3.5 On site education and awareness**

Central to the success of the waste strategy will be its ownership by the local residents and the commercial businesses. Their active participation in setting local targets and refining the site wide infrastructure, collection arrangements will be essential in delivering a truly sustainable development. The CIC in conjunction with Peterborough CC will facilitate these discussions.

The householders pack will provide on purchase together with the on line real time information about the management of the site will provide up to date information on waste and recycling. This will include promoting LETS (Local employment Trading Schemes) equipment and materials exchanges (e.g. furniture), and the bartering. These will collectively assist in meeting the targets for waste reduction for the site.

### **3.6 Monitoring**

Morris Group is committed to monitoring the performance of the site once occupied. The CIC will carry out this function in association with Peterborough CC. Efforts will be made to continually approve the performance though the active involvement of all site users and occupants.

## **4 Site Waste Management Plan**

### **4.1 Introduction**

Morris Group is committed to preparing a Site Waste Management Plan (SWMP) that details the amount and type of waste that will be produced on the construction site and how it will be reduced, reused, recycled and disposed of. The material waste will be summarised and recorded in a live document that is updated regularly throughout the course of the project and records how the waste streams will be managed. This document will be prepared for the development following the validation of the remediation strategy. *(The soil making materials identified during the remediation will affect the balance of construction materials on site and this is critical to establish before the SWMP can be concluded)*

Maximum credits will be secured against Was2 through a comprehensive SWMP, participation and high performance in the Considerate Constructors Schemes and the environmental management scheme to manage implementation an achievement of the KPI's and targets

Morris Group is committed to using the WRAP template for SWMP and to assist in

*“improving materials resource efficiency, by promoting the economic use of construction materials and methods so that waste is minimised and any waste that is produced can be re-used, recycled or recovered in other ways before disposal options are explored.”*

The SWMP is presented here in outline. It follows the WRAP template and comprises a series of 14 Steps that cover the construction project cycle from pre-design to project completion.

The completed SWMP will be in the form of an excel spreadsheet that will be completed and updated during the project. The information to be inserted into the WRAP template is presented here in word format.

The SWMP Template will allow the site to be developed to its full potential and will enable Best Practice in SWMPs to be delivered.

- pre-design: administration details and initial design decisions and waste forecasts;
- design: detailed design decisions and waste forecasts;
- procurement: responsibilities for waste management on site;
- on site: recording waste movements, comparing actual quantities with estimates and revising the SWMP as necessary; and
- project completion: final project declarations, quantities, savings and KPIs

Morris Group proposes to use the WRAP template as it is flexible and offers a number of advantages:

- clear demonstration of compliance with the SWMP Regulations 2008;
- goes beyond compliance, so can be used for projects across the UK;
- applicable to all sizes of project and all types of construction;
- data only has to be entered once and are then taken forward automatically to subsequent Steps.

Morris Group also wishes the development to benefit from the other key features including:

- It can be used throughout the project cycle to build the SWMP, not just a Template for reporting the results;
- enables calculation of KPIs on waste and materials for projects;
- enables performance to be monitored throughout the project, not just at the end; and
- links to other potentially useful guidance and tools, such as recycled content and The efficient use of materials

#### 4.2 14 steps in the SWMP

Step	Title	Example Responsible Owner
Step 1	Administration and planning	Client
Step 2	Action log	Client
Step 3	KPIs and targets	Client
Step 4	Pre-design and design measures	Design Coordinator
Step 5	Responsibility for waste management	Waste Management Champion/Principal Contractor
Step 6	Forecasting key waste production	Waste Management Champion/Principal Contractor
Step 7	Planning reuse and recycling	Waste Management Champion/Principal Contractor
Step 8	Register of licences, permits and movements	Waste Management Champion/Principal Contractor
Step 9	Comparison of actual and estimated quantities	Waste Management Champion/Principal Contractor
Step 10	Cost savings from design	Design Coordinator
Step 11	The costing of site waste management	Waste Management Champion/Principal Contractor
Step 12	Overall recycled content	Waste Management Champion/Principal Contractor
Step 13	Implementation	Waste Management Champion/Principal Contractor
Step 14	Final project declarations	Waste Management Champion/Principal Contractor

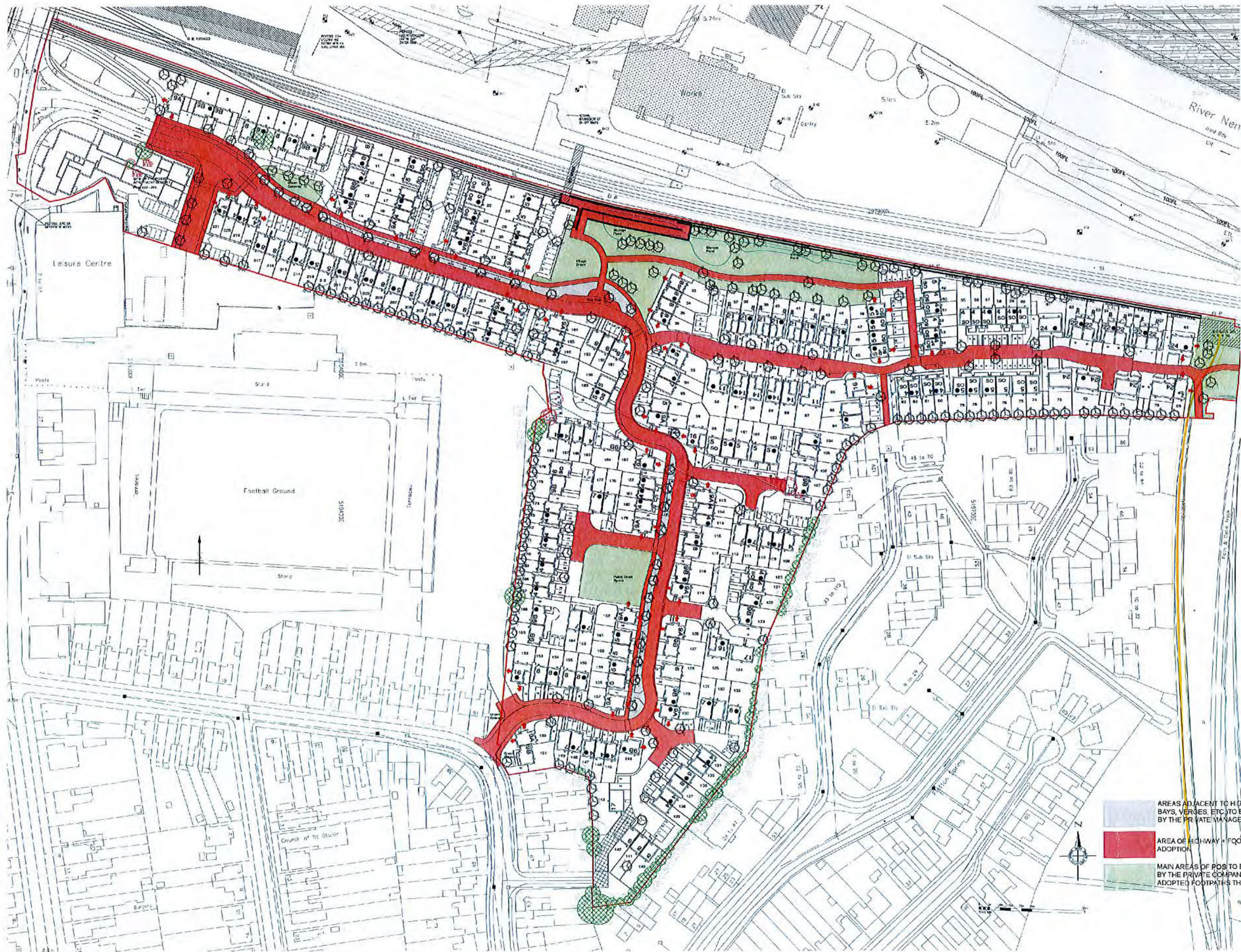
## Schedule 10 - Estate Management Scheme Documents

It is Morris Homes intention to layout the areas coloured green on the plan reference 08037/P/111 Revision A.

Morris will set up an Estate Management Company by agreement with the nominated RSL provider with the express intent that the areas of public open space will be maintained or managed either via the management company or by Peterborough City Council following agreement for the city to adopt these areas upon the payment of an agreed commuted sum.

In addition the Estate Management Company will maintain the following areas associated with Apartment Block 1 comprising plots 222-295:

- Car part and landscaping of the same
- Roof garden/sedum roof
- Green walls
- Lifts
- Stairwell, corridors and common parts



**NOTES**  
 Do not scale from this drawing. Only specified dimensions are to be taken from this drawing.  
 Contractor must verify all dimensions on site before commencing any work on site drawings.  
 Report any discrepancies to the architect before commencing work. If this drawing exceeds the quantities taken from any drawings the architect is to be informed before the work is started.  
 Work within the Construction Design & Management (Regulation 2007) is not to start until a Health and Safety Plan has been produced.  
 This drawing is copyright and must not be reproduced without consent of Browne Smith Baker LLP.

**DRAWING STATUS/TITLE KEY**

F Feasibility	SK Sketch	L Landscape
P Planning	M Marketing	S Survey
T Tender	TNT Tender	OG Ordnance Survey
C Contractor	AB As Built	

This drawing originates from the CAD file:  
 S:\2008\0837-Peterborough-Carbon-Challenge-File7-Drawing\11-Plan\11-Current\0837\_P\_111 Adoptable Areas Layout.dwg

**REVISIONS**

Rev	Description	Drawn	Date	Checked	Day
A	Revised to reflect site layout drawing	MB	11.02.11	MRS	11.02.11

AREAS ADJACENT TO HIGHWAY (PARKING BAYS, VERGES, ETC) TO BE MAINTAINED BY THE PRIVATE MANAGEMENT COMPANY

AREA OF HIGHWAY + FOOTPATHS FOR ADOPTION

MAIN AREAS OF POS TO BE MAINTAINED BY THE PRIVATE COMPANY WITH ADOPTED FOOTPATHS THROUGH

**Browne Smith Baker**  
 Architects  
 1-12 Portland Terrace,  
 Newcastle upon Tyne, NE2 1JQ  
 Tel: 0191 272 1133  
 Fax: 0191 212 0772  
 www.browne-smith-baker.com  
 Leeds: 0113 245 1375 • Darlington: 0 125 462 345 • Hull: 0 482 529 275

**PROJECT**  
 South Bank  
 Peterborough Carbon Challenge  
 for Morris Homes

**DRAWING TITLE**  
 Adoptable Areas Layout

	Scale: A1	Drawn By:
	NTS	MRS
	Checked By:	Date: 21.01.11
	GH	21.01.11

Drawing No. **08037/P/111** Revision **A**

## Schedule 11 – Estate Management Scheme Principles

See Schedule 10

**Schedule 12 - Clawback on change of use of open space and/or community use buildings**

**DATED**

**200[ ]**

(1) THE HOMES AND COMMUNITIES AGENCY  
(Transferor)

(2) PETERBOROUGH CITY COUNCIL ("the Council")

(3) EAST OF ENGLAND DEVELOPMENT AGENCY ("EEDA")

(4) [ ]  
(Transferee)

**DEED OF COVENANT AND CHARGE**

Land at Phase 1 Southbank  
Peterborough

- NB 1. To be entered into by transferee of open space and community areas/buildings
2. Plan will be needed showing the land subject to clawback



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## Deed of Covenant and Charge

### Dated

### Between

- (1) **The Homes and Communities Agency (the Transferor)** (a statutory body) of [110 Buckingham Palace Road London SW1W 9SA]; and
- (2) **Peterborough City Council** of Town Hall Bridge Street Peterborough PE1 1HG (the **Council**); and
- (3) **East of England Development Agency** of Victory House Vision Park Chivers Way Histon Cambridge CB24 9ZR (**EEDA**); and
- (4) [ ] (the **Transferee**) registered in England with number [ ] whose registered office is at [ ] (a corporation organised and existing under the laws of [ ] whose principal place of business is at [ ] of [ ]

### Recitals

- (A) This Deed is supplemental to a Transfer (the **Transfer**) dated [ ] made between (1) the Transferor and (2) the Transferee of the Property
- (B) The Transferee has acquired the Property subject to the provisions set out in this Deed

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following expressions shall (except where the context otherwise requires) have the meanings respectively attributed to them:

**Act** the Town and Country Planning Act 1990 (as amended) and any act or instrument or order altering amending or replacing the said Act

**Act of Circumvention** any act or omission of the Transferee or transaction or series of transactions entered into by the Transferee or its successors in title with any person or persons the principal purpose or effect of which is to avoid or depress or reduce the size of any Additional Sum which might otherwise fall due to the Partners or to avoid or delay the recoverability or potential receipt in whole or part by the Partners of any Additional Sum Provided that it is hereby agreed that there is no obligation on the Transferee to seek the creation of any Additional Sum by way of an application for planning permission or otherwise

**Additional Sum** a sum in Pounds Sterling (exclusive of VAT) equal to 70% of the amount by which the Open Market Value of the Relevant Property exceeds its Current Use Value

**Charge** the Charge created by clause 3

**Current Use** either:

- (i) use for the purposes of public or private open space amenity land or for non-profit making community use; or
- (ii) use for any purposes constituting or permitted by any Specified Event which occurred before the Latest Specified Event

as the case may be

**Current Use Value** the price which the Relevant Property might reasonably be expected to realise on the Valuation Date upon an unconditional sale for cash in the open market at arms length by a willing seller to a willing buyer for an estate in fee simple absolute in possession with vacant possession without the benefit of the Latest Specified Event and upon the assumptions that:

- (i) the Relevant Property may be used for the Current Use
- (ii) there has been a reasonable period for the proper marketing of the interest prior to the Valuation Date
- (iii) the Relevant Property is to be sold together with the rights granted by but subject to the covenants exceptions reservations and other matters contained or referred to in the Transfer or in the entries on the register of the title relating to (or including) the Relevant Property including this Deed and any entries on the register of the title relating to them insofar as they are still subsisting and relate to or affect the Relevant Property but otherwise free from onerous restrictions encumbrances covenants and conditions

but disregarding

- (i) any existing or prospective planning consent for any use other than for the Current Use; and
- (ii) any other factor or event which might enhance the value of the Relevant Property or any part thereof at the Valuation Date

**Develop** and **Development** shall have the meanings respectively assigned to them by the Act and shall be deemed to include in addition any development or change of use or intensification of use for which planning permission is not required

**Disposal** any disposal or dealing with the Property or part of it including:

- (a) the transfer or grant of any interest or licence over the Property or part of it; and
- (b) the variation of any interest or licence in the Property or part of it so as to permit a use other than the Current Use

but subject to the following exclusions:

- (i) a bona fide grant or renewal of a lease or licence at arms length for a term of less than seven years at a rack rent without taking or receiving a premium on terms which do not permit any use of the Property other than the Current Use
- (ii) a bona fide mortgage on normal commercial terms
- (iii) bona fide licences for Development purposes

**Implementation** in relation to any Development constituting a Specified Event the first date upon which any planning permission or works constituting or in contemplation of the proposed Development are commenced by the carrying out of a material operation (as defined by the Act) or (in relation to a change of use only) the date upon which the Relevant Property is first used for the relevant purposes

**Interest Rate** 3% above the annual base lending rate for the time being of Barclays Bank Plc

**Judicial Proceedings** any form of judicial proceedings or legal challenge including any application or appeal to the Court or any other tribunal or forum in respect of the decision act or omission of the local planning authority the Secretary of State for the Office of the Deputy Prime Minister Court or any other tribunal or forum including without limitation an application for judicial review

**Latest Specified Event** the planning permission or change of use or Development which constitutes the Latest Specified Event relating to the Relevant Property or the relevant part of it to occur on or prior to the Valuation Date

**Open Market Value** the price which the Relevant Property might reasonably be expected to realise as at the Valuation Date upon an unconditional sale for cash in the open market at arms length by a willing seller to a willing buyer for an estate in fee simple absolute in possession with vacant possession with the benefit of the Latest Specified Event and upon the assumptions that:

- (i) the Relevant Property may be used either for the Current Use or the use or Development permitted or constituted by the Latest Specified Event;
- (ii) the Latest Specified Event is capable of immediate Implementation;
- (iii) there has been a reasonable period for the proper marketing of the interest prior to the Valuation Date;
- (iv) the Relevant Property is to be sold together with the rights granted by but subject to the exceptions and reservations contained or referred to in the Transfer and the entries on the register of the title relating to (or including) the Relevant Property including the provisions of this Deed

and any entries on the register of the title relating to them insofar as they are still subsisting and relate to or affect the Relevant Property but otherwise free from any onerous restrictions encumbrances covenants and conditions (including the Charge and any restrictions encumbrances covenants and conditions

but disregarding:

- (i) any existing or prospective planning consent for a use other than the Current Use and that permitted by the Latest Specified Event; and
- (ii) any other factor or event which might enhance the value of the Relevant Property or any part thereof at the Valuation Date

**Partners** means together the Transferor the Council and EEDA

**Price** the sum of One Pound (exclusive of VAT)

**Property** [the private and public open space and the land and buildings to be used for non-profit making community use as shown coloured [ ] on the plan annexed hereto

**Relevant Period** the period of 35 years commencing on the date of this Deed

**Relevant Proportions** means the Transferor 31.6%, the Council 13.3% and EEDA 55.1%

**Relevant Property** the Property as a whole (in the event of a Specified Event occurring in respect of the whole of the Property) or the part of the Property in respect of which a Specified Event has occurred (in the event of a Specified Event occurring in respect of part of the Property only (as the case may be)

**Specified Event** any of the following events:

- (i) the grant of planning permission in writing to any person other than the Transferor in accordance with the provisions of the Act (whether in outline or in detail) for a change of use or for Development of the Property or any part thereof for any purpose other than the Current Use
- (ii) the change of use or Development by any person other than the Transferor of the Property or any part thereof for use or Development for any purpose other than the Current Use

**Transferee's Successor** for the purposes of clauses 3.2.1 10 and 11 of this Deed any person or persons to whom or in whose favour the Transferee or any mortgage administrator receiver trustee in bankruptcy personal representative or liquidator or successor in title of the Transferee shall have made a Disposal of the Property or any part or parts thereof

**Valuation Date** in relation to any Specified Event the earliest of:

- (i) the date of Implementation of the relevant planning permission (or Development as the case may be) constituting or permitted by the Latest Specified Event; or
- (ii) the date of completion of any Disposal of the Relevant Property or part of it first occurring after the Latest Specified Event

VAT valued added tax charged under the Value Added Tax Act 1994 and shall include any interest fine penalty or surcharge in respect of value added tax charges

1.2 In this Deed unless the context otherwise requires:

- (a) the singular includes the plural and vice versa and where there are two or more persons included in the expression "the Transferee" covenants expressed to be made by the Transferee shall be deemed to be made by such persons jointly and severally;
- (b) words denoting a particular gender denote the other genders as well
- (c) reference to the Transferor the Council EEDA and the Transferee include their successors in title and assigns and or any organisation or entity which has taken over either or both the functions and responsibilities of such
- (d) headings are for ease of reference only and shall not be taken into account in construing this Deed
- (e) references to clauses sub-clauses paragraphs and schedules are references to those contained in this Deed unless otherwise stated
- (f) any reference to a state rule regulation treaty directive bye-law code of practice circular guidance note or any notice order direction or requirement given or made pursuant to it includes every statutory modification consolidation re-enactment and statutory extension of it for the time being in force

**2. COVENANTS RELATING TO CLAWBACK**

The Partners and the Transferee hereby mutually covenant and agree that the provisions of this Deed shall have effect between them

**3. CREATION OF LEGAL CHARGE**

- 3.1 The Transferee acknowledges the existence of a debt to the Partners of the sum of one pound (£1.00) ("the Debt") and hereby covenants to pay the Debt to the Partners upon demand
- 3.2 The Transferee hereby charges the Property in favour of the Partners by way of first legal mortgage with payment of the Debt and of all sums (together with

interest) as may from time to time become due under the provisions of this Deed

- 3.3 It is hereby agreed and declared that whilst the charge created by clause 3.1 remains in force the powers of leasing or agreeing to lease and of accepting surrenders of leases conferred by statute or on a mortgagor in possession shall not apply and neither the Transferee nor its successors in title to the Property or any part thereof shall grant or agree to grant any lease thereof (other than a mortgage term or a lease excluded from the definition of Disposal) nor accept any surrender thereof without the consent of the Partners

#### 4. **THE PRICE AND ADDITIONAL SUM**

The parties hereby acknowledge and agree that

- 4.1 the Price has been agreed between them on the basis that neither the Property nor any part thereof shall at any time be used for any purposes other than the Current Use
- 4.2 if and on each occasion during the Relevant Period a Valuation Date occurs following a Specified Event in relation to the whole or part of the Property then the Transferee or (following receipt by the Partners of a Deed of Covenant pursuant to clause 1) the Transferee's successor shall on each and every such occasion pay to the Transferor the Council and EEDA in the Relevant Proportions an Additional Sum calculated pursuant to the provisions of clauses 5 and 6 of this Deed

#### 5. **DETERMINATION OF THE ADDITIONAL SUM**

- 5.1 During the period of one month commencing on the relevant Valuation Date the parties shall consult together and endeavour to agree the Open Market Value and the Current Use Value and any Additional Sum payable
- 5.2 If the parties fail to agree within the period specified in clause 5.1 then the Open Market Value or the Current Use Value or both of them (as the case may be) and any Additional Sum payable shall be determined by a chartered surveyor in accordance with the provisions of clause 9 of this Deed at the request of any party by service of written notice upon the other parties at any time after the expiration of such period
- 5.3 The Additional Sum (together with interest thereon at the Interest Rate for the period commencing on the Valuation Date and ending on the date of actual payment calculated on a daily basis but compounded with quarterly costs on the usual quarter days) shall become payable to the Transferor the Council and EEDA in the Relevant Proportions on a date being seven days from the date of agreement or determination of the Additional Sum pursuant to clauses 5.1 and 5.2 above

#### 6. **NOTIFICATION OF DEVOLUTION OF INTERESTS**

The Partners and the Transferee hereby mutually agree that they will within fourteen days of its occurrence give notice to each other of any devolution of

or other dealing with their respective interests under this Deed other than in the case of the Partners in circumstances where no notice is required by operation of law

## **7. TRANSFEREE'S CONSEQUENTIAL OBLIGATIONS**

The Transferee shall:

- 7.1 (Subject to clause 13 below) not make any Disposal without the prior written consent of the Partners
- 7.2 Give notice to the Partners of any oral arrangement contract for or document or deed giving effect to any Disposal of the Property or any part thereof forthwith after the occurrence of any such event together with a certified copy of any such contract or document or deed or reasonable evidence of the terms of any oral arrangement
- 7.3 Supply to the Partners copies of all applications for planning permission relating to the Property or any part of it and all material information relating to any Judicial Proceedings in relation thereto immediately they are submitted to the local planning authority the Secretary of State for the Office of the Deputy Prime Minister Court or any other tribunal or forum as appropriate or notified to the Transferee and will from time to time supply such further information as to the progress of any such application or of any such Judicial Proceedings as the Partners may reasonably require
- 7.4 Notify the Partners forthwith upon the occurrence of any Specified Event in relation to the Property or any part thereof and supply copies of all consents permissions or approvals or notices in relation thereto forthwith upon receipt of the same by the Transferee
- 7.5 Not to enter into any Act of Circumvention and not to assist cause or permit any other party to enter into any Act of Circumvention

## **8. ASSIGNMENT BY THE TRANSFEROR**

The Partners shall not assign compromise and otherwise deal with all of its interest rights and entitlement under this Deed and in respect of any Additional Sum payable thereunder save to a successor in function or responsibility

## **9. DISPUTE RESOLUTION**

- 9.1 All disputes differences and questions which arise between the Partners and the Transferee concerning arising out of or connected with this Deed shall if such dispute difference or question relates to the value of any interest in property be referred to a chartered surveyor agreed upon by the parties but in default of agreement appointed at the request made (subject to paragraphs 5.1 and 5.2 above) at any time of either of the parties by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors ("the RICS President")



- 9.2 Any reference to such a chartered surveyor shall if the parties so agree in writing 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
- 9.3 If the dispute is determined by an arbitrator the arbitration will be conducted in accordance with the Arbitration Act 1996 but the arbitrator will not be entitled to take the initiative in ascertaining the facts
- 9.4 If the dispute is determined by an expert then the expert will allow the parties a reasonable opportunity to make representations and counter representations to him and take reasonable account of any representations which are made and if required by either party given written reasons for his decision which shall be final and binding
- 9.5 The fees and expenses of the determination of the chartered surveyor (including the costs of his appointment) will be borne as he may direct
- 9.6 If a party fails to pay any fees and expenses the chartered surveyor directs be paid by it within a reasonable time and the other party pays them the defaulting party will reimburse the amount paid for it on demand from the paying party
- 9.7 If the chartered surveyor dies or becomes unwilling to act or incapable of acting or his determination is not made within a reasonable time after his appointment the RICS President may on the application of either party or both parties discharge him and appoint another chartered surveyor in his place
- 9.8 Any person so appointed to determine a dispute shall be of at least ten years professional qualification and shall be experienced in relation to property of a similar nature to the Relevant Property and in the case of a dispute arising under paragraph 5.2 above shall have knowledge of the values of property used for the Current Use and the use proposed by virtue of the Latest Specified Event

## 10. COSTS

Each party shall pay their own costs and expenses (subject to clause 9.5) in relation to this deed and anything pursuant to this Deed.

