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DATED _____ **2025**

Rolls–Royce Power Engineering Limited (1)

-and-

W & J S TEMPORAL LIMITED (2)

-and-

Hallam Land Management Limited (3)

-and-

Ashfield District Council (4)

Under Section 106 of the Town and Country Planning Act 1990
relating to proposed residential development on land off Newark Road, Sutton-in-Ashfield

Planning Application Reference: V/2022/0629

PINS Reference: APP/W3005/W/24/3350529

WALKER MORRIS LLP

33 Wellington Street

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Ref: CAS/ HAL00487.124

CONTENTS

Clause		Page
1	DEFINITIONS AND INTERPRETATION.....	4
2	GENERAL PROVISIONS.....	18
3	OWNERS' COVENANTS TO THE DISTRICT COUNCIL.....	24
4	DISTRICT COUNCIL'S COVENANTS TO THE OWNERS.....	24
	FIRST SCHEDULE.....	25
	SECOND SCHEDULE.....	38
	THIRD SCHEDULE.....	44
	ANNEX 1 (Plan 1).....	47
	ANNEX 2 (Plan 2).....	48

THIS AGREEMENT is made as a Deed the day of Two Thousand and Twenty Five

BETWEEN:

- (1) **ROLLS–ROYCE POWER ENGINEERING LIMITED** (Company No. 01305027) whose registered office is at Moor Lane, Derby, Derbyshire, DE24 8BJ (“**First Owner**”); and
- (2) **W & J S TEMPORAL LIMITED** (Company No. 00772263) whose registered office is at Park Farm, Palterton Lane, Sutton Scarsdale, Chesterfield, Derbyshire S44 5UT (“**Second Owner**”); and
- (3) **HALLAM LAND MANAGEMENT LIMITED** (Company No. 02456711) whose registered office is at Isaacs Building, 4 Charles Street, Sheffield, United Kingdom S1 2HS (“**Developer**”); and
- (4) **ASHFIELD DISTRICT COUNCIL** of Urban Road, Kirkby in Ashfield, Nottingham NG17 8DA (“**District Council**”);

together the “**Parties**” and reference to “**Party**” shall be construed accordingly.

RECITALS:

- A. By means of the Planning Application planning permission is sought by the Developer from the District Council to carry out the Development.
- B. The District Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Application Land is situated.
- C. The District Council is a Principal Council within the meaning of the Local Government Act 1972.
- D. The First Owner is the freehold owner of the part of the Application Land registered at HM Land Registry with title absolute under title number NT64930 (“**First Owner's Land**”).
- E. The Second Owner is the freehold owner of the part of the Application Land registered at HM Land Registry with title absolute under title number NT120855 (“**Second Owner's Land**”).
- F. The Developer has an interest in the:
 - a) First Owner's Land by way of an option agreement, dated 15th September 2016, and made between the First Owner and the Developer; and

- b) Second Owner's Land way of an option agreement, dated 17th April 2012, as varied on 28th July 2022, and made between the Second Owner and the Developer.
- G. The Appeal was lodged on behalf of the Owners against the District Council's failure to give notice of its decision in relation to the Planning Application within the appropriate statutory period.
- H. The Owners have agreed to enter into this Agreement with the intent that their respective interests in the Application Land shall be subject to the covenants and obligations contained herein and with the intention that those covenants and obligations should create planning obligations pursuant to Section 106 of the 1990 Act.
- I. The District Council is satisfied that the provisions of this Agreement and the planning obligations contained herein comply with their respective policies in relation to Section 106 of the 1990 Act and are sufficient in respect thereof.

OPERATIVE PROVISIONS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall have the following meanings:

“1990 Act”	the Town & Country Planning Act 1990 as amended;
“Affordable Dwellings”	means at least 10% (ten percent) of the Dwellings to be provided and Occupied as Affordable Rented Dwellings and Shared Ownership Dwellings in accordance with the Affordable Housing Scheme and “Affordable Dwelling” shall be construed accordingly;
“Affordable Housing”	means housing provided to eligible households whose needs are not met by the market in accordance with the definition set out in the National Planning Policy Framework;
“Affordable Housing Contribution”	means if applicable the sum to be agreed between the District Council and the Owners and which shall represent 40% (forty percent) of the sale price of the relevant Dwellings which were to be

provided as Affordable Rented Dwellings and/or Shared Ownership Dwellings (as applicable) at the time the Dwellings are disposed of, which may be payable by the Owners to the District Council in accordance with the provisions of **paragraph 1.10 of the First Schedule** for use by the District Council towards the provision of Affordable Housing within the District of Ashfield;

“Affordable Housing Provider”

means:

- (a) a non-profit registered provider of social housing under the Housing and Regeneration Act 2008 and registered with Homes England as a registered provider; or
- (b) any other housing provider;

as shall be approved in writing by the District Council and dependent upon the Affordable Housing Provider being able to demonstrate to the District Council its ability to deliver the Affordable Housing on the Application Land in accordance with the terms of this Agreement;

“Affordable Housing Scheme”

means the scheme for the provision of Affordable Dwellings which shall specify:

- (a) the location of the Affordable Dwellings within the Development;
- (b) the intended Affordable Housing Provider;
- (c) the dwelling mix (type, bedrooms) for the Affordable Housing (which shall reflect the mix of the Market Dwellings);

- “Affordable Rented Dwellings”** means at least 75% (seventy five percent) of the Affordable Dwellings to be let at an affordable rent being up to 80% (eighty percent) of the open market rental value for the unit type, such rent to be in accordance the National Planning Policy Framework;
- “Appeal”** means the appeal PINS Reference No. APP/W3005/W/24/3350529 lodged on behalf of the Owners against the Council’s failure to give notice of its decision in relation to the Application within the appropriate statutory period;
- “Application Land”** means the land shown edged red on Plan 1;
- “Bus Pass”** means a free 3 (three) month adult bus pass entitling the holder to travel free of charge for a period of 3 (three) months (commencing from the date of issue of the bus pass) for travel within Nottinghamshire at any time (provided that the pass is applied for prior to the expiry of the period ending 6 (six) months from the date that the Bus Pass Application Forms is supplied by the Owners to the First Occupier(s) of the relevant Dwelling in accordance with **paragraph 5.1 of the First Schedule**) to be provided to First Occupier(s) of Dwellings in accordance with the provisions of **paragraph 5 of the First Schedule** and reference to **“Bus Passes”** shall be construed accordingly;
- “Bus Pass Application Form”** means an application form for a Bus Pass to be provided to new residents on First Occupation of any Dwelling;
- “Bus Pass Uptake Report”** has the meaning given in **paragraph 5.3 of the First Schedule**;
- “Bus Service Contribution”** means the sum of £220,000.00 (two hundred and twenty thousand pounds) Index Linked payable by the Owners to the District Council in accordance

with the provisions of **paragraphs 2.1 and 1.2 of the First Schedule** towards procuring with the County Council improvements to the local bus services to serve the Development the need for which is to mitigate the effects of the Development;

“Bus Stop Infrastructure Contribution”

means the sum of £45,600.00 (forty five thousand and six hundred pounds) Index Linked payable by the Owners to the District Council in accordance with the provisions of **paragraphs 2.3 and 2.4 of the First Schedule** towards procuring with the County Council improvements to:

- (a) the 2 (two) bus stops within the vicinity of the Application Land denoted as AS0324 and AS0551 Kirkby Folly Road such improvements to include:
 - (i) AS0324 Kirkby Folly Road: real time bus stop pole and display including electrical connections, raised boarding kerbs, lowered access kerbs, enforceable bus stop clearway or other enhancements as required; and
 - (ii) AS0551 Kirkby Folly Road: real time bus stop pole & display including electrical connections, raised boarding kerbs, extended hardstands/footways enforceable bus stop clearway or other enhancements as required; or
- (b) such other bus stop(s) within the vicinity of the Application Land as may otherwise be agreed in writing between the Owners and the District Council in consultation with the County Council at the time due to

the re-routing of the local bus service(s)
closer to the Application Land;

the need for which is to mitigate the effects of the
Development;

