

DATED **2024**

- (1) **WARRINGTON BOROUGH COUNCIL**
- (2) **JOHN MASSEY CROSS AND ROBERT KENNETH CROSS**
- (3) **STEPHEN HARRY SINKER & JANE SUSAN SINKER AND NIGEL PHILIP SINKER & CHRISTINE SINKER**
- (4) **NIGEL PHILIP SINKER & CHRISTINE SINKER**
- (5) **BARCLAYS SECURITY TRUSTEE LIMITED**
- (6) **EMERALD 22 LLP**

AGREEMENT

Pursuant to section 106 Town and Country Planning Act 1990 relating to land to the west of Junction 20 of the M6 Motorway, and Junction 9 of the M56 Motorway and to the south of, Grappenhall Lane/Cliff Lane (known as Six:56 Warrington) Grappenhall, Warrington

Planning Reference: 2019/34799

THIS AGREEMENT is made as a DEED the

day of

2024

PARTIES

- (1) **WARRINGTON BOROUGH COUNCIL** of Town Hall, Sankey Street, Warrington WA1 1UH (the **Council**)
- (2) **JOHN MASSEY CROSS** of Cliff Lane Farm, Cartridge Lane, Grappenhall, Warrington WA4 4SH and **ROBERT KENNETH CROSS** of 7 Cartridge Lane, Grappenhall, Warrington WA4 4SH (the **First Owner**)
- (3) **STEPHEN HARRY SINKER & JANE SUSAN SINKER** of Bradley Hall Farm, Cliff Lane, Grappenhall, Warrington WA4 4SL and **NIGEL PHILIP SINKER & CHRISTINE SINKER** of Bungalow, Bradley Hall Farm, Cliff Lane, Grappenhall, Warrington WA4 4SL (the **Second Owner**)
- (4) **NIGEL PHILIP SINKER & CHRISTINE SINKER** of Bungalow, Bradley Hall Farm, Cliff Lane, Grappenhall, Warrington WA4 4SL (the **Third Owner**)
- (5) **BARCLAYS SECURITY TRUSTEE LIMITED** (Co. Regn. No. 10825314) whose registered office is at 1 Churchill Place, London E14 5HP (the **Mortgagee**)
- (6) **EMERALD 22 LLP** (Co. Regn. No. OC440096) whose registered office is Grand Buildings 1-3 Strand, Trafalgar Square, London, WC2N 5HR, (the **Developer**)

INTRODUCTION:

- (A) The Council is the local planning authority for the purposes of the Act for that part of the Site as shown edged red and unhatched on Plan 5. The remainder of the Site shown hatched green is situated within the area of which Cheshire East is the Local Planning Authority as shown on Plan 5.
- (B) The First Owner is the freehold owner of part of the Site as set out in more detail in Schedule 3.
- (C) The Second Owner is the freehold owner of part of the Site as set out in more detail in Schedule 3.
- (D) The Third Owner is the freehold owner of part of the Site as set out in more detail in Schedule 3.
- (E) The Mortgagee has an interest in part of the Site by virtue of the Legal Charge and as set out in more detail in Schedule 3.
- (F) The Developer intends to facilitate the Development on the Site in accordance with the Planning Permission.
- (G) The Council, National Highways England and other parties are the freehold owners of parts of the Site as set out in more detail in Schedule 4. The Parties have agreed that those parts of the Site detailed in Schedule 4 will not be bound by the terms of this Deed.
- (H) The Planning Application received 5 April 2019 is a cross-boundary application for Planning Permission. Langtree PP & Panattoni submitted the Planning Application to the Council which was received by the Council on 5 April 2019 and validated on 15 May 2019. The Planning Application seeks Planning Permission for the Development on the Site.
- (I) An identical planning application was submitted to Cheshire East Council (reference number 19/1685M) ("Cheshire East Application"). The Cheshire East Application was

not subject to call-in by the Secretary of State pursuant to powers contained in section 77 of the Act and on 19 May 2022 conditional planning permission was granted for the Cheshire East Application (“Cheshire East Planning Permission”).

- (J) On 10 March 2022 the Council resolved to grant planning permission for the Development subject to conditions and the completion of a Section 106 Agreement and a direction by the Secretary of State not to call in the Planning Application pursuant to powers contained in section 77 of the Act.
- (K) Notification was given by way of letter on 22 November 2022 that the Secretary of State had directed that the Planning Application to be referred to him for his determination instead of being dealt with by the Council as local planning authority.
- (L) The Call-In Planning Application is awaiting determination by the Secretary of State and the Owner wishes to enter into the planning obligations herein specified with the intention that if the Secretary of State grants Planning Permission pursuant to the Planning Application the Council will be able to enforce the planning obligations pursuant to Section 106 of the Act.
- (M) The Council is satisfied that the obligations in this Deed are necessary to make the Development acceptable in planning terms, directly related to the Development, and fairly and reasonably related in scale and kind to the Development.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed unless the context otherwise requires the following words and expressions and phrases shall have the meanings hereby prescribed to them:

The Act

the Town and Country Planning Act 1990 as amended;

Bird Habitat Contribution

means the sum of £1,993,838.22 (one million nine hundred and ninety three thousand eight hundred and thirty eight pounds and twenty two pence being the estimated amount required for Bird Mitigation Measures as identified in the Bird Mitigation Measures Framework Proposal;

Bird Mitigation Measures

the provision of off-site mitigation for compensatory bird habitat for breeding skylark and overwintering birds such as lapwing and starling to include habitat creation and/or restoration and the maintenance and management of the same for a period of 30 years;