## 11. SUCCESSOR'S COVENANT

The Transferee hereby covenants with the Partners that if and when during the Relevant Period the Transferee shall make a Disposal in favour of the Transferee's Successor the Transferee shall procure that the Transferee's Successor shall charge the Property the subject of any Disposal to the Partners in the terms of clause 3 of this Deed and enter into a deed of covenant with the Partners or to whom they shall direct so as to bind himself or themselves and his or their successors in title (jointly and severally in the case of a covenant by more than one person) and for the benefit of and so as to be enforceable by the Partners and their successors in title and assigns in terms identical to this Deed but under which the Transferee's Successor is "the Transferee"

(including a covenant in identical terms to this covenant) such deed of covenant and charge to be in the form annexed with such amendments as the parties may reasonably agree to the intent that the covenants and obligations of the Transferee under clauses 2 and 3 of this Deed may be enforced directly against the Transferee's Successor or any subsequent successor or estate owner by the Partners or their successors in title and assigns and on completion of such deed of covenant and charge the Transferee shall be released from all future liability under this Deed of Covenant and Charge and the Partners shall discharge the charge created by clause 3.1

**12. REGISTRATION AGAINST TITLE**

The Transferor and the Transferee hereby apply to the Chief Land Registrar to enter upon the Register of Title to the Property a restriction in the following terms:-

"Except under an Order of the Registrar or of the Court no disposition or dealing by the Proprietor of the land or any part thereof (including a disposition or dealing by a mortgagee or chargee in exercise of a power of sale) is to be registered during the period of [35 years expiring on [ ] unless the prior written consent of the The Homes and Communities Agency, Peterborough City Council and East of England Development Agency or their successor in title has been given to such disposition or dealing"

**13. CONSENT TO DISPOSAL**

The Partners hereby covenant with the Transferee and the Transferee's successors that the Partners will not unreasonably withhold its consent to any Disposal or the registration of any Disposal if the Transferee and the Transferee's successor shall on or before such disposal have complied with the provisions and requirements of this Deed (including clause 11) PROVIDED ALWAYS that it shall not be deemed unreasonable for the Partners to withhold its consent so long as any monies due and payable to the Partners under the provisions of the Deed are outstanding

**14. SERVICE OF NOTICES**

The provisions of the Law of Property Act 1925 (as amended) as to the service of notices shall apply to any notice or other document required or authorised to be given or served under this Deed

**15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this instrument has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms and the parties may rescind or vary the terms of it without the consent of such person but this does not affect any right or remedy of any person who is not a party to this instrument which exists or is available apart from this Act

16. **DELIVERY**

This Deed remains undelivered until the date hereof

IN WITNESS whereof this Deed has been executed the day and year first before written

The COMMON SEAL of HOMES  
AND COMMUNITIES AGENCY  
was hereunto affixed  
in the presence of:

Authorised Signatory

*NB: Add all execution blocks at time of engrossment*

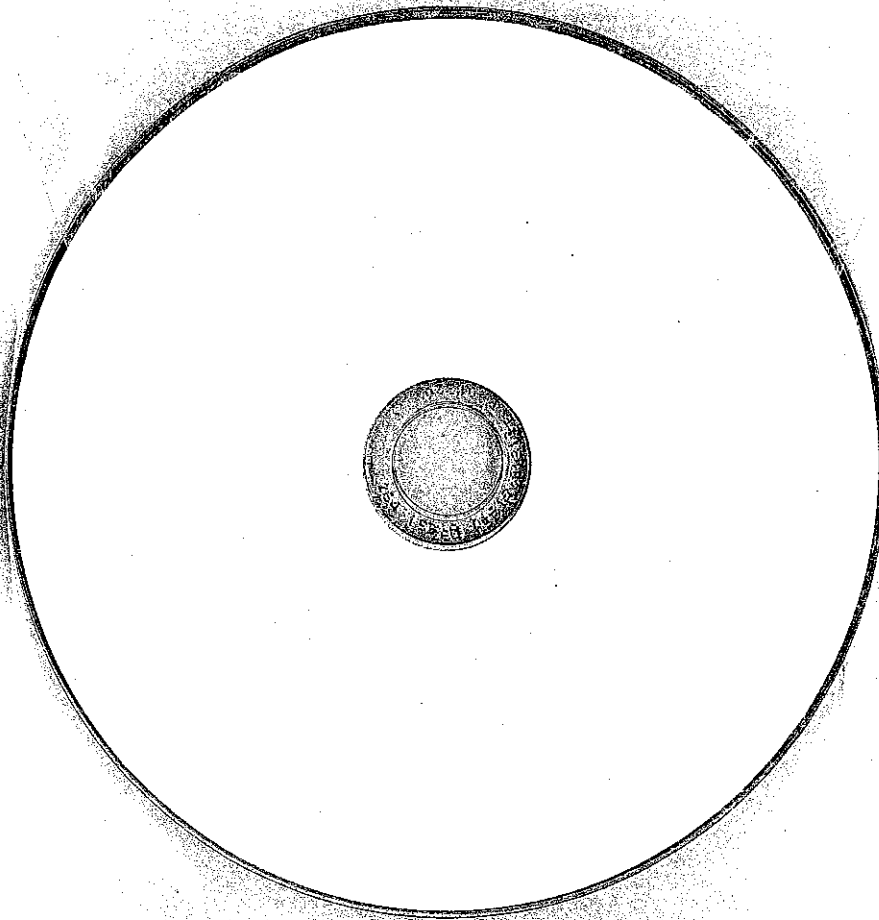
Hewitsons LLP  
Shakespeare House  
42 Newmarket Road  
Cambridge CB5 8EP

Tel: (01223) 461155

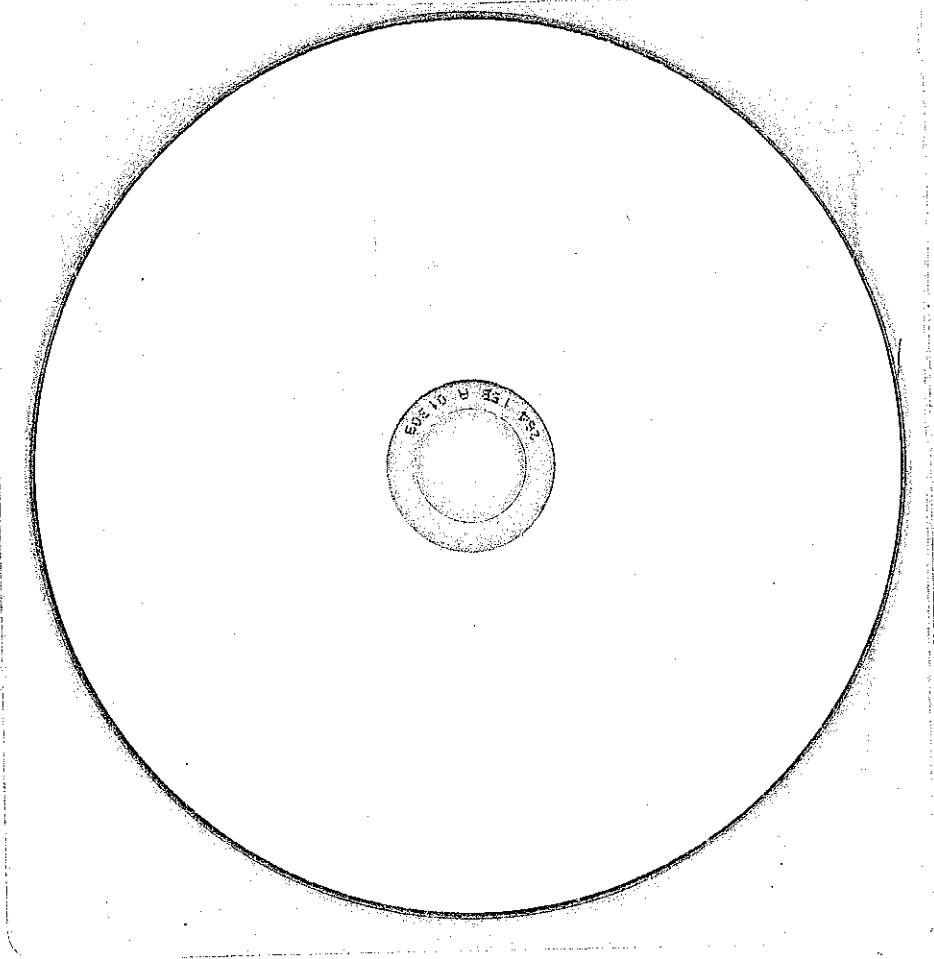
09 February 2010

EJJ/JL

Appendix 1 - pPod disc



Appendix 2 - EP disc 1



**Appendix 3 - Customer Satisfaction Survey**





**POST PURCHASE SURVEY**

Development..... Plot No..... Housetype.....

Please tick the most appropriate box. If you are unable to comment on any particular question, then please leave it blank.

<b>1. Now that you have moved in - your overall impression of:</b>	Excellent	Very Good	Good	Satisfactory	Poor
Cleanliness and tidiness of the site	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cleanliness of the roads	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtesy and helpfulness of the Site Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments.....  
 .....  
 .....

<b>2. Have you had any teething problems</b>	YES <input type="checkbox"/>	NO <input type="checkbox"/>			
<i>If yes, what is your overall impression of:</i>	Excellent	Very Good	Good	Satisfactory	Poor
Communication process for reporting problems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Timescale in which problems were resolved	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Efficiency/effectiveness in completing the work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtesy of tradesmen in carrying out the work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Helpfulness of Site Manager in organising the work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Helpfulness of the Customer Care Dept.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments.....  
 .....  
 .....

**3. What improvement in house design would you like to see?**  
 .....  
 .....  
 .....

**4. We are continually trying to improve the service we offer. Would you consider buying another Morris Home in the future or recommending us to others?**

YES  NO

Signature..... Date..... Tel No.....

**Thank you for your time in completing this questionnaire.  
 Please return it in the pre-paid envelope provided to Morris Homes Limited.**



## PURCHASER SURVEY

DEVELOPMENT ..... PLOT No ..... HOUSETYPE .....

Please tick the most appropriate box. If you are unable to comment on any particular question, then please leave it blank.

<b>1. The Site - first impressions</b>	Excellent	Very Good	Good	Satisfactory	Poor
Your initial impression of the site	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtesy and helpfulness of Sales Advisor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments.....  
 .....  
 .....

<b>2. Helping you through the buying process</b>	Excellent	Very Good	Good	Satisfactory	Poor
Professionalism of the Sales Advisor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sales Advisor explanation of the buying process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Updating you on the completion date of the property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments.....  
 .....  
 .....

<b>3. Pre-Occupation Inspection</b>	Excellent	Very Good	Good	Satisfactory	Poor
<i>How would you rate:</i>					
The explanation of the inspection process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall external finish of your home	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall internal finish of your home	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
How happy were you with how we addressed any concerns?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments.....  
 .....  
 .....

<b>4. Moving in day - handover of your new home</b>	Excellent	Very Good	Good	Satisfactory	Poor
How well had the pre-occupation inspection items been attended to	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
How helpful were our staff on the day	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Usefulness of the handover pack	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments.....  
 .....  
 .....

<b>5. Moving in day - your overall impression of:</b>	Excellent	Very Good	Good	Satisfactory	Poor
Cleanliness of your home on handover	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internal finish of your home	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
External finish of your home	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments.....  
 .....  
 .....

<b>6. Now that you have moved in - your overall impression of:</b>	Excellent	Very Good	Good	Satisfactory	Poor
Cleanliness and tidiness of the site	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cleanliness of the roads	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtesy and helpfulness of the Site Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments.....  
 .....  
 .....

**7. What initially drew your attention to your current home?**

Site Signage  Recommendation  \*Newspaper Advertising  Website  Other

\*Please indicate which publication .....

**8. What features of a Morris home particularly influenced your purchasing decision?**

.....  
 .....  
 .....

**9. We are continually trying to improve the service we offer. Would you consider buying another Morris home in the future or recommending us to others?**

Yes  No

SIGNATURE..... DATE..... TEL No.....

**Thank you for your time in completing this questionnaire  
 Please return it to Morris Homes Ltd in the pre-paid envelope provided**

Morris Homes Limited, Morland House, Altrincham Road, Wilmslow, SK9 5NW  
 Tel: 01625 544444 Fax: 0845 833 8453

## **Appendix 4 – Forms of Transfer of plots and leasehold building to Developer referred to in Schedules 3, 4 and 5**

NB: To be amended prior to completion – see Schedule 6

1. Stamp Duty

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

- It is certified that this instrument falls within category  in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987
- It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £
- It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001

2. Title number(s) out of which the Property is transferred *Leave blank if not yet registered.*

3. Other title number(s) against which matters contained in this transfer are to be registered, if any

4. Property transferred *Insert address, including postcode, or other description of the property transferred. Any physical exclusions, e.g. mines and minerals, should be defined. Any attached plan must be signed by the transferor.*

Plot No [  ] Phase 1 South Bank Peterborough

The Property is defined: *Place "X" in the appropriate box.*

- on the attached plan and shown *State reference e.g. "edged red".*
- on the Transferor's title plan and shown *State reference e.g. "edged and numbered 1 in blue".*

5. Date

6. Transferor *Give full name(s) and company's registered number, if any.*

[The Homes and Communities Agency] *[here insert name of relevant transferor/transferees]*

7. Transferee for entry on the register *Give full name(s) and company's registered number, if any. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix before the registered number, if any. For foreign companies give territory in which incorporated.*

[pPod Limited]

*Unless otherwise arranged with Land Registry headquarters, a certified copy of the Transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.*

8. Transferee's intended address(es) for service (including postcode) for entry on the register *You may give up to three addresses for service one of which must be a postal address but does not have to be within the UK. The other addresses can be any combination of a postal address, a box number at a UK document exchange or an electronic address.*

9. The Transferor transfers the Property to the Transferee

**10. Consideration** Place "X" in the appropriate box. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.

- The Transferor has received from the Transferee for the Property the sum of *In words and figures.* [NB. Nil consideration – note may be removed prior to engrossment]
- Insert other receipt as appropriate. [ ] whose registered office is at [ ] ("the Developer") has received from the Transferee for the Property the sum of [ ]
- The transfer is not for money or anything which has a monetary value

**11. The Transferor transfers with** Place "X" in the appropriate box and add any modifications.

- full title guarantee       limited title guarantee

Subject to clause 13.5

**12. Declaration of trust** Where there is more than one Transferee, place "X" in the appropriate box.

- The Transferees are to hold the Property on trust for themselves as joint tenants
- The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares
- The Transferees are to hold the Property *Complete as necessary.*

**13. Additional provisions**

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

13.1 In this Transfer the following terms shall have the following meanings:-

- “the common services” shall mean the sewers drains channels pipes watercourses gutters wires cables pillars turrets amplifiers poles soakaways and any other apparatus for the supply transmission or distribution to the Property or any part or parts of the Estate of water gas electricity or telephone radio or television signals or for the disposal from the Property or any part or parts of the Estate of water gas electricity or telephone radio or television signals or for the disposal from the Property or any part or parts of the Estate of soil foul water rainwater or surface water which are not to be adopted or maintained at the expense of any statutory or other authority
- “the Estate” shall mean the estate known as Phase 1 South Bank Peterborough shown for identification only edged green on the Plan
- “the Estate Roads” shall mean the roadways and the ancillary footpaths (if any) shown cross-hatched black on the Plan
- “the Joint Access” shall mean the area (if any) which is shown coloured yellow on the Plan and which forms or is intended to form the site of an access drive jointly serving the Property and adjoining or neighbouring dwellings on the Estate
- “Estate Lease” shall mean the Lease of the Estate dated the [ ] day of [ ] 200[ ] and made between [(1) The Homes and Communities Agency (2) pPod Limited

(3) Morris Homes Limited and Gentoo Limited

“the Perpetuity Period”	shall mean the period of eighty years from the date hereof
“the Plan”	shall mean the plan annexed hereto
“Private Unit Lease”	means the lease of even date with this transfer and entered into immediately prior to the completion of this transfer and made between the Transferor (1) [NB Here insert name of buyer] (2) in respect of the Property
“shared parking space”	shall mean the area (if any) coloured blue on the Plan
“Title Matters”	shall mean all matters referred to in (or referred to in documents contained or referred to in) the entries of the above mentioned title number(s)
“the Transferee and the Transferor”	where the context so admits shall include the successors in title of the Transferee and the Transferor and the owners and occupiers for the time being of the Property or any part of it

### **13.2 Agreements and Declarations**

- 13.2.1 The singular shall include the plural and vice versa
- 13.2.2 References to persons shall include bodies corporate and vice versa
- 13.2.3 Where more than one person constitutes the Transferor and/or the Transferee then all covenants and obligations contained or referred to in this Transfer and on the part of the Transferor and/or the Transferee to be observed or performed are joint and several covenants and obligations on the part of the persons constituting the Transferor and/or the Transferee

**13.3** [Pursuant to the powers contained in the [Leasehold Reform Housing and Urban Development Act 1993 (Part III)] and all other enabling powers] the Property is transferred SUBJECT TO and with the benefit of the restrictive covenants referred to below in accordance with the building scheme affecting or intended to affect the Estate as constituted by this Transfer and transfers of other parts of the Estate and SUBJECT TO all Title Matters TOGETHER WITH (so far as the Transferor has the power to grant the same) for the benefit of the Transferee and all persons authorised by it the rights easements and privileges set out in the First Schedule hereto in common with all others entitled to the like rights SUBJECT TO the Lease and the Private Unit Lease BUT EXCEPTING AND RESERVING to the Transferor and the Developer and their respective successors in title and its or their respective servants agents and all others authorised by it or them for the benefit of the remainder of the Estate and any land now or formerly belonging to the Transferor adjoining the Property the rights easements and privileges set out in the Second Schedule hereto

### **13.4**

- 13.4.1 The Transferee so as to bind the Property but not so as to render him personally liable after having parted with all interest in the Property covenants separately with each of the Transferor and the Developer and every other person who is now the owner of any land forming part of the Estate (subject to the right of the Transferor to vary and release covenants set out below) for the benefit of the whole and every part of the Estate to observe and perform the covenants restrictions conditions and stipulations set out in Parts I and II of the Third Schedule hereto
- 13.4.2 The parties declare that all the restrictive covenants imposed on different transferees by this and other transfers of land in the Estate pursuant to the building scheme referred to above are intended to be mutually enforceable between such transferees and their respective successors in title regardless of the date or dates of the transfers to them
- 13.4.3 The Transferee hereby covenants with the owners and occupiers for the time being of any land (“the Adjacent Land”) situate within 100 metres of the boundaries of the Property and not forming part of the Estate as a third party covenant for the benefit of the Adjacent Land that the Transferee will at all times observe and perform the covenants restrictions and stipulations contained in Part II of the Third Schedule hereto

- 13.4.4 The Transferee hereby further covenants with the Transferor and the Developer and all others claiming under it as transferees of any part of the Estate to pay and contribute with others using the same a fair renewal of any common services and Joint Access and shared parking space
- 13.4.5 It is hereby agreed and declared that any walls of the dwelling and garage constructed on the Property separating it from any other dwelling and garage on the Estate shall be deemed to be party walls and shall be repaired and maintained as such
- 13.4.6 The Transferor hereby reserves the right to modify waive or release any covenants restrictions conditions or stipulations relating to any adjoining or neighbouring land forming part of the Estate whether imposed or entered into before or at the same time as or after those herein contained and whether they are the same as the covenants restrictions conditions and stipulations set out in the Third Schedule hereto or not
- 13.4.8 The parties intend that the term of years granted by the Lease shall so far as it concerns the Property (only) merge and be extinguished in the reversion expectant thereon and the Developer hereby covenants with the Transferee and his successors in title that the Developer will make up the Estate Roads and sewers on the Estate and will indemnify the Transferee from and against all claims and demands for contributions to the cost of construction maintenance and repair of the same until such time as the same are adopted as maintainable at the public expense
- 13.4.9 The Transferor hereby releases the Property from the provisions for the payment of additional monies contained in the Lease and any vendor's lien created thereby
- 13.4.10 The Transferee shall observe and perform the landlord covenants in the Private Unit Lease and shall indemnify and keep indemnified the Transferor against any breach or non-observance thereof
- 13.5** The Transferor shall not be liable under the covenants implied by Sections 2 and 3 of the Law of Property (Miscellaneous Provisions) Act 1994 by reason of the Property being subject to the following matters:-
- 13.5.1 Matters revealed in the Transferor's solicitors' written replies to preliminary enquiries raised by the Developer's solicitors
- 13.5.2 Matters revealed by searches and enquiries of statutory bodies statutory undertakers utility companies and any other competent authorities which the Transferee has made and/or which a prudent purchaser would have made relating to the Property
- 13.5.3 Matters which would be revealed by an inspection or survey of the Property
- 13.5.4 Interests which override under the Land Registration Act 2002
- 13.6** It is hereby agreed and declared that save in respect of the covenants set out in clauses 13.4.1, 13.4.3, 13.4.4 and in Part II of the Third Schedule hereto no person who is not a party to this Transfer shall be entitled in his own right to enforce any term of this Transfer pursuant to the Contracts (Rights of Third Parties) Act 1999

**THE FIRST SCHEDULE  
(Rights Easements and Privileges)**

- 1.** UNTIL the same are adopted by the Local Highway Authority as highways maintainable at the public expense (if ever) a right of way for the Transferee at all times and for all reasonable purposes over and along the carriageways and (on foot only) over the footpaths forming part of:-
- (a) the Estate Roads and
- (b) the roads and footpaths constructed on the Transferor's adjoining land giving access to and from the highways now adopted and



(c) the Joint Access (if any)

2. A right to the free passage of water and soil gas and electricity telephone radio or television signals through the common services now or within the Perpetuity Period running through in under or over or attached to any adjoining or neighbouring land upon the Estate with full power (upon reasonable prior notice being given) to enter upon any such land to inspect make lay clean reconstruct divert alter maintain or connect into such common services the person or persons exercising such rights doing as little damage as possible and forthwith making good all damage done
3. SUCH rights of access to and entry upon such parts of the Estate as are not built upon and as are necessary and proper for the decoration maintenance repair or reinstatement of any building erected on the Property and for the due observance and performance of the conditions obligations restrictions and stipulations contained in the Third Schedule hereto and for the exercise of the Transferee's rights contained in this First Schedule subject to the proviso that except in the case of emergency the Transferee shall give to the occupiers of the relevant part of the Estate 48 hours notice in writing before exercising such rights of access and entry and the Transferee shall cause as little damage and disturbance as possible to the Estate in the exercise of such rights of access and entry and forthwith shall make good all damage caused
4. THE rights of subjacent and lateral support and shelter for any building erected on the Property by and from adjoining parts of the Estate and any buildings now constructed or in course of construction upon such adjoining parts
5. THE right (if necessary) for the foundations and other projections of the buildings now erected on the Property to extend beyond the boundaries of the Property and to overhang any adjoining part or parts of the Estate together with full rights of eavesdrop and all necessary rights of support from any adjoining property
6. THE right to use for the parking of a light vehicle only the shared parking space in common with the Transferor and all others so entitled

**THE SECOND SCHEDULE**  
**(Exceptions and Reservations)**

1. THE right to free passage of water and soil gas and electricity telephone radio or television signals through all common services running through in under or over or attached to the Property with full power (upon reasonable prior notice being given) to enter upon the Property to construct lay clean reconstruct divert or alter maintain or connect into such common services doing as little damage as possible and forthwith making good all damage done
2. ANY right to light or air or other easement right or privilege (except insofar as it is herein specifically granted) which would or might restrict or prejudicially affect the future rebuilding alteration or development of any part of the Estate or any adjoining or neighbouring land now or formerly belonging to the Transferor or any part or parts thereof
3. A right of way at all times and for all purposes over and along the Joint Access (if any) constructed upon the Property
4. DURING the period of 5 years from the date hereof the right to enter upon the Property for the purpose of implementing and establishing the landscaping scheme designed for the Estate and of carrying out such maintenance as the Transferor deems fit
5. THE right to use for the parking of a light vehicle only the shared parking space (if any) constructed on the Property in common with the Transferee at such times and in such manner as may be reasonable
6. THE right so far as is reasonably necessary to construct and maintain the foundations of any dwelling and premises now erected or in the course of erection on the Estate or the adjoining or neighbouring land now or formerly belonging to the Transferor in or under the Property and the roofs eaves gutters gullies and downpipes of such dwelling and any such garage over and above the Property with full rights of support for such foundations roofs eaves gutters gullies and downpipes
7. THE right for the owner of any part of the Estate or of any adjoining or neighbouring land to enter upon the

Property as is reasonably necessary for the purpose of constructing repairing and maintaining any buildings erected on the Estate or the said adjoining or neighbouring land the person or persons exercising such right causing as little damage and disturbance as possible and making good any damage done with reasonable dispatch

8. ALL rights of subjacent and lateral support and shelter for any buildings now constructed or in course of construction upon the Estate from the Property or any building now erected on it

**THE THIRD SCHEDULE**  
**(Covenants, Restrictions, Conditions and Stipulations)**

**Part I**

1. NOT to carry on any trade business or manufacture upon or in any building erected on the Property nor to use such building for any purpose other than as a single private dwelling
2. NOT to erect more than one dwelling on the Property or any part thereof
3. NOT to erect on the Property or upon any buildings thereon any radio or television aerial or similar apparatus in such manner as to be visible from outside such building
4. NOT to park or permit to be parked on the Property or any part thereof any commercial vehicle other than a light delivery van except in case of emergency or for so long as may be reasonably necessary for the purpose of delivery of goods to and collecting goods from the Property or some part thereof
5. NOT without the consent in writing of the Transferor to place or permit to remain on the Property in front of any building thereon any caravan or trailer or boat
6. NOT to erect or permit to be erected upon any part of the Property which falls between the front of the building erected thereon and the Estate Roads any wall fence or other linear feature of any nature whatsoever
7. FOREVER hereafter to maintain along the boundaries of the Property marked with an inward "T" on the Plan a good and substantial fence hedge or wall of a type and height previously approved in writing by the Transferor
8. FOREVER hereafter to maintain as a soft landscaping area that part of the Property laid out as such pursuant to the scheme for development of the Estate and to keep such area in a neat and tidy condition and free from rubbish
9. NOT to use or permit to be used in any fuel burning apparatus from time to time installed on the Property any fuel other than "authorised fuel" as defined by the regulations made under Section 34 of the Clean Air Act 1956 or any statutory modification or re-enactment thereof for the time being in force
10. NOT to make any additions or alterations of any kind to the exterior of any building erected or to be erected on the Property other than in materials consistent with those of the existing building

**Part II**

NOT to cut down lop or top any of the timber or other trees hedgerows or shrubs on the Property without the consent in writing of the Transferor which if granted may be subject to such conditions as the Transferor may think fit but which shall not be unreasonably withheld in the case of cutting down lopping or topping required by virtue of any effective notice order or direction from the local highway or other competent authority

14. **Execution** *The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be executed by the Transferee (all of them, if there is more than one).*

The COMMON SEAL of HOMES  
AND COMMUNITIES AGENCY  
was hereunto affixed  
in the presence of:

Authorised Signatory

Signed as a deed by [ \_\_\_\_\_ ] acting by two/a director[ s ] [ \_\_\_\_\_ ]  
and its secretary ]:

Sign here

Director

Director[/Secretary]

Signed as a deed by [ name of transferee ] in the  
presence of:

Sign here

Signature of witness \_\_\_\_\_

Name (in BLOCK CAPITALS) \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

***NB FOREGOING PROVISIONS TO BE ADAPTED TO TAKE  
ACCOUNT OF MANAGEMENT COMPANY PROVISIONS – SEE  
ESTATE MANAGEMENT SCHEME ETC REFERRED TO IN  
AGREEMENT FOR LEASE***

1. Stamp Duty

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

- It is certified that this instrument falls within category  in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987
- It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of
- It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001

2. Title number(s) out of which the Property is transferred *Leave blank if not yet registered.*

3. Other title number(s) against which matters contained in this transfer are to be registered, if any

4. Property transferred *Insert address, including postcode, or other description of the property transferred. Any physical exclusions, e.g. mines and minerals, should be defined. Any attached plan must be signed by the transferor.*

Plot No [ ] Phase 1 South Bank Peterborough

The Property is defined: *Place "X" in the appropriate box.*

- on the attached plan and shown *State reference e.g. "edged red".*
- on the Transferor's title plan and shown *State reference e.g. "edged and numbered 1 in blue".*

5. Date

6. Transferor *Give full name(s) and company's registered number, if any.*

[The Homes and Communities Agency]

7. Transferee for entry on the register *Give full name(s) and company's registered number, if any. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix before the registered number, if any. For foreign companies give territory in which incorporated.*

[pPod Limited]

*Unless otherwise arranged with Land Registry headquarters, a certified copy of the Transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.*

8. Transferee's intended address(es) for service (including postcode) for entry on the register *You may give up to three addresses for service one of which must be a postal address but does not have to be within the UK. The other addresses can be any combination of a postal address, a box number at a UK document exchange or an electronic address.*

9. The Transferor transfers the Property to the Transferee

**10. Consideration** Place "X" in the appropriate box. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.

- The Transferor has received from the Transferee for the Property the sum of *In words and figures.* [NB. Nil consideration – note may be removed prior to engrossment]
- Insert other receipt as appropriate. [ \_\_\_\_\_ ] whose registered office is at [ \_\_\_\_\_ ] ("the Developer") has received from the Transferee for the Property the sum of [ \_\_\_\_\_ ]
- The transfer is not for money or anything which has a monetary value

**11. The Transferor transfers with** Place "X" in the appropriate box and add any modifications.

- full title guarantee       limited title guarantee

**12. Declaration of trust** Where there is more than one Transferee, place "X" in the appropriate box.

- The Transferees are to hold the Property on trust for themselves as joint tenants
- The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares
- The Transferees are to hold the Property *Complete as necessary.*

**13. Additional provisions**

*Use this panel for:*

- *definitions of terms not defined above*
- *rights granted or reserved*
- *restrictive covenants*
- *other covenants*
- *agreements and declarations*
- *other agreed provisions.*

*The prescribed subheadings may be added to, amended, repositioned or omitted.*

13.1 In this Transfer the following terms shall have the following meanings:-

- “Affordable Unit Lease” means the lease of even date with this transfer and entered into immediately prior to the completion of this transfer and made between the Transferor (1) [NB Here insert name of RSL] (2) in respect of the Property
- “the common services” shall mean the sewers drains channels pipes watercourses gutters wires cables pillars turrets amplifiers poles soakaways and any other apparatus for the supply transmission or distribution to the Property or any part or parts of the Estate of water gas electricity or telephone radio or television signals or for the disposal from the Property or any part or parts of the Estate of water gas electricity or telephone radio or television signals or for the disposal from the Property or any part or parts of the Estate of soil foul water rainwater or surface water which are not to be adopted or maintained at the expense of any statutory or other authority
- “the Estate” shall mean the estate known as Phase 1 South Bank Peterborough shown for identification only edged blue on the Plan
- “the Estate Roads” shall mean the roadways and the ancillary footpaths (if any) shown cross-hatched black on the Plan
- “the Joint Access” shall mean the area (if any) which is shown coloured yellow on the Plan and

which forms or is intended to form the site of an access drive jointly serving the Property and adjoining or neighbouring dwellings on the Estate

“Estate Lease”	shall mean the Lease of the Estate dated the [ ] day of [ ] 200[ ] and made between [(1) The Homes and Communities Agency (2) pPod Limited (3) Morris Homes Limited and Gentoo Limited] ]
“the Perpetuity Period”	shall mean the period of eighty years from the date hereof
“the Plan”	shall mean the plan annexed hereto
“Shared Ownership Lease”	shall mean a shared ownership lease as defined by Section 106 of the Housing Associations Act 1985
“shared parking space”	shall mean the area (if any) coloured blue on the Plan
“Statutory Acquisition”	shall mean a disposal of a dwelling erected on the Property to a tenant exercising a statutory right to purchase such dwelling
“Title Matters”	shall mean all matters referred to in (or referred to in documents contained or referred to in) the entries on the registers of the above-mentioned title number(s)
“the Transferee”	where the context so admits shall include the successors in title of the Transferee the owners and occupiers for the time being of the Property or any part of it