“CIL Regulations”

means the Community Infrastructure Levy
Regulations 2010 (as amended);

**“Commencement of
Development”**

means the earliest date on which any of the
material operations (as defined by Section 56(4) of
the 1990 Act) pursuant to the implementation of
the Development is begun save that irrespective of
the provisions of Section 56(4) of the 1990 Act
none of the following operations shall constitute a
material operation for the purposes of constituting
Commencement of Development:

- (a) trial holes or other operations to establish
the ground conditions of the Application
Land, site survey work, or works of
remediation
- (b) archaeological investigations on the
Application Land
- (c) any works of demolition or site clearance
- (d) any structural planting or landscaping
works
- (e) ecological or nature conservation works
associated with the Development
- (f) construction of site compounds boundary
fencing or hoardings
- (g) construction of off-site access or highway
works or provision of services (including
drainage and media)

(h) any other preparatory works agreed in writing with the District Council;

and reference to "**Commence**" shall be construed accordingly;

- “County Council”** means Nottinghamshire County Council of County Hall, West Bridgford, Nottingham NG2 7QP who is the education authority and highway authority or the area within which the Application Land is situated;
- “Decision Letter”** means the letter issued by the Inspector or the Secretary of State determining the Appeal;
- “Development”** means the development described in the Planning Application and to be carried out pursuant to the Planning Permission and Reserved Matters Approval(s);
- “Discounted Market Dwellings”** means a Dwelling to be sold by the owner at 75% (seventy five percent) of its Open Market Value;
- “District of Ashfield”** means the administrative district of the District Council;
- “Dwelling(s)”** means a dwelling built pursuant to the Planning Permission and Reserved Matters Approval(s);
- “First Occupation”** means the first Occupation of a Dwelling excluding all subsequent occupation and reference to **“First Occupied”** and **“First Occupier(s)”** shall be construed accordingly;
- “First Owner's Land”** has the meaning given above in Recital D;
- “Footway/Cycleway Works B Option”** means the works to deliver the footway/cycleway as shown on Drawing No. ADC1580-DR-012 Rev P12;

“Footway/Cycleway Works Notice”	has the meaning given in paragraph 3.2 of the First Schedule ;
“Healthcare Contribution”	means the sum of £541.88 (five hundred and forty one pounds and eighty eight pence) per Dwelling Index Linked payable in accordance with the provisions of paragraphs 2.9 and 2.10 of the First Schedule towards procuring with the ICB enhancements to the capacity and infrastructure at Willowbrook Medical Practice and/or Family Medical Centre Kirkby and/or Healthcare Complex Kirkby the need for which is to mitigate the effects of the Development;
“Homes England”	means the Homes and Communities Agency trading as Homes England or any body or bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008;
“Housing Need”	means living in unsuitable housing conditions and either unable to afford to rent at market rent or unable to buy suitable housing at open market prices;
“ICB”	means the NHS Nottingham and Nottinghamshire Integrated Care Board (or any successor body or bodies undertaking the existing functions of NHS Nottingham and Nottinghamshire Integrated Care Board);
“Index Linked”	means the application to the sum concerned of the indexation set out in the Third Schedule;
“Inspector”	means an inspector appointed by the Secretary of State to determine the Appeal pursuant to Schedule 6, of the 1990 Act;
“LEAP”	means a ‘local equipped area for play’ as defined by Fields in Trust (or such successor body or

organisation whose primary objectives are protecting and improving outdoor sports and play spaces) including play equipment predominantly for children up to the age of 12 (twelve) years with seating for accompanying adults;

“Library Contribution”

means the sum of £44.64 (forty four pounds and sixty four pence) per Dwelling Index Linked payable in accordance with the provisions of **paragraphs 2.11 and 2.12 of the First Schedule** towards procuring with the County Council additional library stock at Sutton-in-Ashfield Library, Idlewells Shopping Centre, Forest St, Sutton-in-Ashfield NG17 1BP the need for which is to mitigate the effects of the Development;

“Management Company”

means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owners for the purposes of carrying out future maintenance of the Open Space and:

- (a) which is incorporated in England and Wales or Scotland;
- (b) which has its registered office in England or Wales or Scotland;
- (c) whose primary objects permit it to maintain and renew areas of public open space and footpaths;
- (d) its officers have prior experience of carrying out the maintenance of public open space, play areas, footpaths and planting;

“Market Dwelling(s)”

means Dwellings for sale on the open market which is constructed as part of the Development and which is not an Affordable Dwelling;

- “Monitoring Contribution”** means the sum of £4,000.00 (four thousand pounds) Index Linked payable in accordance with the provisions of **paragraph 2.19 of the First Schedule** towards the District Council’s costs of monitoring compliance with this Agreement;
- “National Planning Policy Framework”** means the National Planning Policy Framework published by the Ministry of Housing, Communities and Local Government in December 2024 (or any future guidance or initiative that replaces or supplements it);
- “Nominations Agreement”** means an agreement in a form specified by the District Council relating to the nominations procedure and local lettings plans for the Affordable Dwellings;
- “Occupation”** means in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include:
- (a) daytime occupation by workmen involved in the erection fitting out or decoration of any part of the Development; or
 - (b) the use of any Dwelling for the marketing of the Development; or
 - (c) the storage of plant and materials;
- and references to **“Occupy”** and **“Occupied”** shall be construed accordingly;
- “Open Market Value”** means the value agreed between the District Council and the Owners of a Dwelling to be sold on the open market based on the following assumptions:
- (a) a willing seller and a willing buyer in an arm's length transaction;

- (b) a reasonable period for the proper marketing of the Dwelling; and
- (c) market conditions at the time of the valuation;
- (d) the parties had each acted knowledgeably, prudently and without compulsion;

“Open Space”

means the parts of the Development shown indicatively on Plan 2 to be laid out as open space to include any greenspace and a LEAP (and for the avoidance of doubt being outside of any plot curtilage) in accordance with a condition(s) annexed to the Planning Permission and/or Reserved Matters Approval(s);

“Open Space Management Plan”

means the open space management plan to secure:

- (a) the future maintenance of the Open Space; and
- (b) a programme identifying the phased delivery of all Open Space areas across the Application Land;

to be approved by the District Council in accordance with a condition(s) annexed to the Planning Permission and/or Reserved Matters Approval(s) which for the avoidance of doubt may allow for the Open Space to be transferred to the District Council or to a Management Company;

“Open Space Works”

means the works to be carried out on the Development for the laying out of the Open Space in accordance with a condition(s) annexed to the Planning Permission and/or Reserved Matters Approval(s);

- “Owners”** means collectively the First Owner and the Second Owner and **“Owner”** shall be construed accordingly;
- “Owners' POS Notice”** has the meaning given in **paragraph 4.2 of the First Schedule**;
- “Plan 1”** means the plan marked "Plan 1" attached hereto at Annex 1;
- “Plan 2”** means Drawing No. EMS2254_120 Sheet No: 01 Rev D marked "Plan 2" attached hereto at Annex 2;
- “Planning Application”** means the outline planning application submitted to the District Council and allocated reference number V/2022/0629 (with all matters reserved except access) for a residential development of up to 300 dwellings with associated infrastructure and landscaping;
- “Planning Obligations”** means the obligations, conditions and stipulations set out in the First Schedule and **“Planning Obligation”** shall be construed accordingly;
- “Planning Permission”** means a planning permission granted pursuant to the Planning Application and the Appeal by an Inspector or the Secretary of State;
- “Practical Completion”** means the stage of construction or conversion of any Dwelling or other building comprising the Development such that it is capable of Occupation;
- “Protected Tenant”** means any tenant who:
- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling;

- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a has otherwise obtained full ownership of a single Affordable Dwelling;

“Regulator of Social Housing”

means the Regulator of Social Housing being the body corporate undertaking the functions of the Regulator of Housing within the meaning of Part 1 of the Housing and Regeneration Act 2008 as amended by the Legislative Reform (Regulator of Social Housing (England) Order 2018 (or as redefined by any amendment replacement or re-enactment of such Act);

