

Dated

2020

- (1) **ELMBRIDGE BOROUGH COUNCIL**
- and -
- (2) **SURREY COUNTY COUNCIL**
- and -
- (3) **JOCKEY CLUB RACECOURSES LIMITED**

**AGREEMENT UNDER SECTION 106 OF THE
TOWN AND COUNTRY PLANNING ACT 1990 IN
RELATION TO THE REDEVELOPMENT OF
SANDOWN RACECOURSE**

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THIS AGREEMENT is made as a **DEED** on the day of 2020

BETWEEN:

- (1) **Elmbridge Borough Council** of Civic Centre, High Street, Esher, Surrey, KT10 9SD (the "**Council**");
- (2) **Surrey County Council** of County Hall, Penrhyn Road, Kingston-upon-Thames, KT1 2DN (the "**County Council**"); and
- (3) **Jockey Club Racecourses Limited** whose registered office is at 75 High Holborn, London, WC1V 6LS (Company Registration Number 2909409) (the "**Owner**").

RECITALS

- (A) The Council is the local planning authority for the purposes of the Act for the Land.
- (B) The County Council is the local highway authority for the purposes of the Highways Act 1980 and a local planning authority for the purposes of the Act for the area in which the Land is located.
- (C) The Council and the County Council are the authorities that can enforce the terms of this Deed for the purposes of the Act.
- (D) The Owner owns the freehold interest in the Land which comprises parts of a larger area registered at the Land Registry under title number SY357347.
- (E) The Golf Club Owner owns the leasehold interest in land known as Sandown Golf Centre, More Lane, Esher which includes a small part of Site D and which is registered at the Land Registry under title number SY736166.
- (F) The Application was submitted to the Council and was refused on 3 October 2019.
- (G) An appeal has been submitted in relation to such refusal and allocated reference number APP/K3605/W/20/3249790 and has been called in by the Secretary of State to determine.

I. **DEFINITIONS**

I.1 In this Deed (except where the context otherwise requires):

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

Affordable Housing means a proportion of the total number of Residential Units as may be determined in accordance with the terms of the Unilateral Undertaking that are to be made available pursuant to the Unilateral Undertaking to eligible households whose needs are not met by the market in accordance with the National Planning Policy Framework;

Affordable Housing Provider has the meaning given to that term in the Unilateral Undertaking;

Application means the application made in respect of the Land under the Council's reference 2019/0551 for hybrid planning permission for the redevelopment of the Land involving:

- (a) Outline application for development/redevelopment of sections of the site to

replace/modify existing operational/associated facilities, and to provide up to 150 bedroom hotel (Use Class C1), family/community zone, residential development up to 318 units (Use Class C3) and to relocate existing day nursery (Use Class D1), all with car parking, access and related works following demolition of existing buildings and hardstanding (for access only).

- (b) Full application for the widening of the southwest and east sections of the racecourse track including associated groundworks, re-positioning of fencing, alterations to existing internal access road from More Lane and new bell-mouth accesses serving the development.

Bank Base Rate means the Bank of England official dealing rate as set by the Monetary Policy Committee;

Commencement of Development means the earliest date upon which a material operation forming part of the Development is begun in accordance with the provisions of section 56(4) of the Act save that for the purposes of this Deed none of the following operations shall constitute a material operation:

- (a) site preparation works;
- (b) archaeological investigations;
- (c) remediation works;
- (d) erection of fences and hoardings and construction of temporary access and service roads;
- (e) site investigation works (including environmental investigations); and
- (f) works of demolition;

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

Community Use Agreement means an agreement to secure the Community Use Agreement Indicative Heads of Terms as set out at Schedule 6 or such other terms as agreed between the parties;

Community Use Agreement Indicative Head of Terms means the indicative heads of terms to be captured in the Community Use Agreement set out at Schedule 6;

Development means the development authorised by the Planning Permission;

Dwelling means any unit of Class C3 residential accommodation constructed as part of the Development;

Expert has the meaning ascribed to it at clause 11;

First Occupation means the first occasion on which any Residential Unit is occupied, other than occupation for the purposes of construction or fitting out or marketing and the term "Occupied" shall be construed accordingly;

Golf Club Owner means CGA Sandown Limited whose registered office is at Sandown Park Golf Centre, More Lane, Esher, Surrey, KT10 8AN or such other party who may at the time that clause 4 is discharged hold an interest in Site D as their successor in title;

Hotel Planning Permission means two planning permissions, the first granted on 9 January 2009 under reference 2008/0729 and the second granted on 28 June 2011 under reference 2011/0811 (the latter being a planning permission under section 73 of the Act subject to an extended time limit for implementation which has since been lawfully implemented) both of which provide for the development of a "detached hotel with associated parking, medical facilities, canteen, changing rooms and saddling enclosures (4,684sqm) following demolition of existing hotel and associated facilities (1,593sqm)";

Index Linked means increased (if applicable) in proportion to movements in the Index between the date the Planning Permission is granted and the date the particular payment is made;

Index means in respect of any financial contributions payable under this Deed the All Items Group (item reference CHAW) of the Retail Prices Index published by H M Government Office for National Statistics provided that during any period where no such index exists, the index which replaces the same or is nearest equivalent thereto (which shall be agreed by the parties or, in default of agreement, fixed by the President for the time being of the Law Society on the application of any party) shall be used;

Indicative Phasing Information means the indicative phasing information set out at Schedule 7;

Land means the land as shown for indicative purposes only edged red on the Site Location Plan comprising parts of the larger area registered at the Land Registry under title number SY357347;

Land Receipts means the net receipt of monies paid to the Owner of the Racecourse Land from the disposal of all, part or parts of the Residential Land by the Owner of the Racecourse Land and to be used only for Racecourse Improvement Works

Littleworth Common means the site of Nature Conservation Importance known as Littleworth Common shown marked in green on the Littleworth Common Plan;

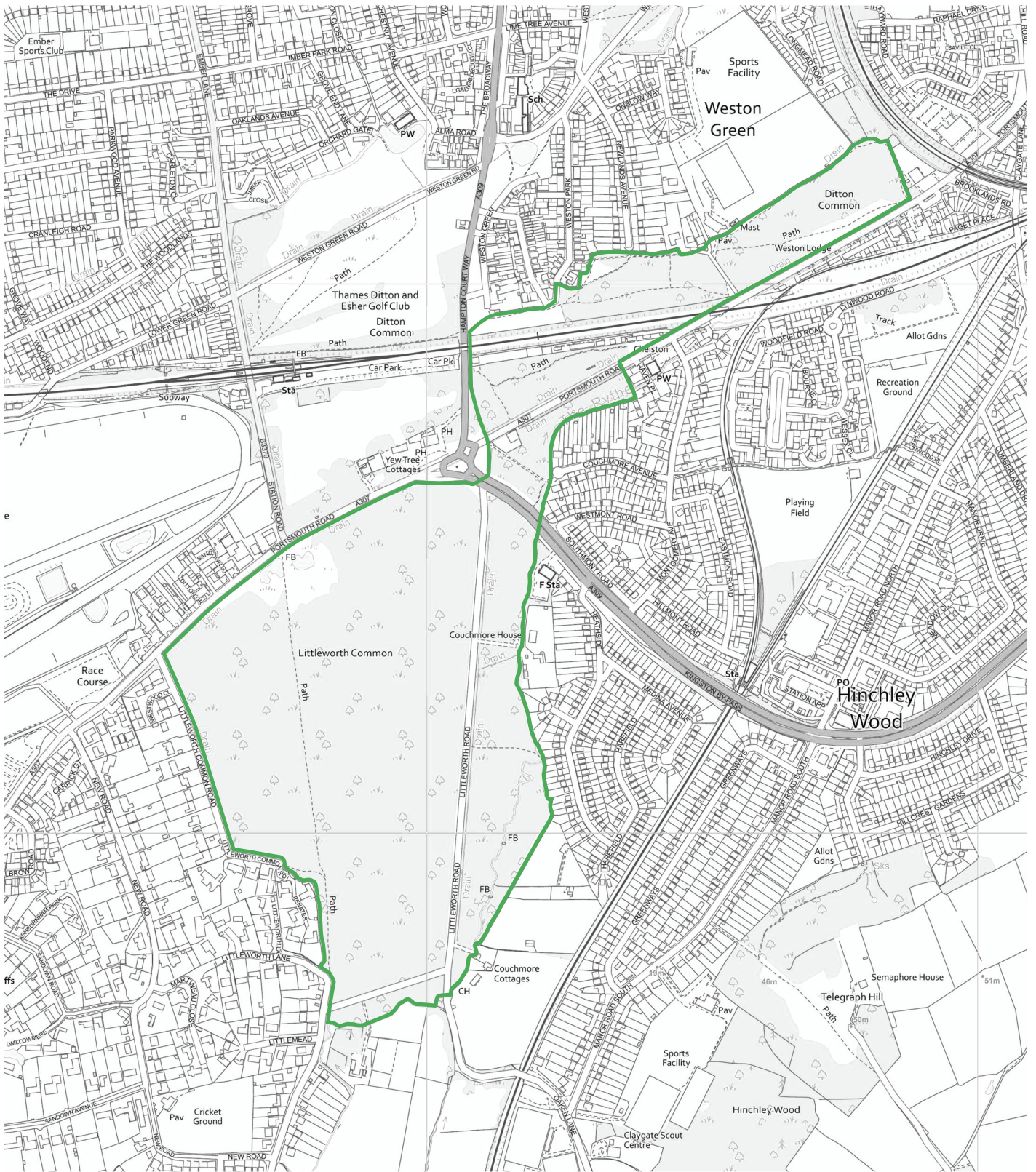
Littleworth Common Contribution means the sum of up to £25,000 (twenty five thousand pounds) Index Linked to be applied towards the preparation and, if required, implementation of the Littleworth Common Management Plan;