### **13.2 Agreements and Declarations**

13.2.1 The singular shall include the plural and vice versa

13.2.2 References to persons shall include bodies corporate and vice versa

13.2.3 Where more than one person constitutes the Transferor and/or the Transferee then all covenants and obligations contained or referred to in this Transfer and on the part of the Transferor and/or the Transferee to be observed or performed are joint and several covenants and obligations on the part of the persons constituting the Transferor and/or the Transferee

**13.3** [Pursuant to the powers contained in the [Leasehold Reform Housing and Urban Development Act 1993 (Part III)] and all other enabling powers] the Property is transferred SUBJECT TO and with the benefit of the restrictive covenants referred to below in accordance with the building scheme affecting or intended to affect the Estate as constituted by this Transfer and transfers of other parts of the Estate and SUBJECT TO all Title Matters TOGETHER WITH (so far as the Transferor has the power to grant the same) for the benefit of the Transferee and all persons authorised by it the rights easements and privileges set out in the First Schedule hereto in common with all others entitled to the like rights SUBJECT TO the Lease and the Affordable Unit Lease BUT EXCEPTING AND RESERVING to the Transferor its successors in title and its or their respective servants agents and all others authorised by it or them for the benefit of the remainder of the Estate and any land now or formerly belonging to the Transferor adjoining the Property the rights easements and privileges set out in the Second Schedule hereto

### **13.4**

13.4.1 The Transferee so as to bind the Property but not so as to render him personally liable after having parted with all interest in the Property covenants separately with each of the Transferor and every other person who is now the owner of any land forming part of the Estate (subject to the right of the Transferor to vary and release covenants set out below) for the benefit of the whole and every part of the Estate to observe and perform the covenants restrictions conditions and stipulations set out in Parts I and II of the Third Schedule hereto

13.4.2 The parties declare that all the restrictive covenants imposed on different transferees by this and other transfers of land in the Estate pursuant to the building scheme referred to above are intended

to be mutually enforceable between such transferees and their respective successors in title regardless of the date or dates of the transfers to them

- 13.4.3 The Transferee hereby covenants with the owners and occupiers for the time being of any land ("the Adjacent Land") situate within 100 metres of the boundaries of the Property and not forming part of the Estate as a third party covenant for the benefit of the Adjacent Land that the Transferee will at all times observe and perform the covenants restrictions and stipulations contained in Part II of the Third Schedule hereto
- 13.4.4 The Transferee hereby further covenants with the Transferor and all other persons claiming under it as transferees of any part of the Estate to pay and contribute with others using the same a fair proportion of the cost of maintenance repair and renewal of any common services Joint Access or shared parking space
- 13.4.5 It is hereby agreed and declared that any walls of the dwelling and garage constructed on the Property separating it from any other dwelling and garage on the Estate shall be deemed to be party walls and shall be repaired and maintained as such
- 13.4.6 The Transferor hereby reserves the right to modify waive or release any covenants restrictions conditions or stipulations relating to any adjoining or neighbouring land forming part of the Estate whether imposed or entered into before or at the same time as or after those herein contained and whether they are the same as the covenants restrictions conditions and stipulations set out in the Third Schedule hereto or not
- 13.4.8 The parties intend that the term of years granted by the Lease shall so far as it concerns the Property (only) merge and be extinguished in the reversion expectant thereon and the Transferor hereby releases the Property from the provisions for the payment of additional monies contained in the Lease and any vendor's lien created thereby
- 13.4.9 The Transferee shall observe and perform the landlord covenants in the Affordable Unit Lease and shall indemnify the keep indemnified the Transferor against any breach or non-observance thereof

**13.5** The Transferor shall not be liable under the covenants implied by Sections 2 and 3 of the Law of Property (Miscellaneous Provisions) Act 1994 by reason of the Property being subject to the following matters:-

- 13.5.1 Matters revealed in the Transferor's solicitors' written replies to preliminary enquiries or in correspondence from the Transferor's solicitors to the Transferee's solicitors
- 13.5.2 Matters revealed by searches and enquiries of statutory bodies statutory undertakers utility companies and any other competent authorities which the Transferee has made and/or which a prudent purchaser would have made relating to the Property
- 13.5.3 Matters which would be revealed by an inspection or survey of the Property
- 13.5.4 Interests which override under the Land Registration Act 2002

**13.6** It is hereby agreed and declared that save in respect of the covenants set out in clauses 13.4.2, 13.4.3 and 13.4.4 and in Part II of the Third Schedule hereto no person who is not a party to this Transfer shall be entitled in his own right to enforce any term of this Transfer pursuant to the Contracts (Rights of Third Parties) Act 1999

**13.7** The Transferor and the Transferee hereby jointly apply to the Register to enter the following restriction against the title relating to the Property:-

No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered prior to [ ]1 without a written consent signed on behalf of [Urban Regeneration Agency of 110 Buckingham Palace Road, London SW1W 9SA] by an authorised office or its conveyancer. (Form N)

**13.8** IT IS AGREED AND DECLARED that this Transfer shall not include or operate or by virtue of section 62 of

the Law of Property act 1925 be deemed to include or operate as a grant or transfer of any easements, rights, privileges or liberties whatsoever now enjoyed by or appurtenant to the Property or any part of it over, through on or upon any other land save to the extent that such easements, rights, privileges or liberties are expressly granted by this Transfer

**THE FIRST SCHEDULE**  
**(Rights Easements and Privileges)**

1. UNTIL the same are adopted by the Local Highway Authority as highways maintainable at the public expense (if ever) a right of way for the Transferee at all times and for all reasonable purposes over and along the carriageways and (on foot only) over the footpaths forming part of:-
  - (a) the Estate Roads 2 and
    - 1 This date will be 35 years from date of completion
    - 2 This will only refer to the roads identified in the Lease as Adoptable Highways
  - (b) the Joint Access (if any)
2. A right to the free passage of water and soil gas and electricity telephone radio or television signals through the common services now or within the Perpetuity Period running through in under or over or attached to any adjoining or neighbouring land upon the Estate with full power (upon reasonable prior notice being given) to enter upon any such land to inspect make lay clean reconstruct divert alter maintain or connect into such common services the person or persons exercising such rights doing as little damage as possible and forthwith making good all damage done
3. SUCH rights of access to and entry upon such parts of the Estate as are not built upon and as are necessary and proper for the decoration maintenance repair or reinstatement of any building erected on the Property and for the due observance and performance of the conditions obligations restrictions and stipulations contained in the Third Schedule hereto and for the exercise of the Transferee's rights contained in this First Schedule subject to the proviso that except in the case of emergency the Transferee shall give to the occupiers of the relevant part of the Estate 48 hours notice in writing before exercising such rights of access and entry and the Transferee shall cause as little damage and disturbance as possible to the Estate in the exercise of such rights of access and entry and forthwith shall make good all damage caused
4. THE rights of subjacent and lateral support and shelter for any building erected on the Property by and from adjoining parts of the Estate and any buildings now constructed or in course of construction upon such adjoining parts

**THE SECOND SCHEDULE**  
**(Exceptions and Reservations)**

1. THE right to free passage of water and soil gas and electricity telephone radio or television signals through all common services running through in under or over or attached to the Property with full power (upon reasonable prior notice being given) to enter upon the Property to construct lay clean reconstruct divert or alter maintain or connect into such common services doing as little damage as possible and forthwith making good all damage done
2. ANY right to light or air or other easement right or privilege (except insofar as it is herein specifically granted) which would or might restrict or prejudicially affect the future rebuilding alteration or development of any part of the Estate or any adjoining or neighbouring land now or formerly belonging to the Transferor or any part or parts thereof
3. A right of way at all times and for all purposes over and along the Joint Access (if any) constructed upon the Property
4. DURING the period of 5 years from the date hereof the right to enter upon the Property for the purpose of implementing and establishing the landscaping scheme designed for the Estate and of carrying out such maintenance as the Transferor deems fit



5. THE right to use for the parking of a light vehicle only the shared parking space (if any) constructed on the Property in common with the Transferee at such times and in such manner as may be reasonable
6. THE right so far as is reasonably necessary to construct and maintain the foundations of any dwelling and premises now erected or in the course of erection on the Estate or the adjoining or neighbouring land now or formerly belonging to the Transferor in or under the Property and the roofs eaves gutters gullies and downpipes of such dwelling and any such garage over and above the Property with full rights of support for such foundations roofs eaves gutters gullies and downpipes
7. THE right for the owner of any part of the Estate or of any adjoining or neighbouring land to enter upon the Property as is reasonably necessary for the purpose of constructing repairing and maintaining any buildings erected on the Estate or the said adjoining or neighbouring land the person or persons exercising such right causing as little damage and disturbance as possible and making good any damage done with reasonable dispatch
8. ALL rights of subjacent and lateral support and shelter for any buildings now constructed or in course of construction upon the Estate from the Property or any building now erected on it

**THE THIRD SCHEDULE**  
**(Covenants, Restrictions, Conditions and Stipulations)**

**Part I**

1. NOT to carry on any trade business or manufacture upon or in any building erected on the Property nor to use such building for any purpose other than as a single private residence and during the period of 35 years from the date hereof:-
  - 1.1 not to dispose of the dwellinghouse erected on the Property other than on a Shared Ownership Lease on an assured tenancy at affordable rent in line (in each case) with the guidelines for the time being of the Housing Corporation and
  - 1.2 not to dispose of the freehold of the Property or any part thereof other than to a housing association, registered social landlord or other registered non-profit making housing body
2. NOT to erect more than one dwelling on the Property or any part thereof
3. NOT to erect on the Property or upon any buildings thereon any radio or television aerial or similar apparatus in such manner as to be visible from outside such building
4. NOT to park or permit to be parked on the Property or any part thereof any commercial vehicle other than a light delivery van except in case of emergency or for so long as may be reasonably necessary for the purpose of delivery of goods to and collecting goods from the Property or some part thereof
5. NOT without the consent in writing of the Transferor to place or permit to remain on the Property in front of any building thereon any caravan or trailer or boat
6. NOT to erect or permit to be erected upon any part of the Property which falls between the front of the building erected thereon and the Estate Roads any wall fence or other linear feature of any nature whatsoever
7. FOREVER hereafter to maintain along the boundaries of the Property marked with an inward "T" on the Plan a good and substantial fence hedge or wall of a type and height previously approved in writing by the Transferor
8. FOREVER hereafter to maintain as a soft landscaping area that part of the Property laid out as such pursuant to the scheme for development of the Estate and to keep such area in a neat and tidy condition and free from rubbish
9. NOT to use or permit to be used in any fuel burning apparatus from time to time installed on the Property any fuel other than "authorised fuel" as defined by the regulations made under Section 34 of the Clean Air Act

1956 or any statutory modification or re-enactment thereof for the time being in force

10. NOT to make any additions or alterations of any kind to the exterior of any building erected or to be erected on the Property other than in materials consistent with those of the existing building

**Part II**

NOT to cut down lop or top any of the timber or other trees hedgerows or shrubs on the Property without the consent in writing of the Transferor which if granted may be subject to such conditions as the Transferor may think fit but which shall not be unreasonably withheld in the case of cutting down lopping or topping required by virtue of any effective notice order or direction from the local highway or other competent authority

14. Execution *The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be executed by the Transferee (all of them, if there is more than one).*

The COMMON SEAL of HOMES  
AND COMMUNITIES AGENCY  
was hereunto affixed  
in the presence of:

Authorised Signatory

Signed as a deed by [ ] acting by  
two/a director[ s ] [ and its secretary ]:

Sign here

Director

Director[/Secretary]

Signed as a deed by [ name of transferee ] in the  
presence of:

Sign here

Signature of witness \_\_\_\_\_

Name (in BLOCK CAPITALS) \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

<p>The common seal of [ name of transferee ] was affixed in the presence of:</p> <p style="text-align: center;">Signature of director</p> <p style="text-align: center;">Signature of secretary</p>	<p><i>Common seal of [ name of transferee ]</i></p>
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<p>Signed as a deed by [ name of transferee ] acting by two/a director[ s ] [and its secretary]:</p>	<p>Sign here</p> <p style="text-align: right;">Director</p> <p style="text-align: right;">Director[/Secretary]</p>
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***NB FOREGOING PROVISIONS TO BE ADAPTED TO TAKE ACCOUNT OF MANAGEMENT COMPANY PROVISIONS – SEE ESTATE MANAGEMENT SCHEME ETC REFERRED TO IN AGREEMENT FOR LEASE***

1. Stamp Duty

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

- It is certified that this instrument falls within category  in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987
- It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £
- It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001

2. Title number(s) out of which the Property is transferred *Leave blank if not yet registered.*

3. Other title number(s) against which matters contained in this transfer are to be registered, if any

4. Property transferred *Insert address, including postcode, or other description of the property transferred. Any physical exclusions, e.g. mines and minerals, should be defined. Any attached plan must be signed by the transferor.*

[  ] forming part of the Estate

The Property is defined: Place "X" in the appropriate box.

- X  on the attached plan and shown edged red comprising the plots on the Estate together with the curtilage of the same *State reference e.g. "edged red".*
- on the Transferor's title plan and shown  *State reference e.g. "edged and numbered 1 in blue".*

5. Date

6. Transferor *Give full name(s) and company's registered number, if any.*

[The Homes and Communities Agency]

7. Transferee for entry on the register *Give full name(s) and company's registered number, if any. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix before the registered number, if any. For foreign companies give territory in which incorporated.*

[pPod Limited] *[here insert details of developer taking transfer of leasehold block]*

*Unless otherwise arranged with Land Registry headquarters, a certified copy of the Transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.*

8. Transferee's intended address(es) for service (including postcode) for entry on the register *You may give up to three addresses for service one of which must be a postal address but does not have to be within the UK. The other addresses can be any combination of a postal address, a box number at a UK document exchange or an electronic address.*

9. The Transferor transfers the Property to the Transferee

**10. Consideration** Place "X" in the appropriate box. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.

- The Transferor has received from the Transferee for the Property the sum of *In words and figures.*
- Insert other receipt as appropriate.*
- The transfer is not for money or anything which has a monetary value

**11. The Transferor transfers with** Place "X" in the appropriate box and add any modifications.

- full title guarantee       limited title guarantee

Subject to clause 13.5

**12. Declaration of trust** Where there is more than one Transferee, place "X" in the appropriate box.

- The Transferees are to hold the Property on trust for themselves as joint tenants
- The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares
- The Transferees are to hold the Property *Complete as necessary.*

**13. Additional provisions**

*Use this panel for:*

- *definitions of terms not defined above*
- *rights granted or reserved*
- *restrictive covenants*
- *other covenants*
- *agreements and declarations*
- *other agreed provisions.*

*The prescribed subheadings may be added to, amended, repositioned or omitted.*

13.1 In this Transfer the following terms shall have the following meanings:-

“the common services”	shall mean the sewers drains channels pipes watercourses gutters wires cables pillars turrets amplifiers poles soakaways and any other apparatus for the supply transmission or distribution to the Property or any part or parts of the Estate of water gas electricity or telephone radio or television signals or for the disposal from the Property or any part or parts of the Estate of water gas electricity or telephone radio or television signals or for the disposal from the Property or any part or parts of the Estate of soil foul water rainwater or surface water which are not to be adopted or maintained at the expense of any statutory or other authority
“the Estate”	shall mean the estate known as Phase 1 South Bank Peterborough shown for identification only edged green on the Plan
“the Estate Roads”	shall mean the roadways and the ancillary footpaths (if any) shown cross-hatched black on the Plan
“the Joint Access”	shall mean the area (if any) which is shown coloured yellow on the Plan and which forms or is intended to form the site of an access drive jointly serving the Property and adjoining or neighbouring dwellings on the Estate
“Interim Certificate”	means a certificate issued by HCA under clause [5] of the Lease [NB To be amended if necessary so as to accord with final definition in the Lease]

“the Lease”	shall mean the Lease of the Estate dated the [ ] day of [ ] 200[ ] and made between [(1) The Homes and Communities Agency (2) The Transferee (3) Morris Homes Limited and Gentoo Homes Limited
“the Perpetuity Period”	shall mean the period of eighty years from the date hereof
“the Plan”	shall mean the plan annexed hereto
“Title Matters”	shall mean all matters referred to in (or referred to in documents contained or referred to in) the entries of the above mentioned title number(s)
“the Transferee”	where the context so admits shall include the successors in title of the Transferee the owners and occupiers for the time being of the Property or any part of it

### 13.2 Agreements and Declarations

- 13.2.1 The singular shall include the plural and vice versa
- 13.2.2 References to persons shall include bodies corporate and vice versa
- 13.2.3 Where more than one person constitutes the Transferor and/or the Transferee then all covenants and obligations contained or referred to in this Transfer and on the part of the Transferor and/or the Transferee to be observed or performed are joint and several covenants and obligations on the part of the persons constituting the Transferor and/or the Transferee

**13.3** Pursuant to the powers contained in the [Leasehold Reform Housing and Urban Development Act 1993 (Part III)] and all other enabling powers the Property is transferred SUBJECT TO and with the benefit of the restrictive covenants referred to below in accordance with the building scheme affecting or intended to affect the Estate as constituted by this Transfer and transfers of other parts of the Estate and SUBJECT TO all Title Matters TOGETHER WITH (so far as the Transferor has the power to grant the same) for the benefit of the Transferee and all persons authorised by it the rights easements and privileges set out in the First Schedule hereto in common with all others entitled to the like rights SUBJECT TO the Lease BUT EXCEPTING AND RESERVING to the Transferor its successors in title and its or their respective servants agents and all others authorised by it or them for the benefit of the remainder of the Estate and any land now or formerly belonging to the Transferor adjoining the Property the rights easements and privileges set out in the Second Schedule hereto

### 13.4

- 13.4.1 The Transferee so as to bind the Property but not so as to render him personally liable after having parted with all interest in the Property covenants separately with each of the Transferor and every other person who is now the owner of any land forming part of the Estate (subject to the right of the Transferor to vary and release covenants set out below) for the benefit of the whole and every part of the Estate to observe and perform the covenants restrictions conditions and stipulations set out in Parts I and II of the Third Schedule hereto
- 13.4.2 The parties declare that all the restrictive covenants imposed on different transferees by this and other transfers of land in the Estate pursuant to the building scheme referred to above are intended to be mutually enforceable between such transferees and their respective successors in title regardless of the date or dates of the transfers to them
- 13.4.3 The Transferee hereby covenants with the owners and occupiers for the time being of any land (“the Adjacent Land”) situate within 100 metres of the boundaries of the Property and not forming part of the Estate as a third party covenant for the benefit of the Adjacent Land that the Transferee will at all times observe and perform the covenants restrictions and stipulations contained in Part II of the Third Schedule hereto
- 13.4.4 The Transferee hereby further covenants with the Transferor and all other persons claiming under it as transferees of any part of the Estate to pay and contribute with others using the same a fair

proportion of the cost of maintenance repair and renewal of any common services and Joint Access

13.4.5 The Transferor hereby reserves the right to modify waive or release any covenants restrictions conditions or stipulations relating to any adjoining or neighbouring land forming part of the Estate whether imposed or entered into before or at the same time as or after those herein contained and whether they are the same as the covenants restrictions conditions and stipulations set out in the Third Schedule hereto or not

13.4.6 The Transferee hereby further covenants with the Transferor to observe and perform (so far as they remain to be performed) the covenants on its part contained in the Lease relating to any dwellings erected or to be erected on the Property in respect of which an Interim Completion Certificate has not been issued at the date hereof

**13.5** The Transferor shall not be liable under the covenants implied by Sections 2 and 3 of the Law of Property (Miscellaneous Provisions) Act 1994 by reason of the Property being subject to the following matters:-

13.5.1 Matters revealed in the Transferor's solicitors' written replies to preliminary enquiries or in correspondence from the Transferor's solicitors to the Transferee's solicitors

13.5.2 Matters revealed by searches and enquiries of statutory bodies statutory undertakers utility companies and any other competent authorities which the Transferee has made and/or which a prudent purchaser would have made relating to the Property

13.5.3 Matters which would be revealed by an inspection or survey of the Property

13.5.4 Interests which override under the Land Registration Act 2002

**13.6** The Transferor and the Transferee jointly APPLY to the Chief Land Registrar to enter the following Restriction against the Title relating to the Property:-

RESTRICTION Form N: No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate from [Urban Regeneration Agency (known as English Partnerships) of 110 Buckingham Palace Road, London SW1W 9SA] certifying that clauses 6 and 10 of the Lease dated [ ] made between Urban Regeneration Agency (1) East of England Development Agency (2) Peterborough City Council (3) Commission for New Towns (4) [pPod Limited (5) Morris Homes Limited and Gentoo Limited (6)] have been complied with

**13.7** It is hereby agreed and declared save in respect of the covenants set out in Part II of the Third Schedule hereto that no person who is not a party to this Transfer shall be entitled in his own right to enforce any term of this Transfer pursuant to the Contracts (Rights of Third Parties) Act 1999

#### **THE FIRST SCHEDULE (Rights Easements and Privileges)**

1. UNTIL the same are adopted by the Local Highway Authority as highways maintainable at the public expense (if ever) a right of way for the Transferee at all times and for all reasonable purposes over and along the carriageways and (on foot only) over the footpaths forming part of:-
  - (a) the Estate Roads and
  - (b) the roads and footpaths constructed on the Transferor's adjoining land giving access to and from the highways now adopted and
  - (c) the Joint Access (if any)
  
2. A right to the free passage of water and soil gas and electricity telephone radio or television signals through the common services now or within the Perpetuity Period running through in under or over or attached to any adjoining or neighbouring land upon the Estate with full power (upon reasonable prior notice being given) to enter upon any such land to inspect make lay clean reconstruct divert alter maintain or connect into such

common services the person or persons exercising such rights doing as little damage as possible and forthwith making good all damage done

3. SUCH rights of access to and entry upon such parts of the Estate as are not built upon and as are necessary and proper for the decoration maintenance repair or reinstatement of any building erected on the Property and for the due observance and performance of the conditions obligations restrictions and stipulations contained in the Third Schedule hereto and for the exercise of the Transferee's rights contained in this First Schedule

subject to the proviso that except in the case of emergency the Transferee shall give to the occupiers of the relevant part of the Estate 48 hours notice in writing before exercising such rights of access and entry and the Transferee shall cause as little damage and disturbance as possible to the Estate in the exercise of such rights of access and entry and forthwith shall make good all damage caused

4. THE rights of subjacent and lateral support and shelter for any building erected on the Property by and from adjoining parts of the Estate and any buildings now constructed or in course of construction upon such adjoining parts
5. THE right (if necessary) for the foundations and other projections of the buildings now erected on the Property to extend beyond the boundaries of the Property and to overhang any adjoining part or parts of the Estate together with full rights of eavesdrop and all necessary rights of support from any adjoining property

#### **THE SECOND SCHEDULE (Exceptions and Reservations)**

1. THE right to free passage of water and soil gas and electricity telephone radio or television signals through all common services running through in under or over or attached to the Property with full power (upon reasonable prior notice being given) to enter upon the Property to construct lay clean reconstruct divert or alter maintain or connect into such common services doing as little damage as possible and forthwith making good all damage done
2. ANY right to light or air or other easement right or privilege (except insofar as it is herein specifically granted) which would or might restrict or prejudicially affect the future rebuilding alteration or development of any part of the Estate or any adjoining or neighbouring land now or formerly belonging to the Transferor or any part or parts thereof
3. A right of way at all times and for all purposes over and along the Joint Access (if any) constructed upon the Property
4. DURING the period of 5 years from the date hereof the right to enter upon the Property for the purpose of implementing and establishing the landscaping scheme designed for the Estate and of carrying out such maintenance as the Transferor deems fit
5. THE right so far as is reasonably necessary to construct and maintain the foundations of any dwelling and premises now erected or in the course of erection on the Estate or the adjoining or neighbouring land now or formerly belonging to the Transferor in or under the Property and the roofs eaves gutters gullies and downpipes of such dwelling and any such garage over and above the Property with full rights of support for such foundations roofs eaves gutters gullies and downpipes
6. THE right for the owner of any part of the Estate or of any adjoining or neighbouring land to enter upon the Property as is reasonably necessary for the purpose of constructing repairing and maintaining any buildings erected on the Estate or the said adjoining or neighbouring land the person or persons exercising such right causing as little damage and disturbance as possible and making good any damage done with reasonable dispatch
7. ALL rights of subjacent and lateral support and shelter for any buildings now constructed or in course of construction upon the Estate from the Property or any building now erected on it

#### **THE THIRD SCHEDULE (Covenants, Restrictions, Conditions and Stipulations)**



## Part I

1. Save for those parts of the Property comprising the commercial units (if any) not to carry on any trade business or manufacture upon or in any building erected on the Property nor to use such building for any purpose other than as a single/private dwellings
2. NOT to erect more than [this is the number of dwellings contained within the building in accordance with the planning permission] dwellings a on the Property or any part thereof

3. NOT to erect on the Property or upon any buildings thereon any radio or television aerial or similar apparatus in such manner as to be visible form outside such building
4. Not to use or permit to be used the Commercial Units for any residential purposes or as a public house or as a community meeting place
5. NOT to park or permit to be parked on the Property or any part thereof any commercial vehicle other than a light delivery van except in case of emergency or for so long as may be reasonably necessary for the purpose of delivery of goods to and collecting goods from the Property or some part thereof
6. NOT without the consent in writing of the Transferor to place or permit to remain on the Property in front of any building thereon any caravan or trailer or boat
7. NOT to erect or permit to be erected upon any part of the Property which falls between the front of the building erected thereon and the Estate Roads any wall fence or other linear feature of any nature whatsoever
8. FOREVER hereafter to maintain along the boundaries of the Property marked with an inward "T" on the Plan a good and substantial fence hedge or wall of a type and height previously approved in writing by the Transferor
9. FOREVER hereafter to maintain as a soft landscaping area that part of the Property laid out as such pursuant to the scheme for development of the Estate and to keep such area in a neat and tidy condition and free from rubbish
10. NOT to use or permit to be used in any fuel burning apparatus from time to time installed on the Property any fuel other than "authorised fuel" as defined by the regulations made under Section 34 of the Clean Air Act 1956 or any statutory modification or re-enactment thereof for the time being in force
11. NOT to make any additions or alterations of any kind to the exterior of any building erected or to be erected on the Property other than in materials consistent with those of the existing building

## Part II

NOT to cut down lop or top any of the timber or other trees hedgerows or shrubs on the Property without the consent in writing of the Transferor which if granted may be subject to such conditions as the Transferor may think fit but which shall not be unreasonably withheld in the case of cutting down lopping or topping required by virtue of any effective notice order or direction from the local highway or other competent authority

15. **Execution** *The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be executed by the Transferee (all of them, if there is more than one).*



Executed as a deed by MORRIS HOMES )  
(EAST MIDLANDS) LIMITED acting by its )  
secretary and a director or by two )  
directors )

Director

Director/Secretary

s. 40(2)

s. 40(2)

Group

Executed as a deed by MORRIS ~~HOMES~~ )  
LIMITED acting by its secretary and a )  
director or by two directors )  
)

Director

Director/Secretary

s. 40(2)



AREAS ADJACENT TO HIGH-WAY (PARKING BAYS, VERGES, ETC.) TO BE MAINTAINED BY THE PRIVATE MANAGEMENT COMPANY  
 AREA OF HIGH-WAY FOOTPATHS FOR ADOPTION  
 MAIN AREAS OF POST TO BE MAINTAINED BY THE PRIVATE COMPANY WITH ADOPTED FOOTPATHS THROUGH

**NOTES**

Do not scale from this drawing. Only figured dimensions are to be taken from this drawing.

Contractor must verify all dimensions on site before commencing any work or stop work if discrepancies to the architect's proposed work. If this drawing exceeds the quantities shown in any way the architect's drawings shall be deemed to be correct.

Work with the Contractor (Quality & Management) Regulations 2007 is not to start until a Health and Safety Plan has been produced.