“Reserved Matters Application”

means an application for discharge of reserved matters pursuant to the Planning Permission;

“Reserved Matters Approval(s)”

means any approval granted in respect of a Reserved Matters Application;

“Second Owner's Land”

has the meaning given above in Recital E;

“Secretary of State”

means the Secretary of State for Housing, Communities and Local Government or any substitute or any Inspector appointed by him;

“Secondary Education Contribution”

means the sum of £2,430.00 (two thousand four hundred and thirty pounds) per Dwelling Index Linked payable in accordance with the provisions of **paragraphs 2.5 and 2.6 of the First Schedule** towards procuring with the County Council improvements, remodelling, enhancing, or expanding facilities to provide additional permanent capacity within the Sutton-Kirkby planning area, to accommodate pupil growth from the Development the need for which is to mitigate the effects of the Development;

“SEND Education Contribution”

means the sum of £633.67 (six hundred and thirty three pounds and sixty seven pence) per Dwelling

Index Linked payable in accordance with the provisions of **paragraphs 2.7 and 2.8 of the First Schedule** towards procuring with the County Council 2 (two) pupil specialist places for pupils with Special Education Needs & Disabilities by expanding special school facilities or to fund the provision of specialist provision attached to a mainstream school the need for which is to mitigate the effects of the Development;

“Shared Ownership Lease”

means a lease to be granted for each Shared Ownership Dwelling for a term of not less than 125 (one hundred and twenty five) years which shall accord with the requirements of, and be consistent with any model shared ownership lease from time to time, of the Regulator of Social Housing (or any statutory successor);

“Shared Ownership Dwellings”

means at least 25% (twenty five percent) of the Affordable Dwellings to be provided on the Application Land to be provided by an Affordable Housing Provider by way of a Shared Ownership Lease in accordance with paragraph d) of Annex 2 of the National Planning Policy Framework where the percentage equity share to be marketed and the percentage rent payable on the retained equity is agreed in writing between the District Council and the Affordable Housing Provider before the units are marketed to the public or by way of shared equity, discounted sale, sub-market/intermediate rent, rent to buy, or any other sub-market/intermediate type/model and which complies with the definition of Affordable Housing within Annex 2 of the National Planning Policy Framework and to be provided in accordance with the Planning Permission, a Reserved Matters Approval(s) and an approved Affordable Housing Scheme and the provisions of **paragraph 1 of the First Schedule** and **“Shared**

Ownership Dwelling” shall be construed accordingly;

“Sport and Recreational Facilities Contribution” means the sum of £900,000.00 (nine hundred thousand pounds) Index Linked payable in accordance with the provisions of **paragraphs 2.13 and 2.14 of the First Schedule** towards the provision of off-site formal sport and recreational facilities the need for which is to mitigate the effects of the Development;

“Subsequent Owner” has the meaning given in **paragraph 1.13 of the First Schedule**;

“Sutton Parkway Train Station Improvements” means improvements to and/or the provision of secure cycle parking at Sutton Parkway Station;

“Sutton Parkway Train Station Improvements Contribution” means the sum of £10,000.00 (ten thousand pounds) Index Linked payable in accordance with the provisions of **paragraphs 2.15 and 2.16 of the First Schedule** towards procuring with the County Council the Sutton Parkway Train Station Improvements the need for which is to mitigate the effects of the Development;

“Waste Management Contribution” means the sum of £104.72 (one hundred and four pounds and seventy two pence) per Dwelling Index Linked payable in accordance with the provisions of **paragraphs 2.17 and 2.18 of the First Schedule** towards procuring with the County Council the provision of waste and recycling infrastructure the need for which is to mitigate the effects of the Development.

1.2 Words in this Agreement importing the singular meaning shall where the context so admits include the plural meaning and vice versa.

1.3 Words in this Agreement of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa.

- 1.4 References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force.
- 1.5 Where in this Agreement reference is made to a clause Schedule or plan such reference (unless the context otherwise requires) is a reference to a clause or Schedule of or in the case of a plan attached to this Agreement.
- 1.6 Covenants made hereunder on the part of the District Council shall be enforceable against the District Council and any statutory successor to it as planning authority.
- 1.7 The expressions “the First Owner” and “the Second Owner” and "the Developer" shall where the context so admits include successors and assigns.
- 1.8 Any covenant by the Owners not to knowingly do any act or thing shall be deemed to include a covenant not to cause or permit the doing of that act or thing.

2 GENERAL PROVISIONS

Statutory Authority

- 2.1 This Agreement and each of the covenants given by the Owners contained herein is a planning obligation and is made pursuant to Section 106 of the 1990 Act and all other powers so enabling.
- 2.2 The covenants by the Owners contained herein shall be enforceable by the District Council.

Liability

- 2.3 The covenants given by the Owners contained herein are made with the intent that the covenants will bind its interest in the Application Land and be binding on and enforceable against their successors in title or assigns and subject to **clause 2.5** those deriving title under the Owners **PROVIDED THAT** without prejudice to the enforcement of covenants against successors in title no person shall be liable for any breach or non-performance of the covenants contained herein or for the performance of any obligations which arise from the carrying out of the Development on and in respect of any land of which they are no longer seised save in respect of any prior subsisting breach.
- 2.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof or specified in a section 73 permission to which **clause 2.24** below applies) granted (whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply **PROVIDED THAT** the obligations in this

Agreement can be applied to any planning permission granted subsequent to the grant of the Planning Permission as herein defined by agreement between the Owners and the District Council as evidenced by a memorandum endorsed on this Agreement.

- 2.5 The covenants contained in this Agreement shall not be enforceable against:
- 2.5.1 individual purchasers or lessees (or their mortgagees) of Dwellings on the Application Land; nor
 - 2.5.2 (other than the provisions of **paragraph 1 of the First Schedule**) against an Affordable Housing Provider unless all or part of the Application Land is transferred to an Affordable Housing Provider and the Affordable Housing Provider builds out the Development pursuant to the Planning Permission in which case the covenants and obligations in this Agreement shall apply in full to the Affordable Housing Provider as successor in title to the Owners; or
 - 2.5.3 against statutory undertakers in relation to any parts of the Application Land acquired by them for electricity sub-stations gas governor stations or pumping stations or against anyone whose only interest in the Application Land or any part of it is in the nature of the benefit of an easement or covenant.
- 2.6 In the event that the First Owner or the Second Owner disposes of its interest in the Application Land or any part thereof (other than a disposal to a purchaser of a Dwelling or to a statutory undertaker) it shall within 28 (twenty-eight) days of such disposal give written notice of the name and address of its successors in title to the District Council together with sufficient details of the land included in the disposal to allow its identification.

Contingencies

- 2.7 The obligations in this Agreement shall be conditional upon the issuing of the Planning Permission by the District Council and the Commencement of Development and save for this clause and **clauses 2.8, 2.12, 2.15, 2.16, 2.17, 2.18, 2.19, 2.20 and 3.2, and paragraphs 1.1, and 5.1.1 of the First Schedule** which shall come in to effect upon completion of this Agreement then until such time all other provisions not herein specified shall be of no effect.
- 2.8 In the event of the Planning Permission expiring or in the event of the withdrawal, revocation or quashing of the Planning Permission the obligations under this Agreement shall cease absolutely and the District Council shall upon written request from the Owners procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith upon request of the Owners.

- 2.9 Where this Agreement is released in part by a future agreement, the District Council shall upon written request from the Owners place a note against the entry made in the Register of Local Land Charges stating which obligations no longer have effect.
- 2.10 If the Owners make a request in writing for the District Council to place a note against the entry made in the Register of Local Land Charges stating which obligations under this Agreement have been discharged and complied with, the District Council will place such a note, as soon as reasonably practicable, against the entry to the extent which such obligations are deemed by the District Council to have been discharged and complied with under the terms of this Agreement.
- 2.11 Following the performance and satisfaction of all covenants and obligations contained in this Agreement the District Council shall upon written request from the Owners effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 2.12 If an Inspector or the Secretary of State in their Decision Letter concludes that any of the Planning Obligations) are incompatible with Regulation 122 of the CIL Regulations and expressly states in their Decision Letter that they attach no weight to that Planning Obligation in determining the Appeal then the relevant Planning Obligation shall from the date of the Decision Letter immediately cease to have effect and the Owners shall be under no obligation to comply with that Planning Obligation but the remaining Planning Obligations shall remain in full force and effect.