Bird Mitigation Measures Framework Proposal

The framework proposal agreed between the Council and the Owner for the provision of the Bird Mitigation Measures in respect of approximately 14 hectares of land at Gatewarth to be managed and maintained by the Council as set out at Appendix 1;

Bird Mitigation Measures Detailed Strategy

the detailed strategy for implementation in accordance with the Bird Mitigation Measures Framework Proposal for land at Gatewarth (or such other suitable land as is agreed with the Council);

Bespoke Public Transport Service Contribution

the sum of £687,800 (six hundred eighty seven thousand and eight hundred pounds) to be utilised towards the provision of a bespoke public transport service to meet the needs of the employees of the final occupiers of the Employment Element of the Development with the purposes of connecting the Development with the wider area;

Bradley Hall Farmhouse

the Bradley Hall farmhouse and other curtilage buildings currently used for residential purposes as shown for indicative purposes only shaded purple/lilac on Plan 4;

Biodiversity Net Gain Monitoring Fee

the sum of £12,893.00 (twelve thousand eight hundred ninety three pounds) for each Phase payable by the Owner to the Council as a contribution towards the Council's costs including its ecological advisers monitoring compliance of the terms of the relevant [biodiversity net gain- conditions set out within the Planning Permission for a 30-year period from the date of completion of the relevant Phase;

Broad Lane

means the existing rural road connecting the B5356 Grappenhall Lane in South Warrington with Grappenhall Village and the wider urban area of Grappenhall;

Broad Lane Proposal

The conversion of the existing grassed highway verge to Broad Lane into a shared footway/cycleway facility allowing improved access by active travel between the Site and the urban areas to the north as well as improving overall accessibility of land within the Green Belt as identified in the Local Cycling and Walking Infrastructure Plan 2019 - 2029. The proposal would be delivered within the highway boundary with pinch points along the route, where the highway verge is restricted in width, potentially being addressed by carriageway narrowing; giving priority to pedestrians/cyclist movement and with vehicles giving way to oncoming vehicles;

Call-In Planning Application

the call in of the Planning Application for determination by Secretary of State under reference APP/M0655/V/22/3311877;

Commencement of Development

the carrying out on the Site or any part thereof (including any Phase) by any party of any material operation begun in accordance with the provisions of section 56(4) of the Act pursuant to the Planning Permission other than any works of demolition of a building or site clearance or remediation works, preliminary drainage works, archaeological works, site or soil investigation, erection of temporary site huts, erection of temporary hoardings or fences, treatment and/or removal of any demolition material pursuant to the Planning Permission and the words "**Commence**" "**Commencement**" and "**Commenced**" shall be construed accordingly;

Committed

the amount which the Council has allocated for expenditure relevant to the purpose for which the sum was paid and such amount has been authorised by the relevant committee or Council member or Council officer or has contracted to expend where such contract provides for payment contingent on the provision of works and/or services and/or supplies;

Contributions

together the Bird Habitat Contribution, the Final Bird Habitat Contribution, Bespoke Public Transport Service Contribution, Biodiversity Net Gain Monitoring Fee, the Footway/Cycleway Contribution; the Green Belt Compensation Contribution, the

Overarching Travel Plan Operation Contribution and the Holcroft Moss Contribution and the word “**Contribution**” shall be construed accordingly;

Development

the Outline application (all matters reserved except for access) comprising the construction of up to 287,909m² (gross internal) of employment floorspace (Use Class B8 and ancillary B1(a) offices), demolition of existing agricultural outbuildings and associated servicing and infrastructure including car parking and vehicle and pedestrian circulation, alteration of existing access road into site including works to the M6 J20 dumbbell roundabouts and realignment of the existing A50 junction, noise mitigation, earthworks to create development platforms and bunds, landscaping including buffers, creation of drainage features, electrical substation, pumping station, and ecological works, accompanied by an Environmental Statement pursuant to the Planning Permission;

Ecological Mitigation Area

the ecological mitigation area shown cross hatched on Plan 2;

Ecological Mitigation Measures

the ecological mitigation measures in respect of the Ecological Mitigation Area the detail and provision of which is to be agreed in accordance with Paragraph 7 of Schedule 1 to include but not be limited to details of any new hard and soft landscaping features including plant species and locations and new habitats including new ponds and timescales for the implementation of any ecological mitigation measures;

Employment Element

the individual operators of up to 287,909m² (gross internal) of employment floorspace within Use Class B8 and including ancillary B1(a) arising out of the Development;

Expert

an independent person appointed in accordance with the provisions of clause 12 to determine a dispute;

Final Bird Habitat Contribution

means the final bird habitat contribution to be provided for the Bird Mitigation Measures (being no less than the Bird Habitat Contribution) calculated in accordance with the detailed proposals set out in the Bird Mitigation Detailed Strategy which for the avoidance of doubt shall include but not be limited to the indexation of the Bird Habitat Contribution pursuant to clause 16.1.3, detailed costings for any additional identified works of habitat creation and restoration and/or maintenance and management including the costs of managing the retention of the existing bird communities at Gatewarth (or such other suitable land as is agreed with the Council);

Footway/Cycleway Contribution

the sum of £405,950.00 (four hundred and five thousand and nine hundred and fifty pounds) to be utilised for the extension of footway/cycleway infrastructure to be provided by the Council within the adopted highway boundary west to the Broad Lane roundabout and then south to the junction of Grappenhall Lane/Barleycastle Lane as shown on Plan 6;

Framework Travel Plan

the updated travel plan prepared by Curtins and dated 5 June 2020 as submitted to the Council;

Framework Landscape and Ecological Management Plan (“LEMP”)

the management plan detailing the management for the landscaped areas for those parts of the Development which are detailed on Plan 2 to deliver the LEMP Measures;