Slater Barrings LLP

**DRAWING STATUS/TYPE KEY**

F	Feasibility	SK	Sketch	L	Landscape
P	Planning	M	Marketing	S	Survey
T	Tender	TM	Tenancy	OS	Ordinance Survey
C	Construction	AB	As Built		

This drawing originates from the CAD file: S:\2009\08037 - Peteborough Carbon Challenge\1 - Drawings\1 - Planning\08037\_P\_111 Adoptable Areas.apex.dwg

**REVISIONS**

Rev	Description	Drawn	Date	Checked	Date
A	Revised to reflect site layout drawing	KB	11.02.11	MRS	11.02.11

**Browne Smith Baker**

ARCHITECTS

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License: 0113 245 1376 - Dategrants: 01555 462 245 - Heli: 01482 202 275

**PROJECT**

South Bank  
 Peteborough Carbon Challenge  
 for Morris Homes

**DRAWING TITLE**

Adoptable Areas Layout

Scale: @A1

Drawn By: MRS

Checked By: NIS

Date Drawn: 21.01.11

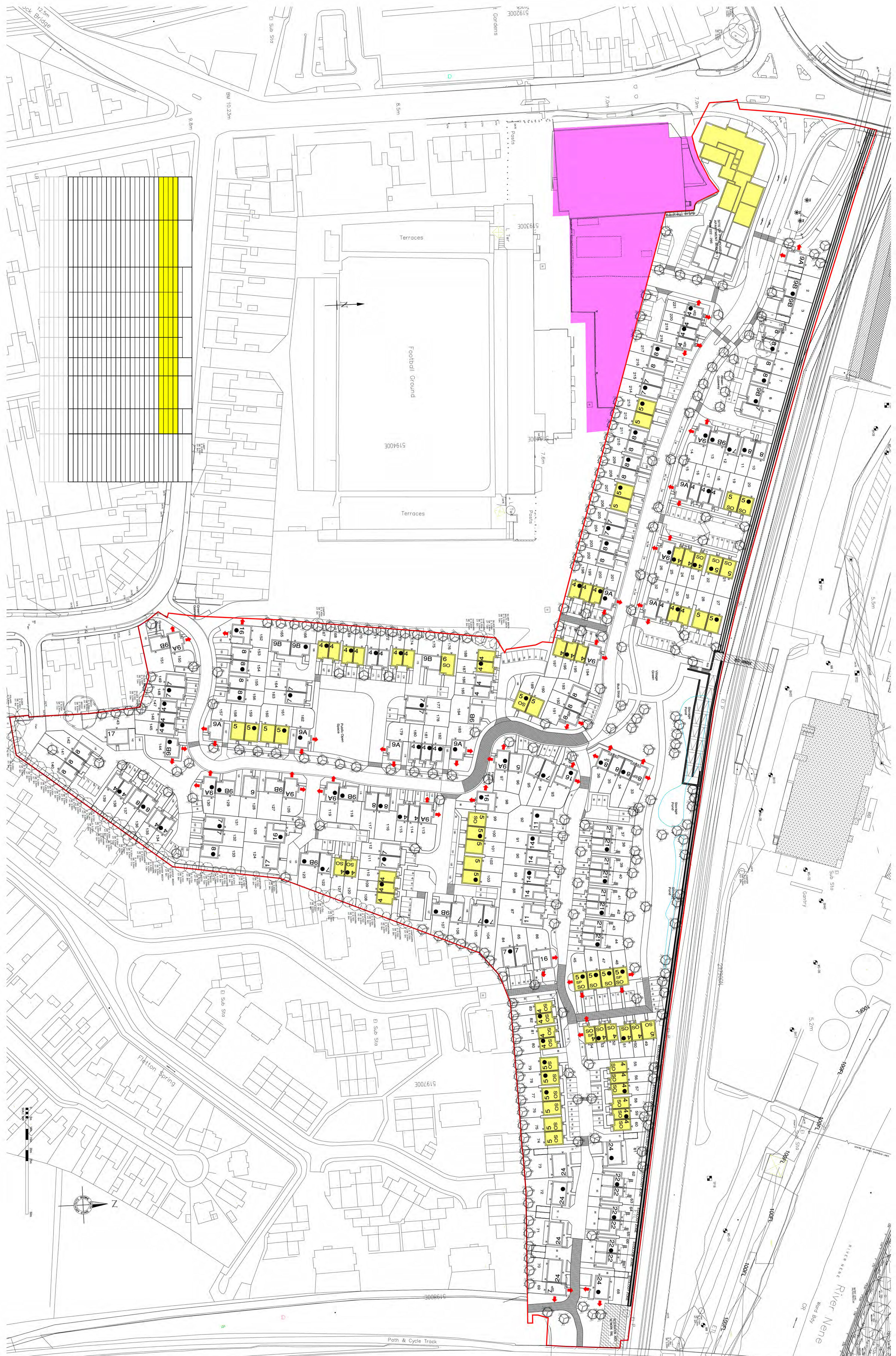
Checked By: GH

Date Checked: 21.01.11

Drawing No. **08037/P/111**

Revision **A**





**NOTES**  
 1. The information on this drawing is for information only and does not constitute an offer of any financial product or service.  
 2. The information on this drawing is for information only and does not constitute an offer of any financial product or service.  
 3. The information on this drawing is for information only and does not constitute an offer of any financial product or service.  
 4. The information on this drawing is for information only and does not constitute an offer of any financial product or service.  
 5. The information on this drawing is for information only and does not constitute an offer of any financial product or service.  
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 8. The information on this drawing is for information only and does not constitute an offer of any financial product or service.  
 9. The information on this drawing is for information only and does not constitute an offer of any financial product or service.  
 10. The information on this drawing is for information only and does not constitute an offer of any financial product or service.

**REVISIONS**  
 No. Description Date Checked Date

**DRAWING STRUCTURE REV**  
 1. Structure  
 2. Structure  
 3. Structure  
 4. Structure  
 5. Structure  
 6. Structure  
 7. Structure  
 8. Structure  
 9. Structure  
 10. Structure

**KEY**  
 Yellow = Affordable Units  
 SO = Shared Ownership Properties

**Browne Smith Baker**  
 11-13 The Quadrant, Newark, Notts  
 Tel: 01930 210111  
 Fax: 01930 210111  
 Email: sales@brownesmithbaker.com  
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**South Bank  
 Peterborough Carbon Challenge  
 for Maffra Homes**

**Lease Plan**

Scale 1:500  
 Drawn By: MBS  
 Checked By: MBS  
 Date: 21.03.11  
 Drawing No: 08037/P/120



**Deed of Variation relating to a lease for the construction and sale of dwellings and other buildings upon land at Southbank, London Road, Peterborough**

**Dated** 20<sup>th</sup> December 2012

**Homes and Communities Agency  
Peterborough City Council  
Morris Homes (East Midlands) Limited  
and  
Morris Group Limited**

Hewitsons LLP  
Exchange House  
482 Midsummer Boulevard  
Central Milton Keynes MK9 2EA

Tel: (01908) 247012

Ref: 78692-689-1-YM

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**DEED OF VARIATION**

20 December 2012

2012

**HM Land Registry**

**Landlord's title no:** CB300177, CB71646, CB271080, CB24833,  
CB182218, CB182219, CB181424, CB182217,  
CB82983, CB352565, CB30343

**Administrative area:** Peterborough

**Tenant's title no:**

**Administrative area:** Peterborough

**PARTIES**

- (1) **Homes and Communities Agency** of Central Business Exchange II, 406 – 412 Midsummer Boulevard, Central Milton Keynes MK9 2EA (**HCA**); and
- (2) **Peterborough City Council** of Town Hall, Bridge Street, Peterborough PE1 1HE (**PCC**);
- (3) **Morris Homes (East Midlands) Limited** (Company Registration No. 0184652) whose registered office is at Morland House, Altrincham Road, Wilmslow, Cheshire SK9 5NW (**Developer**); and
- (4) **Morris Group Limited** (Company Registration No. 05026617) whose registered office is at Morland House, Altrincham Road, Wilmslow, Cheshire SK9 5NW (**Surety**).

**BACKGROUND**

- A** This Deed is supplemental and collateral to the Lease.
- B** The Parties have agreed to vary the Lease on the terms set out in this deed.
- C** The HCA is entitled to the immediate reversion to the Lease.
- D** The residue of the term granted by the Lease is vested in the Developer.
- E** In the Lease, the Surety entered into covenants in respect of the Developer Covenants in the Lease.
- F** The Surety has agreed to join in this deed to record its consent to the variations to the Lease.

## **AGREED TERMS**

### **1. INTERPRETATION**

1.1 The definitions in this clause apply in this deed:

**Confirmed Lease:** means the Lease in the form attached to this deed showing the variations to the Lease as provided for by this deed.

**Lease:** a lease of the land dated 25 March 2011 and made between (1) HCA (2) PCC (3) the Developer and (4) Surety.

**Land:** means the land at Southbank, London Road, Peterborough and demised by the Lease

1.2 References to the HCA include a reference to the person entitled for the time being to the immediate reversion to the Lease. Reference to the Developer include a reference to its respective successors in title and assigns.

1.3 A reference to the Lease includes any deed, licence, consent, approval or other instrument supplemental to it.

1.4 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.

1.5 A person includes a corporate or unincorporated body.

1.6 Unless the context otherwise requires, a reference to the Land is to the whole and any part of it.

1.7 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause of, or Schedule to, this deed and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.

1.8 Clause, Schedule and paragraph headings do not affect the interpretation of this deed.

1.9 Except to the extent that they are inconsistent with the definitions and interpretations in clause 1 of this deed, the definitions and interpretations in clause 1 and 2 of the Lease shall apply to this deed.

### **2. VARIATIONS OF THE LEASE**

2.1 Variations made from and including the date of this deed, the Lease shall be read and construed as varied by the following provisions:

- (a) the definition of **Carbon Challenge Generic Brief** in clause 1 of the Lease is deleted and replaced with the following:

**Carbon Challenge Generic Brief** means the document published by HCA on 7<sup>th</sup> December 2007 setting out standards to be met by developers on certain development sites excluding the minimum standard for energy contained therein

- (b) the definition of **Code** in clause 1 of the Lease is deleted and replaced with the following:

**Code** means the Government's Code for Sustainable Homes (2010) or if HCA agrees (such agreement not to be unreasonably withheld or delayed) as subsequently varied

- (c) the definition of **Code Level** in the Particulars of the Lease is deleted and replaced with the following:

**Code Level** means Level 6 under the Code save for the compulsory minimum standard for energy which shall be replaced with the Zero Carbon Definition

- (d) the insertion of a new **Condition** (g) in clause 1 of the Lease as follows:

- (g) the production by the Developer to HCA of written confirmation from the Zero Carbon Hub that a methodological check against the Zero Carbon Definition has been carried out which shall include the following checks carried out at a design stage and on a sample basis (the sample to be defined by the Zero Carbon Hub with a minimum of one of every Dwelling type per Phase (which for the avoidance of doubt shall (should there be any Leasehold Buildings on a relevant Phase) include Dwellings in Leasehold Buildings of over 4 storeys):

- Compliance with the minimum Fabric Energy Efficiency Standard
- Verification that the correct methodology has been used to determine the Carbon Compliance status of the Dwelling including the correct classification (and for the purpose of this condition the Carbon Compliance limits for dwellings in low rise apartment blocks of up to 4 storeys in the document Carbon Compliance – Setting an appropriate limit for zero carbon homes (February 2011) shall be interpreted also to apply to Dwellings in Leasehold Buildings of over 4 storeys)
- Verification of the calculation to determine the residual emissions from regulated energy uses as defined in Building Regulations and the conversion of these into a payment figure

as set out in Allowable Solutions for Tomorrows New Homes (July 2011)

(e) the deletion of the words "and once the Energy District Centre is complete" at the end of sub-paragraph (vii) to the definition of **Interim Completion Certificate** in clause 1 of the Lease

(f) the definition **Lifetime Homes Certificate** in clause 1 of the Lease is deleted and replaced with the following:

**Lifetime Homes Standard** means a standard for the Development which is equivalent to achieving the Lifetime Homes Standard's 16 Design Criteria as promoted by Habinteg for the Joseph Rowntree Foundation

(g) the deletion of the definition **Safer Parking Scheme Certificate** in clause 1 of the Lease

(h) the insertion of a new definition **Schedule A** in clause 1 of the Lease as follows:

**Schedule A**

The following to be carried out to address the 'as-built' Carbon Compliance standard:

1. Commissioning of MVHR in all units to meet Part F 2010 compliance
2. Air permeability testing to ATTMA Technical Standard L1: Measuring air permeability of building envelopes (dwellings), October 2010 issue (or subsequent update) of every unit on completion
3. In addition, air permeability testing of two dwellings per phase at the following stages:
  - a. First Fix (i.e. completion of building frame including installation of windows)
  - b. Second Fix (i.e. installation of all fittings and services)
  - c. Completion stage
4. In-situ U-value measurement of external walls in all orientations (including sheltered walls, if any) using heat flux sensors in one of each dwelling type. Tests to be carried out in heating season November 2012/ February 2013 on available dwelling types to allow for early feedback. Tests on remaining dwelling types to be carried out in subsequent heating seasons.
5. At least meeting the requirements in section 4.1.4 of the Carbon Challenge Standard Brief regarding occupancy stage performance monitoring. Additional specific requirements:

- a. Thermal imaging of all occupied units to be carried out in heating season November 2012/February 2013 to allow for early feedback. Thermal imaging of all in all subsequent heating seasons (for occupied units not previously assessed), until all units on site have been assessed (to allow for early feedback
  - b. Installation of visual display of solar thermal output in all units with solar thermal panels, providing as a minimum: panel temperature, tank temperature, heat quantity output (kWh). This could be integrated or separate to the main energy display device
6. If a whole-house as-built energy performance test is identified within Part L 2013, this is to be carried out on at least one unit in Phase ~~insert post-2013 phase number~~.

As-built SAP calculations to be carried out, taking into account any changes since design stage including any additional client requirements (conservatories, etc)

The Developer shall provide such information that is collected as soon as reasonably practicable to the Zero Carbon Hub

- (i) the insertion of a new definition of **Zero Carbon Definition** in clause 1 of the Lease as follows:

**Zero Carbon Definition** means compliance with the Zero Carbon Homes Standard as defined by the Zero Carbon Hub in the following publications:

- Defining A Fabric Energy Efficiency Standard (November 2009)
- Carbon Compliance – Setting an appropriate limit for zero carbon homes (February 2011) (and for the purpose of this definition the Carbon Compliance limits in that document for dwellings in low rise apartment blocks of up to 4 storeys shall be interpreted also to apply to Dwellings in Leasehold Buildings of over 4 storeys)
- Allowable Solutions for Tomorrows New Homes (July 2011)
- Allowable Solutions – Evaluating opportunities and priorities (September 2012); and
- DCLG publication : Zero Carbon Homes – Impact Assessment (May 2011)

And satisfaction of the requirements of Schedule A in addition to requirements required under building regulations, Code for Sustainable Homes and the Carbon Challenge Generic Brief

- (j) the insertion of a new definition **Zero Carbon Hub** in clause 1 of the Lease as follows:

**Zero Carbon Hub** means the organization known as the Zero Carbon Hub employed by the Developer with a duty of care to the HCA to carry out such checks as may be required

- (k) the insertion of a new clause 4.7 in the Lease as follows:

4.7 Prior to the occupation of the first of each Dwelling type for each Phase the Developer will comply with Condition (g) in respect of that Phase

- (l) clause 5.3(c) of the Lease is deleted

- (m) the deletion of the words "and a Safer Parking Scheme Certificate in respect of the Commercial Units" after the words "a Secured by Design Certificate in respect of the Dwellings" in clause 25.1 of the Lease

- (n) clause 25.4 of the Lease is deleted and replaced with the following:

25.4 The Developer shall carry out and complete the Development to achieve the Lifetime Homes Standard

## 2.2 The Lease remains in force

The Lease shall remain fully effective as varied by this deed and the terms of the Lease shall have effect as though the provisions contained in this deed had been originally contained in the Lease.

## 3. DEVELOPER'S COVENANT

The Developer covenants to observe and perform the Developer's covenants in the Lease as varied by this Deed

## 4. SURETY

- 4.1 The Surety consents to the Developer entering into this deed. In consideration of the HCA entering into this deed, and subject to clause 4.2 the Surety agrees that its guarantee and other obligations under the Lease shall remain fully effective and:

(a) to the extent that any provision of this deed varies the term of the Lease, shall apply to the Lease as varied; and

(b) subject to clause 4.1(a), shall not be released or diminished by any provision of this deed

- 4.2 Nothing in this deed shall prevent or limit the operation of section 18 of the Landlord and Tenant (Covenants) Act 1995

## **5. REGISTRATION OF THIS DEED**

### **5.1 Application for registration**

Promptly following the completion of this deed, the Developer shall apply to register this deed at Land Registry against the Developer's registered title number and the HCA's registered title numbers.

### **5.2 Requisitions**

5.2.1 The Developer shall ensure that any requisitions raised by Land Registry in connection with an application for registration are dealt with promptly and properly;

5.2.2 The HCA shall reasonably assist the Developer with any requisitions raised by the Land Registry, if requested to do so by the Developer

### **5.3 Official Copies**

Within one month after completion of the registration, the Developer shall send to HCA official copies of the respective registered titles.

## **6. CONFIRMED LEASE**

The Parties have caused the Confirmed Lease to be prepared for ease of future reference, but if there is any inconsistency between the Confirmed Lease, the Lease or this deed, the Lease (as varied by the provisions of this deed) shall prevail.

## **7. GOVERNING LAW**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## **8. CONTRACTUAL RIGHTS OF THIRD PARTIES**

No term of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party but this does not affect any right or remedy of a third party which exists or is available apart from under the Act

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

**Schedule – Annexure**  
**Confirmed Lease**



**Counterpart Lease for the construction and sale of dwellings and other buildings upon land at Southbank, London Road, Peterborough**

**Dated 25 March 2011**

**Homes and Communities Agency**

**Peterborough City Council**

**Morris Homes (East Midlands) Limited  
(Developer)**

**Morris Homes Limited  
(Surety)**

**HEWITSONS  
SHAKESPEARE HOUSE  
42 NEWMARKET ROAD  
CAMBRIDGE  
CB5 8EP**

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**Lease**

**LR1. Date of lease**

**LR2. Title number(s)**

**LR2.1 Landlord's title number(s) CB300177 CB71646 CB271080  
CB24833 CB182218 CB182219 CB181424 CB182217 CB82983  
CB352565 CB360343**

**LR2.2 Other title numbers**

**None**

**LR3. Parties to this lease**

**Landlord**

**Homes and Communities Agency (HCA)**

**Tenant**

**Morris Homes (East Midlands) Limited** (Company Number 184652) whose registered office is at Morland House, Altrincham Road, Wilmslow, Cheshire, SK9 5NW (Developer)

**Other parties**

**Morris Group Limited (Surety)** (company number 05026617) whose registered office is at Morland House Altrincham Road Wilmslow Cheshire SK9 5NW (Surety)

**Peterborough City Council** of Town Hall Bridge Street Peterborough PE1 1HE (PCC)

**LR4. Property**

**In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.**

The land demised by this lease is known as Phase 1 Southbank, London Road, Peterborough defined as the **Land** in Clause 1 and more fully described in that definition.

**LR5. Prescribed statements etc.**

**None.**

**LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.**

None.

You must set out here any statement prescribed under rules 179, 180 or 196 mentioned above, or refer to the clause number in this lease which contains the statement.

Although LR5 must not be deleted, LR5.1 may be deleted if it is not relevant. But LR5.2 must NOT be renumbered.

Clause LR5.2 may be deleted if none of the listed legislation applies.

**LR6. Term for which the Property is leased**

The term as specified in this lease at Clause 3.1.

**LR7. Premium**

[£1 plus VAT of £\*\*<sup>1</sup>]

If VAT is payable on the premium, it must be stated, including how much. State for example, "£100,000 plus VAT of £17,500" or "£117,500 inclusive of VAT". Do NOT simply refer to VAT generally for example, "£100,000 plus VAT".

**LR8. Prohibitions or restrictions on disposing of this lease**

This lease contains a provision that prohibits or restricts dispositions.

You must include whichever of these two statements is appropriate. Do NOT refer to the relevant clauses in the lease.

**LR9. Rights of acquisition etc.**

**LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land**

None.

**LR9.2 Tenant's covenant to (or offer to) surrender this lease**

None.

**LR9.3 Landlord's contractual rights to acquire this lease**

<sup>1</sup> HCA to produce election on PCC and EEDA Land.

None.

**LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property LR2.2 above.**

None.

### **LR11. Easements**

#### **LR11.1 Easements granted by this lease for the benefit of the Property**

See Schedule 1 Part 1.

Refer to the schedule number which sets out easements granted. NB all relevant burdened title numbers should be inserted into clause LR2.2 above.

#### **LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property**

See Schedule 1 Part 2.

Refer to the schedule number which sets out easements reserved. NB all relevant benefiting title numbers should be inserted into clause LR2.2 above.

### **LR12. Estate rent charge burdening the Property**

None.

### **LR13. Application for standard form of restriction**

The full text of the standard form of restriction and the title against which it is to be entered must be set out (not forgetting to put any additional title number into clause LR2.2 above).

If more than one standard form of restriction is required, then use this clause to apply for each of them, repeating the introductory words below for each restriction.

If a non-standard form of restriction is required, this should NOT be referred to in this clause. A separate application must be made on Form RX1.

Clause LR13 may be deleted in its entirety if it is not relevant. But LR14 must not be renumbered.

### **LR14. Declaration of trust where there is more than one person comprising the Tenant**

Clause LR14 may be deleted in its entirety if it is not relevant.

Not applicable.

## PARTICULARS

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<b>ESTATE NAME:</b>	Phase 1 Southbank, Peterborough
---------------------	---------------------------------

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<b>AREA:</b>	17 acres approximately
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<b>NUMBER OF DWELLINGS:</b>	295 comprising: 120 Affordable Units 36 Affordable Shared Ownership Units 84 Rental Units 175 Private
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<b>NUMBER OF OTHER BUILDINGS</b>	ONE Commercial Unit
----------------------------------	---------------------

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<b>PRICE:</b>	£1 (One Pound)
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<b>DEVELOPMENT END DATE:</b>	Seven years from the date of this Lease subject to extension in accordance with Schedule 2 paragraph 6
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<b>BID SUBMISSION</b>	The submission dated February 2008 made by the Developer in response to the tender by EP of the Land contained in the disc annexed as Appendix 1 (including any variations or additions thereto)
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<b>CODE LEVEL</b>	means Level 6 under the Code save for the compulsory minimum standard for energy which shall be replaced with the Zero Carbon Definition
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---

<b>CEEQUAL AWARD CERTIFICATE</b>	"Very Good"
----------------------------------	-------------

---

<b>FINAL CERTIFICATE</b>	"Excellent"
--------------------------	-------------

---



## **Lease**

## **Dated**

## **Between**

- (1) **The Homes and Communities Agency** (a statutory body) (which expression shall where the context so admits include the person for the time being entitled to the reversion immediately expectant upon the determination of the term hereby agreed to be granted) of Central Business Exchange 406-412 Midsummer Boulevard Milton Keynes MK9 2EA (**HCA**);
- (2) **Peterborough City Council** of Town Hall, Bridge Street, Peterborough PE1 1HE (**PCC**);
- (3) **Morris Homes (East Midlands) Limited** (Company Number 0184652) whose registered office is at Morland House, Altrincham Road, Wilmslow, Cheshire, SK9 5NW (**Developer**); and
- (4) **Morris Group Limited** (company registration number 05026617) whose registered office is at Morland House Altrincham Road Wilmslow Cheshire SK9 5NW; (**Surety**)

## **Recitals**

The parties hereto have agreed to the grant of this Lease with a view to the creation of a new zero carbon community in line with the Carbon Challenge Generic Brief

## **It is agreed:**

### **1 Definitions**

In this Lease the following definitions apply:

**Access Deed** means the Deed of Release and Grant of today's date and made between (1) HCA and (2) PCC

**Adjoining Land** means the land belonging to Peterborough City Council shown coloured pink on the Plan.

**Adoptable Common Services** means all Common Services which are intended to become adopted or maintainable at the public expense or by any public or statutory authority.

**Adoptable Highways** means Highways intended to be adopted as maintainable by the highway authority

**Affordable Flat** means any Flat comprised in a Leasehold Building and which is to be disposed of by the Association under a Shared Ownership Lease or Tenancy Agreement (or as otherwise permitted by the Planning Permission).

**Affordable Unit** means a Dwelling which is not an Affordable Flat and which is to be disposed of by the Developer to the Association for further disposal by the Association under a Shared Ownership Lease or Tenancy Agreement (or as otherwise permitted by the Planning Permission).

**Affordable Unit Lease** means a lease for a term of not less than 150 years to be granted by HCA at the request of the Developer to the Association in such form as the Developer shall reasonably require and the intention is that it shall include an acknowledgement by the lessee that the estate has been developed as an environmentally sustainable development.

**Alternative Solution** means a solution that is acceptable to both the Developer and HCA:

- (a) to enable the Dwellings to be constructed to the Code Level or Revised Code in the discretion of the Developer; and
- (b) is not materially more expensive than the proposed Off Site Energy Solution or On Site Energy Solution; and
- (c) that in the opinion of the Developer will be acceptable to potential Dwelling purchasers and their mortgagees; and
- (d) that can be fully implemented on the Land

**Alternative Solution Period** means the period of three months (or such other period that the Developer and HCA may agree in writing) commencing on the second anniversary of the date of this Lease

**Approved Plans** means the drawings, layout plan, the landscaping layout and scheme, the house types and building specifications, programme of works and any other plans and specifications relating to the Development which have been approved by the Planning Permission

**Association** means Cross Keys Homes Limited (company no. 04557701) whose registered office is at Shrewsbury Avenue Woodston Peterborough PE2 7BZ or such other independent housing organisation registered with the Tenants Services Authority as a registered provider and approved by HCA acting reasonably and without delay

**Building for Life Award** means the award by the Building for Life Scheme of a Building for Life with a minimum of Gold Standard for the Development

**Carbon Challenge Inspector** means the appropriate member of the HCA multi-disciplinary panel (who must have no conflict of interest) appointed by the Developer to monitor the implementation of the Development Strategies by the Developer in accordance with the requirements and obligations of the Developer under the Lease

**Carbon Challenge Generic Brief** means the document published by HCA on 7<sup>th</sup> December 2007 setting out standards to be met by developers on certain development sites excluding the minimum standard for energy contained therein

**Category D and E Specifications** means any specification or process which is rated as Category D or E within the Green Guide

**CEEQUAL** means Civil Engineering Environmental Quality Assessment and Award Scheme

**CEEQUAL Award Certificate** means a post construction assessment certificate in respect of the whole of the Development confirming that the appropriate elements of the Development have been so constructed as to achieve the rating of "Very Good"

**CEEQUAL Manual** means a manual to be kept by the Developer for inspection by the CEEQUAL Inspectors

**Challenge Period** means the period of three months from the date of the Planning Permission or Revised Planning Permission or Energy Planning Permission provided that if Judicial Proceedings are begun within such period of three months time the Challenge Period will be automatically extended to be the date on which such Judicial Proceedings being Finally Determined.

**Code** means the Government's Code for Sustainable Homes (2010) or if HCA agrees (such agreement not to be unreasonably withheld or delayed) as subsequently varied

**Code Final Certificate** means an assessment certificate of post-construction compliance with the Code issued by a company sanctioned by the Building Research Establishment in respect of a Dwelling confirming that such Dwelling has been constructed so as to achieve not less than the Code Level

**Code Level** means Level 6 under the Code save for the compulsory minimum standard for energy which shall be replaced with the Zero Carbon Definition

**Commencement Date** means the date of this Lease

**Commercial Unit** means a single unit of commercial accommodation (whether or not on one floor) constructed on the Land and which is intended for use exclusively for non-residential purposes together with any land forming the curtilage thereof and identified as such in the Approved Plans

**Common Areas** means:

- (i) those parts of the Land not included in any Dwelling or in any Commercial Unit
- (ii) those Highways and Common Services not intended to be adopted as maintainable at public expense;

- (iii) Open Space Land not intended to be transferred to PCC and which it is intended shall be transferred to the Management Company as shown on the Approved Plans

**Common Services** means sewers, drains, channels, pipes, watercourses, gutters, wires, cables, pillars, turrets, amplifiers, poles, soakaways and any other apparatus for the supply, transmission or distribution of water, gas, electricity or telephone, radio or television signals or for the disposal of soil, foul water rainwater or surface water, which are not to be adopted as maintainable at public expense

**Conditions** means:

- (a) the production by the Developer to HCA of a completed pre-assessment estimator in respect of the proposed Development achieving the Code Level
- (b) the production by the Developer of each of the listed Development Strategies in detail and in a form acceptable to HCA acting reasonably and without delay
- (c) the production by the Developer to HCA of a Process Efficiency Statement acceptable to HCA acting reasonably and without delay
- (d) the production by the Developer to HCA of an Open Book Costing Estimate for the Development in a form acceptable to HCA acting reasonably and without delay
- (e) the production by the Developer to HCA of an Initial Certificate in respect of the Commercial Units (if any) with the Development
- (f) the production by the Developer to HCA of completed pre-assessment estimator for a CEEQUAL Assessment in respect of the proposed Development or relevant Phase of it
- (g) the production by the Developer to HCA of written confirmation from the Zero Carbon Hub that a methodological check against the Zero Carbon Definition has been carried out which shall include the following checks carried out at a design stage and on a sample basis (the sample to be defined by the Zero Carbon Hub with a minimum of one of every Dwelling type per Phase (which for the avoidance of doubt shall (should there be any Leasehold Buildings on a relevant Phase) include Dwellings in the Leasehold Buildings of over 4 storeys)):
  - Compliance with the minimum Fabric Energy Efficiency Standard

- Verification that the correct methodology has been used to determine the Carbon Compliance status of the Dwelling including the correct classification (and for the purpose of this condition the Carbon Compliance limits for dwellings in low rise apartment blocks of up to 4 storeys in the document Carbon Compliance – Setting an appropriate limit for zero carbon homes (February 2011) shall be interpreted also to apply to Dwellings in Leasehold Buildings of over 4 storeys)
- Verification of the calculation to determine the residual emissions from regulated energy uses and the conversion of these into a payment figure as set out in Allowable Solutions for Tomorrows New Homes (July 2011)

**Considerate Constructors Scheme** means the Code of Considerate Practice promoted by the construction industry a copy of which is to be found on the Considerate Constructors Scheme website

**Customer Satisfaction Survey** means the customer satisfaction survey to be conducted by the Developer at the times and in the manner as set out in Appendix 3

**Deed of Covenant and Charge** means a deed in the form set out in Schedule 12 together with such amendments as the Developer may require and HCA approves acting reasonably and without delay

**Deleterious Materials** means any materials or substances which:

- are not in accordance with the report entitled "Good Practice in the Selection of Construction Materials" (published under the auspices of the steering group representing the British Council for Offices and the British Property Federation and prepared by Ove Arup at the date of this Lease and/or the relevant British and/or European Standards and/or codes of practice or which are generally known within the construction industry at the time of specification or use to be deleterious to the durability and/or to the health and safety of buildings and/or structures and/or finishes and/or plant and machinery in the particular circumstance in which they are specified to be used; or
- are (or fall within) a Category D or E Specification

**Detailed Access Statement** means a certificate by an NARC consultant that the Development has been built in accordance with the Approved Plans insofar as it relates to access to and within the Development and the Dwellings

**Developed Land** means each and every part of the Land on which the Developer has from time to time constructed a Dwelling or a Commercial Unit to at least foundation level (excluding floor slab) together with the curtilage and Common Parts associated with all such Dwellings or Commercial Unit and all appurtenant roads sewers services and other facilities and infrastructure serving or benefiting or intended to serve or benefit the same

**Developer** includes every person who is at any time the developer under this Lease.

**Development** means the erection and completion on the Land of all buildings, erections, structures, Highways, drainage, infrastructure and other works in accordance with the Carbon Challenge Generic Brief and the Approved Plans including site preparation and the demolition of any existing buildings and the redevelopment of the Land as permitted by the Planning Permission

**Development Strategies** means the individual detailed development strategies prepared by the Developer with the approval of HCA (and specified in Schedule 9).