Commencement of Development

- 2.13 The Owners shall give the District Council 7 (seven) days' notice in advance of the Commencement of Development and the date on which Commencement of Development has taken place shall be confirmed by exchange of correspondence between the Owners and the District Council **PROVIDED THAT** default in giving notice or confirming the date by exchange of correspondence shall not prevent Commencement of Development occurring.

Determination by Expert

- 2.14 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owners and the District Council concerning this Agreement including any dispute as to whether or not an obligation has been performed or matter to be agreed under any of the provisions of this Agreement the matter may at the written option of any relevant party (notice of which shall be given to the other party or parties) be referred to such expert as they may agree or (in default of agreement within 20 (twenty) working days of the date of giving of the notice)

appointed by the Chairman for the time being of the Planning and Environment Bar Association whose appointment shall be conducted on the following terms:

2.14.1 The person to be appointed pursuant to **clause 2.13** shall if possible be a person having 15 (fifteen) years or more relevant post-qualification experience of the issue in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute.

2.14.2 The reference to the expert shall be on terms that:

- (a) the expert shall afford the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;
- (b) the expert shall be able to stipulate periods of time for the making of such submissions and representations;
- (c) the expert shall be bound to have regard to the said submissions and representations;
- (d) the expert shall have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the expert shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;
- (e) the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and
- (f) the findings of the expert shall save in the case of manifest material error be final and binding on the Owners and the District Council save that the parties retain the right to refer to the Courts on a matter of law.

Time Periods

2.15 Any of the periods specified in the Agreement may be extended by mutual agreement in writing between the Owners and the District Council.

Approvals

2.16 For the purposes of this Agreement where a party is required to make a request, give confirmation, approval or consent, express satisfaction with, agree to vary, or to give notice of

any matter, such request, confirmation, approval, consent, expression of satisfaction, agreement to vary, or notice shall be deemed to have not been given or expressed unless given or expressed in writing and shall not be unreasonably withheld or delayed.

Notices

- 2.17 The service of notices and communications pursuant to this Agreement shall be sent to the addressee at the address stated in this Agreement or at such other address as the addressee shall have notified to the others in writing.
- 2.18 Notices and communications under this Agreement may be sent by personal delivery or by First Class Post (recorded delivery) and any notice or communication sent by First Class Post (recorded delivery) and correctly addressed shall be conclusively deemed to have been received by the addressee on the second business day following the date of posting.

Exclusion of the Contracts (Rights of Third Parties) Act 1999

- 2.19 Nothing herein contained or implied shall give or be construed as giving rights, privileges, powers or enforceability other than to the specific parties executing this document and their successors (if any) as defined herein and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained.

Void Provisions

- 2.20 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the forgoing provisions would be to defeat the original intention of the parties.

No Fetter of Discretion

- 2.21 Save as permitted by law in equity nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the District Council in its rights powers duties and obligations under all public and private statutes bylaws and regulations which may be as fully and effectually exercised as if the District Council were not a party to this Agreement.

Effect of any Waiver

- 2.22 No waiver (whether express or implied) by the District Council of any breach or default by the Owners in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the District Council (as relevant) from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owners.

General Requirement to Co-operate

- 2.23 Without prejudice to its statutory duties the District Council and the Owners shall act in good faith and shall co-operate with each other to facilitate the discharge and performance of the obligations of the other contained within this Agreement within the timescales specified.

Interest

- 2.24 If any payment due to the District Council under this Agreement is paid late interest will be payable from the date the payment is due to the date of payment at 8% (eight percent) above the Bank of England base lending rate prevailing at the time.

Future Permissions

- 2.25 In the event that an application is made pursuant to Section 73 of the Act for an amendment to the Planning Permission or a Reserved Matters Approval and planning permission is granted (whether or not on appeal) in respect of the application (and the District Council is satisfied in its absolute discretion that no revised planning obligations are required as a result of such amendment) references to Planning Permission and/or a Reserved Matters Approval in this Agreement shall be to the new planning permission or reserved matters approval granted pursuant to Section 73 of the Act and this Agreement shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act, unless requested by the District Council PROVIDED THAT in the event of a different planning obligation under section 106 of the 1990 Act agreed by the District Council being binding on any Section 73 Consent, this planning obligation shall not apply to that Section 73 Consent if that separate planning obligation expressly states that it is in substitution for the obligations in this planning obligation.

Jurisdiction

- 2.26 This Agreement 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.

3 OWNERS' COVENANTS TO THE DISTRICT COUNCIL

- 3.1 The Owners covenant with the District Council so as to bind their respective interests in the Application Land and each and every part thereof to observe and perform the covenants set out in the First Schedule and the Developer acknowledges that its interest in the Application Land shall be bound by the covenants set out in the First Schedule.
- 3.2 The Developer covenants with the District Council to pay the District Council's reasonable legal costs in respect of the preparation of this Agreement on its execution.

4 DISTRICT COUNCIL'S COVENANTS TO THE OWNERS

- 4.1 The District Council covenants with the Owners to fulfil the covenants on its behalf contained in the Second Schedule and where applicable in the First Schedule.

FIRST SCHEDULE

(Owners' Covenants)

The Owners covenant with the District Council as follows:

1 Affordable Housing

- 1.1 To submit to the District Council for approval prior to the Commencement of Development an Affordable Housing Scheme for the Development and not to Commence unless and until the Affordable Housing Scheme for the Development has been approved by the District Council.
- 1.2 To provide 10% (ten percent) of the Dwellings constructed as part of the Development as Affordable Dwellings in accordance with the Planning Permission, Reserved Matters Approval(s), approved plans and an Affordable Housing Scheme approved pursuant to **paragraph 1.1 of this Schedule** or any approved variation thereto.
- 1.3 Not to dispose of any interest in the Affordable Dwellings save to an Affordable Housing Provider or the District Council in accordance with this **paragraph 1** or allow the same to be disposed of otherwise than in accordance with this **paragraph 1**.
- 1.4 Not to Occupy or permit or suffer or allow the Occupation of more than:
- 1.4.1 30% (thirty percent) of the Market Dwellings on the Development until:
- (a) 50% (fifty percent) of the Affordable Dwellings on the Development have achieved Practical Completion and are ready for Occupation; and
 - (b) the freehold of those Affordable Dwellings has been transferred to an Affordable Housing Provider or the District Council or binding contracts to

transfer such units to an Affordable Housing Provider or the District Council have been exchanged; and

- 1.4.2 60% (sixty percent) of the Market Dwellings on the Development until:
- (a) 100% (one hundred percent) of the Affordable Dwellings on the Development have achieved Practical Completion and are ready for Occupation; and
 - (b) the freehold of those Affordable Dwellings has been transferred to an Affordable Housing Provider or the District Council or binding contracts to transfer such units to an Affordable Housing Provider or the District Council have been exchanged; and
- 1.5 The transfer or binding contract, as the case may be, referred to in **paragraph 1.4.2(b) and 1.4.3(b) and 1.4.3 (c) of this Schedule** shall provide inter alia for:
- 1.5.1 the transfer of the freehold title to be with full title guarantee with such rights of access and passage of other rights reasonably necessary for the beneficial enjoyment of the Affordable Dwellings and the provision of roads and services rendering them suitable for immediate Occupation; and
 - 1.5.2 the imposition of such covenants as the Owners shall reasonably require as are consistent with the sale of any Dwellings within the Development; and
 - 1.5.3 where the Affordable Dwellings are being transferred to an Affordable Housing Provider, evidence to the District Council of such transfer or contract has been provided.
- 1.6 Subject to **paragraph 1.7 of this Schedule** not to use or allow the Affordable Dwellings to be used for any purpose other than for Affordable Housing in accordance with the terms of this Agreement.
- 1.7 The restriction referred to in **paragraph 1.6 of this Schedule** shall not apply to:
- 1.7.1 a Protected Tenant or any person deriving title under a Protected Tenant; or
 - 1.7.2 a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a

“**Receiver**”)) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver.