Littleworth Common Management Plan means the preparation of a scheme of measures to enhance the management and maintenance of Littleworth Common including a suite of habitat management and enhancements to ameliorate the adverse impacts of additional visitor pressure in line with the increase visitors expected directly related to the Development and the subsequent implementation of those measures to ensure the on-going long-term management of Littleworth Common;

Littleworth Common Plan means the plan marked 'Location Plan – Littleworth Common' appended to this Deed;

Material Start means the commencement of a material operation comprising construction work in the course of the erection of a building within the meaning of section 56(4)(a) of the Act;

Non-Race Day means all other days other than a Race Day;



LOCATION PLAN
LITTLEWORTH COMMON



Scale @ A4 : 1:10,000

Plan No. :



rapleys.com
0370 777 6292

This map is for identification purposes only and should not be relied upon for accuracy.
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LONDON
BIRMINGHAM
BRISTOL
CAMBRIDGE
EDINBURGH
HUNTINGDON
MANCHESTER

Occupation means occupation for the purposes permitted by the Planning Permission but not including any such use of such land or buildings for the purposes of construction or fitting out or occupation for marketing or display or occupation in relation to security operations and "Occupy" "Occupied" and "Occupier" shall be construed accordingly;

Open Market Unit means all those Residential Units which are not Affordable Housing;

Owner means the owner or owners of the Residential Land and or the Racecourse Land as the case may be;

Planning Permission means the planning permission granted pursuant to the Application;

Practical Completion means issue of a certificate of practical completion by the Owner's architect (or if the relevant works are constructed by a person other than the Owner by that person's architect) which certifies that the relevant works have been:

- (a) completed so that they can be used for the purpose and operate in the manner for which they were so designed;
- (b) fully fitted out so that they are available for Occupation;

Race Day means a day on which a horse race meeting is held (plus a day either side for associated operational tasks to be completed) plus 10 days for additional events (each also plus a day either side for associated operational tasks to be completed) held at the Owners discretion at the Racecourse Land

Racecourse Land means Site A, Site B, Site C, Site D, Site E1 and Site E2 which are shaded yellow on the Site Location Plan for identification only;

Racecourse Obligations means those obligations set out at Schedule 2;

Racecourse Improvement Works means works including but not limited to stable staff accommodation, grandstand, racecourse operational facilities, family/community zone, carpark rationalisation, racetrack widening, car park upgrade and hotel facilities;

Racecourse Improvement Works Deposit Account means a ring fenced escrow account to be established by the Owner in the joint names of the Council and the Owner of the Racecourse Land for the sole purpose of receiving the Land Receipts and funding the Racecourse Improvement Works in accordance with the terms of the Racecourse Improvement Works Deposit Account Agreement;

Racecourse Improvement Works Deposit Account Agreement means an agreement to be entered into between the Council and the Owner of the Racecourse Land to control the use of the Racecourse Improvement Works Deposit Account in accordance with the costs as specified in core document CD6.63 relating to appeal ref APP/K3605/W/20/3249790 or as may otherwise be agreed between the parties and setting out that any interest earned on funds held will be payable to the Owner;

Racecourse Improvement Works Phasing and Delivery Plan means a plan between the Council and the Owner of the Racecourse Land which sets out a phased programme for the delivery of the Racecourse Improvement Works and which sets out the full breakdown of costs of the Racecourse Improvement Works based on the Indicative Phasing Information set out at Schedule 7 and based on the document with reference CD6.63 or such other terms as are agreed between the parties;

Reserved Matters Approval means an application to discharge any of the reserved matters attached to the Planning Permission;

Residential Unit means any Dwelling comprised within the Development including the Affordable Housing;

Residential Land means Site 1, Site 2, Site 3, Site 4 and Site 5 which are shaded blue on the Site Location Plan for identification only;

Residential Obligations means those obligations set out at Schedule 1;

Residential Owner means the owner or owners of the Residential Land

Site 1 means the land marked as such on the Site Location Plan;

Site 2 means the land marked as such on the Site Location Plan;

Site 3 means the land marked as such on the Site Location Plan;

Site 4 means the land marked as such on the Site Location Plan;

Site 5 means the land marked as such on the Site Location Plan;

Site A means the land marked as such on the Site Location Plan;

Site B means the land marked as such on the Site Location Plan;

Site C means the land marked as such on the Site Location Plan;

Site D means the land marked as such on the Site Location Plan;

Site E1 means the land marked as such on the Site Location Plan;

Site E2 means the land marked as such on the Site Location Plan;

Site F means the land marked as such on the Site Location Plan;

Site Location Plan means drawing number I1071 PL_001 Rev A appended to this Deed;

Unilateral Undertaking means a unilateral deed of planning obligations made under section 106 of the Act and binding upon the Residential Land, which has been made by the Owner in favour of the Council on or about the date of this Deed and which also relates to the Application and makes provision for Affordable Housing (a copy of which is set out in Schedule 1 to this Deed for ease of reference); and

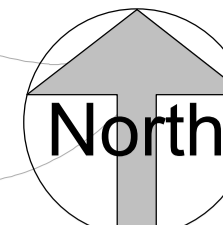
Working Day means any day of the week other than Saturday Sunday or any bank holiday and any other day upon which the Council's offices are closed to the public.

2. INTERPRETATION

In this Deed (except where the context otherwise requires):

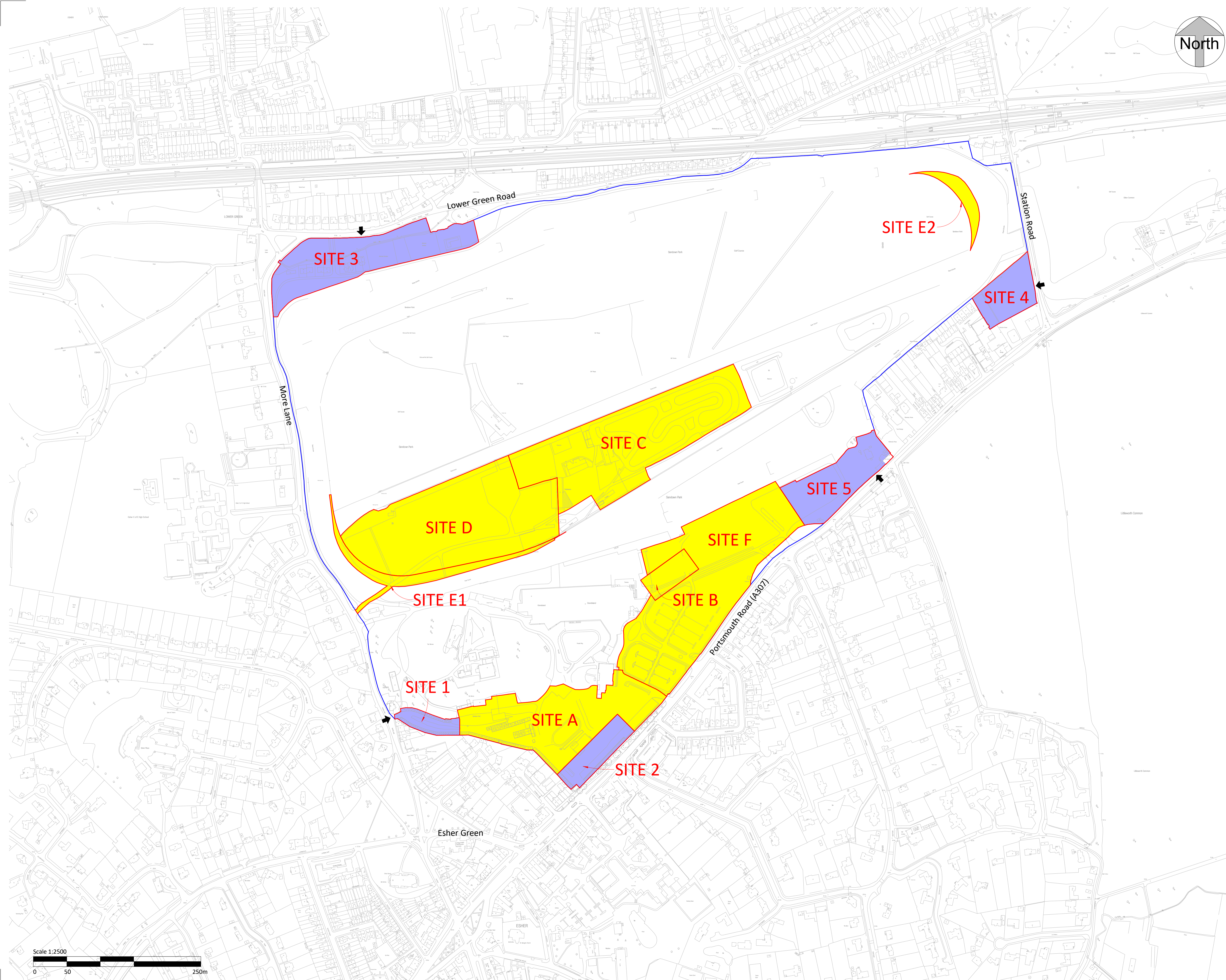
2.1 Reference to the masculine feminine and neuter genders shall include other genders.