Gatewarth

the area shown as Area 4 and edged orange for indicative purposes only on Plan 3;

Green Belt Compensation Contribution

the sum of £2,452,250.00 (two million, four hundred fifty two thousand and two hundred and fifty pounds) to be utilised by the Council towards off-site compensatory Green Belt improvements in the following order of priority to the extent reasonably practicable:

- (i) the Broad Lane Proposal; and
- (ii) the existing Public Right of Way (PRoW) which runs between Cartridge Lane and the Bridgewater Canal and also forms part of Warrington’s Greenway Network

or such other appropriate location(s) to be decided by the Council in accordance with Policy GB1 of the Local Plan and P09 of the Planning Obligations SPD;

Holcroft Moss Contribution

the sum of £112,285.00 (one hundred and twelve thousand and two hundred and eighty five pounds) to be utilised towards the delivery of long-term ecological resilience works involving hydrological restoration measures to benefit the Holcroft Moss in accordance with Warrington Borough Council’s Planning Obligations Supplementary Planning Document, draft for consultation, December 2023;

Index

All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation or any successor organisation or any successor to that index from time to time or if such index ceases to be published or is otherwise unavailable for use such alternative basis for indexation as may be determined by the Council most closely comparable to it;

Interest

Interest at 4% (four percent) above the base rate of Barclays Bank Plc from time to time;

Land

the land against which this Deed may be enforced shown edged red on Plan 1 and described in Schedule 3;

LEMP Measures

- a) Description and evaluation of features to be managed
- b) Ecological trends and constraints on Site that might influence management
- c) Aims and objectives of management
- d) Appropriate management options for achieving aims and objectives
- e) Prescriptions for management actions
- f) Preparation of a work schedule (including annual work plan capable of being rolled forward over a five year period)
- g) Details of the body or organisation responsible for implementation of the plan
- h) Ongoing monitoring and remedial measures
- i) Details of the legal and funding mechanism(s) by which the long term implementation of the plan, for a minimum of 30 years, will be secured by the Owner with the management body(ies) responsible for its delivery
- j) Where the results from monitoring show that conservation aims and objectives of the LEMP are not being met, how contingencies and/or remedial action will be

identified, agreed and implemented so that the development still delivers the fully functioning biodiversity and landscape objectives of the originally approved scheme;

Local Employment Scheme

the scheme to be provided by the Owner to the Council to include:

- a) Details of how the initial staff/employment opportunities at the Development will be advertised and how liaison with the Council and other bodies will take place in relation to maximising the access of the local workforce within the borough of Warrington to information about employment opportunities;
- b) Details of how sustainable training opportunities will be provided for those recruited to fulfil staff / employment requirements including the provision of apprenticeships or an agreed alternative;
- c) A procedure setting out criteria for employment, and for matching of candidates to the vacancies;
- d) Measures to be taken to offer and provide college and/or work placement opportunities at the Development to students within the locality;
- e) Details of the promotion of the Local Employment Scheme and liaison with contractors engaged in the construction of the Development to ensure that they also apply the Local Employment Scheme so far as practicable having due regard to the need and availability for specialist skills and trades and the programme for constructing the Development;
- f) A procedure for monitoring the Local Employment Scheme and reporting the results of such monitoring to the Local Planning Authority including details of the origins qualifications numbers and other details of candidates; and
- g) A timetable for implementation of the Local Employment Scheme;

Monitoring Fee

£4,583.00 (four thousand, five hundred and eighty three pounds) towards the Council's reasonable costs of monitoring compliance with the obligations in this Deed;

Occupation

occupation of the Development for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fully fitting out or decoration or occupation for marketing or display or occupation in relation to the provision of security and "Occupied" and "Occupy" shall be construed accordingly;

Overarching Travel Plan

the overarching travel plan to cover the whole development to be based upon the Framework Travel Plan (in accordance with Section 7 of the Framework Travel Plan) and to include the first completed travel plan survey. The Overarching Travel Plan is to be monitored by annual monitoring reports to be produced by the Owner and provided to the Council, following the receipt of the Overarching Travel Plan for a period of five years;

Overarching Travel Plan Operation Contribution

the sum of £50,000 (fifty thousand pounds) to deliver operation of the Overarching Travel Plan for the Development to promote and support sustainable travel initiatives for future occupiers;

Owner

together the First Owner, Second Owner and Third Owner;

Phase

any phase of the Development in a phasing plan to be submitted to the Council for its approval concurrently with the first reserved matters submission;

Phase LEMP

a Landscape and Ecological Management Plan for a particular Phase (excluding the Ecological Mitigation Area), including a timetable for implementation and details of management, site maintenance and monitoring, in accordance with the details set out in the approved Framework LEMP, or any revised approved details;

Plan 1

the plan marked Plan 1 showing the Land attached hereto;

Plan 2

the plan with drawing reference 16-184 P111 Rev I and titled Green Infrastructure Parameters Plan;

Plan 3

the plan marked Plan 3 indicatively showing Gatewath as Area 4 and edged orange attached hereto;

Plan 4

the plan marked Plan 4 showing Bradley Hall Farmhouse for indicative purposes only shaded purple/lilac attached hereto;

Plan 5

the plan marked Plan 5 showing the Site edged red attached hereto;

Plan 6

the plan marked Plan 6 showing the location of the extension of footway/cycleway infrastructure indicatively shown by a yellow line that is to be provided by the Council following receipt of the Footway/Cycleway Contribution;

Planning Application

the application for Planning Permission under reference number 2019/34799;

Planning Obligations SPD

Warrington Borough Council's draft Planning Obligations Supplementary Planning Document 2023 which following the expiry of the consultation period on 7 June 2024 is awaiting formal approval at the meeting of the Council's Cabinet on 8 July 2024;