- 1.8 Not to transfer the Affordable Dwellings to an Affordable Housing Provider without first procuring that the transfer includes:
- 1.8.1 a provision that the Affordable Housing Provider shall undertake to enter into a Nominations Agreement with the District Council; and
 - 1.8.2 a provision that the Affordable Dwellings shall not be used for any purpose other than for Affordable Housing save where **clause 2.5.2** and **paragraph 1.7 of this Schedule** applies.
- 1.9 To procure that the Affordable Housing Provider permits the District Council or its agent to nominate 100% (one hundred percent) of the first occupiers and 50% (fifty percent) of the second occupiers of the Affordable Dwellings, such occupier being someone who is in Housing Need.
- 1.10 In the event the Owners have not entered into a binding contract with an Affordable Housing Provider within 12 (twelve) months of Commencement of Development pursuant to **this paragraph 1** of this Schedule to notify the District Council (such notification to include evidence of the Owners' reasonable endeavours to enter into a binding contract with an Affordable Housing Provider) and:
- 1.10.1 If the District Council (acting reasonably) is satisfied that the notification provided pursuant to **paragraph 1.10 of this Schedule** demonstrates that the Owners have used reasonable endeavours to enter into a binding contract with an Affordable Housing Provider, it may determine whether to take a transfer of the Affordable Dwellings or to accept an Affordable Housing Contribution and:
 - (a) In the event the District Council determines that an Affordable Housing Contribution shall be payable in lieu of provision of the Affordable Dwellings on the Application Land then the Owners shall pay the Affordable Housing Contribution prior to the first Occupation of 60% (sixty percent) of the Market Dwellings on the Development **AND** the Owners shall be entitled to dispose of the Dwellings that would have been Affordable Dwellings as Market Dwellings free from the restrictions in **this paragraph 1**.
 - (b) In the event that the District Council elects to take a transfer of the Affordable Dwellings the Owners shall offer to transfer the Affordable

Dwellings to the District Council for a sum to be agreed between the Owners and the District Council such sum to represent the build cost provision of services infrastructure and land as part of the Development and to use reasonable endeavours to exchange legally binding contracts with the District Council (such contracts to be on the terms contained in **paragraph 1.5 of this Schedule**) within 3 (three) months of the Owners receiving written acceptance of the offer.

- (c) If within 3 (three) months of the Owners receiving written acceptance of the offer from the District Council, legally binding contracts have not been exchanged with the District Council or the District Council has provided written confirmation of its withdrawal from acceptance of the offer the Owners shall be entitled to withdraw the offer from negotiations and shall be released from the requirement to comply with the provisions of this Agreement in relation to the provision of Affordable Housing **PROVIDED THAT** the Dwellings that would have been Affordable Dwellings shall be provided as Discounted Market Dwellings (and the transfer of such dwellings shall contain a provision to ensure that future transfers shall be restricted in perpetuity so that the sale price does not exceed 75% (seventy-five percent) of the Open Market Value at the time of such sale, such provision to require a restriction to be inserted to the title register at the Land Registry).

- 1.11 If the District Council (acting reasonably) is not satisfied that the notification provided pursuant to **paragraph 1.10 of this Schedule** demonstrates that the Owners have used reasonable endeavours to enter into a binding contract with an Affordable Housing Provider, the District Council shall serve written notice on the Owners that they shall be required to use reasonable endeavours to enter into such a contract within 6 (six) months from the date of notification by the District Council and if at the end of that 6 (six) month period the Owners have not been able to enter into a binding contract with an Affordable Housing Provider the provisions of **paragraph 1.10 of this Schedule** shall apply **PROVIDED THAT** at the conclusion of the 6 (six) month period under this **paragraph 1.11 of this Schedule** the District Council shall not be entitled to again serve a notice under this paragraph and the provisions of **paragraph 1.10.1 of this Schedule** shall apply.
- 1.12 In respect of any Affordable Dwellings to be sold as Discounted Market Dwellings pursuant to **paragraph 1.10.1(c) of this Schedule**, in order that the future ownership and selling price of all and any Discounted Market Dwelling shall be controlled so as to ensure that each such dwelling remains a Discounted Market Dwelling available to persons in Housing Need in

perpetuity, on the first disposal of each Discounted Market Dwelling to secure the registration at HM Land Registry of the following restriction (or in such other form as the Chief Land Registrar shall deem appropriate) against the title to the Discounted Market Dwelling and shall provide the District Council with a copy of such title (showing the restrictions unless otherwise agreed in writing):-

“no disposition of the registered estate other than a charge by the proprietor of the registered estate, or by the proprietor of a charge, not being a charge registered before the entry of this restriction shall be completed by way of registration without a certificate signed by Ashfield District Council that the provisions of the Deed dated [insert date of this s106 Agreement] 2024 between (1) Rolls–Royce Power Engineering Plc (2) W & J S Temporal Limited (3) Hallam Land Management Limited and (4) Ashfield District Council have been complied with”

- 1.13 On each subsequent disposal of any Discounted Market Dwelling the new owner (the **“Subsequent Owner”**) shall procure the registration at the Land Registry of a restriction in the same form as set out above at **paragraph 1.12** against the title to the Discounted Market Dwelling in which they have acquired an interest and supply a copy of such title (showing the restriction) to the District Council.
- 1.14 If a Subsequent Owner of a Discounted Market Dwelling who wishes to dispose of the dwelling is not able to locate a prospective purchaser who is a person or persons in Housing Need after a period of 3 (three) months of first advertising the Discounted Market Dwelling for sale then the Subsequent Owner may sell the Discounted Market Dwelling at a price which is representative of the Open Market Value and the Subsequent Owner shall pay to the District Council upon completion of the sale of the Discounted Market Dwelling as an open market dwelling the sum which is 25% (twenty-five percent) of the open market value and the obligations in this **paragraph 1 of this Schedule** shall no longer apply to that dwelling.
- 1.15 Prior to entering into a contract for the sale of the Discounted Market Dwelling with a prospective purchaser to provide the District Council with the following information:
- 1.15.1 evidence that the prospective purchaser is a person or persons that has/have a Housing Need; and
- 1.15.2 evidence as to the local market value of the Discounted Market Dwelling; and
- 1.15.3 details as to the proposed sale price.

and not to enter into a contract for sale of a Discounted Market Dwelling unless and until the District Council has provided it with a letter (such letter not to be unreasonably withheld or

delayed) confirming that the District Council accepts the evidence provided to it pursuant to this **paragraph 1.15** or, where the District Council does not accept the evidence provided, the full reasons as to why it does not accept the evidence.

2 Contributions

Bus Service Contribution

2.1 To pay the Bus Service Contribution to the District Council for onward transmission to the County Council as follows:

2.1.1 £110,000.00 (one hundred and ten thousand pounds) prior to the Occupation of more than 20% (twenty percent) of the Dwellings; and

2.1.2 the remaining £110,000.00 (one hundred and ten thousand pounds) prior to the Occupation of more than 50% (fifty percent) of the Dwellings.

2.2 Not to Occupy more than:

2.2.1 20% (twenty percent) of the Dwellings unless and until £100,000.00 (one hundred thousand pounds) of the Bus Service Contribution has been paid to the District Council in accordance with **paragraph 2.1.1 of this Schedule**; and

2.2.2 50% (fifty percent) of the Dwellings unless and until all of the Bus Service Contribution has been paid to the District Council in accordance with **paragraph 2.1.2 of this Schedule**.

Bus Stop Infrastructure Contribution

2.3 To pay the Bus Stop Infrastructure Contribution to the District Council for onward transmission to the County Council prior to the Occupation of any of the Dwellings.

2.4 Not to Occupy any of the Dwellings until the Bus Stop Infrastructure Contribution has been paid to the District Council.