2.2 Reference to the singular includes the plural and vice versa unless the contrary intention is



Figured dimensions only are to be used. All dimensions to be checked onsite. Differences between drawings and between drawings and specification or bills of quantities to be reported to the PRC Group. For Planning purposes, drawings can be scaled using the scale bar.
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| Revisions: | Drawn / Chkd: | Date: |
|-----------------------|---------------|------------|
| • Issued for planning | AS/MC | 18.02.2019 |
| A COLOURS ADDED | MC | 19.10.2020 |



Client:
 Jockey Club Racecourses Ltd



Project:
 Sandown Park

24 Church St. West,
 Woking, Surrey,
 GU21 6HT
 01483 494 350

Drawing Title:
 Location Plan

| | | |
|-------------|-------------------|------------|
| Scale @ A1: | Checked by: | Date: |
| 1:2500 | MC | 01.02.2019 |
| Job No: | Stage_Drawing No: | Rev: |
| 11071 | PL_001 | A |

| Issue Status: | Offices |
|---|---------------|
| Construction <input type="checkbox"/> Preliminary <input type="checkbox"/> | Woking |
| Information <input type="checkbox"/> Approval <input checked="" type="checkbox"/> | London |
| Tender <input type="checkbox"/> | Milton Keynes |
| | Warsaw |

expressed.

- 2.3 Reference to natural persons are to include corporations and vice versa.
- 2.4 Headings are for reference purposes only and shall not be taken into account in the construction or interpretation of this Deed.
- 2.5 The expressions the "Owner" and the "Golf Club Owner" shall include their successors in title and assigns and persons claiming under and through them and the expression "the Council" and "the County Council" shall include their respective statutory successors in function.
- 2.6 A reference to a clause paragraph or schedule is (unless the context otherwise requires) a reference to a clause paragraph or schedule to this Deed.
- 2.7 Words denoting an obligation on a party to do any act 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 such restriction.
- 2.8 Where a party includes more than one person any obligation of that party shall be joint and several PROVIDED THAT this provision shall not alter the division of liability between an owner of the Residential Land and an owner of the Racecourse Land.
- 2.9 Any reference to any statute or to any section of a statute includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

3. STATUTORY AUTHORITY AND LEGAL EFFECT

3.1 This Deed is made pursuant to:

3.1.1 Section 106 of the Act; and

3.1.2 Section 111 of the Local Government Act 1972;

and all other enabling powers and enactments which may be relevant for the purposes of giving validity to this Deed.

3.2 This Deed shall be of no effect unless and until the Planning Permission is granted, and shall cease to have effect if the Planning Permission shall be quashed, revoked or otherwise withdrawn or lapses or expires prior to Commencement of Development.

3.3 The obligations in this Deed are planning obligations for the purpose of section 106 of the Act and are enforceable by the Council as local planning authority and by the County Council as local highway authority;

3.4 Having regard to the provisions of regulation 122 of the Community Infrastructure Regulations 2010 the Owner, the Council and the County Council hereby agree and declare that the planning obligations contained in this Deed are necessary to make the Development acceptable in planning terms are directly related to the Development and are fairly and reasonably related in scale and kind to the Development PROVIDED THAT the Owner expresses no opinion in that regard in respect of:

3.4.1 Paragraph 1 of Schedule 1 (covenants relating to the Littleworth Common Contribution);

- 3.4.2 Paragraph 3 of Schedule 2 (covenants relating to the Hotel Planning Permission).
- 3.5 If the Secretary of State states clearly in any decision letter of his granting Planning Permission that one or more obligations in this Deed are in whole or in part unnecessary or otherwise in whole or in part fail the statutory tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 then the said obligation or obligations or part or parts thereof shall to that extent not apply and shall not be enforceable by the Council or the County Council.
- 3.6 No person shall be bound by any obligations rights or duties contained in this Deed and/or liable for any breach of a covenant and/or obligations contained in this Deed:
- 3.6.1 after it shall have parted with all interest in the Land;
- 3.6.2 in a case involving an obligation which relates to a specific part of the Land after it shall have parted with its title to such specific part and specifically no party shall be liable for a breach of the Residential Obligations after having parted with its title to the Residential Land and no party shall be liable for a breach of the Racecourse Obligations after having parted with its title to the Racecourse Land;
- PROVIDED THAT in either case such party shall remain liable for any subsisting breach of covenant arising prior to it parting with its interest.
- 3.7 The obligations in this Deed shall not be binding on or enforceable against:
- 3.7.1 the residential owners and/or occupiers of the Open Market Units or any mortgagees of such owners and/or occupiers;
- 3.7.2 any owner, lessee or occupier of non-residential floorspace within the Development;
- 3.7.3 any mortgagee or chargee from time to time of all or any part of the Land and any receiver (including an administrative receiver) or administrator appointed by such mortgagee or chargee (howsoever appointed) unless and until they enter into possession of the Land or part of it and then only in respect of a breach occurring whilst in possession;
- 3.7.4 any statutory service company or authority or other provider who shall take a transfer, lease or easement of or over any part or parts of the Land for the purposes of providing services (including gas water electricity drainage telecommunications or public transport services) to the Development.
- 3.8 No statutory undertaker shall be bound by any obligations rights and duties contained in this Deed and/or be liable for any breach of covenant and/or obligation contained in this Deed in respect of any land used only as an electricity substation gas governor or pumping station.
- 3.9 Nothing in this Deed shall be construed as prohibiting or limiting or be triggered by any right or act to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) or otherwise coming into effect after the date of this Deed.
- 3.10 Nothing in this Deed shall be construed as restricting the exercise by the Council or the County Council of any powers exercisable by them under the Act or under any act or any statutory instrument order or bylaw in the exercise of their function as a local authority.

4. MINOR INTEREST – SITE D

4.1 The Owner covenants with the Council not to Commence the Development of the Racecourse Land or the Residential Land unless and until the Golf Club Owner has entered into a deed of adherence in substantially the form annexed at Schedule 5 so as to make the obligations under this Deed which are binding upon the Racecourse Land also binding upon the Golf Club Owner's leasehold interest in Site D as detailed at Recital (E).

4.2 Clause 4.1 shall cease to apply in the event of a surrender of the leasehold interest identified in Recital (E) insofar as it relates to Site D.

5. CONDITION PRECEDENT

5.1 The covenants by the Owner under clauses 6.1 and 6.5 shall have effect from the Commencement of Development on the Residential Land.

5.2 The covenants by the Owner under clause 6.3 shall have effect from the Commencement of Development on the Racecourse Land save that paragraph 1 of Schedule 2 may be enforced so as to prohibit such Commencement.

6. OBLIGATIONS

Covenants with the Council

6.1 Subject to clause 5.1 the Owner covenants with the Council so as to bind the Residential Land to observe and perform the covenants obligations and restrictions set out in Schedule 1.

6.2 Schedule 1 also appends the terms of a Unilateral Undertaking given in respect of the Residential Land. For the avoidance of doubt those obligations are not repeated in this Deed and are included for ease of reference only.

6.3 Subject to clause 5.2 the Owner covenants with the Council so as to bind the Racecourse Land to observe and perform the covenants and obligations and restrictions set out in Schedule 2.

6.4 The Council covenants with the Owner to observe and perform the covenants obligations and restrictions set out in Schedule 3.

Covenants with the County Council

6.5 Subject to clause 5.1 the Owner covenants with the County Council so as to bind the Residential Land to observe and perform the covenants obligations and restrictions on its part set out in Schedule 4.

6.6 The County Council covenants with the Owner to observe and perform the covenants obligations and restrictions on its part set out in Schedule 4.

7. INVALIDITY

If a clause or sub-clause of this Deed shall be deemed to be unenforceable or ultra vires the remainder of this Deed shall remain in full force and effect provided severance from this Deed is possible.

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

Nothing contained in this Deed shall give or be construed as giving any rights privileges powers or enforceability other than to the Council and the Owner and their respective successors (if any) as defined in this Deed and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Deed.

9. **INTEREST**

The Owner shall pay interest at 5% above the Bank Base Rate on any monies due under the provisions of this Deed in the event of late payment for the period from the date 30 days after the monies should have been paid to the date the money is received by the Council or the County Council as the case may be.

10. **OTHER MATTERS**

10.1 This Deed shall be registered as a Local Land Charge.

10.2 This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original but all the counterparts shall together constitute the one Deed.

10.3 No variation to this Deed shall be effective unless made by deed in accordance with clause 14.

10.4 The applicable law for this Deed shall be English law.

10.5 All interest earned on sums paid to the Council under this Deed shall be taken to form part of the principal sum and may be expended by the Council subject to the same terms and restrictions that apply to the principal sum.