**District Energy Centre** means apparatus for the production and supply of the Energy Centre Services

**Dwelling** means any house, bungalow, flat, maisonette or other single unit of residential accommodation constructed on the Land together with any land forming its curtilage and any other appurtenant structures.

**EEDA** means East of England Development Agency of Victory House Vision Park Chivers Way Histon Cambridge CB24 9ZR

**Enactment** means statute, statutory instrument, statutory guidance, treaty, regulation, directive, byelaw, code of practice, guidance note, circular, common law and any notice, order, direction or requirement given or made pursuant to any of them for the time being in force.

**Energy Centre Services** means all pipes wires cables and ancillary apparatus for the supply of hot water and (if required by the Developer) electricity to the Development

**Energy Planning Permission** means a planning permission granted to PCC pursuant to clause 29.1 which is satisfactory to the Developer acting reasonably and that has become Immune from Challenge for the provision of a District Energy Centre in the Moyes Stand

**Environment** means all or any of the following media, alone or in combination: the air (including the air within buildings and the air within any other natural or man-made structures above or below ground), water (including water under or within land or in pipes or sewerage systems), soil, land and any ecological systems and living organisms supported by those media and buildings.

**Environmental Law** means all European Community, national and local statutes, and the common law, from time to time in force concerning:

- (a) pollution of, damage to or protection of the Environment or health and safety and/or the provision of remedies in respect of or compensation for damage or harm to the Environment or to health and safety and/or

- (b) emissions, discharges, releases or escapes into the Environment or the presence in the Environment of Hazardous Substances or the production, processing, management, treatment, storage, transport, handling or disposal of Hazardous Substances

and any bylaws, regulations or subordinate legislation, judgments, decisions, notices, orders, circulars, codes of practice and permits from time to time issued or made thereunder having force of law.

**Estate Layout Plan** means a plan showing the layout and boundaries of the Dwellings and the Commercial Units to be comprised in the Development such plan being suitable for lodging as an estate layout plan at the Land Registry

**Estate Management Scheme** means the scheme to secure the long-term stewardship and maintenance of the Common Areas and the Open Space Land within the Development to the Code Level and to address wider community responsibility and environmental objectives in accordance with the Estate Management Scheme Principle

**Estate Management Scheme Documents** means those documents described in Schedule 10 which shall be in accordance with the Estate Management Scheme Principles

**Estate Management Scheme Principles** means the principles for the sustainable on-going management of the Development in accordance with the Code as set out in Schedule 11

**Final Certificate** means in the case of a Commercial Unit a post construction assessment certificate issued by a company sanctioned by the Building Research Establishment in respect of a Commercial Unit confirming that such Commercial Unit has been constructed so as to achieve the rating of "Excellent"

**Final Completion Certificate** means a certificate issued pursuant to clause 6

**Finally Determined** means in respect of all Judicial Proceedings initiated within the Challenge Period that they have been finally determined meaning the later of:-

- (a) the date a court has made a decision upon those proceedings and no further appeal to a higher court has been or can be made; or
- (b) the date the Judicial Proceedings have been withdrawn without remission to the Local Planning Authority or the Secretary of State.

**Flat** means a single unit of residential accommodation (whether or not on the same floor) constructed on the Land which:

- (a) forms a part only of a building; and
- (b) is divided horizontally from some other part of that building.

**Football Club Leases** means the leases dated 24 December 2009 and 2 April 2008 (as varied by a Deed of Variation dated 24 December 2009) both made between Peterborough City Council and Peterborough United Football Club Limited relating to Peterborough United Football Ground, London Road, Peterborough, PE2 8AL.

**Grant** means grant monies paid to the Developer pursuant to the Affordable Housing Grant Agreement dated 25 March 2011; and/or the PCC Grant Agreement dated 25 March 2011 for rental units; and/or the Regeneration Grant Agreement dated 25 March 2011

**Green Guide** means the environmental rating scheme for building specifications being part of BREEAM (BRE Environmental Assessment Method) ratings are set out as an A+ to E ranking system where A+ represents the best environmental performance/least environmental impact and E the worst environmental performance/most environmental impact

**Hazardous Substances** means any wastes, pollutants, contaminants and any other natural or artificial substance, including, for the avoidance of doubt, radioactive material (in each case whether in the form of a solid, liquid, gas or vapour, and whether alone or in combination) which is capable of causing harm or damage to the Environment or to the health and safety of persons.

**Highways** means roads, cycleways, footpaths, pavements, accessways, squares, courtyards, driveways, forecourts, entranceways and ancillary verges, landscaped areas, lighting, street furniture, drains, other utilities and associated works.

**Immune from Challenge** means in respect of the relevant planning permission:-

- (a) any Challenge Period with regard to any decision (including but not limited to a decision upon appeal or by a Court or pursuant to any application or Appeal under Section 73 of the Act) has expired without Judicial Proceedings being initiated
- (b) all Judicial Proceedings initiated within any Challenge Period have been finally determined (meaning the later of):-
  - (i) the date a court has made a decision upon those proceedings and no further appeal to a higher court has been or can be made; or
  - (ii) the date the Judicial Proceedings have been withdrawn without remission to the Local Planning Authority or the Secretary of State; and
- (c) where Judicial Proceedings have been fully determined (as above defined) and the planning application the subject of those proceedings has been remitted to the Local Planning Authority or the Secretary of State it or he has made a decision with regard to such matters so remitted; or



(d) all such proceedings initiated within any Challenge Period having been finally determined (meaning no further Judicial Proceedings or appeal can be made)

**Inspection Stage** means the stage in construction of the relevant Dwelling or Commercial Unit when second fix has been completed

**Interest** means interest at the rate of three per cent per annum above the base lending rate from time to time of Barclays Bank PLC (or of such other UK clearing bank as HCA may designate from time to time by giving notice to the Developer) both before and after any judgment, calculated on a daily basis from the date on which the payment is due under this Lease to the date on which such payment is made.

**Interim Client Design Award** means an interim assessment certificate issued by a company sanctioned by CEEQUAL Limited

**Interim Completion Certificate** means in relation to a Dwelling or a Commercial Unit a certificate given by the Carbon Challenge Inspector certifying that:-

- (i) the Dwelling or Commercial Unit has been erected to Inspection Stage in accordance with the Approved Plans
- (ii) that the Highways reasonably necessary to give access to the Dwelling or Commercial Unit have been constructed to base course level and the sewers drains and other services ancillary to and reasonably necessary for the proper enjoyment of the Dwelling or Commercial Unit are ready for use by the occupiers thereof
- (iii) no Category D or E Specifications have been used in (or affect) the construction of the Dwelling or Commercial Unit (or any of the materials used in such construction)
- (iv) the relevant Dwelling or Commercial Unit has been built to Inspection Stage in accordance with the Development Strategies so far as they directly relate to the relevant Dwelling or Commercial Unit at Inspection Stage and having regard to the progress of the Development and the Dwelling / Commercial Unit's position in the Developer's programme for the Development
- (v) that the relevant Dwelling or Commercial Unit has been built in compliance with the Carbon Challenge Generic Brief so far as it directly relates to the relevant Dwelling or Commercial Unit at Inspection Stage and having regard to the progress of the Development and the Dwelling / Commercial Unit's position in the Developer's programme for the Development

- (vi) the Carbon Generic Challenge Brief so far as it directly relates and is appropriate to the relevant Dwelling or Commercial Unit (as the case may be) has been materially complied with having regard to the stage of the overall Development then reached and the Dwelling / Commercial Unit's position in the Developer's programme for the Development
- (vii) that the Carbon Challenge Inspector (acting as a Code Assessor) has recommended or the Carbon Challenge Inspector has received confirmation from the Code Assessor that the Code Assessor has recommended to the Building Research Establishment that the Code Level certification should be given in respect of the relevant Dwelling or an "Excellent" rating should be given in respect of the Commercial Unit (as the case may be) once practically complete

**PROVIDED THAT** where HCA has confirmed its approval in writing to the Developer or the Carbon Challenge Inspector to any element of the Development Strategies and / or Carbon Generic Challenge Brief the Carbon Challenge Inspector shall accept (without liability) such approvals for the purposes of issuing any Interim Completion Certificate

**Initial Certificate** means a provisional stage assessment report issued by a company sanctioned by the Building Research Establishment in respect of the Commercial Units to be erected on the Land pursuant to the Lease confirming that the design of such Commercial Units is such that the Commercial Units are capable of achieving the requirements of the Building Research Establishment Environmental Assessment Method (BREEAM) stipulated standard of assessment of "Excellent"

**Judicial Proceedings** means any application for Judicial Review and all ensuing proceedings until the Judicial Review has been finally determined and no further proceedings or appeal has been or can be made

**Judicial Review** means judicial review under the Civil Procedure Rules 1998 Schedule 1, RSC Order 53 (Applications for Judicial review) and any complementary rules, Practice Direction and protocols and any amendments to the foregoing issued by the Lord Chancellor's Department or successors in function

**Land** means all that land situate at Southbank, London Road, Peterborough (comprising the Area and shown edged red on the Plan (and references to "Land" shall include any part or parts of it).

**Landowners** means HCA

**Landscape Works Specification** means the specification relating to landscaping approved pursuant to the Planning Permission

**Lease** means this Lease and any variation agreed by the parties in writing and any deed or document supplemental to this Lease.

**Leasehold Building** means a building comprising Flats (including any land forming the curtilage of the building) and may include Commercial Units at ground floor level

**Lifetime Homes Standard** means a standard for the Development which is equivalent to achieving the Lifetime Homes Standard's 16 Design Criteria as promoted by Habinteg for the Joseph Rowntree Foundation

**Local Planning Authority** means Peterborough City Council or such other authority, as shall from time to time authority to deal with town and country planning matters.

**Management Company** means such company that the Developer will incorporate for the management of the Development in accordance with the Estate Management Scheme.

**Moyes Stand** means the stand in Peterborough Football Club's stadium shown marked on the Plan as "Moyes Stand".

**New Planning Agreement** means any agreement obligation or undertaking to be made pursuant to the following or similar legislation Section 106 of the Act, Sections 38 and/or 278 of the Highways Act 1980, Section 104 of the Water Industry Act 1991, Section 111 Local Government Act 1972, Electricity Act 1989, Gas Act 1980, Water Act 1989 or any provision of similar intent with any appropriate authority as to the water supply to or drainage of surface water and effluent from the Land or other services or access and any subsequent variations to a planning agreement but excluding the Planning Agreement

**Off Site Energy Solution** means the grant of the Energy Planning Permission, the Developer entering into all relevant documents with an energy provider for the supply of the Energy Centre Services and a lease of part of the Moyes Stand in Peterborough Football Club granted to the Developer or such other party as the Developer may specify to accommodate the District Energy Centre in all such cases satisfactory to the Developer acting reasonably

**On Site Energy Solution** means the Revised Planning Permission and the Developer entering into all relevant documents with an energy provider for the supply of the Energy Centre Services in all cases satisfactory to the Developer acting reasonably

**Open Book Costing Estimate** means a costing estimate of the various components comprising the Development to be prepared by the Developer on an open book basis

**Open Space Land** means that part of the Land being the open spaces, play areas, amenity areas and landscaping areas including open space, community play spaces and allotments, community greenhouses and sheds, fenland zone and wildlife habitat, sustainable urban drainage system, green limb/canopy walkway to connecting bridge and car park (if any) identified as such in the Approved Drawings for use by residents within the Development or for general public use.

**Option for Lease** means the option agreement dated 26 March 2010 made between The Homes and Communities Agency, East of England Development Agency, Peterborough City Council and Morris Homes Limited pursuant to which this Lease has been granted.

**Overage** means the overage payments (if any) specified in the Option for Lease

**Particulars** means the details appearing in the page of this Lease so headed.

**Party** means a party to this Lease and **Parties** means more than one Party.

**PCC** means Peterborough City Council.

**PCC Transfer** means the transfer of today's date made between (1) PCC and (2) HCA of part of the Land

**Perpetuity Period** means the period of eighty years from the date of this Lease.

**Phase** means a phase of the Development designated as such in the Approved Plans

**Plan** means the plan annexed hereto

**Planning Acts** means all Enactments relating to town and country planning.

**Planning Agreement** means a unilateral undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 dated 16 day of March 2011 and made between HCA (1) EEDA (2) and PCC (3) and Morris Homes (East Midlands) Limited (4) and all approvals consents discharges and variations thereunder and substituted agreements therefore.

**Planning Considerations** means:

- (a) that the requirements of the Local Planning Authority, the County Council or Highway Authority or any other public authority or undertaker or company or other like body and their officers, representatives or agents;
- (b) the terms of the local development framework or similar document and any proposed provisions or modifications thereto;
- (c) good planning and development practice;
- (d) the advice of the Developer's planning consultants or Planning Counsel or other expert; and
- (e) planning policy guidance issued by HM Government current at the relevant time; and/or
- (f) the anticipated market for the Dwellings proposed.

**Planning Counsel** means counsel of at least 10 years call specialising in Town and Country planning and development

**Planning Permission** means full planning permission reference 10/01267/FUL dated 25 day of March 2011 together with the Planning Agreement and all approvals consents discharges and variations thereunder and substituted permissions

**Prescribed Rate** means interest at 4% over the base lending rate from time to time of Barclays Bank Plc

**Private Unit** means a Dwelling to be disposed of by the Developer to a Purchaser and which is neither a Rental Unit nor a Shared Ownership Unit

**Private Unit Lease** means a lease for a term of 999 years at a premium to be granted by HCA at the request of the Developer to a Purchaser in such form as the Developer shall reasonably require and the intention is that it shall include an acknowledgement by the lessee that the estate has been developed as an environmentally sustainable development.

**Purchaser** means any person (including the Association) who shall take (or enter into a contract with the Developer to take) a transfer or lease (or any other disposal) of any Dwelling or Commercial Unit

**Quality Standards** means standards which:

- secure the required Building for Life Award
- satisfy the Secured by Design requirements
- in terms of design would satisfy the requirements of the Code Initial Certificate
- would achieve the Code Level

**Reimbursement** means in relation to the Undeveloped Land (where a New Lease is granted) or in relation to the Land (where a New Lease is not granted) the market value of the infrastructure and servicing works undertaken by the Developer at the date of the termination forfeiture or repudiation of this Lease

**Rental Unit** means a Dwelling for which a Tenancy Agreement is to be disposed of by the Developer or the Association (as the case may be)

**Revised Code Level** means at the discretion of the Developer either:-

- (a) Level 6 under the Code as published in October 2007; or
- (b) Level 6 under the Code as published as at the date of service of the Revised Code Level Notice

**Revised Code Level Notice** means the notice that may be served by the Developer pursuant to clause 29.5.2 of its intention to implement the Planning Permission and build the Development to the Revised Code Level

**Revised Planning Permission** means a planning permission granted to the Developer pursuant to clause 29.2 which is satisfactory to the Developer and that has become Immune from Challenge

## **Schedule A**

The following to be carried out to address the 'as-built' Carbon Compliance standard:

1. Commissioning of MVHR in all units to meet Part F 2010 compliance
2. Air permeability testing to ATTMA Technical Standard L1: Measuring air permeability of building envelopes (dwellings), October 2010 issue (or subsequent update) of every unit on completion
3. In addition, air permeability testing of two dwellings per phase at the following stages:
  - a. First Fix (i.e. completion of building frame including installation of windows)
  - b. Second Fix (i.e. installation of all fittings and services)
  - c. Completion stage
4. In-situ U-value measurement of external walls in all orientations (including sheltered walls, if any) using heat flux sensors in one of each dwelling type. Tests to be carried out in heating season November 2012/ February 2013 on available dwelling types to allow for early feedback. Tests on remaining dwelling types to be carried out in subsequent heating seasons.
5. At least meeting the requirements in section 4.1.4 of the Carbon Challenge Standard Brief regarding occupancy stage performance monitoring.

Additional specific requirements:

  - a. Thermal imaging of all occupied units to be carried out in heating season November 2012/ February 2013 to allow for early feedback. Thermal imaging of all In all subsequent heating seasons (for occupied units not previously assessed), until all units on site have been assessed (to allow for early feedback
  - b. Installation of visual display of solar thermal output in all units with solar thermal panels, providing as a minimum: panel temperature, tank temperature, heat quantity output (kWh). This could be integrated or separate to the main energy display device

6. If a whole-house as-built energy performance test is identified within Part L 2013, this is to be carried out on at least one unit in Phase ~~[[insert post-2013 phase number]]~~.
7. As-built SAP calculations to be carried out, taking into account any changes since design stage including any additional client requirements (conservatories, etc)

The Developer shall provide such information that is collected as soon as reasonably practicable to the Zero Carbon Hub

**Secured by Design Certificate** means a certificate or written confirmation issued by the relevant local constabulary in which the Land is situated confirming accreditation by that local constabulary in accordance with [ODPM] Public Service Agreement (current at the date of the Bid Submission)

**Shared Ownership Lease** means a shared ownership lease as defined by Section 106 of the Housing Associations Act 1985 in such form as the Developer shall reasonably require but to include a covenant by the lessee to respect the aim to achieve zero carbon emissions from the Development

**Shared Ownership Unit** means a Dwelling for which a Shared Ownership Lease is to be disposed of by the Developer or the Association (as the case may be) to a Purchaser.

**Termination Notice** means the notice that may be served by HCA or the Developer to terminate the Lease after the Alternative Solution Period in accordance with the provisions of clause 29.5.1

**Tenancy Agreement** means an agreement to let a Rental Unit under an assured tenancy substantially in such form as the Developer shall reasonably require but to include a covenant by the lessee to respect the aim to achieve zero carbon emissions from the Development

**The Secretary of State** means the Secretary of State or other minister or authority for the time being having or entitled to exercise the powers now conferred upon The Secretary of State by sections 77, 78 and 79 of The Town and County Planning Act

**Title Date** means 15 June 2009 save for title number CB71646 where it means 30 November 2010 and CB300177 where it means 12 November 2010

**Title Matters** means the matters contained or referred to in (or in the documents contained or referred to in) the entries on the register of the title(s) under which the Landowners hold the Land as at the Title Date.

**Transfer (Affordable Unit)** means a transfer of the freehold reversion to an Affordable Unit Lease substantially in the annexed form but with such amendments as the Developer shall reasonably require but including in any event the relevant provisions set out in Schedule 6

**Transfer (Private Unit)** means a transfer of the freehold reversion to a Private Unit Lease substantially in the annexed form but with such amendments as the Developer shall reasonably require but including in any event the relevant provisions set out in Schedule 6

**Transfer (Leasehold Building)** means a transfer of a Leasehold Building substantially in the annexed form but with such amendments as the Developer shall reasonably require but including in any event the relevant provisions set out in Schedule 6



**Undeveloped Land** means any part of the Land which from time to time is not Developed Land

**VAT** means value added tax charged under the Value Added Tax Act 1994.

**Working Day** means any day except Saturday, Sunday or any public holiday in England.

**Zero Carbon Definition** means compliance with the Zero Carbon Homes Standard as defined by the Zero Carbon Hub in the following publications:

- Defining A Fabric Energy Efficiency Standard (November 2009)
- Carbon Compliance – Setting an appropriate limit for zero carbon homes (February 2011) (and for the purpose of this definition the Carbon Compliance limits in that document for dwellings in low rise apartment blocks of up to 4 storeys shall be interpreted also to apply to Dwellings in Leasehold Buildings of over 4 storeys)
- Allowable Solutions for Tomorrows New Homes (July 2011)
- Allowable Solutions – Evaluating opportunities and priorities (September 2012); and
- DCLG publication: Zero Carbon Homes – Impact Assessment (May 2011)

And satisfaction of the requirements of Schedule A in addition to requirements required under building regulations, Code for Sustainable Homes and the Carbon Challenge Generic Brief

**Zero Carbon Hub** means the organization known as the Zero Carbon Hub employed by the Developer with a duty of care to the HCA to carry out such checks as may be required

## **2 Interpretation**

- 2.1 Terms specified in the Particulars shall have the meanings there given to them.
- 2.2 Where a Party includes two or more persons, the covenants made by that Party are made by those persons jointly and severally.
- 2.3 Words implying one gender include all other genders; words implying the singular include the plural and vice versa and words implying persons include any person or entity capable of being a legal person.
- 2.4 A covenant not to do any act or thing includes a covenant not to permit or suffer such act or thing to be done.
- 2.5 A reference to any Enactment includes all modifications, extensions, amendments and re-enactments of such statute in force for the time being and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under them or deriving validity from them.
- 2.6 Provisions are to be construed independently and, if any provision is void or wholly or partly unenforceable, then that provision, to the extent that it is unenforceable, shall be deemed not to form part of this Lease, but the validity and enforceability of the remainder of that provision or of the Lease shall not be affected.
- 2.7 A reference to a numbered clause, schedule appendix or paragraph is a reference to the relevant clause, schedule appendix or paragraph in this Lease.
- 2.8 Headings to clauses, schedules and paragraphs are for convenience only and do not affect the meaning of this Lease.
- 2.9 The words including and in particular shall be construed as being by way of illustration or emphasis only and shall not limit the generality of the preceding words.
- 2.10 References to the completion of a transfer or other disposal mean the execution and delivery of the necessary assurances, not contracts to enter into such transfers or other disposals or their subsequent registration.
- 2.11 Any right or exception granted or excepted in favour of HCA or the Landowners shall be deemed to be granted or excepted in addition in favour of any other person authorised by HCA or the Landowners.

- 2.12 Where the consent or approval of HCA is required such consent or approval must be in writing and be signed by the Area Director (or such other officer as shall have been notified in writing by HCA to the Developer as being the appropriate officer for such purposes).
- 2.13 References to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both of the functions and responsibilities of such public organisation.

### **3 Demise**

- 3.1 For the Price and the Overage (if any) referred to in the Option for Lease payable by the Developer to HCA of which the sum of £1 (being part thereof and which includes the sum payable under the Option for Lease) has been paid on the date of this Lease (receipt whereof HCA acknowledges ) and any other sums payable under this Lease and the covenants on the part of the Developer and the Surety contained in this Lease HCA HEREBY DEMISES to the Developer ALL THAT the Land TOGETHER with the benefit of the rights set out in Part I of Schedule 1 (so far as HCA can grant the same) and in common with HCA and all others now or hereafter enjoying or entitled to the like rights but EXCEPT AND RESERVING to HCA and where applicable to PCC for the benefit of the Adjoining Land (and those authorised by it) and its successors in title and the owners and occupiers thereof the rights, easements and privileges set out in Part 2 of Schedule 1 TO HOLD the same unto the Developer from the date hereof for the term of NINE HUNDRED AND NINETY-NINE YEARS (determinable nevertheless as hereinafter mentioned) SUBJECT to all Title Matters and to all rights, easements and privileges affecting the Land or any part thereof PAYING THEREFOR the yearly rent of ONE POUND (if demanded) on the anniversary of the date of this Lease.
- 3.2 PCC hereby grants to the Developer and all those authorised by it the rights for the benefit of the Land set out in Part 1 of Schedule 1 for the term of this Lease and to end on the expiry or earlier determination of this Lease

### **4 Covenants relating to the Development**

- 4.1 The Developer covenants with HCA to comply with the Developer's obligations contained in the Schedules.
- 4.2 HCA covenants with the Developer to comply with HCA's obligations contained in the Schedules
- 4.3 Prior to commencement of any work on the first Dwelling on the Land by the Developer it shall comply with Condition (a)
- 4.4 Prior to the completion of the sale and purchase of the first Dwelling to be sold on the Land the Developer shall comply with each of the following:-

Condition (b)

Condition (c); and

Condition (d);

- 4.5 Prior to the sale or grant of a Lease of each Commercial Unit the Developer shall comply with Condition (e)
- 4.6 Prior to each Phase of the Development the Developer will comply with Condition (f) in respect of that Phase
- 4.7 Prior to the occupation of the first of each Dwelling type for each Phase the Developer will comply with Condition (g) in respect of that Phase.

## **5 Interim Completion Certificate**

- 5.1 The Developer will as soon as reasonably practicable after receipt of an Interim Completion Certificate in respect of a Dwelling or Commercial Unit the Developer will send a copy to HCA
- 5.2 If at any time during construction of any Dwelling or Commercial Unit (as the case may be) (or upon any inspection by HCA of such Dwelling or Commercial Unit) Category D or E Specifications are discovered to have been used (or affect the Dwelling or Commercial Unit) then the same shall forthwith be removed and replaced with non Category D or E Specifications and until such removal and replacement has occurred to the reasonable satisfaction of the Carbon Challenge Inspector the Carbon Challenge Inspector shall be entitled to withhold the issue of the Interim Completion Certificate relating to such Dwelling
- 5.3 The Developer will use its reasonable endeavours to provide to HCA:-
- (a) as soon as reasonably practicable after practical completion of each Dwelling or Commercial Unit a Code Final Certificate in respect of that Dwelling and a Final Certificate in respect of that Commercial Unit;and
  - (b) on or before practical completion of 50 per cent (by number) of the Dwellings intended to be constructed as part of the Development an Interim Client Design Award in respect of the Development.
- 5.4 The Developer hereby covenants with HCA:
- (a) not to send out any notice to a Purchaser requiring completion of the sale of a Dwelling or Commercial Unit unless and until the Interim Completion Certificate for that Dwelling or Commercial Unit has been issued;
  - (b) not to permit any person to occupy any Dwelling or Commercial Unit (provided that this clause does not prevent Dwellings from being used as show homes in connection with the sale of Dwellings on the Land for so long as it is reasonable to do so) nor to purport to complete the sale of any Dwelling or Commercial Unit until and unless the Interim Completion Certificate for that Dwelling or Commercial Unit has been issued by the Carbon Challenge Inspector
  - (c) to use its reasonable endeavours to enter into all requisite agreements with the highway authority pursuant to section 38 Highways Act 1980 in respect of the construction and adoption of the Adoptable Highways comprising or relating to the Development and all requisite agreements with the highway authority pursuant to section 278 of the Highways Act 1980 (as appropriate) in respect of the construction of any Highways comprising or relating to the Development and procure any bond or guarantee required by the highway authority in connection with any such agreement as soon as reasonably practicable;

- (d) to use its reasonable endeavours to enter into an agreement or any reasonable with the relevant water authority pursuant to section 104 of the Water Industry Act 1991 in respect of the construction and adoption of the sewers serving the Development and procure any bond or guarantee required by such water authority in connection with such agreements as soon as reasonably practicable;
- (e) not to complete the grant of any lease of a Dwelling without simultaneously completing the transfer of the freehold reversion to such Lease from HCA to the Developer

and it is agreed that failure by the Developer to comply with any part of this covenant shall entitle HCA to withhold the issue of all further Interim Completion Certificates in respect of the Development until the breach has been rectified to the reasonable satisfaction of HCA Provided That HCA must first have served not less than three months prior written notice on the Developer of such failure and notwithstanding such breach has not been so rectified by expiry of such notice

- (f) to confirm to HCA as soon as reasonably practicable after the grant of this Lease that the Land Registry has approved an Estate Layout Plan in respect of the Scheme or the next phase of it

- 5.5 The Developer shall procure that in any contract for the sale of a Dwelling or Commercial Unit there shall be inserted into such contract (in a type size and character no less prominent than the remainder of the contract) the following wording:

"The [Purchaser] [Buyer] hereby acknowledges that the lease of the [Property] (which is to be made by the freeholder) will not be released until satisfaction of the requirements set out in the building lease relating to the [Development] [Estate] granted to the Developer and that the [Purchaser] [Buyer] has been advised to obtain (before it completes the purchase of the [Property] from the Developer) written confirmation from the solicitors acting for the Developer that the Interim Completion Certificate for the [Property] has been issued"

- 5.6 Without prejudice to the generality of clause 19.2 it is agreed that the issue by the Carbon Challenge Inspector of an Interim Completion Certificate (or a Final Completion Certificate) does not imply any warranty or representation by HCA in respect of any Dwelling or anything else upon or relating to the Development or the manner or quality of construction or design or fitness for purpose or absence of defect of anything on the Development nor that any particular standard has been achieved and HCA shall have no liability to any person to whom any such certificate is issued.