Education Contributions

Secondary Education Contribution

2.5 To pay the Secondary Education Contribution to the District Council for onward transmission to the County Council as follows:

- 2.5.1 50% (fifty percent) of the Secondary Education Contribution prior to Occupation of more than 20% (twenty percent) of the Dwellings .
- 2.5.2 The balance of 50% (fifty percent) of the Secondary Education Contribution relative to the number of Dwellings prior to Occupation of more than 50% (fifty percent) of the Dwellings .
- 2.6 Not to Occupy more than:
- 2.6.1 20% (twenty percent) of the Dwellings until 50% (fifty percent) of the Secondary Education Contribution has been paid to the Council pursuant to **paragraph 2.5.1 of this Schedule**.
- 2.6.2 50% (fifty percent) of the Dwellings until the remaining 50% (fifty percent) of the Secondary Education Contribution has been paid to the Council pursuant to **paragraph 2.5.2 of this Schedule**.

SEND Education Contribution

- 2.7 To pay the SEND Education Contribution to the District Council for onward transmission to the County Council as follows:
- 2.7.1 50% (fifty percent) of the SEND Education Contribution prior to Occupation of more than 20% (twenty percent) of the Dwellings .
- 2.7.2 The balance of 50% (fifty percent) of the SEND Education Contribution relative to the number of Dwellings prior to Occupation of more than 50% (fifty percent) of the Dwellings .
- 2.8 Not to Occupy more than:
- 2.8.1 50% (fifty percent) of the Dwellings until 50% (fifty percent) of the SEND Education Contribution has been paid to the Council pursuant to **paragraph 2.7.1 of this Schedule**.
- 2.8.2 50% (fifty percent) of the Dwellings until the remaining 50% (fifty percent) of the SEND Education Contribution has been paid to the Council pursuant to **paragraph 2.7.2 of this Schedule**.

Healthcare Contribution

- 2.9 To pay the Healthcare Contribution to the District Council for onward transmission to the ICB as follows:

- 2.9.1 50% (fifty percent) of the Healthcare Contribution prior to Occupation of more than 20% (twenty percent) of the Dwellings .
- 2.9.2 The remaining 50% (fifty percent) of the Healthcare Contribution prior to Occupation of more than 50% (fifty percent) of the Dwellings.
- 2.10 Not to Occupy more than:
- 2.10.1 20% (twenty percent) of the Dwellings until 50% (fifty percent) of the Healthcare Contribution has been paid to the Council pursuant to **paragraph 2.9.1 of this Schedule**.
- 2.10.2 50% (fifty percent) of the Dwellings until the remaining 50% (fifty percent) of the Healthcare Contribution has been paid to the Council pursuant to **paragraph 2.9.2 of this Schedule**.

Library Contribution

- 2.11 To pay the Library Contribution to the District Council for onward transmission to the County Council as follows:
- 2.11.1 50% (fifty percent) of the Library Contribution prior to Occupation of more than 20% (twenty percent) of the Dwellings .
- 2.11.2 The remaining 50% (fifty percent) of the Library Contribution prior to Occupation of more than 50% (fifty percent) of the Dwellings.
- 2.12 Not to Occupy more than:
- 2.12.1 20% (twenty percent) of the Dwellings until 50% (fifty percent) of the Library Contribution has been paid to the Council pursuant to **paragraph 2.11.1 of this Schedule**.
- 2.12.2 50% (fifty percent) of the Dwellings until the remaining 50% (fifty percent) of the Library Contribution has been paid to the Council pursuant to **paragraph 2.11.2 of this Schedule**.

Sport and Recreational Facilities Contribution

- 2.13 To pay 50% (fifty percent) of the Sport and Recreational Facilities Contribution to the District Council prior to Occupation of any of the Dwellings and not to Occupy any of the Dwellings until 50% (fifty percent) of the Sport and Recreational Facilities Contribution has been paid to the District Council.

- 2.14 To pay the balance of 50% (fifty percent) of the Sport and Recreational Facilities Contribution to the District Council prior to Occupation of more than 50% (fifty percent) of the Dwellings and not to Occupy more than 50% (fifty percent) of the Dwellings until the balance of 50% (fifty percent) of the Sport and Recreational Facilities Contribution has been paid to the District Council.

Sutton Parkway Train Station Improvements Contribution

- 2.15 To pay the Sutton Parkway Train Station Improvements Contribution to the District Council for onward transmission to the County Council prior to the Occupation of any of the Dwellings.
- 2.16 Not to Occupy any of the Dwellings (until the Sutton Parkway Train Station Improvements Contribution has been paid to the District Council).

Waste Management Contribution

- 2.17 To pay the Waste Management Contribution to the District Council for onward transmission to the County Council as follows:
- 2.17.1 50% (fifty percent) of the Waste Management Contribution prior to Occupation of more than 20% (twenty percent) of the Dwellings .
- 2.17.2 The remaining 50% (fifty percent) of the Waste Management Contribution prior to Occupation of more than 50% (fifty percent) of the Dwellings .
- 2.18 Not to Occupy more than:
- 2.18.1 20% (twenty percent) of the Dwellings until 50% (fifty percent) of the Waste Management Contribution has been paid to the Council pursuant to **paragraph 2.17.1 of this Schedule**.
- 2.18.2 50% (fifty percent) of the Dwellings until the remaining 50% (fifty percent) of the Waste Management Contribution has been paid to the Council pursuant to **paragraph 2.17.2 of this Schedule**.

Monitoring Contribution

- 2.19 To pay the Monitoring Contribution to the District Council prior to the Commencement of Development and not to Commence Development until the Monitoring Contribution has been paid.

3 Footway/Cycleway Works B Option

- 3.1 To use reasonable endeavours to achieve the Footway/Cycleway Works B Option prior to the Occupation of more than 50% (fifty percent) of the Dwellings and not to Occupy more than 50% (fifty percent) of the Dwellings unless and until it has used its reasonable endeavours to achieve the Footway/Cycleway Works B Option.
- 3.2 In the event that it has not been possible to achieve the Footway/Cycleway Works B Option to notify (“**Footway/Cycleway Works Notice**”) the District Council (such notification to include evidence of the Owners' reasonable endeavours to achieve the Footway/Cycleway Works B Option) and not to not to Occupy more than 50% (fifty percent) of the Dwellings unless and until the Council has confirmed that its agreement that reasonable endeavours have been used **PROVIDED THAT** in the event that the District Council:
- 3.2.1 does not confirm to the Owners in writing of its agreement that reasonable endeavours have been used or provide in writing why (providing a reasoned justification) in its opinion that reasonable endeavours have not been used within 30 (thirty) Working Days of receipt of the Footway/Cycleway Works Notice from the Owner it shall be deemed that the Council has confirmed that reasonable endeavours have been used; or
- 3.2.2 confirms acting reasonably that in its opinion reasonable endeavours have not been used (providing a reasoned justification) within 30 (thirty) Working Days of receipt of the Footway/Cycleway Works Notice from the Owner then:
- (a) the Owners may continue to submit further evidence of its reasonable endeavours used to achieve the Footway/Cycleway Works B Option in which case the procedure set out in this paragraph 3.2 of this Schedule shall be repeated; or
- (b) either Party may refer any dispute or disagreement to an expert for determination in accordance with the disputes procedure in clause 2.14.
- 3.3 Upon receipt of:
- 3.3.1 the District Council confirming its agreement that reasonable endeavours have been used in accordance with paragraph 3.2 of this Schedule; or
- 3.3.2 the District Council's deemed approval that reasonable endeavours have been used in accordance with paragraph 3.2.1 of this Schedule; or
- 3.3.3 the expert determining that reasonable endeavours have been used in accordance with paragraph 3.2.2(b) of this Schedule;

the obligation on the Owners to achieve the Footway/Cycleway Works B Option shall cease and determine and the restriction on the Occupation of dwellings in paragraph 3.3 shall be lifted.

- 3.4 In the event that the expert determines that reasonable endeavours have not been used in accordance with paragraph 3.2.2(b) of this Schedule then the Parties shall comply with the findings of the expert (save in the case of a material error).