10.6 Nothing contained in this Deed shall require the Owner to undertake or procure any work on land not within its ownership or control.

11. **DISPUTES**

11.1 Where the parties are in dispute or disagreement or have any differences relating to any matter the subject of or connected with this Deed or its meaning or construction then (without prejudice to any provision in this Deed which specifies a particular timescale for the resolution or determination of any matter) the parties shall use their reasonable endeavours to resolve the same within 20 Working Days of the dispute arising.

11.2 Failing the resolution of any such dispute disagreement or difference within the said 20 Working Days or within such other period as may be specified in this Deed in relation to the resolution or determination of the matter in question the dispute disagreement or difference shall be referred for determination in accordance with the provisions of this clause 11 on the reference of any of the parties to the dispute.

11.3 The dispute disagreement or difference shall be referred to the decision of a single expert (the "**Expert**") qualified to deal with the subject matter of the dispute disagreement or difference who shall either be jointly nominated by the parties within a period of five Working Days following a failure of the parties to resolve the dispute disagreement or difference pursuant to clause 11.2 or failing agreement on such nomination the expert shall

be nominated by the President for the time being of the Law Society.

- 11.4 The determination of the Expert (including any determination as to the responsibility for payment of his own costs and those of the parties) shall be final and binding upon the parties.
- 11.5 The terms of reference of any Expert appointed to determine a dispute disagreement or difference shall include the following:
- 11.5.1 he shall call for representations from all parties within 10 Working Days of a reference to him under this Deed and shall require the parties to exchange representations within this period;
 - 11.5.2 he shall allow the parties 10 Working Days from the expiry of the ten Working Days period referred to in clause 11.5.1 to make counter-representations;
 - 11.5.3 any representations or counter-representations received out of time shall be disregarded by the Expert;
 - 11.5.4 he shall provide the parties with a written decision (including his reasons) within 10 Working Days of the last date for receipt of counter-representations;
 - 11.5.5 he shall be entitled to call for such independent expert advice as he shall think fit;
 - 11.5.6 his costs and the costs of any independent expert advice called for by the Expert shall be included in his award.
- 11.6 Nothing in this clause 11 shall fetter any party's right of recourse to the Courts.

12. **NOTICES**

- 12.1 Any notice or other written communication to be served upon or given by one party to any other party under the terms of this Deed shall be deemed to have been validly served or given in the following circumstances:
- 12.1.1 if delivered by hand upon delivery at the address of the relevant party;
 - 12.1.2 if sent by email delivered in strict accordance with clause 12.2 below
 - 12.1.3 if sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given within two Working Days after the date of posting;
- provided that if in accordance with the above provision any notice or other written communication would otherwise be deemed to be served or given after 4.30 p.m. such notice or other written communication shall be deemed to be served or given at 9.00 a.m. on the next Working Day.
- 12.2 The address for any notice or other written communication shall only be within the United Kingdom and is:
- 12.2.1 for the Council, Civic Centre, High Street, Esher, Surrey, KT10 9SD or by e-mail sent to: c and quoting the reference 2019/0551 in the subject line;

12.2.2 for the County Council, County Hall, Penrhyn Road, Kingston-upon-Thames, KT1 2DN or by e-mail sent to: and quoting the reference "Sandown s106" in the subject line; and

12.2.3 for the Owner, 75 High Holborn, London, WC1V 6LS or by e-mail sent to: and quoting the reference "Sandown s106" in the subject line;

12.3 In the event that the parties decide that the recipients of any notice or other written communication should change from the individuals and/or contact details referred to in clause 12.2 the parties shall notify each other in writing giving details of the replacement individual(s) and/or contact details.

12.4 Any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.

12.5 Any payments due to the Council under the terms of this Deed shall be sent to the Council at Civic Centre, High Street, Esher, Surrey, KT10 9SD or paid by agreed electronic means.

12.6 Any payments due to the County Council under the terms of this Deed shall be sent to the County Council at County Hall, Penrhyn Road, Kingston-upon-Thames, KT1 2DN or paid by agreed electronic means.

13. **APPROVALS AND CONSENTS**

The parties agree that any approval, satisfaction, consent, agreement, certification or other authorisation required from any party under this Deed shall not be unreasonably withheld or delayed.

14. **VARIATIONS**

14.1 The parties agrees that if a deed of variation is entered into affecting only:

14.1.1 one or more obligations in Schedule 1 then only the Council and the parties with an interest in the Residential Land shall be required to be a party to such deed of variation;

14.1.2 one or more obligations in Schedule 2 then only the Council and the parties with an interest in the Racecourse Land shall be required to be a party to such deed of variation; and

14.1.3 one or more obligations in Schedule 4 the Council, the County Council and the parties with an interest in the Residential Land shall be required to be a party to such deed of variation.

15. **COUNTERPARTS**

This deed may be executed in any number of counterparts, and by the application of any combination of electronic and wet-ink signatures, each such counterpart being an original copy of a single deed.

16. **COSTS**

- 16.1 The Owner shall pay the Council's reasonable legal costs incurred in the preparation, negotiation and completion of this Deed up to a limit of £1,350.
- 16.2 The Owner shall pay the County Council's reasonable legal costs incurred in the preparation negotiation and completion of this Deed up to a limit of £2,000

IN WITNESS whereof this Deed has been executed as a deed and delivered on the date first above written.

SCHEDULE I – RESIDENTIAL OBLIGATIONS

The obligations contained in this Schedule I relate to the Residential Land only and are not enforceable against any other part of the Land.

Further obligations that will become binding upon the Residential Land upon Commencement of the Residential Development have been entered into under the Unilateral Undertaking (a draft copy of which is appended to this Deed for ease of reference only) and which are not enforceable against any other part of the Land.

The Owner hereby covenants in respect of the Residential Land as follows:

I. Littleworth Common Contribution

I.1 To pay the Littleworth Common Contribution to the Council in two tranches as follows:

- I.1.1 an initial payment of £5,000 (five thousand pounds) (Index Linked) prior to Commencement of the Development; and
- I.1.2 to pay the second tranche of £20,000 (twenty thousand pounds) (Index Linked), prior to Occupation of Sites 2, 4 , 5 or the hotel, whichever is Occupied first pursuant to the Planning Permission.

APPENDIX – COPY UNILATERAL UNDERTAKING

Dated _____

2020

(1) **JOCKEY CLUB RACECOURSES LIMITED**

- To -

(2) **ELMBRIDGE BOROUGH COUNCIL**

**UNILATERAL UNDERTAKING UNDER SECTION
106 OF THE TOWN AND COUNTRY PLANNING
ACT 1990 IN RELATION TO THE
REDEVELOPMENT OF LAND AT SANDOWN
RACECOURSE**

Appendix

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London WC2B 6AH

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Ref: 61373.1

Email:

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THIS DEED OF UNDERTAKING IS GIVEN on the day of 2020

BY:

- (1) **Jockey Club Racecourses Limited** whose registered office is at 75 High Holborn, London, WC1V 6LS (Company Registration Number 2909409) (the "**Owner**").

IN FAVOUR OF:

- (2) **Elmbridge Borough Council** of Civic Centre, High Street, Esher, Surrey, KT10 9SD (the "**Council**")

RECITALS

- (A) The Council is the local planning authority for the purposes of the Act for the Land.
- (B) The Council is the authority that can enforce the terms of this Undertaking for the purposes of the Act.
- (C) The Owner owns the freehold interest in the Land which comprises parts of a larger area registered at the Land Registry under title number SY357347.
- (D) The Application was submitted to the Council and was refused on 3 October 2019.
- (E) An appeal has been submitted in relation to such refusal and allocated reference number APP/K3605/W/20/3249790 and has been called in by the Secretary of State to determine.
- (F) This Undertaking is in addition to an agreement entered into further to the Act between the Owner and Council on or about the same date in respect of the Application.

I. **DEFINITIONS**

In this Undertaking (except where the context otherwise requires):

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

Additional On-Site Affordable Housing Units means the additional Affordable Housing Units to be provided as a consequence of Viability Review 1 or Viability Review 2;

Aggregate Affordable Housing means the Affordable Housing Units (including any Additional On-Site Affordable Housing Units) plus the Notional Off-Site Affordable Housing Units;

Affordable Housing means initially 20% of the total number of Residential Units or such other proportion as may be determined following Viability Review 1 or Viability Review 2 as identified in an Approved Affordable Housing Scheme (the Affordable Housing Units) that are to be made available to eligible households whose needs are not met by the market in accordance with the National Planning Policy Framework;

Affordable Housing Cap means an upper limit on the Aggregate Affordable Housing of 45% of the overall number of residential units delivered pursuant to the Planning Permission;

Affordable Housing Chargee means any mortgagee or chargee of the Affordable Housing Provider or of the owner or part owner of any Shared Ownership Unit (other than the Owner) or any administrator fixed charge receiver (including any receiver appointed under

the Law of Property Act 1925) administrative receiver or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or the successors in title to such mortgagee or chargee or receiver or other appointed person.