Planning Permission

the planning permission granted by the Secretary of State pursuant to the Call-In Planning Application;

Secretary of State

Secretary of State for Levelling Up, Housing and Communities;

Site

the land shown edged red on Plan 5 comprising the entire development site being Land to the west of Junction 20 of the M6 Motorway, and Junction 9 of the M56 Motorway and to the south of, Grappenhall Lane/Cliff Lane (known as Six:56 Warrington) Grappenhall, Warrington the title of which is set out in Schedules 4 and 5;

Warrington's Greenway Network

the detail referred to in Warrington Borough Council's Local Cycling and Walking Infrastructure Plan 2019-2029;

Working Day

any day (apart from Saturday, Sunday, Christmas Day, Good Friday and any statutory bank holiday or other day during the Christmas period on which the Council's offices are closed to the public) on which clearing banks in the City of London are open for the transaction of ordinary business and "Working Days" shall be construed accordingly.

2. INTERPRETATION

Unless the context otherwise requires:

- 2.1 Words incorporating the singular include the plural and vice versa and words importing any gender include every gender;
- 2.2 References to natural persons are to include corporations and vice versa;
- 2.3 A person includes a natural person corporate or unincorporated body (whether or not having separate legal personality) and reference to a company shall include any corporation or other body corporate wherever and however incorporated or established;
- 2.4 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction;
- 2.5 Any references in this Deed to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it;
- 2.6 If any provisions of this Deed shall be held to be invalid illegal or unenforceable (for whatever reason), the validity legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected impaired or called into question;
- 2.7 References to "the parties" shall mean the parties to the Deed and reference to "party" shall mean any one of the parties;
- 2.8 The Interpretation Act 1978 shall apply to this Deed;
- 2.9 The clause and paragraph headings and the recitals are purely to aid interpretation, are for reference purposes only, and have no binding legal effect;
- 2.10 Wherever there is more than one person named as a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;
- 2.11 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.

3. STATUTORY AUTHORITY AND LEGAL EFFECT

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous

- Provisions) Act 1982 and Section 1 of the Localism Act 2011 and all other enabling powers which may be relevant for the purpose of giving validity to this Deed.
- 3.2 The covenants, restrictions and requirements under this Deed create planning obligations pursuant to Section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by those persons in the Land.
 - 3.3 The obligations of the Owner in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council as local planning authority.
 - 3.4 To the extent that any of the obligations are not planning obligations within the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 Act, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and section 1 of the Localism Act 2011 and all other enabling powers.
 - 3.5 Subject to clause 3.6, the Owner covenants with the Council to the intent that this Deed shall be enforceable without limits of time (other than as expressly provided in this Deed) against the Owner in respect of the Land and any person deriving title through or under the Owner to the Land or any part or parts of the Land as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.
 - 3.6 No person shall be bound by any obligations rights and duties contained in this Deed and/or be liable for any breach of a covenant and /or obligation contained in this Deed after they shall have parted with all interest in the Land or any part of it PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest .
 - 3.7 If the Planning Permission expires (within the meanings of sections 91, 92 or 93 of the Act) or is revoked or otherwise withdrawn before Commencement of Development, this Deed shall forthwith determine and cease to have effect (insofar as it has not already been complied with).
 - 3.8 Subject to Clause 3.11 nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
 - 3.9 Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or under any other Act or any statutory instrument, order or bye-law in the exercise of its functions as a local authority.
 - 3.10 The obligations shall not be enforceable against statutory undertakers in relation to any part or parts of the Land acquired by them for their statutory purposes or against anyone whose only interest in the Land is the benefit of an easement or covenant.
 - 3.11 If the Council agrees pursuant to an application under Section 73 of the Act to any variation or release of any condition contained in the Planning Permission or if any condition is varied or released following an appeal under Section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission save where the Council or the Secretary of State or Inspector in their determination indicate that consequential amendments are required to this Deed to reflect the impact of Section 73 and in such circumstances a separate deed pursuant to Section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.

- 3.12 If the Secretary of State or Inspector concludes that any of the planning obligations set out in this Deed are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010, and accordingly attached no weight to that obligation in determining the Call-In Planning Application then the relevant obligation shall from the date of the Decision Letter cease to have effect and the Owner shall be under no obligation to comply with the relevant planning obligation.

4. CONDITION PRECEDENT

- 4.1 This Deed shall take effect on the date hereof save for clauses 6.1 and 8.1 and Schedule 1 and Schedule 2 which shall not take effect until the grant of the Planning Permission

5. COSTS

- 5.1 The Developer agrees to pay to the Council on the signing of this Deed its reasonable costs of and incidental to the preparation and execution of this Deed amounting to £8,000.
- 5.2 The Owner agrees to pay to the Monitoring Fee to the Council prior to Commencement of Development.

6. OBLIGATIONS

- 6.1 The Owner covenants so as to bind the Land to comply with the obligations set out in Schedule 1.

7. MORTGAGEE'S AND DEVELOPER'S CONSENT

- 7.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of its mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Land or any part of it in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.
- 7.2 The Developer acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed PROVIDED THAT the Developer shall otherwise have no liability under this Deed (save for Clause 5) unless and until it acquires a freehold or leasehold interest in the Land (or part thereof) in which case it too will be bound by the obligations.

8. THE COUNCIL'S COVENANTS

- 8.1 The Council covenants with the Owner as set out in Schedule 2.

9. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

9.1 For the purposes of the Contract (Rights of Third Parties) Act 1999 nothing in this Deed shall confer on any third party any right to enforce any benefit or any terms of this Deed.

10. **LOCAL LAND CHARGES**

10.1 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and may be registered as such against the Land.