4 Public Open Space

- 4.1 To complete the Open Space Works on the Application Land in accordance with the Open Space Management Plan and to make the Open Space available for use by residents of the Development in accordance with the programme for delivery of the Open Space agreed as part of the Open Space Management Plan and not to Occupy more than the Dwellings identified in accordance with the programme for delivery until the relevant areas of Open Space have been completed on the Application Land.
- 4.2 Following the completion of the carrying out of the Open Space Works on the Application Land the Owners shall serve a notice in writing upon the District Council (“**Owners' POS Notice**”).
- 4.3 As soon as reasonably practicable following service of an Owners' POS Notice in accordance with **paragraph 4.2 of this Schedule** the Owners shall engage the Management Company (having first supplied to the District Council a certified copy of the Memorandum and Articles of Association of the Management Company) on terms to be agreed between the Owners and the Management Company in consultation and agreement with the District Council to manage and maintain the relevant area(s) of Open Space and all further management and maintenance shall be thereafter carried out by the Management Company in accordance with the principles set out in **paragraph 4.3.2 of this Schedule PROVIDED THAT** it is agreed that it shall be a term of the Management Company's engagement that the Management Company will:
- 4.3.1 only allow the use of the Open Space for public use and no other purpose;
- 4.3.2 maintain and manage in perpetuity the Open Space fully in accordance with the Open Space Management Plan relating to the relevant area of Open Space subject to any variations that may be agreed in writing between the District Council and the Owners from time to time.
- 4.4 The Owners will comply with the provisions set out in **paragraphs 4.3.1 and 4.3.2 of this Schedule** until such time as a Management Company has been engaged to undertake the future management and maintenance of the Open Space or the particular element of the Open Space as the case may be.

- 4.5 The Owners hereby declares that pursuant to Section 31(6) Highways Act 1980 that the Open Space has not been dedicated to the public nor is any use by the public of any part of the Open Space to be taken in any way as an intention by the Owners to dedicate the same as highway.
- 4.6 The Owners will procure that public access is allowed to the Open Space but subject to the following provisions:
- 4.6.1 access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owners having regard to overriding reasons of safety, security and prudent building management **PROVIDED THAT** such requirements and regulations shall not be imposed without the District Council's prior written approval; and
- 4.6.2 notices may be erected on the Open Space and access to them will be denied by the Owners or the Management Company for 1 (one) day each year in order to prevent public rights of way or common rights coming into being; and
- 4.6.3 access may be denied by the Owners or the Management Company for and during the maintenance, repair cleansing or renewal of the Open Space or for and during the construction of any building or land abutting it subject to the District Council's prior approval.
- 4.7 The Owners or the Management Company may close the Open Space or any part thereof for reasonable periods by reason of:
- 4.7.1 emergency; and/or
- 4.7.2 cleansing, maintenance and repair; and/or
- 4.7.3 at the direction of the emergency services or other lawful authority; and/or
- 4.7.4 construction activities whilst the proposed development is being built if in the interests of health and safety.

5 Sustainable Transport – Bus Pass

- 5.1 Upon the First Occupation of each and every Dwelling to provide to the First Occupier(s) of the Dwelling with a Bus Pass Application Form.
- 5.2 In the event that the First Occupier(s) of a Dwelling requests a Bus Pass and returns the completed Bus Pass Application Form to the Owner within 6 (six) months of the date the Bus Pass Application Form was supplied by the Owners in accordance with **paragraph 5.1 of this**

Schedule then the Owners will supply or procure the supply of (at its own expense) the Bus Pass to the First Occupier(s) of that Dwelling within 20 (twenty) Working Days of the date of receipt of the completed Bus Pass Application Form **PROVIDED THAT** it is agreed that:

- 5.2.1 the Owners shall not be obliged to offer to provide more than 2 (two) Bus Pass per Dwelling; and
 - 5.2.2 in the event a First Occupier(s) does not return a completed application form to the Owners within 6 (six) months of the date the Bus Pass Application Form was supplied by the Owners to a First Occupier(s) the Owners' liability under this **paragraph 5.2 of this Schedule** to offer a Bus Pass to the First Occupier(s) of a Dwelling shall cease and determine; and
 - 5.2.3 the Owners' maximum liability in relation to supplying a Bus Pass in relation to each Dwelling shall be limited to and in any event shall not exceed £768.00 (seven hundred and sixty eight pounds) (*calculated on the basis of supplying a 2x 3 (three) month Bus Pass with a monthly cost of £128.00 (one hundred and twenty eight pounds) for a Bus Pass*) per Dwelling.
- 5.3 To supply to the District Council at 6 (six) monthly intervals details (“**Bus Pass Uptake Report**”) of the Bus Passes supplied to the First Occupier(s) within the proceeding 6 (six) months period until all the Dwellings have been First Occupied.

6 General

- 6.1 The Owners covenant to give the District Council not less than 21 (twenty one) days prior written notice of:
- 6.1.1 the Commencement of Development; and
 - 6.1.2 Occupation of the first (1st (first) Dwelling; and
 - 6.1.3 Occupation of twenty percent (20%) of the Dwellings; and
 - 6.1.4 Occupation of fifty percent (50%) of the Dwellings.
 - 6.1.5 First Occupation of the 300th Dwelling.
- 6.2 The Owners covenant to give the District Council written notice upon Commencement of Development.

SECOND SCHEDULE (Council's Covenants)

The District Council covenants with the Owners as follows:

1 Affordable Housing

- 1.1 In the event that the Owners serve notice on the District Council pursuant to **paragraph 1.10 of the First Schedule** confirming that the Owners have been unable to enter into a binding contract with an Affordable Housing Provider for the Affordable Dwellings the District Council shall determine whether to take a transfer of the Affordable Dwellings or whether an Affordable Housing Contribution shall be payable in lieu of provision of the Affordable Dwellings on site and shall notify the Owners of that election prior to the first Occupation of 60% (sixty percent) of the Market Dwellings.
- 1.2 In the event the District Council determines that an Affordable Housing Contribution is payable, the District Council shall use such contribution solely for the provision of Affordable Housing within the District of Ashfield and for no other purpose whatsoever.
- 1.3 In the event the District Council determines that an Affordable Housing Contribution is payable, the District Council hereby confirms that upon receipt of payment of the Affordable Housing Contribution the Owners will be released from the obligations relating to Affordable Housing in this Agreement.
- 1.4 In the event that a Subsequent Owners pay to the District Council any sum under **paragraph 1.14 of the First Schedule** the District Council shall use such sum solely for the provision of Affordable Housing within the District of Ashfield and for no other purpose whatever.
- 1.5 If all or any part of the Affordable Housing Contribution shall remain unexpended after the period of 5 (five) years from the date of payment of the final instalment by the Owners to the District Council it shall following receipt of a request from the Owners repay such unexpended monies to the Owners (or to the Owners' nominee) together with interest thereon calculated from the date of payment to the date of repayment.

2 Bus Service Contribution

- 2.1 Within 10 (ten) Working Days of receipt of the Bus Service Contribution from the Owners to pass the Bus Service Contribution to the County Council but only on the condition that:
 - 2.1.1 Such monies shall be used solely for the purposes specified in this Agreement in the definition Bus Service Contribution and for no other purpose whatsoever; and

- 2.1.2 If all or any part of the Bus Service Contribution shall remain unexpended or uncommitted after the period of 10 (ten) years from the date of payment of the final instalment by the Owners to the District Council it shall following receipt of a request from the Owners or the District Council repay such unexpended or uncommitted monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.
- 2.2 To forward to the Owners (or the Owners' nominee) any monies received from the County Council pursuant to **paragraph 2.1.2 of this Schedule**.