Affordable Housing Review Contribution means a financial contribution for the provision of off-site Affordable Housing in the Council's administrative area the precise value of which shall be calculated in accordance with Formula 2 as may be applicable and which shall be subject to the Affordable Housing Cap;

Affordable Housing Provider means one of the Council's registered provider partners, being a non-profit registered provider of social housing pursuant to the Housing and Regeneration Act 2008 or another registered provider proposed by the Owner and Approved;

Affordable Housing Scheme means a detailed scheme setting out the tenure and location of the Affordable Housing Units to be submitted to and approved in writing by the Council in accordance with paragraph 1 of Schedule 1;

Affordable Housing Standards means standards that ensure compliance with any contractual obligations entered into by the Affordable Housing Provider with Homes England (or successor organisation) under the Shared Ownership and Affordable Homes Programme 2016-21 (or any replacement programme in place);

Affordable Housing Units means the Residential Units to be provided as Social Rented Units, Affordable Rented Units and Shared Ownership Units as identified in the Approved Affordable Housing Scheme;

Affordable Rent; means rented housing let by Affordable Registered Providers of social housing to households who are eligible for Social Rented Housing. Affordable Rent is not subject to the national rent regime but is subject to other rent controls that require a rent and service charge of no more than the lower of either;

- a) For one and two bedroom dwellings, 80 per cent of the Market Rent or 95% of the Local Housing Allowance Cap applying to the relevant property size for the month in which the property is to be let;
- b) For three bedroom dwellings, 80 per cent of the Market Rent or 85% of the Local Housing Allowance Cap applying to the relevant property size for the month in which the property is to be let;
- c) For dwellings with four or more bedrooms, 80 per cent of the Market Rent or 70% of the Local Housing Allowance Cap applying to the relevant property size for the month in which the property is to be let

Affordable Rented Units means the Affordable Housing Units to be provided at an Affordable Rent in to be identified by the Affordable Housing Scheme;

Application means the application made in respect of the Land under the Council's reference 2019/0551 for hybrid planning permission for the redevelopment of the Land involving:

- (a) Outline application for development/redevelopment of sections of the site to replace/modify existing operational/associated facilities, and to provide up to 150 bedroom hotel (Use Class C1), family/community zone, residential development

up to 318 units (Use Class C3) and to relocate existing day nursery (Use Class D1), all with car parking, access and related works following demolition of existing buildings and hardstanding (for access only).

- (b) Full application for the widening of the southwest and east sections of the racecourse track including associated groundworks, re-positioning of fencing, alterations to existing internal access road from More Lane and new bell-mouth accesses serving the development.

Approval means confirmation that material or documents submitted by the Owner are acceptable for the purposes of this Undertaking, such confirmation to be either given in writing by the Council or deemed to be given in accordance with clause 10 (and "Approved" shall have the corresponding meaning)

Bank Base Rate means the Bank of England official dealing rate as set by the Monetary Policy Committee;

Build Costs means the total costs of delivery inclusive of all fees contingencies, finance and any other associated costs of delivery as Approved (either estimated or actual as the context requires);

Commencement of Development means the earliest date upon which a material operation forming part of the Development is begun in accordance with the provisions of section 56(4) of the Act save that for the purposes of this Undertaking none of the following operations shall constitute a material operation:

- (a) site preparation works;
- (b) archaeological investigations;
- (c) remediation works;
- (d) erection of fences and hoardings and construction of temporary access and service roads;
- (e) site investigation works (including environmental investigations); and
- (f) works of demolition;

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

Development means the development authorised by the Planning Permission;

Development Viability Information means all that information that is included in Rapleys document: Affordable Housing Viability Assessment dated 21 February 2019 reference AAMJ/18/01839;

Dwelling means any unit of Class C3 residential accommodation constructed as part of the Development;

Eligible Households means households living or working within the Borough of Elmbridge or any other household approved by Elmbridge Council's Housing Services with a recognised housing need and whose incomes are not sufficient to allow them to afford decent and appropriate housing in the market;

Expert has the meaning ascribed to it at clause 10;

First Occupation means the first occupation of any Residential Unit other than occupation for the purposes of construction or fitting out or marketing and the term "Occupied" shall be construed accordingly

Formula 1 means the formula identified as "Formula 1" in Schedule 2;

Formula 2 means the formula identified as "Formula 2" in Schedule 2;

Index Linked means increased (if applicable) in proportion to movements in the Index between the date the Challenge Free Planning Permission is granted and the date the particular payment is made;

Index means in respect of any financial contributions payable under this Undertaking the All Items Group (item reference CHAW) of the Retail Prices Index published by H M Government Office for National Statistics provided that during any period where no such index exists, the index which replaces the same or is nearest equivalent thereto (which shall be agreed by the parties or, in default of agreement, fixed by the President for the time being of the Law Society on the application of any party) shall be used;

Land means the land as shown for indicative purposes only edged red on Plan 1 comprising parts of the larger area registered at the Land Registry under title number SY357347;

Local Housing Allowance Cap means the maximum rental allowance providing financial assistance towards the housing costs of low income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Works and Pensions or such similar framework that may replace it.

Market Rent means an estimate of its market rent inclusive of all service charges at the time the tenancy is granted that is based on a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors

Material Start means the commencement of a material operation comprising construction work in the course of the erection of a building within the meaning of section 56(4)(a) of the Act;

Nominations Agreement means an agreement that restricts occupancy of the Affordable Housing Units to Eligible Households chosen in accordance with a nomination agreement agreed between the Council and the Affordable Housing Provider.

Notional Off-Site Affordable Housing Units means the number of Affordable Housing Units that could have been provided by spending the surplus profit as determined in accordance with paragraph 6.2 of Schedule 1;

Nursery Facility means a day nursery facility to replace the existing facility pursuant to the Application;

Occupation means occupation for the purposes permitted by the Planning Permission but not including any such use of such land or buildings for the purposes of construction or fitting out or occupation for marketing or display or occupation in relation to security operations and "Occupy" "Occupied" and "Occupier" shall be construed accordingly;

Open Market Unit means all those Residential Units which are not Affordable Housing Units or Additional On-Site Affordable Housing Units;

Owner means the owner or owners of the Residential Land;

Planning Permission means the planning permission granted pursuant to the Application and for the purposes of clause 10 including any associated Planning Inspector's report and decision letter from or on behalf of the Secretary of State;

Reserved Matters Approval means an application to discharge any of the reserved matters attached to the Planning Permission;

Residential Land means Site 1, Site 2, Site 3, Site 4 and Site 5 which are shaded [blue] on the Site Location Plan for identification only;

Residential Obligations means those obligations set out at Schedule 1;

Residential Owner means the owner or owners of the Residential Land

Residential Unit means any Dwelling comprised within the Development including the Affordable Housing Units;

Review 1 Date means the date which is 24 months from but excluding the date of grant of the Planning Permission

Review 2 Date means the date which is 36 months from but excluding the date of the grant of Planning Permission;

Review 3 Date means the date on which 75% of the Residential Units have been sold or otherwise disposed of;

Shared Ownership Unit means a Dwelling specified in the Affordable Housing Scheme as one which will be disposed of on shared ownership terms as defined in section 2(6) of the Housing Act 1996;

Site 1 means the land marked as such on the Site Location Plan;

Site 2 means the land marked as such on the Site Location Plan;

Site 3 means the land marked as such on the Site Location Plan;

Site 4 means the land marked as such on the Site Location Plan;

Site 5 means the land marked as such on the Site Location Plan;

Site Location Plan means drawing number 1071 PL_001 Rev A appended to this Undertaking;

Social Rented Unit means a Dwelling specified in the Affordable Housing Scheme as one which is intended to be let as rented housing in accordance with guideline target rents determined through the national rent regime;

Viability Review 1 means the upwards only review of the financial viability of the Development at Review 1 Date (if required) applying Formula 1 to determine whether any Additional On-Site Affordable Housing Units can be provided;

Viability Review 2 means the upwards only review of the financial viability of the Development at Review 2 Date (if required) applying Formula 1 to determine whether any Additional On-Site Affordable Housing Units can be provided;

Viability Review 3 means the upwards only review of the financial viability of the Development at Review 3 Date applying Formula 2 to determine whether any Affordable Housing Review Contribution can be provided;

Viability Review means Viability Review 1 and/or Viability Review 2 and/or Viability Review 3 as the context permits;

Working Day means any day of the week other than Saturday Sunday or any bank holiday and any other day upon which the Council's offices are closed to the public.

2. **INTERPRETATION**

In this Undertaking (except where the context otherwise requires):

- 2.1 Reference to the masculine feminine and neuter genders shall include other genders.
- 2.2 Reference to the singular includes the plural and vice versa unless the contrary intention is expressed.
- 2.3 Reference to natural persons are to include corporations and vice versa.
- 2.4 Headings are for reference purposes only and shall not be taken into account in the construction or interpretation of this Undertaking.
- 2.5 The expression the "Owner" shall include their successors in title and assigns and persons claiming under and through them and the expression "the Council" shall include its respective statutory successors in function.
- 2.6 A reference to a clause paragraph or schedule is (unless the context otherwise requires) a reference to a clause paragraph or schedule to this Undertaking.
- 2.7 Words denoting an obligation on a party to do any act 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 such restriction.
- 2.8 Where a party includes more than one person any obligation of that party shall be joint and several.
- 2.9 Any reference to any statute or to any section of a statute includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

3. **STATUTORY AUTHORITY AND LEGAL EFFECT**

- 3.1 This Undertaking is made pursuant to:
 - 3.1.1 Section 106 of the Act; and
 - 3.1.2 Section 111 of the Local Government Act 1972;

and all other enabling powers and enactments which may be relevant for the purposes of giving validity to this Undertaking.