10.2 If the Planning Permission expires unimplemented, or is revoked, or if all obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 6 of the Local Land Charges Rules 2018 or any statutory re-enactment thereof and the Council shall cancel the registration.

11. **NOTICES**

11.1 Any notice consent or approval given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or special delivery to the recipient at the address stated in this Deed or such other address for service as a party to be served may have previously notified in writing.

11.2 In the case of the Council, the address for service shall be upon the Council's Development Management Services Manager at the address aforesaid or such other person or such other address for service as shall have been previously notified by the Council to the Owner.

11.3 Each notice served in accordance with this clause shall be deemed to have been given or made and delivered if by delivery when left at the relevant address or if by letter 48 hours after posting.

11.4 Notices shall not be sent by email or DX.

12. **RESOLUTION OF DISPUTE**

12.1 One party may by serving notice on all the other parties ("**the Notice**") require a dispute to be referred to an expert for determination.

12.2 The Notice must specify:

12.2.1 the nature, basis and brief description of the dispute;

12.2.2 the clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and

12.2.3 the proposed Expert.

12.3 The Expert may be agreed upon by the parties and in the absence of such agreement within 10 Working Days of the date that the Notice is issued pursuant to Clause 12.1 either party may request that the following nominate the Expert at their joint expense:

12.3.1 if such dispute relates to matters concerning the construction, interpretation and/or the application of this Deed, the Chairman of the Bar Council to nominate the Expert;

12.3.2 if such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;

- 12.3.3 if such dispute relates to matters requiring a specialist chartered civil engineer or specialist transport advice, the President of the Institution of Civil Engineers to nominate the Expert;
- 12.3.4 if such dispute relates to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert; and
- 12.3.5 in all other cases, the President of the Law Society to nominate the expert as he thinks appropriate including joint experts.
- 12.4 If an Expert nominated or appointed pursuant to this Clause 12 shall die or decline to act another Expert may be appointed in their place in accordance with the provisions of Clause 12.9.
- 12.5 The Expert will be appointed subject to an express requirement that they reach their decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 30 (thirty) Working Days from the date of the notice of their appointment which is served on the parties pursuant to Clause 12.
- 12.6 Notice in writing of the appointment of the Expert pursuant to this Clause 12 shall be given by the Expert to the parties and he shall invite each of the parties to submit to him within 10 (ten) Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 5 (five) Working Days in respect of any such submission and material.
- 12.7 The Expert shall act as an expert and not as an arbitrator. They shall consider any written representation submitted to them within the period specified in Clause 12 and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with their own judgement.
- 12.8 The Expert shall give notice of their decision in writing and their decision will (in the absence of manifest error, error of law and/or fraud) be final and binding on the Parties hereto.
- 12.9 If for any reason the Expert fails to make a decision and give notice thereof in accordance with this Clause 12 the party or parties may apply to the respective person at 12.3.1 to 12.3.5 for a substitute to be appointed in place of the existing Expert (which procedure may be repeated as many times as necessary).
- 12.10 The Expert's costs shall be in the Expert's award or in the event that he makes no determination, such costs will be borne by the parties to the dispute in equal shares.
- 12.11 Nothing in this clause shall be taken to fetter the parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed.

13. **CHANGE IN OWNERSHIP**

- 13.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership or creation of a new interest of the Owner in the Land such change in ownership occurring before all the obligations under this Deed have been discharged, such notice to give details of the transferee's/lessee's full name and registered office (if a company or usual address if not) together with the area of the land transferred by reference to a plan.

14. COMMUNITY INFRASTRUCTURE LEVY

14.1 If after the date of this Deed the Council implements the provisions relating to Community Infrastructure Levy pursuant to the Planning Act 2008 as amended and has a charging schedule that has been approved and taken effect and as a consequence thereof any obligations under this Deed or under any condition attached to the Planning Permission change so that the Owner must pay a sum of money to any person (whether HM Government or to the Council or otherwise) which would duplicate, add to or overlap with any obligation of a party under this Deed then the parties agree that the terms of this Deed may at the election of the party affected be modified to such extent (if any) as is necessary to provide terms which are financially and practically no less advantageous and no more onerous than the terms of this Deed as at the date that they are entered into.

14.2 If having regard to the Community Infrastructure Levy Regulations 2010 No. 948 as amended it is declared that any one of the Contributions is unlawful or invalid or should not have been taken into account in the determination of the Planning Application by a court of competent jurisdiction then the clauses of this Deed relating to the relevant Contribution (s) shall be severed in accordance with clause 2.6 of this Deed.

15. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable. If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this Deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration in return for a valid VAT invoice.

16. INDEXATION

16.1 Any sum referred to as due in Schedule 1 shall be increased by an amount equivalent to the increase in the Index from the 9 May 2023 (being the date of commencement of the Six56 Public Inquiry) until the date on which such sum is paid save for

16.1.1 the Biodiversity Net Gain Monitoring Fee for each Phase shall be increased by an amount equivalent to the increase in the Index from 11 June 2024 (being the date of resumption of the Six56 Public Inquiry) until the date on which such sum is paid;

16.1.2 the Green Belt Compensation Contribution which shall be increased by an amount equivalent to the increase in the Index from 11 June 2024 (being the date of resumption of the Six56 Public Inquiry) until the date on which such sum is paid;

16.1.3 the Bird Habitat Contribution which shall be increased by an amount equivalent to the increase in the Index from 11 June 2024 (being the date of resumption of the Six56 Public Inquiry) until the date the Final Bird Habitat Contribution is agreed;

16.1.4 the Final Bird Habitat Contribution which shall be increased by an amount equivalent to the increase in the Index from the date it is agreed until the date on which such sum is paid.