- 5.7 The Developer and the Surety hereby agree to indemnify and keep indemnified HCA against any costs claims actions proceedings and liability arising directly or indirectly from HCA being party (as lessor) to any lease to any Purchaser or Management Company or Association of any part of the Development of any Dwelling or Commercial Unit

## **6 Final Completion Certificate**

Prior to issue of Interim Completion Certificates for the last 10 Dwellings the Developer shall:

- (a) produce to the Carbon Challenge Inspector a CEEQUAL Award Certificate in respect of the Development achieving a minimum standard of rating of "Very Good"
- (b) produce to the Carbon Challenge Inspector a Detailed Access Statement in respect of the Development

and the Carbon Challenge Inspector shall immediately after the issue of the last Interim Completion Certificate issue a certificate that he has received the documents referred to in (a) and (b) above (**Final Completion Certificate**).

## **7 Leases and transfers of Dwellings and Commercial Units**

The Developer and the HCA covenant with each other to comply with their respective obligations contained in the Schedules.

## **8 Transfer of Open Space Land**

8.1 HCA covenants to transfer at any time or times following the completion by the Developer of its obligations in relation to the same and if the Developer requests in writing within 15 Working Days of such request the whole or any part of the Open Space Land and / or the Common Areas to the Management Company or such other persons as the Developer may reasonably require in each case for a consideration of £1.00.

8.2 The transfer(s) shall be in such form as the Developer shall reasonably require and HCA acting reasonably shall approve

8.3 The Developer shall procure that simultaneously with the completion of any such transfer the transferee (other than the local authority if the Open Space Land is being adopted) enters into a deed with HCA in the form of the Deed of Covenant and Charge

## **9 Transfer etc of Common Services and Highways**

HCA covenants to enter into, if the Developer so requests in writing within 15 Working Days of such request, any leases, transfers, easements, licences, agreements or other document with any public or statutory authority in connection with any Common Services or Highways or matters ancillary thereto in such form as the Developer shall reasonably require and HCA approves acting reasonably and each at their own cost provided that any costs payable to any third party pursuant to those agreements shall be met by the Developer.

## **10 Transfer of remainder of Land**

- 10.1 Following the issue of the Final Completion Certificate the HCA shall transfer to the Management Company and the Developer shall procure that it will accept the same and if it does not then the Developer will do so in respect of the remainder of the Land (if any) the freehold of which is still vested in HCA and which is not the subject of any other provision for transfer under this Lease Provided that the Developer may by notice to HCA elect that the whole or part of those parts of such remainder land be transferred to the highway or other competent authority as highway public open space or other amenity land.
- 10.2 Each transfer shall be in such form as the Developer and HCA shall reasonably require.
- 10.3 HCA shall be entitled to instruct the Carbon Challenge Inspector not to issue Interim Completion Certificates for the last 5 Private Units until the provisions of clause 10.1 have been complied with by the Developer and the Developer shall procure that the Carbon Challenge Inspector shall comply with any such instruction.

## **11 General provisions relating to transfers**

Notwithstanding the completion of any lease or transfer under this Lease, the provisions of this Lease shall remain in force in respect of anything remaining to be done by the Developer or HCA. In particular, such completion is not to be treated as an acknowledgment by HCA that all money due from the Developer to HCA in respect of the transfer has been paid or that the Developer has complied with any other obligations on its part.

## **12 Estate Management Scheme**

The Developer agrees that:

- 12.1 the terms of the Estate Management Scheme Documents will be incorporated into each lease or transfer of every Dwelling or Commercial Unit such that the Purchaser of each Dwelling or Commercial Unit and any successor in title to a Purchaser or any person deriving title under a Purchaser will in turn become liable under the Estate Management Scheme Documents for the duration of their estate or interest
- 12.2 it will in settling the form of lease or transfer of each Dwelling or Commercial Unit require the Purchaser to become a member of the Management Company in accordance with the Memorandum and Articles of Association.
- 12.3 it will procure the incorporation of the Management Company prior to completion of the sale of the first Dwelling and supply a certified copy of the Certificate of Incorporation to HCA.
- 12.4 it shall not alter or amend the Memorandum and Articles of Association of the Management Company in any way which is inconsistent with the Estate Management Scheme or the Estate Management Scheme Documents



- 12.5 it will set up a Web page for the Management Company the format and content of which shall be first approved by HCA (such approval not to be unreasonably withheld or delayed).
- 12.6 it shall procure that HCA shall be entitled to have a representative on the board of the Management Company and will invite a representative of any other relevant stakeholder reasonably proposed by HCA to be a member of the board and that the Developer itself shall have a representative on such board.
- 12.7 shall ensure that every person who is a proprietor of a leasehold title or freehold title registered at the Land Registry of a Dwelling or Commercial Unit at the Development will become a member of the Estate Management Company.

### **13 Developer's further covenants**

The Developer further covenants with the Landowners as follows:

- 13.1 To comply at all times with the Carbon Challenge Generic Brief
- 13.2 To pay (if demanded) the reserved rent on the days and in the manner aforesaid.
- 13.3 To pay Interest on any sum of money payable to HCA by the Developer under this Lease which is not paid when payment is due.
- 13.4 To pay all rates, taxes, claims, assessments and outgoings whatsoever in respect of the Land (except in relation to any Dwelling or Commercial Unit which has been disposed of to a Purchaser) now or hereafter imposed or charged upon the owner or occupier.
- 13.5 To indemnify and keep indemnified HCA from and against all claims, demands and liabilities howsoever arising from the use or occupation of the Land or its condition or in respect of the design of the Development or any part thereof and the materials and workmanship used by the Developer in the Development or any part thereof and any inaccuracies in the plan or other description of any Dwelling or Commercial Unit used in any transfer.
- 13.6 Not to use the Land other than for the Development.
- 13.7 Not to assign, underlet, transfer, charge, share or part with possession of or grant any licence or interest in respect of the Land or any part thereof except in accordance with the provisions of this Lease save that the Developer shall be permitted with the prior written consent of HCA (such consent not to be unreasonably withheld) to charge this Lease to a person, firm or company providing the development finance for the construction of the Development.

- 13.8 Within fourteen days after the date of every dealing charge or other devolution of this Lease to give notice thereof in writing to HCA and produce to it a certified copy of the instrument effecting the devolution.
- 13.9 To pay all expenses (including solicitors' costs and surveyor's fees) incurred by HCA of and incidental to and in connection with:
- (a) the preparation and service of any notice under Section 146 of the Law of Property Act 1925 and any proceedings under Sections 146 or 147 of that Act even if forfeiture is avoided otherwise than by relief granted by the Court
  - (b) any consents or approvals requested by the Developer pursuant to clause 13.7
  - (c) any supplemental documentation required by the Developer in respect of any matters relating to this Lease not envisaged at the date of this Lease
- 13.10 On the receipt of any notice, order, direction or thing from any competent authority affecting or likely to affect the Land whether the same shall be served directly on the Developer or the original or a copy thereof be received from any other person whatsoever the Developer will:
- (a) so far as such notice, order, direction or other thing or the Act regulations or other instrument under or by virtue of which it is issued or the provisions hereof require it so to do comply therewith at its own expense; and
  - (b) forthwith deliver to HCA a copy of such notice, order, direction or other thing.
- 13.11 At the end or sooner determination of the said term quietly to yield up the Land to HCA in accordance with the covenants on the part of the Developer contained in this Lease.
- 13.12 Not to do anything on the Land which may be or become a nuisance or cause damage to HCA or to the owners or occupiers of any adjoining or neighbouring land or cause or give rise to the significant possibility of significant harm to the health of living organisms and other interference with the ecological systems of which they form part or cause pollution of ground or surface water PROVIDED THAT to the extent that the Development is undertaken in accordance with this Lease it shall not be a breach of this Lease.
- 13.13 By way of indemnity only to comply with all Title Matters.

13.14 In the event of a default by the Developer to execute any documents required under the provisions of clauses 8, 9 or 10 of this Lease, the Developer irrevocably and by way of security appoints HCA as its attorney and in its name and on its behalf and as its act and deed and in such manner as the attorney may think fit to sign execute seal deliver and do all deeds instruments acts and things which it is required to do under clauses 8, 9 and 10 of this Lease. The Developer covenants immediately on the request of HCA to ratify and confirm all deeds, instruments, acts and things signed, executed, sealed, delivered and done under that appointment.

#### 14 HCA's and PCC's covenants

14.1 The HCA covenants with the Developer as follows:

- (a) That the Developer observing and performing the several covenants and stipulations on the part of the Developer herein contained shall peacefully hold and enjoy the Land during the said term without any interruption by HCA or any person rightfully claiming under or in trust for them.
- (b) If requested by the Developer, to enter into any of the agreements (excluding any guarantee or bond) referred to in paragraph 1.2 of Schedule 2 as landowner in so far as it is necessary to dedicate the land, sewer or other matter the subject of the agreement on terms approved by HCA (such approval not to be unreasonably withheld or delayed) subject to the Developer entering into an indemnity guaranteed by the Sureties (in a form reasonably required by HCA) indemnifying HCA against all liability for all costs, obligations and liabilities in connection or arising therefrom
- (c) If requested by the Developer to invoke the provisions of clauses 7.2 and 7.4, paragraphs a, b, c, d of Schedule 1 and paragraphs 3 and 4 of Schedule 2 of the Access Deed dated 25 March 2011 and to enter into any transfers, leases, easements, licences or other agreements with any public authority in connection with the Adoptable Common Services or any service media and any ancillary apparatus on terms approved by HCA (such approval not to be unreasonably withheld or delayed) subject to the Developer entering into an indemnity guaranteed by the Sureties (in a form reasonably required by HCA) indemnifying HCA against all liability for all costs, obligations and liabilities in connection or arising therefrom
- (d) On the receipt of any notice, order, direction or thing from any competent authority affecting or likely to affect the Land whether the same shall be served directly on HCA or the original or a copy thereof be received from any other person whatsoever HCA will as soon as reasonably practicable deliver to the Developer a copy of such notice, order, direction or other thing

- (e) Each Party shall pay its own and its own advisers' costs in relation to all agreements or the documents referred to in this clause 14.1 but the Developer shall be responsible for any costs payable to any third party pursuant to those agreements or other documents.

14.2 The PCC covenants with the Developer as follows:

- (a) That PCC shall at the reasonable request of the Developer enforce the reservations (including but not limited to the reservations in the PCC's favour in clause 3.5 of the Football Club Leases) that the PCC has the benefit of pursuant to the Football Club Leases so that any means of access or provision of services to the football ground on the Adjoining Land will align with the corresponding easements agreed pursuant to the Access Deed and PCC Transfer.
- (b) PCC will use its reasonable endeavours to do everything necessary to assist the Developer in exercising the reservations in the Football Club Leases (at nil cost to the Developer) in so far as they align with the corresponding easements agreed pursuant to the Access Deed and PCC Transfer.

15 **Forfeiture**

In this Lease the following expressions shall have the following meanings:

**"Breach Notice"**                      **Termination** means a written notice served by HCA on the Developer (copied to the Permitted Chargee) as described in clause 15.1 (b) referring to that clause and stating that failure to respond could lead to the termination of this Lease

**"Insolvency"**                      means, in relation to the Developer:

- (a) the apportionment of:
  - (i) an administrator; or
  - (ii) a receiver and/or manager to this Lease by a Permitted Chargee; or
  - (iii) a liquidator (whether compulsorily or voluntarily except for the purpose of a solvent reconstruction);
- (b) the Permitted Chargee taking possession as mortgagee;

(and **Insolvent** shall be construed accordingly);

<b>“Insolvency Termination Notice”</b>	means a written notice served by HCA on the Developer (copied to the Permitted Chargee) as described in clause 15.1(a) referring to that clause and stating that failure to respond within 10 Working Days could lead to the termination of this Lease
<b>“IP”</b>	means any of: a liquidator or administrator appointed to the Developer, or a receiver and/or manager appointed to the Lease of whom the HCA has written notice
<b>“Permitted Charges”</b>	means any mortgagee of this Lease and/or holder of a floating charge over all or substantially all of the Developer’s business and assets approved by HCA pursuant to clause 13.7 and of whom the HCA has written notice
<b>“Suitable Substitute”</b>	means a person, firm or company, approved by HCA (such approval not to be unreasonably withheld or delayed) with the technical ability, commercial expertise and adequate financial facilities to complete the Development on the terms contemplated by this Lease
<b>“Terminate the Lease”</b>	means, in this clause the exercise by HCA of any of the rights listed in clause 15.2; and Termination of this Lease shall be construed accordingly

**15.1 HCA’S Remedies on breach**

**(a) Insolvency event**

If:

- (i) an administration order is made in relation to the Developer
- (ii) the Developer shall enter into liquidation (whether compulsorily or voluntarily except for the purposes of amalgamation or reconstruction of a solvent company);
- (iii) a receiver or manager shall be appointed by the Developer
- (iv) the Developer becomes insolvent

then and in any such case HCA may serve an Insolvency Termination Notice. Following the service of any Insolvency Termination Notice under this sub-clause, the provisions of clause 16 shall govern the respective rights of HCA, the Developer Party and the Permitted Chargee

**(b) Fundamental Terms etc.**

If there shall be a material breach, non performance or non-observance of any of the terms herein contained and on the part of the Developer to be performed or observed and the Developer shall have failed to remedy the same within a reasonable period from service of a written notice by HCA to the Developer specifying the breach, non performance or non-observance then and in any such case HCA may serve a Breach Termination Notice. Following the service of any Breach Termination Notice under this sub-clause, the provisions of clause 17 shall govern the respective rights of HCA, the Developer and the Permitted Chargee.

**(c) Failure to Carry out Works**

In addition to HCA's remedies set out in clauses 15.1 (a) and 15.1 (b) above if the Developer or the Permitted Chargee (as appropriate) shall fail to carry out or complete any of the works required by this Lease in accordance with the terms of this Lease and the Developer shall have failed to carry out the same within a reasonable period of a written notice sent by HCA to the Developer specifying the breach and requiring the Developer to remedy the breach HCA its agents employees contractors and licensees shall at any time prior to such remediation be entitled to enter the Land and to carry out such works itself and the Developer or Permitted Chargee shall forthwith upon demand reimburse the proper costs fees and expenses incurred by HCA in connection therewith together with interest at the Prescribed Rate (such costs fees expenses and interest to be recovered by HCA as a debt).

**15.2 Termination of the Lease**

HCA may not:

- (a) re-enter and take possession of the Land; or
- (b) forfeit the Lease;

unless it has first served notice on the Developer (copied to the Permitted Chargee) and served an Insolvency Termination Notice in accordance with the terms of sub-clause 15.1 (a) or, as appropriate, a Breach Termination Notice in accordance with sub-clause 15.1 (b).

**15.3 If the Lease Is Terminated:**

- (a) to the extent that the beneficial ownership of copyright, design right and any other intellectual property right in any documents, reports, investigations and designs submitted and approved as part of the Planning Permission is vested in it, the Developer grants to the HCA, any IP and the Permitted Chargee a royalty free, non exclusive and irrevocable licence to use and reproduce any and all of such documents and the designs contained in them in connection only with its ownership of the Development, any works carried out by the Developer and the Land and this licence shall be freely assignable to third parties and carry the right to grant sub-licences;
- (b) to the extent that beneficial ownership of copyright, design right or any other intellectual property right in any documents referred to in sub-clause 15.3 (a) above is vested in any person other than the Developer including (without limitation) any of the Consultants or the Contractor or other contractor or supplier the Developer shall use its reasonable endeavours to procure that the beneficial owner grants to the HCA non-exclusive and irrevocable licence to use and reproduce all and any of the documents and the designs contained in them, for any of the purposes and on the same terms as set out in sub-clause 15.3 (a) above

15.4 Neither the Developer nor HCA may vary or supplement (or attempt to vary or supplement) the Lease without the prior written consent of the Permitted Chargee, whose consent shall not be unreasonably withheld or delayed.

## **16 HCA's rights on Developer's Insolvency**

16.1 Within 10 Working Days after the service of an Insolvency Termination Notice either:

- (a) the IP; or
- (b) if the Permitted Chargee has taken possession as mortgagee, the Permitted Chargee shall confirm in writing to HCA whether it:
  - (i) proposes to complete the Development in accordance with the terms of this Lease; or
  - (ii) proposes to seek a Suitable Substitute to complete the Development; or
  - (iii) proposes not to complete the Development

- 16.2 The IP or Permitted Chargee may indicate in a notice served under clause 16.1 that it proposes to take the action specified in 16.1 (i) pending 16.1 (ii) above. If the IP or Permitted Chargee has give such an indication and taken the action in 16.1(i) within the requisite time scale it will be entitled within a period of 6 months from the date of service of the Insolvency Termination Notice to seek a Suitable Substitute to complete the Development and the provisions set out in clause 16.4 (other than as to timescale where the provisions of this clause 16.2 will apply instead) will apply in relation to any Suitable Substitute proposed during that 6 month period.
- 16.3 Where the IP or Permitted Chargee informs HCA in writing pursuant to clause 16.1 that it will complete the Development then that IP (acting in its capacity for and on behalf of the Developer and without any personal liability) and/or the Permitted Chargee (as the case may be) shall be bound by the terms of this Lease from the date of that notification (and the Permitted Chargee shall take an assignment of both the benefit and burden of this Lease within a further 20 Working Days after serving that notification) and (subject to any arrangements for curing any antecedent breaches by the Developer and/or extending the terms of the Lease for a reasonable period in order to permit completion of the Development as the IP or Permitted Chargee and HCA shall agree, acting reasonably) (or in the absence of agreement as determined by an expert in accordance with clause 19) on any breach of the terms of this Lease by the IP or Permitted Chargee following that assignment the HCA's rights to forfeit as set out in this Lease will apply but not the obligations set out in clauses 16 and 17.
- 16.4 Where the IP or Permitted Chargee indicates to HCA in writing pursuant to clause 16.1 that it will seek a Suitable Substitute then within 6 months after serving that notification it must:
- (a) identify that Suitable Substitute;
  - (b) obtain HCA's approval to that Suitable Substitute (such approval not to be unreasonably withheld or delayed); and
  - (c) procure that the Suitable Substitute enters into an assignment of this Lease with new arrangements for curing any antecedent breaches by the Developer and such extension of the term in order to permit the completion of the Development as the Suitable Substitute and HCA shall agree, acting reasonably (or in the absence of agreement as determined by an expert in accordance with clause 19).
- 16.5 If:
- (a) the IP or Permitted Chargee fails to respond to an Insolvency Termination Notice within 10 Working Days of service; or
  - (b) their response indicates that they do not wish to complete the Development; or



- (c) the Lease is not assigned within the timescale required by clauses 16.3 or 16.4 as the case may be;

HCA may on the earlier of:

- (d) the expiry of that 10 Working Day period; and
- (e) receipt of such response; and
- (f) on expiry of the period for assignment;

respectively Terminate the Lease.

16.6 In the circumstances contemplated by clauses 16.3, 16.4 and 16.1 (b)(iii), HCA may not set off against any Reimbursement payable by it pursuant to this Lease any sums due from the Developer to HCA otherwise than pursuant to this Lease.

16.7 If HCA Terminates the Lease then:

- (a) it will have regard to its common law obligation to mitigate against its loss; and
- (b) following any subsequent dealing by HCA with its estate or interest in the Undeveloped Land (or any part of it) or (if a New Lease is not granted) the Undeveloped Land and the Developed Land (or any part of them) it will pay the Reimbursement to the Developer (or the Permitted Chargee) from any sums which HCA receives in respect of such dealing within 20 Working Days of HCA receiving such sum; and
- (c) unless the Lease is Terminated as a result of a breach of the Quality Standards, HCA will grant a New Lease of the Developed Land to the Developer in accordance with clause 18.

## **17 HCA's rights following material breach of this Lease**

17.1 Within 20 Working Days after the service of a Breach Termination Notice identifying a material breach of this Lease the Permitted Chargee shall confirm in writing to HCA whether it:

- (a) proposes to complete the Development in accordance with the terms of this Lease; or
- (b) proposes to seek a Suitable Substitute to complete the Development; or
- (c) proposes not to complete the Development.

17.2 Where the Permitted Chargee informs HCA pursuant to clause 17.1 they propose to either seek a Suitable Substitute or to complete the Development, then, within 6 calendar months of service of the Breach Termination Notice the Permitted Chargee or its IP must either:

- (a) where they have indicated an intention to seek a Suitable Substitute:
  - (i) identify that Suitable Substitute
  - (ii) obtain HCA's approval to that Suitable Substitute (such approval not to be unreasonably withheld or delayed); and
  - (iii) procure that the Suitable Substitute enters into an assignment of this Lease with such extension of the term as is reasonable in order to permit the completion of the Development and subject to any arrangements for curing any antecedent breaches by the Developer as the Suitable Substitute and HCA shall agree acting reasonably (or in the absence of agreement as determined by an expert in accordance with clause 19); or
- (b) where they have indicated an intention to complete the Development enter into an assignment of this Lease with such extension of the term as is reasonable in order to permit the completion of the Development and subject to any arrangements for curing any antecedent breaches by the Developer as the IP or Permitted Chargee and HCA shall agree acting reasonably (or in the absence of agreement as determined by an expert in accordance with clause 19).

17.3 Where the Permitted Chargee has responded within the period referred to in clause 17.1 confirming it will seek either a Suitable Substitute or will complete the Development, the HCA will not take any steps to Terminate the Lease for the reasons set out in clause 17.1 until after the expiry of the time periods permitted to allow for the assignment of this Lease set out in clause 17.2,

17.4 Where the Permitted Chargee does not respond within the requisite period referred to in clause 17.1 or has replied indicating it will not be taking any action the HCA shall be entitled forthwith to Terminate the Lease.

17.5 If the Permitted Chargee fails to complete the assignment of the Lease directly or to a Suitable Substitute in accordance with clause 17.3 then subject to clauses 17.7, 17.8 and 18 (which shall survive in the circumstances contemplated by clause 17.7) HCA may, without prejudice to any right of action or remedy which may have accrued in respect of any antecedent breach by either party of this Lease, Terminate the Lease.

17.6 If HCA Terminates the Lease then:

- (a) it will have regard to its common law obligations to mitigate against its loss; and
- (b) following each subsequent dealing by HCA with its estate or interest in the Undeveloped Land (or any part of it) or (if a New Lease is not granted) the Undeveloped Land and the Developed Land (or any part of them) it will pay the Reimbursement to the Developer (or the Permitted Chargee) from any sums which HCA receives in respect of such dealing within 20 Working Days of HCA receiving such sums; and

- (c) unless the Lease is Terminated as a result of a breach of the Quality Standards, HCA will grant a New Lease of the Developed Land to the Developer in accordance with clause 18.

17.7 If HCA shall Terminate the Lease as a result of a breach of the Quality Standards clause 18 shall not apply.

17.8 Pending completion of any assignment and or actual Termination of this Lease pursuant to this clause 17 the Developer shall remain liable for and shall continue to perform the provisions of this Lease unless HCA otherwise directs.

## **18 Developed and Undeveloped Land**

18.1 Where the circumstances in clause 17 arise and permit the grant of such a New Lease and following service of a Termination Notice there has been no assignment of this lease within the requisite time scale then within 10 Working Days after the forfeiture termination or repudiation of this Lease HCA will grant to the Developer ("the Lessee") who will accept a lease ("the New Lease") of the Developed Land on the same terms as the terms of this Lease (and the Commercial Conditions as defined in and set out in the Agreement for Lease shall apply to the grant of the New Lease) in so far as they are applicable to the Developed Land (including without limitation the provisions relating to payment of the Premium and the Overage applicable in each case to the Developed Land) with such changes as the parties acting reasonably shall agree having regard to the extent of the Developed Land and the necessary rights and easements to be granted and reserved to enable the Developed Land and the Undeveloped Land to be fully developed so as to be beneficially occupied and neither party will ransom the other when agreeing the extent of those rights.

18.2 The New Lease shall include (but not by way of limitation):

Such of the following provisions but only to the extent they are necessary and on terms which are reasonable in relation either to the development and ongoing use of the Developed Land or the development and ongoing use of the Undeveloped Land:

- (a) The right for the Lessee to enter upon the Undeveloped Land to complete all roads sewers services common parts open space or other matters which relate to affect or would be used by the owner or occupier for the time being of any part of the Developed Land ("Infrastructure") both before during and after the completion of the Dwellings on it
- (b) The right for the Developed Land and each and every part of it to use the Infrastructure
- (c) The obligation on HCA as freehold owner of the Undeveloped Land to join in any agreements or deeds for the adoption, dedication or transfer for the Infrastructure reasonably required by the Lessee

- (d) Common obligations on both HCA and the Lessee to procure that on the sale or letting of all Dwellings (whether on the Developed Land or Undeveloped Land) the management arrangements to any non-adoptable common services and areas designed by the Developer are imposed
- (e) Where the Infrastructure benefits both the Developed Land and the Undeveloped Land, provisions for:
  - (i) the fair and reasonable contribution by the parties (by reference to the benefit of the Infrastructure to their respective interests in the Developed Land and the Undeveloped Land) to the proper and reasonable cost of the construction of Infrastructure; and
  - (ii) the payment of the contribution referred to above which where due from the Lessee to the HCA shall be added to the Premium and where due from the HCA to the Lessee shall be paid from any sums the HCA receives following any subsequent dealing with its estate or interest in the Undeveloped Land.

18.3 The Agreed Transfer and the Agreed Lease shall be amended to ensure that each Dwelling is granted all such rights and easements as it shall reasonably require over both the Developed Land and the Undeveloped Land.

18.4 The Developer will itself accept and take up the New Lease and will execute a counterpart of it.

## 19 Disputes

19.1 Save where otherwise provided and subject to Clauses 17.2 and 17.3, any dispute arising between HCA and the Developer as to their respective rights, duties and obligations or as to any matter or thing in any way arising out of or in connection with the subject matter of this Lease shall be referred in accordance with the provisions of the Arbitration Act 1996 to the determination of a single arbitrator to be appointed (in default of agreement between the parties as to such appointment) by the President for the time being of the Law Society.

19.2 Any dispute arising between HCA and the Developer over any calculation or valuation to be made under this Lease shall be referred to an expert to be agreed upon by the parties, or failing agreement, to an expert nominated by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's determination of the calculation or valuation shall be conclusive and binding.

- 19.3 In so far as the provisions of this Lease require the form and contents of any document to be entered into between any of the parties hereto to be settled and the settling or conditions of such form shall not be agreed then the same shall be settled by counsel of at least 7 years call and experienced in property matters and regeneration schemes including public sector parties willing to act and in default of agreement as to his appointment to be appointed by the President for the time being of the Law Society.
- 19.4 Any costs payable by reason of the provisions of this Clause [19] shall be borne initially in equal proportions by HCA and the Developer and thereafter as may be adjusted by the award or awards pursuant to the provisions thereof.