- 3.2 This Undertaking shall be of no effect unless and until the Planning Permission is granted, and shall cease to have effect if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) and if it is modified by any statutory procedure or lapses or expires prior to Commencement of Development.
- 3.3 The obligations in this Undertaking are planning obligations for the purpose of section 106 of the Act and are enforceable by the Council as local planning authority
- 3.4 Having regard to the provisions of regulation 122 of the Community Infrastructure Regulations 2010 the Owner believes that the planning obligations contained in this Undertaking are necessary to make the Development acceptable in planning terms are directly related to the Development and are fairly and reasonably related in scale and kind to the Development.
- 3.5 If the Secretary of State states clearly in his decision letter granting Planning Permission that one or more obligations in this Undertaking are in whole or in part unnecessary or otherwise in whole or in part fail the statutory tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 then the said obligation or obligations or part or parts thereof shall to that extent not apply and shall not be enforceable by the Council.
- 3.6 No person shall be bound by any obligations rights or duties contained in this Undertaking and/or liable for any breach of a covenant and/or obligations contained in this Undertaking:
- 3.6.1 after it shall have parted with all interest in the Land;
- 3.6.2 in a case involving an obligation which relates to a specific part of the Land after it shall have parted with its title to such specific part;
- PROVIDED THAT in either case such party shall remain liable for any subsisting breach of covenant arising prior to it parting with its interest.
- 3.7 The obligations in this Undertaking shall not be binding on or enforceable against:
- 3.7.1 the residential owners and/or occupiers of the Open Market Units or any mortgagees of such owners and/or occupiers;
- 3.7.2 an Affordable Housing Provider save in respect of paragraph 2.4 of Schedule I;
- 3.7.3 the residential owners (other than the Affordable Housing Provider) and/or occupiers of the Affordable Rent Units, the Shared Ownership Units and the Social Rented Units (including any tenant or occupier exercising a right to buy right to acquire or similar statutory right to purchase together with their successors in title);
- 3.7.4 any owner, lessee or occupier of non-residential floorspace within the Development;
- 3.7.5 subject to clause 3.8 any mortgagee or chargee from time to time of all or any part of the Land and any receiver (including an administrative receiver) or administrator appointed by such mortgagee or chargee (howsoever appointed) including a housing administrator of the whole or any part of the Affordable Housing;
- 3.7.6 any statutory service company or authority or other provider who shall take a transfer, lease or easement of or over any part or parts of the Land for the purposes

of providing services (including gas water electricity drainage telecommunications or public transport services) to the Development.

3.8 In the event that a mortgagee or chargee of an Affordable Housing Provider (or any receiver appointed by such mortgagee or charge) (the "**Secured Party**") seeks to dispose of the Affordable Housing Units or any part thereof (the "**Foreclosure Units**") pursuant to the terms of the mortgage or charge the Secured Party shall first use reasonable endeavours to dispose of the Foreclosure Units to an Affordable Housing Provider or to the Council Provided That

3.8.1 the Secured Party shall first give written notice to the Council of its intention to dispose of the Foreclosure Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Foreclosure Units to another Affordable Housing Provider or to the Council and

3.8.2 if after a period of three months following notice of the intention to dispose of the Foreclosure Units having been provided to the Council the Secured Party (having used reasonable endeavours as aforesaid) shall not have completed the transfer of the Foreclosure Units or any of them to an Affordable Housing Provider or to the Council the Secured Party shall thenceforth be entitled to make the disposition free of any restrictions under this Undertaking, which restrictions shall determine absolutely.

3.9 No statutory undertaker shall be bound by any obligations rights and duties contained in this Undertaking and/or be liable for any breach of covenant and/or obligation contained in this Undertaking in respect of any land used only as an electricity substation gas governor or pumping station.

3.10 Nothing in this Undertaking shall be construed as prohibiting or limiting or be triggered by any right or act to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) or otherwise coming into effect after the date of this Undertaking.

3.11 Nothing in this Undertaking shall be construed as restricting the exercise by the Council of any powers exercisable by them under the Act or under any act or any statutory instrument order or bylaw in the exercise of their function as a local authority.

4. **CONDITION PRECEDENT**

4.1 The covenants by the Owner under this Undertaking shall have effect from the Commencement of Development on the Residential Land save that paragraph 1.1 of Schedule 1 may be enforced so as to prohibit such Commencement in accordance with its terms (and for the avoidance of doubt clause 10 shall apply in that regard).

5. **OBLIGATIONS**

Subject to clause 4.1 the Owner covenants with the Council so as to bind the Residential Land to observe and perform the covenants obligations and restrictions set out in Schedule 1 and Schedule 2.

6. **INVALIDITY**

If a clause or sub-clause of this Undertaking shall be deemed to be unenforceable or ultra vires the remainder of this Undertaking shall remain in full force and effect provided severance from this Undertaking is possible.

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

- 7.1 Nothing contained in this Undertaking shall give or be construed as giving any rights privileges powers or enforceability other than to the Council and the Owner and their respective successors (if any) as defined in this Undertaking and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Undertaking.

8. **INTEREST**

The Owner shall pay interest at five per centum (5%) per annum above the Bank Base Rate on any monies due under the provisions of this Undertaking in the event of late payment for the period from the date the monies should have been paid to the date the money is received by the Council.

9. **OTHER MATTERS**

- 9.1 This Undertaking shall be registered as a Local Land Charge.
- 9.2 No variation to this Undertaking shall be effective unless made by deed between the Owner and the Council.
- 9.3 The applicable law for this Undertaking shall be English law.
- 9.4 Nothing contained in this Undertaking shall require the Owner to undertake or procure any work on land not within its ownership or control.

10. **INDEPENDENT DETERMINATION**

- 10.1 The following provisions apply in the event that any material or documentation has been submitted to the Council for Approval under the terms of this Undertaking (the "**Submission**")

- 10.2 If the Council either:

10.2.1 refuses to approve a Submission, or

10.2.2 fails to approve a Submission within 30 Working Days of its receipt

then the Owner may refer the Submission for the approval (or refusal to approve) of a single expert (the "**Expert**") qualified to deal with the subject matter of the Submission and nominated by the President for the time being of the Law Society (or such other independent third party as the Owner may reasonably select in the event of a refusal to make such nomination).

- 10.3 The terms of reference of any Expert appointed under this clause 10 shall include the following:

- 10.3.1 he shall be appointed to either approve or refuse to approve the Submission, having regard to the terms of this Undertaking, and the Planning Permission
 - 10.3.2 he shall call for representations from the Council;
 - 10.3.3 he shall disregard any representations received more than 5 Working Days after the request under sub-clause 10.3.2;
 - 10.3.4 he shall issue the Owner and the Council with a written decision (including his reasons) within 10 Working Days of the last date for receipt of representations (but late delivery shall not affect the validity of a decision);
 - 10.3.5 he shall be entitled to call for such independent expert advice as he shall think fit;
 - 10.3.6 his costs and the costs of any independent expert advice called for by the Expert shall be paid by the Owner.
- 10.4 The approval of an Expert shall be taken to be an approval of the Council for the purposes of this Undertaking

11. **NOTICES**

- 11.1 Any notice or other written communication to be served upon or given by one Party to any other party under the terms of this Undertaking shall be deemed to have been validly served or given in the following circumstances:

- 11.1.1 if delivered by hand upon delivery at the address of the relevant party;
- 11.1.2 if sent by email delivered in strict accordance with clause 11.2 below
- 11.1.3 if sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given within two Working Days after the date of posting;

provided that if in accordance with the above provision any notice or other written communication would otherwise be deemed to be served or given after 4.30 p.m. such notice or other written communication shall be deemed to be served or given at 9.00 a.m. on the next Working Day.

- 11.2 The address for any notice or other written communication shall only be within the United Kingdom and is:
- 11.2.1 for the Council, Civic Centre, High Street, Esher, Surrey, KT10 9SD or by e-mail sent to: _____ and quoting the reference 2019/0551 in the subject line;
 - 11.2.2 for the Owner, 75 High Holborn, London, WC1V 6LS or by e-mail sent to: _____ and quoting the reference "Sandown s.106 Unilateral Undertaking" in the subject line.

- 11.3 In the event that the Parties decide that the recipients of any notice or other written communication should change from the individuals and/or contact details referred to in clause 11.2 the Parties shall notify each other in writing giving details of the replacement individual(s) and/or contact details.

- 11.4 Any notice or other written communication to be given by the Council shall be deemed

valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.

- 11.5 Any payments due to the Council under the terms of this Undertaking shall be sent to the Council at Civic Centre, High Street, Esher, Surrey, KT10 9SD or paid by agreed electronic means.

IN WITNESS whereof this Undertaking has been executed as a deed and delivered on the date first above written.