17. INTEREST

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

18. **WAIVER**

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

19. **JURISDICTION**

19.1 This Deed is governed by and interpreted in accordance with the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the Courts of England.

20. **DELIVERY**

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

21. **REASONABLENESS**

21.1 Any approval, consent, direction, authority, agreement or action to be given by the Parties under this Deed shall not be unreasonably withheld or delayed.

SCHEDULE 1
Obligations of the Owner

The Owner covenants with the Council as follows:

1. **FOOTWAY/CYCLEWAY CONTRIBUTION**
 - 1.1 To pay the Footway/Cycleway Contribution to the Council in full prior to Occupation and not to Occupy the Development until the Footway/Cycleway Contribution has been paid in full to the Council.
2. **BESPOKE PUBLIC TRANSPORT SERVICE CONTRIBUTION**
 - 2.1 To pay the Bespoke Public Transport Service Contribution to the Council in the following tranches:
 - 2.1.1 50% prior to Commencement of Development and not to Commence Development until this has been done; and
 - 2.1.2 The final 50% prior to Occupation and not to Occupy the Development until the Bespoke Public Transport Service Contribution has been paid in full to the Council.
3. **OVERARCHING TRAVEL PLAN OPERATION CONTRIBUTION**
 - 3.1 To pay the Overarching Travel Plan Operation Contribution in full prior to Occupation and not to Occupy the Development until the Overarching Travel Plan Operation Contribution has been paid in full to the Council.
4. **OVERARCHING TRAVEL PLAN**
 - 4.1 To submit the Overarching Travel Plan within 6 months of Occupation to the Council for written approval and not to Occupy further until this has been done.
 - 4.2 To provide the Council with annual monitoring reports on the first, second, third and fourth anniversaries of the submission of the Overarching Travel Plan (unless otherwise agreed with the Council).
5. **CESSATION OF USE OF BRADLEY HALL FARMHOUSE**
 - 5.1 Not to Commence Development other than development in connection with highway work the detail of which is shown on drawing numbers 64076-CUR-00-XX-DR-TP-75002-P02 (Western Access Roundabout); 64076-CUR-00-XX-DR-TP-75001-P03 (Eastern Access Roundabout); 64076-CUR-00-XX-DR-TP-0502-P02 (Cliff Lane Roundabout Proposed Improvements); 64076-CUR-00-XX-DR-TP-75014-P02 (Pedestrian and Cycle Improvements) until the use of Bradley Hall Farmhouse and curtilage buildings for residential purposes has permanently ceased.
6. **BIRD MITIGATION MEASURES DETAILED STRATEGY & FINAL BIRD HABITAT CONTRIBUTION**
 - 6.1 Prior to Commencement of Development to submit the Bird Mitigation Measures Detailed Strategy including the proposed Final Bird Habitat Contribution to the Council for agreement and not to Commence Development until the Bird Mitigation Measures Detailed Strategy and the Final Bird Habitat Contribution has been agreed;
 - 6.2 To pay the Final Bird Habitat Contribution prior to Commencement of Development and not to Commence Development until the Final Bird Habitat Contribution has been paid in full to the Council.
 - 6.3 Not to Occupy any Employment Element on the Land until the Bird Mitigation Measures Detailed Strategy has been implemented.

7. ECOLOGICAL MITIGATION AREA

7.1 The Owner shall not Commence Development on the Land until it has submitted to Cheshire East Council the details required pursuant to Condition 7 of the Cheshire East Planning Permission such details to incorporate as part of the required documentation the Ecological Mitigation Measures and the LEMP Measures and provide a copy of the same to the Council.

7.2 The Owner shall not Commence Development until Cheshire East Council has discharged Condition 7 of the Cheshire East Planning Permission to the extent it is not ongoing and the Council have been provided with a copy of the decision.

8. FRAMEWORK LANDSCAPE AND ECOLOGICAL MANAGEMENT PLAN

8.1 Prior to the Commencement of Development the Framework Landscape and Ecological Management Plan shall be submitted to the Council for written approval.

8.2 In the event that the Council refuse to approve the Framework Landscape and Ecological Management Plan in accordance with paragraph 3.1 of Schedule 2 to submit to the Council within ten Working Days of the refusal an amended Framework Landscape and Ecological Management Plan to address the reasons for refusal and to repeat this process until the Framework Landscape and Ecological Management Plan is approved.

8.3 The Owner shall not Commence Development until the Council has approved in writing the Framework Landscape and Ecological Mitigation Plan.

9. PHASE LEMP

9.1 Prior to the Commencement of Development of any Phase (excluding the Ecological Mitigation Area) the Phase LEMP for that Phase shall be submitted to the Council for written approval.

9.2 In the event that the Council refuse to approve the Phase LEMP in accordance with paragraph 4.1 of Schedule 2 to submit to the Council within ten Working Days of the refusal an amended Phase LEMP for the respective Phase to address the reasons for refusal and to repeat this process until the Phase LEMP is approved.

9.3 The Owner shall not Commence Development on any Phase (excluding the Ecological Mitigation Area) until the Council has approved in writing the Phase LEMP for that Phase.

9.4 The Development of each Phase (excluding the Ecological Mitigation Area) shall be carried out and managed and maintained in accordance with the details contained within the approved Phase LEMP for each relevant Phase.

10. LOCAL EMPLOYMENT SCHEME

10.1 Prior to the Commencement of Development to submit the Local Employment Scheme to the Council for written approval.

10.2 In the event that the Council does not approve the Local Employment Scheme in accordance with paragraph 5.1 of Schedule 2 to submit to the Council within ten Working Days of the refusal an amended Local Employment Scheme to address the reasons for refusal and to repeat this process until the Employment Scheme is approved.