## **20 Notices etc**

- 20.1 Any notice, decision, direction, approval, authority, permission or consent to be given by HCA under this Lease must be in writing and shall be valid and effectual (unless express provisions be made to the contrary) if signed by the director or such other officer or agent as HCA may from time to time by resolution designate for the purpose.
- 20.2 no notice served on HCA's Solicitors shall be valid unless it quotes the reference for the recipient solicitor as set out in Clause 1 of this Agreement or such other reference as may have been notified in writing in accordance with the provisions of this Clause
- 20.3 any notice or document sent by fax to HCA's Solicitors shall only be validly given or delivered if transmitted to 01223 316511 or to such other number as may be expressly notified in writing for the purposes of this Clause
- 20.4 no notice or document served on the Developer's Solicitors shall be valid unless it quotes the reference for the recipient solicitor set out in clause 1 of this Agreement or such other reference as may have been notified in writing to the other parties in accordance with the provisions of this clause and at the same time a copy must be served on The Group Legal Director, Morris Homes, Morland House, Altrincham Road, Wilmslow, Cheshire SK9 5NW
- 20.5 any notice sent by fax to the Developer's Solicitors shall only be validly given or delivered if transmitted to 0121 234 0001 and 01625 526 095 or to such other numbers as may be expressly notified in writing for the purposes of this clause
- 20.6 any notice or document to be given or served on PCC must either be sent or delivered to Legal Services Peterborough City Council Town Hall Peterborough PE1 1HG marked for the attention of the Solicitor for the Council
- 20.7 any notice or document to be given or served upon HCA must either be sent or delivered to HCA's Solicitors in accordance with the provisions of this Agreement or sent or delivered (in accordance with the provisions of this Agreement) to HCA at Central Business Exchange 414 Midsummer Boulevard Milton Keynes MK9 2EA and marked "for the attention of the Regional Director" or such other address (or reference) as HCA may notify in writing to the Developer for such purpose and at the same time a copy must be sent or delivered to HCA's Solicitors (in accordance with the provisions of this Agreement)
- 20.8 any notice or document to be given or served upon the Developer must be sent or delivered in accordance with the provisions of this Agreement to the Developer at Morris Homes (East Midlands) Limited, Morland House, Altrincham Road, Wilmslow, Cheshire. SK9 5NW and marked "for the attention of the Legal Director or such other address (or reference) as the Developer may notify in writing to HCA and at the same time a copy must be sent or delivered to the Developer's Solicitors

## **21 HCA's powers and liability**

- 21.1 Nothing herein contained or implied shall prejudice or affect HCA's rights, powers, duties and obligations in the exercise of its functions as a statutory body and the rights, powers, duties and obligations of HCA under all public or private statutes, byelaws, orders and regulations may be as fully and effectually exercised in relation to the Land and the Development as if HCA were not the owner of the Land and this Lease had not been executed by it.
- 21.2 HCA shall not be under any liability whatsoever in respect of any defect in the design of the Development by reason of HCA having approved the Approved Plans or otherwise and shall not be deemed to have made any representation or warranty as to the fitness or suitability of the Land for the purposes of the Development or any other representation or warranty and the Developer declares that:
- (a) no oral representation has been made to the Developer prior to the date hereof by any of the Landowners or their agents concerning the subject matter of this Lease which has influenced, induced or persuaded the Developer to enter into this Lease; and
  - (b) it has been provided with all information necessary to assess the state and condition of the Land and has been afforded full opportunity to enter the Land to conduct such surveys as it wished.

## **22 Value Added Tax**

- 22.1 All monies payable under the terms of this Lease are paid exclusive of VAT.
- 22.2 In the event of VAT being chargeable on such monies the Developer will on receipt of a valid and proper VAT invoice pay the same to the HCA at the appropriate rate.

## **23 Acknowledgment**

- 23.1 The Parties to this Lease do not intend that any term of this Lease shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.
- 23.2 The Developer hereby acknowledges that this Lease and all documents made supplemental thereto or entered into prior thereto in relation to the Development and all information provided by the Developer (including the Bid Submission) shall be subject to the provisions of the Freedom of Information Act 2000 and the Developer hereby agrees to provide to HCA such assistance as may be reasonably requested to assist HCA to comply with its obligations under the Freedom of Information Act 2000 (but without being under any obligation to divulge commercially sensitive information under this clause).
- 23.3 No variation of this Lease shall be made other than by deed

23.4 Nothing in this Lease shall constitute a partnership or joint venture between the parties hereto or constitute the Developer as the agent of HCA for any purpose whatsoever

**24 Surety Covenants**

24.1 The Surety jointly and severally covenants with HCA as a direct and primary obligation in the terms set out in Schedule 7.

24.2 HCA agrees to use reasonable endeavours to mitigate any losses in respect of which the Surety indemnifies HCA pursuant to the provisions of Schedule 7

**25 Additional Standards**

25.1 The Developer shall use reasonable endeavours to obtain as soon as reasonably practicable following completion of the Development a Secured by Design Certificate in respect of the Dwellings and shall promptly keep HCA informed as to the progress of its application for such certificate and shall promptly supply HCA with a copies of the same once they are issued.



25.2

- (a) The Developer shall use reasonable endeavours to obtain on or before practical completion of 50 per cent (by number) of the Dwellings intended to be constructed on the Development an Interim Client Design Award achieving a minimum standard of "Very Good" and following completion of the Development shall use reasonable endeavours to obtain a CEEQUAL Award and shall promptly keep HCA informed as to the progress of its application for such certificates
- (b) The Developer diligently complete and retain a CEEQUAL Manual in respect of the Development and shall on request produced to the Carbon Challenge Inspector the CEEQUAL Manual for inspection

25.3 The Developer shall promptly following practical completion of 50 per cent (by number) of the Dwellings intended to be constructed within the Development apply for a Building for Life Award and will thereafter diligently pursue the award of the same and shall promptly keep HCA advised of the progress of its application and promptly supply a copy of such award once made

25.4 The Developer shall carry out and complete the Development to achieve the Lifetime Homes Standard

25.5 The Developer shall no later than practical completion of the first Dwelling [or Commercial Unit (as the case may be) prepare a suitably worded User Manual in respect of each Dwelling type and Commercial Unit and shall promptly supply HCA with copies of the same as soon as they are produced

**26 Considerate Constructors Scheme**

The Developer shall in carrying out the works comprising the Development comply with the provisions of the Considerate Constructors Scheme save that where there shall be any conflict between the provisions of this Lease and the provisions of the said Scheme the former shall prevail

**27 Development Strategies**

The Developer covenants with HCA to comply with the Developer's obligations contained in the Development Strategies

**28 Open Book Costings**

The Developer covenants with HCA to install and operate at its own cost [computerised audit systems approved by SMART Audit (BRE Consultancy package that provides a mechanism by which waste can be benchmarked and categorised by source type amount cause and cost) or WRAP (the 'Waste & Resources Action Programme' which encourages and enables businesses and consumers to be more efficient in their use of materials and recycle more things more often)] to monitor and calculate the costs incurred by the Developer in carrying out the Development and implementing the Development Strategies such costs and calculations to be delivered to HCA on a six monthly basis in a format to be approved by HCA (such approval not to be unreasonably withheld or delayed)

## **29 Energy Solution**

- 29.1 The Developer shall use reasonable and commercially sensible endeavours having regard to the Planning Considerations to obtain the Energy Planning Permission and to obtain an Off Site Energy Solution.
- 29.2 Should the Developer be unable to secure an Off Site Energy Solution within 12 months of the date of this Lease or the Energy Planning Permission is subject to Finally Determined Judicial Proceedings that result in the Energy Planning Permission being revoked or declared invalid (whichever is earlier) then the Developer will use reasonable and commercially sensible endeavours having regard to the Planning Considerations to obtain a planning permission for an On Site District Energy Centre ("Revised Planning Permission") and to obtain an On Site Energy Solution PROVIDED THAT before submitting a planning application to the Local Planning Authority the Developer shall submit the same to HCA for approval such approval not to be unreasonably withheld or delayed.
- 29.3 If the Developer obtains an Off Site Energy Solution by the date twelve months after the date of this Lease the rights and obligations of the parties to this Lease will include and take account of the Off Site Energy Solution
- 29.4 If the Developer obtains an On Site Energy Solution by the date twenty-four months after the date of this Lease the rights and obligations of the parties to this Lease will include and take account of the On Site Energy Solution.
- 29.5 If the Developer has not obtained an Off Site Energy Solution in accordance with clause 29.3 or an On Site Energy Solution in accordance with clause 29.4 then the Developer and the HCA will during the Alternative Solution Period endeavour in good faith to investigate, financially appraise and agree the Alternative Solution.
- 29.5.1 If the Alternative Solution cannot be agreed within the Alternative Solution Period then unless the Developer has served the Revised Code Level Notice within the Alternative Solution Period the Developer or HCA may by not less than 10 working days written notice to the other terminate this Lease ("the Termination Notice") whereupon:

29.5.1.1 upon expiry of the Termination Notice the term granted by this Lease shall immediately cease and determine and this Lease shall have no further effect but without prejudice to the rights of either party against the other in respect of any breach of covenant; and

29.5.1.2 on determination of this Lease the Developer will give vacant possession of the Land leaving in place any remediation, construction or other work that the Developer or any person, party or entity authorised by the Developer has undertaken on the Land; and

29.5.1.3 Upon expiry of the Termination Notice the Developer shall forthwith apply to the Land Registry to close its leasehold title and to remove any entries that may have been made in relation to this Lease against the respective title numbers of the Land; and

29.5.1.4 To the extent that any monies that have been drawn down by way of Grant by the Developer either from HCA or from PCC and which have not been expended or the relevant cost not incurred by the date of service of Termination Notice such monies shall be refunded (without penalties or interest) to HCA or PCC as the case may be within 10 working days of service of the Termination Notice.

29.5.2 At anytime within the Alternative Solution Period the Developer may serve notice on the HCA of its intention to implement the Planning Permission and build the Development to the Revised Code Level ("the Revised Code Level Notice") whereupon:

29.5.2.1 all references to the Code shall be replaced with references to the Revised Code; and

29.5.2.4 the Development Strategies shall be modified accordingly.

29.6 HCA and PCC (acting in its capacity as owner of the Adjoining Land and without prejudice to any of its statutory powers) will:-

29.6.1 Use reasonable and commercially sensible endeavours to assist the Developer in obtaining an Off Site Energy Solution and/or an On Site Energy Solution and will at all times act in good faith towards the Developer;

29.6.2 Support any application or representation in respect of any relevant structure or local or other plan or any review that relate to the Off Site Energy Solution and/or On Site Energy Solution and oppose any planning applications submitted by any third party which may adversely affect or prejudice the prospects of obtaining an Off Site Energy Solution and/or On Site Energy Solution; and

**29.6.3** Enter into any New Planning Agreement provided that:-

- (a) the New Planning Agreement does not require the carrying out of any works on or restrict or regulate or otherwise impose any obligation (whether of a financial nature or otherwise other than the payment of fees) on:
  - (i) the development and/or the use or enjoyment of the Land prior to the date when for the purposes of section 56 of the Town and Country Planning Act 1990 the Development is taken to be implemented; or
  - (ii) any land retained by the Landowners and PCC other than the part of the Moyes Stand referred to in clause 29.1.11
- (b) the New Planning Agreement provides that the Landowners and PCC will not be liable for any breach non-observance or non-performance of any obligations covenants or conditions in the New Planning Agreement occurring after they either no longer have an interest in the Land or an interest in the Land arising only from the grant or reservation of any easement or similar right or the benefit of any restrictive covenant; and
- (c) the Developer indemnifies and keeps indemnified the Landowners and PCC against all liabilities whatsoever arising out of or in relation to a New Planning Agreement for the term of the Lease or until the Lease is terminated or in respect of any part of the Moyes Stand for the period of any lease (term)

**29.7** PCC will use reasonable endeavours to procure that any tenant(s) of the part of the Moyes Stand will:

- (a) enter into or grant (as appropriate) to the Developer or such other party as the Developer may specify a lease or sub lease (as appropriate) of that part of the Moyes Stand required for the off site District Energy Centre; and
- (b) grant appropriate rights of access for the construction; laying, maintenance, inspection, replacement, cleaning, re-routing and enlargement of conduits required for the transmission of the Energy Centre Services from the District Energy Centre in the Moyes Stand to the Land and Dwellings; and
- (c) grant appropriate rights to use the conduits referred to in clause 30.6.4 (c) for the transmission of the Energy Centre Services.

**29.8** HCA and PCC (in its capacity as owner of the Adjoining Land) shall not:

- 29.8.1** Make or support any application for planning permission for the Land other than one submitted by the Developer; or

29.8.2 Object to any planning application or appeal lodged by the Developer;  
or

29.8.3 Otherwise do anything which would materially and adversely affect  
and/or materially prejudice the prospects of obtaining an Off Site Energy  
Solution and/or On Site Energy Solution for the Land including without  
limitation making representation to the Local Planning Authority.

### **30 Planning Permission – Termination of Lease**

30.1 If prior to expiry of the Challenge Period the Planning Permission has been the  
subject of Judicial Proceedings and such Judicial Proceedings have been  
Finally Determined resulting in the Planning Permission being revoked or  
declared void ("Revocation Date") then the Developer or HCA may by not less  
than three months written notice to the other to terminate this Lease ("Planning  
Termination Notice") and the following shall apply:

30.1.1 upon expiry of the Planning Termination Notice the term granted by  
this Lease shall immediately cease and determine and this Lease have  
no further effect but without prejudice to the rights of either party  
against the other in respect of any breach of covenant; and

30.1.2 on determination of this Lease the Developer will give vacant  
possession of the Land leaving in place any remediation, construction  
or other work that the Developer or any person, party or entity  
authorised by the Developer has undertaken on the Land.

30.2 Upon expiry of the Planning Termination Notice the Developer shall forthwith  
apply to the Land Registry to close its leasehold title and to remove any  
entries that may have been made in relation to this Lease against the  
respective title numbers of the Land

30.3 To the extent that any monies that have been drawn down by way of Grant by  
the Developer either from HCA or from PCC and which have not been  
expended or the relevant cost not incurred by the date of service of  
Developer's Notice such monies shall be refunded (without penalties or  
interest) to HCA or PCC as the case may be within 10 working days of service  
of the Planning Termination Notice

### **31 Law**

This Lease is governed by and shall be construed in accordance with English  
law and subject to the exclusive jurisdiction of the English courts.

**Executed** by the Parties as a deed and delivered on the day and year first above  
written

## **Schedule 1 – Grants and reservations**

### **Part 1 - Rights easements and privileges**

- 1 A right to enter the Adjoining Land to carry out the Development, such entry to be on the following terms:
  - (a) entry may take place only at times to be agreed with PCC acting reasonably and without delay;
  - (b) entry shall be free of charge but otherwise be subject to such conditions as PCC may reasonably require;
  - (c) entry may only be over such parts of the Adjoining Land as may be appropriate in order to carry out the Development and, in any event, may not be over any part of the Adjoining Land which has been built upon
- 2 The right for the Developer to use and deal with the Land or any part of it in any manner they may think fit notwithstanding any diminishment in light or air to the Adjoining Land or any inconvenience nuisance or annoyance caused by demolition development or any works carried out on the Land

### **Part 2 – Exceptions and reservations**

- 1 The right for the benefit of the Adjoining Land to free passage of water, soil, gas and electricity, telephone, radio or television signals through the Common Services now or at any time within the Perpetuity Period running through, in, under or over or attached, to the Land.
- 2 The right for the benefit of the Adjoining Land within the Perpetuity Period to use, clean, connect into and repair Common Services now or at any time within the Perpetuity Period in, under, over or attached to the Land and to enter upon such part of the Undeveloped Land as may be necessary (but excluding any parts which have permanent structures upon them or are within building lines ) for any of the foregoing the person so entering doing as little damage as possible and as soon as reasonably possible making good any damage done.
- 3 A right of entry on to the Undeveloped Land to carry out any works to the Adjoining Land.
- 4 A right of entry in to the Undeveloped Land and such parts of the Developed Land that shall form roads serving the Development to carry out works to the bridge struts adjoining the eastern boundary of the Land and to access the Network Rail Reservation Area that is adjacent to the eastern boundary within the Land.
- 5 All other rights of entry given to HCA referred to elsewhere in this Lease.

- 6 The right for PCC to use and deal with the Adjoining Land or any part of it in any manner they may think fit notwithstanding any diminishment in light or air to the Land or any inconvenience nuisance or annoyance caused by demolition development or any works carried out on the Adjoining Land

AND all such rights to be on the following terms:-

- (a) Entry may take place only at times agreed with the Developer acting reasonably and without delay
- (b) Entry shall be free of charge but otherwise be subject to such conditions as the Developer may reasonably require
- (c) Entry may only be over such parts of the Land as may be necessary
- (d) Entry shall only be over the Undeveloped Land for the time being within the Land
- (e) The Developer may at any time or times by written notice vary the route of all such rights provided that such alternative routes are not materially less beneficial

## **Schedule 2 – Developer's covenants and other provisions relating to the Development**

### **1 Pre-Development Matters Consents and Agreements**

1.1 No work of any nature forming part of the Development shall commence until:-

- (a) a pre commencement meeting has been held between the Developer and HCA's Development Control Officer (or other officer nominated for such purposes by HCA) (and it shall be the responsibility of the Developer to request and arrange such meeting and the parties agree to meet at a mutually convenient time following reasonable notice and shall act reasonably in agreeing such an appointment);
- (b) the Developer has given to HCA's Development Control Officer (or other officer nominated for such purpose by HCA) not less than ten Working Days' notice of its intention to commence the Development;
- (c) the Developer has complied with any other requirement to be complied with before the Commencement Date under the provisions of this Agreement;
- (d) the Developer has given to HCA's Development Control Officer a copy of the notice that it gives to the Health and Safety Executive under Schedule 1 of the CDM (as referred to in paragraph 11.5 of this Schedule)

### **1.2 Consents and agreements**

Subject to paragraph 1.3, the Developer shall as soon as is reasonably practicable (or such within extended period as the Developer and HCA may agree):

- (a) obtain all permissions and consents required pursuant to the Planning Permission or needed to enable it to carry out the Development;
- (b) obtain consent under the building regulations for the Development in accordance with the requirements of the Building Act 1984;
- (c) obtain all other permissions and consents required to carry out the Development;
- (d) enter into as developer (and the HCA will enter into as landowner on the terms set out in this Agreement) an agreement or agreements with the highway authority pursuant to section 38 and/or section 278 of the Highways Act 1980 (as appropriate) in respect of the construction and adoption of the Adoptable Highways and procure any bond or guarantee required by the highway authority in connection with any such agreement;



- (e) enter into as developer (and the HCA will enter into as landowner on the terms set out in this Agreement) an agreement or agreements with the water authority pursuant to section 104 of the Water Industry Act 1991 in respect of the construction and adoption of the sewers serving the Development and procure any bond or guarantee required by the water authority in connection with such agreement;
- (f) (save to the extent that such parts of the Land are intended to be transferred to the Management Company) enter into an agreement with PCC for the adoption by PCC of the Open Space Land and any other play areas, amenity areas and landscaping areas comprising a part of the Development;
- (g) enter into an agreement with a landscaping contractor upon such terms so as to ensure the completion of the landscaping works referred to in the Approved Plans.

1.3 Each of the matters referred in paragraph 1.2 shall be in accordance with the Approved Plans.

1.4 The Developer covenants with HCA to observe perform and comply with all the obligations on its part contained in any document referred to in paragraph 1.2.

## **2 Boundary fences**

2.1 Prior to commencement of any works on the Land (or if earlier within three months from the Commencement Date) the Developer will erect along all boundaries of the Land (including along such part of the Land as is a highway maintainable at public expense so as to create a safe pedestrian and vehicular access over the same and including vehicular gates appropriate for access to the football ground/club forming part of the Adjoining Land) appropriate fences and hoardings (but in any event being not less than 2 metres in height and being in accordance with the Health and Safety Executive's, or other competent body's, recommendations) and to maintain the same in position and good repair throughout the Development.

2.2 If the Developer shall be in breach of paragraph 2.1 which it does not make good within 28 days of written request from the HCA to do so then HCA shall have the right without further notice to enter upon the Land in order to erect any such fences along the boundaries of the Land (including the right to take down and erect any fences erected by the Developer in an incorrect position, whether on the Land or on adjoining land) and the reasonable cost of all such works undertaken by HCA (including any works of reinstatement to adjoining land) shall be paid by the Developer to HCA on demand.

## **3 Site Access**

3.1 Access to the Land for construction traffic and any other vehicles must be via the existing accesses to the Land and / or any access points agreed with the local planning or other competent authority and no other roadway and the Developer must ensure that anyone driving to the Land is aware of this.

3.2 The Developer must lay a sufficient length of access road of adequate construction to the reasonable satisfaction of HCA before commencing construction work on other aspects of the Development so as to facilitate compliance with the provisions of this Lease relating to protection and cleaning of roads.

#### **4 Temporary vehicle parking /Site Compounds**

4.1 The Developer must provide at the Commencement Date and maintain during the Development to the reasonable satisfaction of HCA a temporary vehicle park for all vehicular traffic used in the course of construction including sub contractor's and operatives' private vehicles and a site compound for the secure storage of plant equipment and materials and shall remove the same and make good the Land at practical completion.

4.2 The proposed layout of the vehicle park and site compound together with construction details shall be provided by the Developer not later than the Commencement Date.

4.3 The Developer must not park or permit or suffer to be parked construction plant vehicles and private vehicles on highways and highway verges except with the express consent in writing of HCA.

#### **5 Completion of Development**

5.1 The Developer must:

(a) substantially commence the Development prior to 31 March 2011 (but without prejudice to any provision of this Lease containing any conditions to be met prior to commencement of the Development); and thereafter

(b) carry out and complete the Development in a good and workmanlike manner to the reasonable satisfaction of HCA in accordance with the Approved Plans at such rate of Development as shall be reasonable and commercially sensible

5.2 The Developer shall ensure that no Deleterious Materials are used in any works or materials used comprised in or relating to the Development.

- 5.3 In carrying out the Development the Developer shall comply with all Planning Agreements related to the Planning Permission affecting the Land including the payment of all sums payable thereunder and the discharge of all obligations thereunder at the times stated therein and shall indemnify and keep indemnified HCA against all actions proceedings claims demands losses costs expenses damages and liabilities arising directly or indirectly from any breach of the Planning Agreements.
- 5.4 The Developer must complete to base and wearing course level such part of the Development as comprises the long term vehicular and pedestrian access (in accordance with the Approved Plans) to the Adjoining Land of the Development to the reasonable satisfaction of PCC

## **6 Extensions of time**

- 6.1 If the Developer is delayed in completing or proceeding with the Development solely by reason of any of the following:

- (a) outbreak of war or civil insurrection involving the United Kingdom;
- (b) fire; tempest; frost;
- (c) any strikes or lockout in the building trade or any kindred trades;
- (d) any town planning or building licensing or building regulations refusal or restrictions;
- (e) exercise by PCC or HCA of their rights under paragraph 19;
- (f) an extension, variation or alteration made to the Development which shall have been approved by HCA pursuant to this Lease;
- (g) other cause or accident beyond the reasonable control of the Developer,

then the Development End Date shall be extended from time to time by such period or periods as shall be reasonable

### **6.2 If the Developer:**

- (a) has served written notice on HCA not less than three months prior to the Development End Date that the Developer has been unable despite using its reasonable and commercially sensible endeavours to dispose of all the Dwellings or proposed Dwellings on the Land (which for the avoidance of doubt shall not include any obligations on the Developer to commence construction of a Dwelling prior to exchange of contracts with a Purchaser for its Disposal); and
- (b) HCA (acting reasonably) is satisfied that the Developer has used its reasonable and commercially sensible endeavours to dispose of the Dwellings and proposed Dwellings.

then the Development End Date shall be postponed by such period as is reasonable in all the circumstances.

6.3 Until the first of the following occurs the Development End Date shall be postponed by such period as is reasonable in all the circumstances:-

(a) the Developer obtains an Off Site Energy Solution in accordance with clause 29.1; or

(b) the Developer obtains an On Site Energy Solution in accordance with clause 29.2; or

(c) the Developer serves the Revised Code Level Notice in accordance with clause 29.5.

## **7 Approved Plans**

7.1 Subject to paragraph 7.2, the Developer must not erect or build or permit or suffer to be erected or built on the Land any building, structure or erection otherwise than in conformity with the Approved Plans without HCA's approval, such approval not to be unreasonably withheld or delayed

7.2 Within 28 days after the service of a notice requiring the Developer so to do the Developer must commence to take down and remove all work or materials which shall not be in accordance with paragraphs 7.1 and 7.2.

## **8 Substitute materials**

If the Developer proves to the reasonable satisfaction of HCA that it is necessary to use substitute materials in the Development then the Developer may use such substitute materials as are first approved by HCA in writing (such approval not to be unreasonably withheld) provided that such substitutions are of no less specification quality design suitability and fitness for purpose than the original materials and are consistent with the Approved Plans and do not comprise any Deleterious Materials.

## **9 HCA's rights to view etc and remedy breaches**

9.1 The Developer must permit HCA by its servants or agents to enter upon the Land at all reasonable times (or at any time in an emergency) for any reasonable purpose, including:

(a) to view the state of progress of the Development and the materials used and intended for use in connection therewith;

(b) ascertaining whether the obligation of the Developer under this Lease or any other document have been observed and performed; and

(c) to exercise the rights excepted and reserved.

9.2 Within a reasonable period from service of written notice by HCA to the Developer specifying a breach by the Developer of the terms of this Lease the Developer to remedy such breach the Developer shall remedy such breach and if the Developer shall default in doing so it shall be lawful for HCA to enter the Land to remedy any such breach and all proper and reasonable costs and expenses thereby incurred shall be paid by the Developer to HCA on demand as a debt due to HCA.

## 10 Compliance with Enactments

10.1 The Developer must do all acts and things required by, and conform in all respects with, the provisions of any Enactments applicable to the Development (which for the avoidance of doubt shall include the provisions of section 57 of and Schedule 22 to the Environment Act 1995) and in particular to comply with:

- (a) the lawful requirements of any statutory undertakers in respect of electricity, gas, water, telephone or other public services; and
- (b) the conditions imposed by any agreements, licences, permissions and approvals for development or use granted in relation to the Land and the Development.

10.2 The Developer hereby indemnifies HCA against becoming liable to pay any penalty, damage, compensation, costs, charges or expenses arising out of the carrying out of the Development save where such liability arises from any negligent or other act default or omission of the HCA, its servants or agents and then only to the extent it does so.

10.3 In this paragraph:

- (a) "Competent Authority" means any government body, the Environment Agency, court, tribunal or other body deriving power under Environmental Law;
- (b) the parties agree that the apportionment by a Competent Authority of any liabilities that may arise under Part IIA of the Environmental Protection Act 1990 (as amended) (Part IIA) in respect of pollution or contamination present in on or under or originating from the Land shall be undertaken on the basis that the Developer shall have full responsibility for any and all such liabilities;
- (c) it is hereby acknowledged and intended by the parties that paragraph 10.3(b) is an agreement on liabilities for the purposes of Part IIA;
- (d) the parties agree that in the event of a notification being served on any of them which indicates that the Land is or is likely to be determined "contaminated land" under Part IIA to notify the other as soon as is reasonably practicable.;

- (e) the parties undertake to furnish the Competent Authority with a copy of this Lease as soon as is reasonably practicable after receiving a note from the Competent Authority or a notification under paragraph 10.3, and individually to agree to the application of paragraph 10.3(b) and to confirm such individual agreement in writing to the Competent Authority following receipt of such notice or notification;
- (f) the parties hereby undertake to use all reasonable endeavours to ensure that the Competent Authority applies the agreement on liabilities set out in paragraph 10.3(b);
- (g) for the avoidance of doubt HCA shall retain the right to appeal against a decision of a Competent Authority in accordance with Part IIA's appeal procedure.

10.4 The Developer hereby undertakes to indemnify HCA and keep HCA indemnified in respect of all and any fines, penalties, charges, actions, costs, claims, expenses, demands, duties, obligations, damages and other liabilities that HCA may suffer (i) as a result of any failure of the Developer to adhere to the provisions of paragraph 10.3; or (ii) arising from any pollution or contamination present in or under or originating from the Land.

## **11 CDM Regulations**

- 11.1 The Developer accepts that it is a client as defined by the Construction (Design and Management) Regulations 2007 (as amended from time to time) ("CDM") and warrants that it is and will at all times remain competent to carry out the role of a client under CDM.
- 11.2 The Developer accepts that it will act as the only client in respect of the Development and the Developer hereby elects to be the only client under CDM for the Development. .
- 11.3 HCA agrees to the election of the Developer as the only client for the Development for the purposes of CDM.
- 11.4 The Developer shall comply fully with all the obligations of the client under CDM.
- 11.5 The Developer shall procure that as soon as practicable after the CDM Co-ordinator (as defined in the CDM) is appointed the CDM Co-ordinator notifies the Health and Safety Executive of the particulars specified in Schedule 1 of CDM and contemporaneously provides a copy of the notification to HCA. The Developer hereby agrees that no work shall commence on site until HCA has received this notification.
- 11.6 The Developer shall not seek to withdraw, terminate or in any manner derogate from such election without HCA's prior written consent, which HCA may in its absolute discretion withhold.