Appendix

SCHEDULE I – OBLIGATIONS TO THE COUNCIL

The obligations contained in this Schedule I relate to the Residential Land only and are not enforceable against any other part of the Land.

The Owner of the Residential Land hereby covenants as follows:

I. Identification of the Affordable Housing (Affordable Housing Scheme)

I.1 Prior to Commencement of Development to submit to the Council for Approval an Affordable Housing Scheme incorporating a plan and schedule in which the following requirements are identified:-

I.1.1 not less than 20% of the total number of Residential Units to be provided as Affordable Housing within the Development;

I.1.2 any Additional On-Site Affordable Housing Units required to be provided as Affordable Housing within the Development in accordance with a Viability Review that has been Approved

I.1.3 the Affordable Housing Units identified shall reflect in the following proportions (unless otherwise agreed in writing by the Council):

| Tenure | Percentage of 20% |
|-------------------------|-------------------|
| Affordable Rented Units | 14% |
| Social Rented Units | 72% |
| Shared Ownership Units | 14% |

I.2 If the Approval of either Viability Review 1 or Viability Review 2 gives rise to any Additional On-Site Affordable Housing Units then such Approval shall invalidate any earlier Approval of an Affordable Housing Scheme and paragraph I.1 shall apply anew.

2. Provision of Affordable Housing Units

2.1 Not to Occupy or cause or allow the Occupation of any Residential Unit on Site 3 until a conditional contract with an Affordable Housing Provider is entered into for either the freehold transfer or a lease of not less than 125 years of the Affordable Housing Units and that as a condition of sale or lease the Affordable Housing Provider shall covenant to enter into a Nominations Agreement with the Council.

2.2 Not to Occupy or cause or allow the Occupation of more than 165 Open Market Units until all the Affordable Housing Units have been made available for Occupation.

- 2.3 Not to Occupy or cause or allow the Occupation of:
- 2.3.1 more than 51 Open Market Units on Site 4; and
 - 2.3.2 any Open Market Units on Site 5;
- until all of the Affordable Housing Units have been made available for Occupation unless otherwise agreed by the Council.

- 2.4 The Affordable Housing Units provided pursuant to this Undertaking shall not be used other than for Affordable Housing and shall only be occupied by Eligible Households.

3. **Viability Review**

- 3.1 Where a Material Start has not been made on Site 3 before Review 1 Date the Owner will carry out Viability Review 1 in accordance with provisions of this Schedule within 20 Working Days of the date on which a Material Start is made on Site 3.
- 3.2 Where a Material Start has not been made on at least one of Site 4 or Site 5 before Review 2 Date the Owner will carry out Viability Review 2 in accordance with the provisions of this Schedule within 20 Working Days of the date on which a Material Start is made on the first of Site 4 or Site 5.
- 3.3 On completion of the sale or letting of 75% of the Residential Units the Owner will carry out Viability Review 3 in accordance with the provisions of this Schedule within 20 Working Days.

4. **Submission of Development Viability Information**

- 4.1 If a Viability Review is triggered pursuant to paragraph 3.1 and or 3.2 and or 3.3 above, the Owner shall (in each case) submit the Development Viability Information on an open book basis to the Council for Approval.
- 4.2 In the case of Viability Review 1 and Viability Review 2 the Owner will also submit to the Council for Approval together with any applicable Development Viability Information a written statement that applies the applicable Development Viability Information to Formula 1 and calculates how many (if any) Additional On-Site Affordable Housing can be provided in accordance with paragraph 5.
- 4.3 In respect of Viability Review 3 the Owner will also submit to the Council for Approval together with any applicable Development Viability Information a written statement that applies the applicable Development Viability Information to Formula 2 and calculates how much (if any) Affordable Housing Review Contribution is payable in accordance with paragraph 6.

5. **Calculation of Additional On-Site Affordable Housing**

- 5.1 If Viability Review 1 or Viability Review 2 shows that a profit surplus arises following the application of Formula 1 then such profit surplus shall be provided as Additional On-Site Affordable Housing.
- 5.2 Any Additional On-Site Affordable Housing Units required further to Viability Review 1 or Viability Review 2 shall be provided by reference to the same proportional tenure split specified or agreed with the Council in accordance with paragraph 1.1.3.

- 5.3 The number of Additional On-Site Affordable Housing Units shall be the number of units that:
- 5.3.1 produces the smallest surplus profit that is greater than zero upon the further application of Formula 1 taking account of such number of Additional On-Site Affordable Housing Units; but
 - 5.3.2 does not cause the overall provision of Affordable Housing pursuant to the Planning Permission to exceed the Affordable Housing Cap.

6. Calculation of Affordable Housing Contribution

- 6.1 If Viability Review 3 concludes that a profit surplus arises following the application of Formula 2 such profit surplus shall subject to paragraph 6.3 be payable to the Council as an Affordable Housing Review Contribution.
- 6.2 If Viability Review 3 results in an Affordable Housing Review Contribution the Owner will calculate the number of Notional Off-Site Affordable Housing Units by dividing the Affordable Housing Review Contribution by the Build Costs per Affordable Housing Unit specified in the Development Viability Information
- 6.3 The Owner shall not be required to provide more Aggregate Affordable Housing than the Affordable Housing Cap, and where the calculation carried out under this paragraph 6 shows the Affordable Housing Cap would be exceeded then the Affordable Housing Review Contribution will be reduced so far as necessary to eliminate that exceedance.

7. Payment of Affordable Housing Review Contribution

- 7.1 Where it is determined pursuant to a Viability Review Approved under paragraph 4.3 above that an Affordable Housing Review Contribution is payable:
- 7.1.1 the Owner shall pay such Affordable Housing Review Contribution to the Council no later than 20 Working Days after such determination; and
 - 7.1.2 the Owner shall not Occupy or dispose or let nor permit Occupation or disposal or letting of more than 80 per cent of the Residential Units until such Affordable Housing Review Contribution has been paid to the Council.
- 7.2 Nothing in this Schedule 1 shall give rise to an Affordable Housing Review Contribution the effect of which is to cause the Development to exceed the Affordable Housing Cap.

8. Force Majeure

- 8.1 In the event of any circumstances beyond the Owner's reasonable control (including but not limited to a pandemic) which will have a material impact on the viability of the Development the Owner may submit to the Council for approval proposed changes to Formula 1 and/or Formula 2 to reflect such circumstances any resulting Approval shall thereafter be applied in substitution for Schedule 2 of this Undertaking.

SCHEDULE 2– FORMULA 1 AND FORMULA 2

FORMULA 1

X = Surplus profit available for Additional On-site Affordable Housing

$$X = ((A - B) - (D - E)) - P$$

A = Estimated GDV for private residential component of development as determined for the time of review (£)

$$B = A \div (C + 1)$$

Assumed application stage GDV for private residential component of the development from grant of planning permission to review date (HPI) (%)

C = Percentage change in value for the private residential component of the development from grant of planning permission to review date (HPI) (%)

D = Estimated Build Costs as determined at the time of review (£)

E = D ÷ (F + 1) (representing the assumed application stage Build Costs at the date of planning permission (£))

F = Percentage change in Build Costs from grant of planning permission to review (BCIS TPI) (%)

P = (A – B) * Y (representing Developer profit on change in GDV of private residential component (£))

Y = Developer profit as a percentage of GDV for the private residential component as determined as part of the review (%)

Notes:

(A – B) = Change in GDV of the private residential component of development from the date of planning permission to the date of review (£)

(D - E) = Change in Build Costs from the date of planning permission to the date of review (£)

FORMULA 2

X = Affordable Housing Review Contribution

$$\mathbf{X = (((A + B) - C) - ((D + E) - F) - P) \times 0.6}$$

A = GDV achieved on sale/ lease of 75 per cent of residential units and GDV from other parts of the development sold / let and other income receipts (£)

B = Estimated GDV for parts of the development that are yet to be sold/ let and other income sources (£)

C = GDV determined as part of the assessment of viability at the time planning permission was granted (or as determined in previous review (£))

D = Build costs incurred at the time of review (£)

E = Estimated Build Costs for remainder of the development (£)

F = Total Build Costs determined as part of the assessment of viability at the time planning permission was granted (or as determined in previous review) (£)

P = (A + B - C) * Y (representing Developer profit on change in GDV (£))

Y = Developer profit as a percentage of GDV as determined at the time planning permission was granted (%)

Notes:

(A + B) - C = The change in GDV from the grant of planning permission (or previous review) to the late stage review (£)

(D + E) - F = The change in Build Costs from the grant of planning permission (or previous review) to the late stage review (£)

P = Developer profit on change in GDV (£)

0.6 = Any surplus profit, after deducting the developer profit (P), will be shared between the LPA and the developer with 60 per cent used for additional affordable housing.

SCHEDULE 3 – NURSERY PROVISIONS

I. Nursery Provisions

- I.1 The Owner shall not carry out any works for the demolition of the existing day nursery until the Commencement of Development on Site 5.
- I.2 Not to Occupy or permit or suffer Occupation of more than 65% of the Open Market Units until the new day Nursery Facility has been provided and is fully operational pursuant to the Planning Permission.