10.3 The Owner shall not Commence Development until the Local Employment Scheme has been approved in writing by the Council.

- 10.4 The Owner shall comply with the approved Local Employment Scheme.
11. **HOLCROFT MOSS CONTRIBUTION**
- 11.1 To pay the Holcroft Moss Contribution to the Council in full prior to Commencement of Development and not to Commence Development until the Holcroft Moss Contribution has been paid in full to the Council.
12. **BIODIVERSITY NET GAIN MONITORING FEE**
- 12.1 Prior to the Commencement of each Phase to pay the required Biodiversity Net Gain Monitoring Fee for that Phase and not to Commence the Development of that Phase until that has been done.
- 12.2 The Owner covenants to provide notification to the Council of not less than 20 Working Days of Commencement of each Phase and not to Commence Development of a Phase unless this has been done.
13. **GREEN BELT COMPENSATION CONTRIBUTION**
- 13.1 To pay the Green Belt Compensation Contribution to the Council in the following instalments
- 13.1.1 60% of the Green Belt Compensation Contribution (the “**First GB Instalment**”) prior to first Commencement of Development and not to Commence the Development until the First GB Instalment has been paid to the Council in full;
- 13.1.2 to pay a further 20% of the Greenbelt Compensation Contribution (the “**Second GB Instalment**”) on or before the first anniversary of the date the First GB Instalment was due to be paid (the “**Second GB Instalment Date**”) and not to undertake any further works of development or cause or permit the Occupation of any Employment Element following the Second GB Instalment Date until the Second GB Instalment has been paid to the Council in full; and
- 13.1.3 to pay the final 20% of the Greenbelt Compensation Contribution (the “**Third GB Instalment**”) on or before the second anniversary of the date the First GB Instalment was due to be paid (the “**Third GB Instalment Date**”) and not to undertake any further works of development or cause or permit Occupation of any Employment Element following the Third GB Instalment Date until the Third GB Instalment has been paid to the Council in full.
14. **TRIGGERS**
- The Owner covenants to notify the Council on the occurrence of each of the following:
- 14.1 the submission of the details to Cheshire East Council pursuant to condition 7 of the Cheshire East Planning Permission;
- 14.2 the implementation of the details approved by Cheshire East Council pursuant to condition 7 of the Cheshire East Planning Permission;
- 14.3 Commencement of Development;
- 14.4 Occupation of the Development; and
- 14.5 Completion of each Phase.

SCHEDULE 2
Council's Covenants

The Council covenants with the Owner as follows:

1. CONTRIBUTIONS

- 1.1 Not to use any part of the Final Bird Habitat Contribution other than for the Bird Mitigation Measures.
- 1.2 Not to use any part of the Bespoke Public Transport Service Contribution other than for the purposes for which it was paid and furthermore the Council covenants to provide the bespoke public transport service.
- 1.3 Not to use any part of the Footway/Cycleway Contribution other than for the purposes for which it was paid and furthermore to provide the extension of footway/cycleway infrastructure.
- 1.4 Not to use any part of the Overarching Travel Plan Operation Contribution other than for the purposes for which it was paid and the Council covenants to use the contribution accordingly.
- 1.5 Not to use any part of the Holcroft Moss Contribution other than for the purposes for which it was paid and the Council covenants to use the contribution accordingly.
- 1.6 Not to use any part of the Biodiversity Net Gain Monitoring Fee other than for the purposes for which it was paid and the Council covenants to use the contribution accordingly.
- 1.7 In the event that any of the Bespoke Public Transport Service Contribution, the Footway/Cycleway Contribution, Overarching Travel Plan Operation Contribution, the Holcroft Moss Contribution or the Green Belt Compensation Contribution have not been spent or Committed for expenditure by the Council within twenty years following the date of receipt of the final payment of the relevant Contribution the Council shall refund to the person that paid the relevant sum any part of the relevant Bespoke Public Transport Service Contribution, Footway/Cycleway Contribution, Green Belt Compensation Contribution and Overarching Travel Plan Operation Contribution and the Holcroft Moss Contribution which has not been spent or Committed for expenditure together with any accrued interest.
- 1.8 In the event that any of the Final Bird Habitat Contribution has not been spent or Committed for expenditure by the Council within thirty years following the date of receipt of the Final Bird Habitat Contribution the Council shall refund to the person that paid it any part of the Final Bird Habitat Contribution which has not been spent or Committed for expenditure together with any accrued interest.
- 1.9 In the event that the relevant Biodiversity Net Gain Monitoring Fee has not been spent or Committed for expenditure by the Council within thirty years following completion of the relevant Phase the Council shall refund to the person that paid it any part of the relevant Biodiversity Net Gain Monitoring Fee which has not been spent or Committed for expenditure together with any accrued interest.

2. FRAMEWORK LANDSCAPE AND ECOLOGICAL MANAGEMENT PLAN

- 2.1 Within 6 weeks or such longer period as shall be agreed between the Council and the Owner of receipt of any submitted Framework Landscape and Ecological Management Plan from the Owner to confirm to the Owner in writing whether the submitted Framework Landscape and Ecological Management Plan is approved. In the event that the submitted Framework Landscape and Ecological Management Plan is not approved to specify the reasons why it has not been approved. To repeat this process in respect of any subsequent or amended Framework Landscape and Ecological Management Plan submitted to the Council for approval until the Framework Landscape and Ecological Management Plan is approved.