3 Bus Stop Infrastructure Contribution

- 3.1 Within 10 (ten) Working Days of receipt of the Bus Stop Infrastructure Contribution from the Owners to pass the Bus Stop Infrastructure Contribution to the County Council but only on the condition that:
- 3.1.1 Such monies shall be used solely for the purposes specified in this Agreement in the definition of Bus Stop Infrastructure Contribution and for no other purpose whatsoever; and
- 3.1.2 If all or any part of the Bus Stop Infrastructure Contribution shall remain unexpended or uncommitted after the period of 10 (ten) years from the date of payment by the Owners to the District Council it shall following receipt of a request from the Owners or the District Council repay such unexpended monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.
- 3.2 To forward to the Owners (or the Owners' nominee) any monies received from the County Council pursuant to **paragraph 3.1.2 of this Schedule**.

4 Education Contributions

Secondary Education Contribution

- 4.1 Within 10 (ten) Working Days of receipt of the Secondary Education Contribution from the Owners to pass the Secondary Education Contribution to the County Council but only on the condition that:
- 4.1.1 Such monies shall be used solely for the purposes specified in this Agreement in the definition of Secondary Education Contribution and for no other purpose whatsoever; and

- 4.1.2 If all or any part of the Secondary Education Contribution shall remain unexpended or uncommitted after the period of 10 (ten) years from the date of payment of the final instalment by the Owners to the District Council it shall following receipt of a request from the Owners or the District Council repay such unexpended or uncommitted monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.
- 4.2 To forward to the Owners (or the Owners' nominee) any monies received from the County Council pursuant to **paragraph 4.1.2 of this Schedule**.

SEND Education Contribution

- 4.3 Within 10 (ten) Working Days of receipt of the SEND Education Contribution from the Owners to pass the SEND Education Contribution to the County Council but only on the condition that:
- 4.3.1 Such monies shall be used solely for the purposes specified in this Agreement in the definition of SEND Education Contribution and for no other purpose whatsoever; and
- 4.3.2 If all or any part of the SEND Education Contribution shall remain unexpended or uncommitted after the period of 10 (ten) years from the date of payment of the final instalment by the Owners to the District Council it shall following receipt of a request from the Owners or the District Council repay such unexpended or uncommitted monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.
- 4.4 To forward to the Owners (or the Owners' nominee) any monies received from the County Council pursuant to **paragraph 4.3.2 of this Schedule**.

5 Healthcare Contribution

- 5.1 To hold the Healthcare Contribution in an interest bearing account upon receipt from the Owners.
- 5.2 Following receipt of the Healthcare Contribution to transfer the Healthcare Contribution to the ICB but only on the condition that the ICB will apply the Healthcare Contribution for the purposes set out in this Agreement.
- 5.3 To return to the party who paid the Healthcare Contribution any part thereof paid to the District Council under this Agreement that has not been transferred to the ICB in accordance with paragraph 5.2 of this Schedule or committed to be transferred to the ICB together with any interest accrued after the expiry of 10 (ten) years from the date of receipt by the District Council of the Healthcare Contribution.

6 Library Contribution

6.1 Within 10 (ten) Working Days of receipt of the Library Contribution from the Owners to pass the Library Contribution to the County Council but only on the condition that:

6.1.1 Such monies shall be used solely for the purposes specified in this Agreement in the definition of Library Contribution and for no other purpose whatsoever; and

6.1.2 If all or any part of the Library Contribution shall remain unexpended or uncommitted after the period of 10 (ten) years from the date of payment of the final instalment by the Owners to the District Council it shall following receipt of a request from the Owners or the District Council repay such unexpended or uncommitted monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.

6.2 To forward to the Owners (or the Owners' nominee) any monies received from the County Council pursuant to **paragraph 6.1.2 of this Schedule**.

7 Sport and Recreational Facilities Contribution

7.1 To use the Sport and Recreational Facilities Contribution solely for the purposes set out in this Agreement in the definition of Sport and Recreational Facilities Contribution and for no other purpose whatsoever.

7.2 If all or any part of the Sport and Recreational Facilities Contribution shall remain unexpended or uncommitted after the period of 10 (ten) years from the date of payment of the final instalment by the Owners to the District Council it shall following receipt of a request from the Owners repay such unexpended monies to the Owners (or the Owners' nominee) together with interest thereon calculated from the date of payment to the date of repayment.

8 Sutton Parkway Train Station Improvements Contribution

8.1 Within 10 (ten) Working Days of receipt of the Sutton Parkway Train Station Improvements Contribution from the Owners to pass the Sutton Parkway Train Station Improvements Contribution to the County Council but only on the condition that:

8.1.1 Such monies shall be used solely for the purposes specified in this Agreement in the definition of Sutton Parkway Train Station Improvements Contribution and for no other purpose whatsoever; and

8.1.2 If all or any part of the Sutton Parkway Train Station Improvements Contribution shall remain unexpended or uncommitted after the period of 10 (ten) years from the date of

payment of the final instalment by the Owners to the District Council it shall following receipt of a request from the Owners or the District Council repay such unexpended or uncommitted monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.

8.2 To forward to the Owners (or the Owners' nominee) any monies received from the County Council pursuant to **paragraph 8.1.2 of this Schedule**.

9 Waste Management Contribution

9.1 Within 10 (ten) Working Days of receipt of the Waste Management Contribution from the Owners to pass the Waste Management Contribution to the County Council but only on the condition that:

9.1.1 Such monies shall be used solely for the purposes specified in this Agreement in the definition of Waste Management Contribution and for no other purpose whatsoever; and

9.1.2 If all or any part of the Waste Management Contribution shall remain unexpended or uncommitted after the period of 5 (five) years from the date of payment of the final instalment by the Owners to the District Council it shall following receipt of a request from the Owners or the District Council repay such unexpended or uncommitted monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.

9.2 To forward to the Owners (or the Owners' nominee) any monies received from the County Council pursuant to **paragraph 9.1.2 of this Schedule**.

10 Sustainable Transport – Bus Pass

10.1 Within 10 (ten) Working Days of receipt of each Bus Pass Uptake Report from the Owners in accordance with **paragraph 5.3 of the First Schedule** to forward the Bus Pass Uptake Report to the County Council.

11 Monitoring

11.1 Following receipt of a written request from the Owners to produce full details of the expenditure of all monies referred to in **paragraphs 1 to 9 (inclusive) of this Schedule** and, if applicable, **paragraphs 1 of this Schedule**.

THIRD SCHEDULE
(Indexation Provisions)

1 In this Schedule:-

"Index" means the Retail Prices Index ("RPI") as published by the Office for National Statistics or any successor body or in the event of discontinuance any replacement thereof such other index as shall be agreed between the Owners and the District Council.

"Base Index Date" means the date of this Agreement.

"Base Index Figure" means the figure published in respect of the Index immediately prior to the Base Index Date.

"Final Index Figure" means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the relevant contribution is paid.

2 The relevant contribution shall be increased by such sum, if any, in pounds sterling as shall be equal to the sum calculated according to the following formula:-

$$\text{Increased Sum} = \frac{A \times C}{B}$$

Where: "A" equals the relevant contribution

"B" equals the Base Index Figure

"C" equals the Final Index Figure

3 If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made.

4 If any substitution for the said RPI or any index previously substituted therefore shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the RPI or any index previously substituted therefore on the other hand.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed on the date first above written

SIGNED as a **DEED** by)
ROLLS-ROYCE POWER ENGINEERING LIMITED)
acting by a director)
in the presence of a witness:) Director

Witness Signature:
Witness Name:
Address:
.....
.....
Occupation:

SIGNED as a **DEED** by)
W & J S TEMPORAL LIMITED)
acting by a director)
in the presence of a witness:) Director

Witness Signature:
Witness Name:
Address:
.....
.....
Occupation:

EXECUTED AS A DEED by)
HALLAM LAND MANAGEMENT LIMITED)

acting by a Director)
 in the presence of a witness:) Director's Signature

.....
 Director's Name (Print)

Witness signature:

Witness name:

Witness address:

Witness occupation:

THE COMMON SEAL OF)
ASHFIELD DISTRICT COUNCIL)
 was hereunto affixed in the presence of: -)

Chairman of the Council

Authorised Officer

**Annex 1
(Plan 1)**

Annex 2
(Plan 2)