11.7 The Developer shall ensure that any and all parties engaged in respect of the procurement and/or undertaking of the works comprised in the Development are aware of the terms of the Developer's election as only the client for the purposes of CDM.

## 12 Health & Safety

12.1 The Developer shall at all times comply with all obligations, requirements and duties arising under Health and Safety legislation in connection with the works comprising the Development.

12.2 The Developer shall at all times procure the compliance with all obligations, requirements and duties arising under Health and Safety legislation by any and all parties appointed in connection with the works comprising the Development or allowed on the Land.

12.3 The Developer shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with the Development, and shall provide a report to HCA's Health & Safety Manager quarterly in the form set out in Schedule 8.

12.4 The Developer shall notify HCA's Health & Safety Manager immediately on the occurrence of any of the following events which arise out of or in connection with the Development:

- (a) a fatal accident to any worker or a member of the public;
- (b) any injury to a member of the public requiring reporting under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time) ("RIDDOR");
- (c) any dangerous occurrence, as defined by RIDDOR;
- (d) the service of any improvement or prohibition notice under the Health & Safety at Work etc Act 1974;
- (e) any incident having health & safety implications which attracts the attention of the police and/or the media;
- (f) the commencement of any criminal prosecution under the Health & Safety at Work etc Act 1974.

## 13 Insurance

The Developer must:

- 13.1 insure, or cause to be insured, at all times during the carrying out of the Development any buildings erected on the Land (save any Dwellings disposed of to Purchasers or land disposed of to the Management Company) (Insurable Premises) in a sum sufficient to cover the cost of completely reinstating the same in the event of total destruction together with architects' and surveyors' fees and other expenses incidental thereto against loss or damage by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion in an insurance office to be approved by HCA (such approval not to be unreasonably withheld) and to ensure that HCA's interest is noted on the policy or policies of insurance;
- 13.2 pay or cause to be paid, all premiums and other monies necessary for effecting such insurance;
- 13.3 whenever required, produce to HCA evidence of the policy or policies of such insurance and the last receipt for every premium or other monies;
- 13.4 (in the event of the Insurable Premises or any part thereof being destroyed or damaged as aforesaid) secure that all monies payable by virtue of such insurance shall with all convenient speed be laid out and applied in rebuilding or otherwise reinstating the same in a good and substantial manner in accordance with the terms of this Lease and (in case the same shall be insufficient for that purpose) make up the deficiency out of its own monies;
- 13.5 not do, or permit to be done, upon the Land anything which may render the policy or policies of insurance void or voidable;
- 13.6 indemnify HCA (notwithstanding any supervision or approval of HCA or any person acting on behalf of HCA) and insure in an insurance office approved by HCA (such approval not to be unreasonably withheld) in the sum of £2,000,000 against any liability, loss, claim or proceedings in respect of any injury or damage whatsoever caused to any person or to any property real or personal in so far as such injury or damage arises out of, or in the course of, or by reason of, the negligent execution of the Development.

#### **14 Protection of Highways**

##### **14.1 The Developer must:**

- (a) comply with all reasonable instructions of the local highway authority and the police given to prevent any congestion of, or hazard to, traffic and in any event arrange for the delivery and removal of all materials to and from the Land with as little inconvenience to pedestrians and traffic as reasonably practicable;
- (b) at all times protect all Highways against damage by vehicles employed in connection with the Development and forthwith make good any such damage at the expense of the Developer in the event that the perpetrator of such damage does not maintain or repair the same;



- (c) at all times keep all Highways free from mud, dirt, debris and other deleterious matter arising from the Development to the reasonable satisfaction of HCA and ensure that all vehicles leaving the Land are clean and properly loaded;
- (d) to provide in any contract for the carrying out of the Development or any part or parts thereof a provision requiring the contractor under such contract to comply with the terms of paragraphs 14.1(a), 14.1 (b) and 14.1(c).

14.2 If the Developer fails to carry out any work necessary for compliance with the provisions of this paragraph 14 within ten Working Days of having received written notification of such default HCA may undertake the same and the Developer must forthwith on demand repay to HCA the proper cost of so doing which cost shall be recoverable by HCA from the Developer as a liquidated debt.

#### **15 Maintenance of Highways**

The Developer must maintain all Highways constructed by the Developer until adoption by the highway authority or transferred to the Management Company.

#### **16 Defects Insurance**

16.1 The Developer must build every Dwelling so as to comply with the requirements of the National House Building Council (or any successor organisation) (NHBC) and so as to qualify for the insurance cover provided by it which the Developer must obtain.

16.2 The Developer will do all that is necessary to ensure that every Purchaser obtains the benefit of the insurance cover provided by NHBC.

#### **17 Sewers, drains and other conduits**

During the construction of the Development the Developer must:

17.1 lay out and construct sufficient for the Development to the reasonable satisfaction of HCA proper and sufficient branch and connecting sewers, drains, shafts, traps, gullies and gratings and to drain such branch and connecting sewers and drains into public sewers;

17.2 liaise with HCA in connection with the overall programming for the provision of services and comply with all reasonable instructions issued by it to ensure the smooth progress of the Development and appropriate interface with any works being carried out on any Adjoining Land;

17.3 protect all pipes, ducts, cables and statutory undertakers' apparatus against damage as a result of carrying out the works;

- 17.4 take all necessary precautions to ensure the protection of all streams, waterways, surface water, sewers and drains against pollution as a result of carrying out the works and any temporary diversions of existing streams, waterways, sewers or other works must be carried out so as not to reduce the capacity of that stream, waterway, sewer or other works and to the reasonable satisfaction of HCA;
- 17.5 ensure that the Common Services are not blocked and that any connection to a Common Service is effected with the approval of HCA such approval not to be unreasonably withheld or delayed or, where appropriate, the relevant statutory undertaker;
- 17.6 maintain all sewers, drains, pipes, ducts, cables and other conduits constructed by the Developer until adoption by the relevant statutory undertaker or transferred to the Management Company.

## **18 Maintenance until completion**

- 18.1 Until completion of the Development, the Developer must keep and maintain the Land and all parts of the Development in a neat and tidy condition so far as may be reasonable.
- 18.2 Until the completion of the disposal of any Dwelling, the Developer must keep and maintain that Dwelling in good and marketable condition.

## **19 Archaeology**

All fossils, coins, articles of value or antiquity and structures or other remains or things of prehistoric, geological or archaeological interest (archaeological finds) discovered on the Land during the Development shall be the property of PCC and the Developer must:

- 19.1 not conceal, remove or damage or permit to be concealed, removed or damaged any archaeological finds;
- 19.2 promptly on discovery of any archaeological finds the archaeology officer of PCC (or other local archaeology authority);
- 19.3 allow (upon such reasonable terms as may be agreed with the Developer) officers and agents of PCC (or other local archaeology authority) with or without workmen and plant to enter the Land for the purpose of appraising, recording and removing the archaeological finds;
- 19.4 reimburse to PCC (or other archaeological authority) or to any third party authorised by them costs incurred in the emergency recording of any significant archaeological find made during the Development.

## **20 Trees**

Save in accordance with the Approved Plans and subject to the Developer obtaining all necessary consents, not to cut down or top any trees on the Land without the consent in writing of HCA such approval not to be unreasonably withheld or delayed.

**21 Gravel etc**

The Developer must not sell or dispose of any earth, clay, gravel or sand from the Land or permit or suffer any of the same to be removed (provided that the Developer may use for the purpose of the Development or dispose of and without making any payment therefore to HCA or to any person any substances which may be excavated in the proper execution of such works).

## **Schedule 3 – Private Units**

### **Part 1 – Leases and transfers of Private Units**

1. The Developer shall use its reasonable and commercially sensitive endeavours to sell each Private Unit to a Purchaser at arm's length, with vacant possession, by the Development End Date.
2. HCA need not take any step in relation to the grant of a Private Unit Lease until the Interim Completion Certificate has been issued in respect of that Private Unit but will execute each Private Unit Lease expeditiously and in any event within 20 Working Days of receipt of the same.
3. HCA need not take any step in relation to the leases of the last ten Private Units remaining to be sold until the Developer has substantially completed the construction of the Development as a whole (other than such ten Private Units) to HCA's reasonable satisfaction (having due regard to planting seasons and other matters beyond the Developer's reasonable control).
4. Subject to paragraphs 2 and 3 of this Part of this Schedule, HCA will grant the Private Unit Lease of each Private Unit to the Developer or, at the direction of the Developer, to a Purchaser who has entered into a Contract to Purchase the Private Sale Units from and at the direction of the Developer and transfer the freehold reversion on the following terms:-
  - (a) the form of lease shall be substantially in the form of the Private Unit Lease attaching a plan delineating the land to be demised by red edging (such plan to conform with the Estate Layout Plan previously approved by HCA and bearing no other red edging);
  - (b) the lease shall be executed by the parties as an original and counterpart;
  - (c) HCA need not deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person) save in relation to any matters arising or disclosed after the Title Date;
  - (d) the Developer shall send the following documents to HCA, executed by the Developer and the Purchaser (as the case may be), not less than 10 Working Days before the anticipated date for completion of the lease
    - (i) the lease and counterpart lease;
    - (ii) any relevant Estate Management Scheme documents

- (iii) the transfer (which shall be substantially in the form of the Transfer (Private Unit)) of the freehold reversion to the lease of the Private Unit (in duplicate) to the Developer which shall be at a consideration of £1.00
  - (iv) a Tenant's Response to Landlord's Notice (in the form set out in Part II of the prescribed Form 3) pursuant to section 8 Landlord and Tenant (Covenants) Act 1995 duly signed by the Purchaser of such Dwelling or Commercial Unit confirming that HCA is released from the landlord covenants contained in the lease of such Dwelling or Commercial Unit
- (e) HCA will return each document referred to in paragraph (d) (i) – (iii) above to the Developer's Solicitors within five Working Days of and including the date of receipt by HCA duly executed on behalf of HCA
  - (f) Receipt by the Developer's Solicitors of the documents referred to in paragraph (d) (i) - (iii) shall be irrevocable authority from the HCA to the Developer and the Developer's Solicitors to complete such documents save where the HCA or its solicitors stipulate otherwise in writing to the Developer's Solicitors in the correspondence returning the relevant document to the Developer's Solicitors
  - (g) the Private Unit Lease shall be granted with vacant possession and the transfer of the freehold reversion to the Private Sale Unit shall be subject only to the Private Unit Lease save (in each case) where the Developer has allowed any occupation of the same by a third party
5. Within 5 Working Days after the completion of any lease and transfer the Developer must deliver to HCA's Solicitors a certified copy of the completed form of lease and transfer.
  6. Immediately following each completion the Developer will apply to register the transfer of the relevant freehold reversion at the Land Registry

## **Schedule 4 – Affordable Units**

### **Leases and transfers of Affordable Units**

1. The Developer shall use its reasonable and commercially sensible endeavours to procure the grant of an Affordable Unit Lease of each Affordable Unit to the Association, with vacant possession by the Development End Date.
2. The Developer shall procure that the Association enters into all relevant Estate Management Scheme documents on completion of each lease.
3. HCA need not take any step in relation to the lease of any Affordable Unit until the Interim Completion Certificate has been issued in respect of that Affordable Unit but will execute the lease of any Affordable Unit expeditiously and in any event within 20 Working Days of receipt of the same.
4. Subject to paragraphs 2 and 3 inclusive of this Part of this Schedule, HCA shall grant the lease in each Affordable Unit to the Developer or, at the direction of the Developer, to the Association and transfer the freehold reversion to the Developer on the following terms:
  - (a) the form of lease shall be substantially in the form of the Affordable Unit Lease attaching a plan delineating the land to be demised by red edging (such plan to conform with the Estate Layout Plan previously approved by HCA and bearing no other red edging);
  - (b) the lease shall be executed by the parties as an original and counterpart ;
  - (c) HCA need not deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person) save in relation to any matters arising or disclosed after the date of this Agreement;
  - (d) the Developer shall send the following documents to HCA, executed by the Developer and the Association (as the case may be), not less than 5 working days before the anticipated date for completion of the transfer and lease
    - (i) the lease in original and counterpart;
    - (ii) any relevant Estate Management Scheme documents
    - (iii) the transfer (which shall be in the form of the Transfer (Affordable Unit)) of the freehold reversion to the Affordable Unit Lease (in duplicate) to the Developer

- (iv) a Tenant's Response to Landlord's Notice (in the form set out in Part II of the prescribed Form 3) pursuant to section 8 Landlord and Tenant (Covenants) Act 1995 duly signed by the Purchaser of such Dwelling or Commercial Unit confirming that HCA is released from the landlord covenants contained in the lease of such Dwelling or Commercial Unit
  - (e) HCA will return each document referred to in paragraph (d) (i) – (iv) above to the Developer's Solicitors within four Working Days of and including the date of receipt by HCA duly executed on behalf of HCA
  - (f) Receipt by the Developer's Solicitors of the documents referred to in paragraph (d) (i) - (iv) shall be irrevocable authority from the HCA to the Developer and the Developer's Solicitors to complete such documents save where the HCA or its solicitors stipulate otherwise in writing to the Developer's Solicitors in the correspondence returning the relevant document to the Developer's Solicitors
  - (g) the transfer of the freehold reversion to the Developer shall be at a consideration of £1.00 and with vacant possession other than the Affordable Unit Lease and be completed simultaneously with the grant of the Affordable Unit Lease save (in each case) where the Developer has allowed any occupation of the same by a third party
  - (h) the Lease of the Affordable Unit shall be granted with vacant possession save (in each case) where the Developer has allowed any occupation of the same by a third party
6. Within 10 Working Days after the completion of any lease and transfer of an Affordable Unit, the Developer must deliver to HCA's Solicitors a certified copy of the completed lease and transfer.
7. Immediately following completion of the lease and transfer the Developer must register the transfer at the Land Registry or, if so requested by HCA, deliver to HCA's Solicitors the appropriate money, completed forms and all other appropriate documentation to enable HCA's Solicitors to apply for the registration and shall pay HCA's Solicitors costs of so doing.

## **Schedule 5 – Transfer etc of Leasehold Buildings and Commercial Units**

- 1** HCA shall transfer, and the Developer shall receive, the freehold interest in a Leasehold Building to the Developer on the following terms:
- (a) HCA is not obliged to transfer any Leasehold Building until the first Interim Completion Certificate has been issued in respect of a Flat in that Leasehold Building.
  - (b) the form of transfer shall be substantially in the form of the Transfer (Leasehold Building) attaching a plan delineating the land to be transferred by red edging (such plan to conform with the Estate Layout Plan previously approved by HCA and bearing no other red edging);
  - (c) the form of transfer shall be executed by the parties in duplicate;
  - (d) HCA shall not be required to deduce title (having already deduced title to the Developer before completion on this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person) save in relation to any matters arising or disclosed after the Title Date;
  - (e) the Developer shall send the following documents to HCA, executed by the Developer, not less than 10 working days before the anticipated date for completion of the transfer:
    - (i) the form of transfer (in duplicate)
    - (ii) the Housing Covenant in respect of the first Flat if it is an Affordable Flat
  - (f) HCA will return each document referred to in paragraphs (d) (i) and (d) (ii) above to the Developer's Solicitors within 4 Working Days of and including the date of receipt by HCA duly executed on behalf of HCA or if later 2 Working Days after the issue of the first Interim Completion Certificate in respect of a Flat in that Leasehold Building
  - (g) Receipt by the Developer's Solicitors of the documents referred to in paragraphs (d) (i) and (d) (ii) shall be irrevocable authority from the HCA to the Developer and the Developer's Solicitors to complete such documents save where the HCA or its solicitors stipulate otherwise in writing to the Developer's Solicitors in the correspondence returning the relevant document to the Developer's Solicitors
  - (h) the transfer of the freehold reversion to the Developer shall be at a consideration of £1.00 and with vacant possession other than the Private Unit Lease or Affordable Unit Lease (as appropriate) and save (in each case) where the Developer has allowed any occupation of the same by a third party be completed simultaneously with the grant of the Private Unit Lease or Affordable Unit Lease



- 2** HCA shall transfer and the Developer shall receive the freehold interest in a Commercial Unit (other than a Commercial Unit within a Leasehold Building) to the Developer on the following terms:
- (a) HCA is not obliged to transfer any Commercial Unit until the Interim Certificate has been issued in respect of that Commercial Unit
  - (b) the consideration for the transfer shall be £1.00 and the transfer shall be with vacant possession save (in each case) where the Developer has allowed any occupation of the same by a third party
  - (c) the provisions of paragraphs 1(c) and 1(d) above have been complied with but in respect of the Commercial Unit
  - (d) The Developer shall send the following documents to HCA executed by the Developer not less than 5 working days before the anticipated date for completion of the transfer:
    - (i) the form of transfer (in duplicate)
  - (e) HCA will return each document referred to in paragraph (e) above to the Developer's Solicitors within 4 Working Days of and including the date of receipt by HCA duly executed on behalf of HCA or if later 2 Working Days after the issue of the Interim Completion Certificate in respect of the Commercial Unit
  - (f) Receipt by the Developer's Solicitors of the documents referred to in paragraph (e) shall be irrevocable authority from the HCA to the Developer and the Developer's Solicitors to complete such documents save where the HCA or its solicitors stipulate otherwise in writing to the Developer's Solicitors in the correspondence returning the relevant document to the Developer's Solicitors
- 3** HCA shall itself or by HCA's Solicitors each time provide to the Developer within [two] Working Days of receipt by HCA of a copy of the Interim Completion Certificate for each Dwelling within any Leasehold Building or each Commercial Unit such written consent as the Developer may reasonably require so as to be sufficient to permit the restriction referred to in Schedule 6 to be released in respect of the disposal of each such Dwelling or Commercial Unit
- 4** On the sale of the last Dwelling or Commercial Unit within such Leasehold Building or Commercial Unit HCA and the Developer shall procure the removal of the restriction on title referred to in paragraph 3 above

## **Schedule 6 – Prescribed Clauses for Transfers**

### **Part 1 – All transfers**

“Estate Lease” shall mean the Lease of the Estate dated the [ ] day of [ ] 200 [ ] and made between [(1) Homes and Communities Agency (2) Peterborough City Council (3) Morris Homes (East Midlands) Limited and (4) Morris Group Limited

- 1 The Transferee acknowledges that the Estate has been developed as an environmentally sustainable development

### **Part 2 – Transfers (Private Units)**

“Private Unit Lease” means the lease of even date with this transfer and entered into immediately prior to the completion of this transfer and made between the Transferor (1) [N.B. here insert name of buyer] (2) in respect of the Property

- 1 The parties intend that the terms of years granted by the Estate shall so far as it concerns the Property (only) merge and be extinguished in the reversion expectant thereon; and
- 2 The Transferee shall observe and perform the landlord covenants in the Private Unit Lease and shall indemnify and keep indemnified the transferor against any breach or non-observance thereof

### **Part 3 – Transfers (Affordable Units)**

“Affordable Unit Lease” means the Lease of even date with this Transfer and entered into immediately prior to the completion of this Transfer and made between the Transferor (1) and the Association (2) in respect of the Property

- 1 The parties intend that the term of years granted by the Affordable Unit Lease shall so far as it concerns the Property (only) merge and be extinguished in the reversion expectant thereon and the Transferor hereby releases the Property from the provisions for the payment of additional monies contained in the Lease and any vendor's lien created thereby
- 2 The Transferee shall observe and perform the landlord's covenants in the Affordable Unit Lease and shall indemnify and keep indemnified the Transferor against any breach or non-observance thereof

### **Part 4 – Transfers (Leasehold Buildings)**

The Transferee applies to the Chief Land Registrar to enter the following Restriction against the Title relating to the Property:-

**RESTRICTION Form L: No disposition of the registered estate other than a charge by the proprietor of the registered estate is to be registered without a certificate from the Homes and Communities Agency of Central Business Exchange 406 - 412 Midsummer Boulevard Milton Keynes MK9 2EA or its conveyancer certifying that the provisions of Schedule 5 to the Lease dated 25 March 2011 made between (1) Homes and Communities Agency (2) Peterborough City Council (3) Morris Homes (East Midlands) Limited and (4) Morris Group Limited have been complied with**

## **Schedule 7 – Covenants by the Surety**

### **1 Developer's Covenants**

In this Schedule **Developer's Covenants** means the covenants, terms, conditions, agreements, restrictions, stipulations and obligations falling to be complied with by the Developer under this Lease.

### **2 Indemnity by Surety**

The Developer or the Surety shall while the Developer remains bound by the Developer's Covenants comply with the Developer's Covenants and the Surety shall indemnify the Landowners against all claims, demands, losses, damages, liabilities, costs, fees and expenses sustained by the Landowners by reason of or arising out of any default by the Developer in complying with the Developer's Covenants.

### **3 Surety jointly and severally liable with Developer**

The Surety shall be jointly and severally liable (whether before or after any disclaimer by a liquidator or trustee in bankruptcy or any forfeiture of this Lease) for the fulfilment of all the obligations of the Developer under this Lease and agree that HCA in the enforcement of its rights under this Lease may proceed against the Surety as if the Surety were named as the Developer in this Lease.

### **4 Waiver by Surety**

The Surety waives any right to require HCA to proceed against the Developer or to pursue any other remedy whatsoever which may be available to HCA before proceeding against the Surety.

### **5 No release of Surety**

None of the following or any combination of them shall release, discharge or lessen or affect the liability of the Surety under this Lease:

- (a) any neglect, delay or forbearance of HCA in endeavouring to obtain payment of any sums due under this Lease or in enforcing compliance with the Developer's Covenants;
- (b) any refusal by HCA to accept any payment tendered by or on behalf of the Developer at a time when HCA is entitled (or would after the service of a notice under section 146 of the Law of Property Act 1925 be entitled) to re-enter the Land;
- (c) any extension of time given by HCA to the Developer;

- (d) save as provided for in the Landlord and Tenant (Covenants) Act 1995 any variation of the terms of this Lease or the transfer of the reversion to or the assignment of this Lease;
- (e) any surrender by the Developer of any part of the Land (in which event the liability of the Surety shall continue in respect of the part of the Land not so surrendered after making any necessary apportionments);
- (f) any other act, omission, matter or thing whereby but for this provision the Surety would be exonerated wholly or in part:-

## **6 Disclaimer or forfeiture of Lease**

6.1 If the Developer (being an individual) becomes bankrupt or (being a company) enters into liquidation and the trustee in bankruptcy or liquidator disclaims or surrenders this Lease or this Lease is forfeited then the Surety shall (if it gives written notice to the Landowners within 65 Working Days after such disclaimer or other event) accept from and execute and deliver to HCA a counterpart of a new lease of the Land (the proper and reasonable costs of which shall be borne by the Surety) and HCA shall grant such new lease to the Surety:

- (a) to take effect from the date of the disclaimer or other event;
- (b) for a term beginning on the date of the disclaimer and equal in length to the residue of the term granted by this Lease which would have remained had there been no disclaimer;
- (c) reserving by way of yearly rent an amount equal to the yearly rent payable immediately before the date of the disclaimer or other event such yearly rent to be payable from that date;
- (d) imposing on the Surety the same obligations as the Developer was subject to immediately before the disclaimer or other event; and
- (e) otherwise containing the same terms and provisions as this Lease, including the provisions relating to payment of money, except that the Surety shall not be required to procure that any other person is made a party to the new lease as Surety.

6.2 If the Surety does not require to take a new lease, the Surety shall nevertheless on demand pay to HCA a sum equal to the rents and other sums that would have been payable under this Lease but for the disclaimer or other event, from and including the date of such disclaimer or other event for a period of two years or (if sooner) until the date on which a lease or underlease of the Land to a third party is completed.

## **7 Supplemental documents**

The Surety shall at the request of HCA join in any document made supplemental or collateral to this Lease.

**8 Address for service**

The Surety shall promptly notify in writing HCA in writing of any change in the Surety's address for service and until such notice has been given the Surety's address for service shall be the Surety's address for service most recently notified in writing to HCA.]

**9 Remedies**

Regardless of any provision of this schedule and the guarantee given to the Landowners by the Surety the Landowners shall not have any greater rights against the Surety than it has against the Developer and the same defences set offs and/or counterclaims which are available to the Developer shall be available to the Surety

## Schedule 8 - Health and Safety Reports

1 The Developer shall provide to HCA on a quarterly basis a Health and Safety Report containing the information relating to health and safety performance. As a minimum the Health and Safety Report will contain the following information:

1.1 Accident incidence rates per 100,000 workers ("**AIR**") involved in the [works associated with the Approved Scheme of Development], listing by month and rolling annual frequency rate for the lifetime of the works comprising the Development:

1.1.1 accidents resulting in greater than three days lost time

1.1.2 major injuries

1.1.3 fatalities

1.1.4 reportable diseases

all as defined by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time), in accordance with the formula:

$$\text{AIR} = (A/N) \div 100,000$$

where: A = the number of accidents or incidents of the defined type during the period

N = the average number of workers on the site during the period

1.1.5 reportable injuries to members of the public

1.2 A listing in respect of the works comprising the Development by month, and the rolling annual rate, showing the number of:

1.2.1 days lost due to accidents occurring on the Land or ill-health incurred by workers directly from the said works on the Land

1.2.2 dangerous occurrences as defined by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time)

1.2.3 enforcement notices served by the regulatory authorities served by the Health & Safety Executive

1.3 A summary in respect of the works comprising the Development of:

1.3.1 all accident investigations carried out in the relevant quarterly period

1.3.2 all actions taken to rectify any identified health and safety deficiencies

- 1.3.3 all initiatives to improve health and safety undertaken in the period (e.g. site inspections, tool box talks etc)
- 1.3.4 all visits by the Health & Safety Executive, the Police or the Environment Agency to the Land undertaken in the relevant quarterly period



## **Schedule 9 – Development Strategies**

**Air Pollutants Strategy**

**Community Engagement Strategy**

**Construction Quality Process**

**Customer Satisfaction Strategy**

**Demolition Strategy**

**Detailed Access Statement**

**Ecology Strategy**

**Health and Wellbeing Strategy**

**Management Strategy**

**Specification and Supply Chain Strategy**

**Overheating Strategy**

**Performance in Fire Strategy**

**Remediation Strategy**

**Surface Water Strategy**

**Transport Strategy**

**Waste Strategy**

**Water Use Strategy**

## **Schedule 10 - Estate Management Scheme Documents**

It is Morris Homes intention to layout the areas coloured green on the plan reference 08037/P/111 Revision A.

Morris will set up an Estate Management Company by agreement with the nominated RSL provider with the express intent that the areas of public open space will be maintained or managed either via the management company or by Peterborough City Council following agreement for the city to adopt these areas upon the payment of an agreed commuted sum.

In addition the Estate Management Company will maintain the following areas associated with Apartment Block 1 comprising plots 222-295:

- Car part and landscaping of the same
- Roof garden/sedum roof
- Green walls
- Lifts
- Stairwell, corridors and common parts

## **Schedule 11 – Estate Management Scheme Principles**

See Schedule 10

**Schedule 12 - Clawback on change of use of open space and/or community use buildings**

**Appendix 1 - pPod disc**

**Appendix 2 - EP disc 1**

## Appendix 3 - Customer Satisfaction Survey

**Appendix 4 – Forms of Transfer of plots and leasehold building to Developer referred to in Schedules 3, 4 and 5**

NB: To be amended prior to completion – see Schedule 6



The COMMON SEAL of **HOMES AND COMMUNITIES AGENCY** was hereunto affixed in the presence of:

Authorised Signatory

The COMMON SEAL of **THE COUNCIL OF THE CITY OF PETERBOROUGH** was hereunto affixed in the presence of:

Authorised Signatory

**Executed as a deed by MORRIS )  
HOMES (EAST MIDLANDS) )  
LIMITED acting by its secretary )  
and a director or by two directors )**

Director

Director/Secretary

**Executed as a deed by MORRIS )  
HOMES LIMITED acting by its )  
secretary and a director or by two )  
directors )**

Director

Director/Secretary

THE COMMON SEAL of  
**HOMES AND COMMUNITIES  
AGENCY** was hereunto affixed  
in the presence of:



**s. 40(2)**

**s. 40(2)** .....  
Authorised Signatory

HCA LEGAL

THE COMMON SEAL of  
**PETERBOROUGH CITY COUNCIL**  
was hereunto affixed  
in the presence of:



**s. 40(2)**

.....  
Authorised Signatory

EXECUTED AS A DEED by  
**MORRIS HOMES (EAST MIDLANDS)  
LIMITED** acting by [ ], a director and  
[ ] a director or its secretary

**s. 40(2)**

.....  
Director

**s. 40(2)**

**s. 40(2)**

.....  
Director / Secretary

EXECUTED AS A DEED by  
**MORRIS GROUP LIMITED**  
acting by [ ], a director and  
[ ] a director or its secretary

**s. 40(2)**

.....  
Director

**s. 40(2)**

.....  
Director / Secretary