3. PHASE LEMP

- 3.1 Within 6 weeks or such longer period as shall be agreed between the Council and the Owner of receipt of any submitted Phase LEMP from the Owner to confirm to the Owner in writing whether the submitted Phase LEMP is approved. In the event that the relevant submitted Phase LEMP is not approved to specify the reasons why it has not been approved. To repeat this process in respect of the relevant Phase LEMP submitted to the Council for approval until it is approved.

4. LOCAL EMPLOYMENT SCHEME

- 4.1 Within 6 weeks or such longer period as shall be agreed between the Council and the Owner of receipt of the submitted Local Employment Scheme from the Owner to confirm to the Owner in writing whether the submitted Local Employment Scheme is approved. In the event that the submitted Local Employment Scheme is not approved to specify the reasons why it has not been approved. To repeat this process in respect of any subsequent or amended Local Employment Scheme submitted to the Council for approval until the Local Employment Scheme is approved.

5. BIRD MITIGATION MEASURES DETAILED STRATEGY & FINAL BIRD HABITAT CONTRIBUTION

- 5.1 Within 6 weeks or such longer period as shall be agreed between the Council and the Owner of receipt of the submitted Bird Mitigation Measures Detailed Strategy and Final Bird Habitat Contribution from the Owner to confirm to the Owner in writing whether the submitted Bird Mitigation Measures Detailed Strategy and Final Bird Habitat Contribution is approved. In the event that the submitted Bird Mitigation Measures Detailed Strategy and Final Bird Habitat Contribution is not approved to specify the reasons why it has not been approved. To repeat this process in respect of any subsequent or amended Bird Mitigation Measures Detailed Strategy and Final Bird Habitat Contribution submitted to the Council for approval until the Bird Mitigation Measures Detailed Strategy and Final Bird Habitat Contribution is approved.

SCHEDULE 3 - The Land to be bound by this Deed

The Land Ownership Details for the Land is as follows:

	<u>Title Number</u>	<u>Freehold Interest</u>	<u>Charge</u>
1	CH590389	First Owner	
2	CH590390	First Owner	
3	CH648758	First Owner	
4	CH178040	Second Owner	Mortgagee by registered charge dated 29 May 1981
5	CH171196	Second Owner	Mortgagee by registered charge dated 29 May 1981
6	CH241028	Third Owner	

**SCHEDULE 4 – LAND COMPRISED WITHIN THE
SITE BUT NOT TO BE BOUND BY this Deed**

	<u>Title Number</u>	<u>Freehold Interest</u>	<u>Charge</u>
		LAND WITHIN CHESHIRE EAST	
1	CH611861	Stephen Harry Sinker & Jane Susan Sinker and Nigel Philip Sinker & Christine Sinker	
2	CH246739	Stephen Harry Sinker & Jane Susan Sinker and Nigel Philip Sinker & Christine Sinker	
3	(Part of) CH171196	Stephen Harry Sinker & Jane Susan Sinker and Nigel Philip Sinker & Christine Sinker	
		Council Owned Land	
4	CH361430	Warrington Borough Council	
		National Highways Limited Land	
5	CH384743	National Highways Limited	
6	CH392250	National Highways Limited	
7	CH575933	National Highways Limited	
8	CH575969	National Highways Limited	
9	CH576103	National Highways Limited	
		Other Land	
10	CH580466	Cheshire West and Chester Borough Council	
11	CH361739	Margaret Norcott, Thomas Andrew Norcott and Richard Anthony Norcott	
12	CH590379	John Massey Cross	

PLAN 1

PLAN 2

PLAN 3

PLAN 4

PLAN 5

PLAN 6

APPENDIX 1
BIRD MITIGATION MEASURES PROPOSAL

IN WITNESS whereof the Council, the Owner, the Mortgagee and the Developer have executed this Deed the day and year first before written

THE COMMON SEAL of)
WARRINGTON BOROUGH COUNCIL)
was hereunto affixed in the)
presence of:)

.....
Authorised signatory

Signed as a deed by)
JOHN MASSEY CROSS)

.....

John Massey Cross

In the presence of:

Signature of witness:-----

Name -----

Address:-----

Occupation: -----

Signed as a deed by)

ROBERT KENNETH CROSS)

.....

Robert Kenneth Cross

In the presence of:

Signature of witness:-----

Name -----

Address:-----

Occupation: -----

Signed as a deed by)

STEPHEN HARRY SINKER)

.....

Stephen Harry Sinker

In the presence of:

Signature of witness:-----

Name -----

Address:-----

Occupation: -----

Signed as a deed by)
JANE SUSAN SINKER)

.....

Jane Susan Sinker

In the presence of:

Signature of witness:-----

Name -----

Address:-----

Occupation: -----

Signed as a deed by)

NIGEL PHILIP SINKER)

.....

Nigel Philip Sinker

In the presence of:

Signature of witness:-----

Name -----

Address:-----

Occupation: -----

Signed as a deed by)
CHRISTINE SINKER)

.....

Christine Sinker

In the presence of:

Signature of witness:-----

Name -----

Address:-----

Occupation: -----

EXECUTED as a **DEED**)
by **EMERALD 22 LLP**)
in turn acting by its member)
ELM 101 (GENERAL PARTNER) LLP)
acting in its capacity as general partner of)
ELM 101 LIMITED PARTNERSHIP)
in turn acting by its member **ELM 101**)
(SECOND MEMBER) LIMITED in turn)
acting by a Director)
:

.....
Director

In the presence of:

Signature of witness:-----

Name -----

Address:-----

Occupation: -----

EXECUTED as a **DEED**, but not)
delivered until the first date specified)
on page 1, by **BARCLAYS**)
SECURITY TRUSTEE LIMITED by a)
director in the presence of a witness:

Signature

Name (block capitals)

**Authorised
signatory/director**

Witness signature

Witness name (block capitals)

Witness address

.....

.....