Appendix

EXECUTED as a deed by
**JOCKEY CLUB RACECOURSES
LIMITED**
acting by a director, in the presence of:

| | |
|-------------------|----------|
| <i>Signature</i> | |
| | Director |
| <i>Print name</i> | |

Witness signature _____

Name (in BLOCK CAPITALS) _____

Address _____

Appendix

SCHEDULE 2 – RACECOURSE OBLIGATIONS

The obligations contained in this Schedule 2 relate to the Racecourse Land only and are not enforceable against any other part of the Land.

The Owner hereby covenants in respect of the Racecourse Land as follows:

1. Racecourse Improvement Works

- 1.1 Prior to the Commencement of the Racecourse Improvement Works and prior to the disposal of any part of the Residential Land to agree the Racecourse Improvement Works Phasing and Delivery Plan with the Council.
- 1.2 Prior to the Commencement of the Racecourse Improvement Works and prior to the disposal of any part of the Residential Land to:
 - 1.2.1 set up the Racecourse Improvement Works Deposit Account; and
 - 1.2.2 subject to prior entry into the Racecourse Improvement Works Deposit Agreement by the Council to pay into the Racecourse Improvement Works Deposit Account all the Land Receipts from the sale of any and all Residential Land.
- 1.3 To carry out the Racecourse Improvement Works in accordance with the Racecourse Improvement Works Phasing and Delivery Plan and the terms of the Racecourse Improvement Works Deposit Agreement.
- 1.4 To use all the Land Receipts for the Racecourse Improvement Works.
- 1.5 Not to withdraw any funds from the Racecourse Improvement Works Deposit Account which would result in a remaining balance of less than £3,000,000 (three million pounds sterling) until a contract with an Affordable Housing Provider is entered into for either the freehold transfer or lease of the Affordable Housing.
- 1.6 Not to commence any Racecourse Improvement Works on Site A other than in conjunction with the groundworks facilitating Sites 1 and 2.

2. Community Use Agreement

- 2.1 Prior to bringing those of the Racecourse Improvement Works comprised in Site C into use the Owner shall submit to the Council for approval the Community Use Agreement based on the Community Use Indicative Heads of Terms or such other terms as are agreed between the parties.
- 2.2 The Owner shall not bring those of the Racecourse Improvement Works comprised in Site C into use until the Community Use Agreement has been approved by the Council and the Owner shall comply with the terms and conditions of Community Use Agreement for the life of the Development.

3. Hotel Planning Permission

- 3.1 The Owner shall not carry out any works or claim any benefit or permitted use pursuant to the Hotel Planning Permission following a Material Start in respect of the hotel permitted pursuant to the Planning Permission.

4. **Littleworth Common Contribution**

- 4.1 Not to Occupy or allow Occupation of the hotel authorised by the Planning Permission unless and until the first tranche of the Littleworth Common Contribution as specified in 1.1.1 of Schedule 1 (£5,000) has been paid in full.

SCHEDULE 3– ELMBRIDGE BOROUGH COUNCIL'S OBLIGATIONS

1. The Council shall as soon as possible upon receipt of the Littleworth Common Contribution apply such contribution towards the appropriate phase of the Littleworth Common Management Plan
2. During the period of two years following First Occupation of a Residential Unit the Council shall be entitled to amend and/or extend the Littleworth Common Management Plan insofar as it considers necessary having regard to the actual impacts of the Residential Development.
3. If the Littleworth Common Contribution (or any part of such contribution) has not been used for the stated purpose within five years of each payment the Council shall return such contribution (or the unexpended part) to the person who made the payment

SCHEDULE 4 – COVENANTS WITH THE COUNTY COUNCIL

The obligations contained in this Schedule 4 relate to the Residential Land only and are not enforceable against any other part of the Land.

The Owner of the Residential Land hereby covenants as follows:

1. Definitions

1.1 In this Schedule 3:

Esher Railway Station Contribution means the sum of £300,000 (three hundred thousand pounds) Index Linked to be applied towards the Esher Railway Station Improvements;

Esher Railway Station Improvements means enhancements to Esher Railway Station including works to improve accessibility and facilitate step-free access; and

Travel Plan Auditing Payment means the sum of £6,150 (six thousand one hundred and fifty pounds).

2. Esher Railway Station Contribution

2.1 To pay the Esher Railway Station Contribution to the County Council prior to First Occupation of a Residential Unit.

3. Travel Plan Auditing Payment

3.1 To pay the Travel Plan Auditing Payment to the County Council prior to First Occupation of a Residential Unit.

4. County Council Covenants

The County Council hereby covenants:

4.1 The County Council shall forthwith upon receipt of the Esher Railway Station Contribution apply such contribution towards the Esher Railway Station Improvements

4.2 To refund to the payer of the Esher Railway Station Contribution to the County Council such part (if any) of the Esher Railway Station Contribution which has not been expended or committed for the purposes defined in paragraph 4.1 above at the expiry of the period of fifteen (15) years from the date of receipt by the County Council of such sum.

SCHEDULE 5 – DEED OF ADHERENCE

BY THIS DEED OF UNDERTAKING dated

20[20]

FROM

- (1) [CGA Sandown Limited whose registered office is at Sandown Park Golf Centre, More Lane, Esher, Surrey, KT10 8AN] (the "Owner"); to
- (2) Elmbridge Borough Council of Civic Centre, High Street, Esher, Surrey, KT10 9SD (the "Council")

WHEREAS

- (A) A deed of planning obligations dated [] was made between (1) the Council (2) Surrey County Council And (3) Jockey Club Racecourses Limited in connection with the determination at appeal of planning application reference 2019/0551 and appeal reference APP/K3605/W/20/3249790 (the "Deed of Planning Obligations");
- (B) The Owner owns the leasehold interest in land known as Sandown Golf Centre, More Lane, Esher which is registered at the Land Registry under title number SY736166 and which includes a small part the parcel identified as "Site D" in the Deed of Planning Obligations;
- (C) The Council is the local planning authority for the area in which the said Site D is situated; and
- (D) The Owner is willing to enter into those covenants under the Deed of Planning Obligations which relate to Site D so as to make them binding upon the Owner's interest in Site D as if the Owner had been an original covenanting party to the Deed of Planning Obligations;

THE OWNER HEREBY COVENANTS

- 1. This Deed of undertaking is made under section 106 of the Town and Country Planning Act 1990 so as to create planning obligations binding upon the Owner's interest in Site D which shall be enforceable without limitation of time by the Council as local planning authority;
- 2. The Owner covenants with the Council so as to bind its interest in Site D for itself and its successors in title to observe and perform those of the obligations in the Deed of Planning Obligations which are binding upon the "Racecourse Land" as that term is defined in the Deed of Planning Obligations as if the Owner were a party to the Deed of Planning Obligations.

Executed as Deed and delivered on the date above by

EXECUTED as a deed by
[CGA SANDOWN LIMITED]
acting by a director, in the presence of:

| | |
|------------|--|
| Signature | |
| Director | |
| Print name | |

Witness signature _____

Name (in BLOCK CAPITALS) _____

Address _____

SCHEDULE 6 – COMMUNITY USE AGREEMENT INDICATIVE HEADS OF TERMS

SANDOWN PARK RACECOURSE

DRAFT HEADS OF TERMS COMMUNITY USE AGREEMENT

CLAUSES

1. Recitals

2. Definition and Interpretation

| | |
|------------------------------|---|
| Chargeable Facilities | To include the Soft Play area, Café and car parking beyond a defined free stay period |
| Community Race Day | Annual community race day held at Sandown Park |
| Community Use | Use of the Community Use Facilities by the local community |
| Community Use Facilities | The outdoor and indoor recreational facilities specified in Schedule 1 |
| Community Use Period | The period during which the Community Use Facilities will be available for Community Use as set out in Schedule 2 |
| Family Enclosure | The Community Use Facilities provided and managed on race days by JCR and identified in Schedule 1 |
| Planning Permission | Outline planning permission (reference 2019/0551) and any pursuant approvals |
| Privileged Membership Scheme | A local community membership scheme as further defined in Schedule 3 |
| Review Committee | Representatives of each of the parties to this Agreement |

3. Aims and Objectives

- To provide opportunities at Sandown Park Racecourse for local families and the wider community on race days to experience horseracing and associated attractions in an affordable and accessible way.
- To provide opportunities at Sandown Park Racecourse on non-race days for the local community, including families, children and young people, to participate in a range of affordable and accessible recreational and sporting activities throughout the year.
- To generate positive attitudes to sport and physical activity by young people.
- To increase the number of people of all ages and abilities participating in sport and physical activity including people with disabilities.

4. Arrangements for Community Use

Jockey Club Racecourses (JCR) agrees to make the Family Enclosure and Community Use Facilities at Sandown Park Racecourse available in accordance with the provisions of Schedule 3 of this Agreement.

5. Marketing and Promotion

Jockey Club Racecourses will market and promote the facilities in accordance with the above aims and objectives.

6. Management

Jockey Club Racecourses:

- Shall be responsible for the provision and management of the Family Enclosure and Community Use Facilities at Sandown Racecourse and will resource and maintain them in a manner which aims to provide for their continued operation (subject to other provisions of this Agreement).

- Will insure and keep insured the Family Enclosure and Community Use Facilities against all usual commercial risks including public liability.
- Will hold an annual Community Race Day at Sandown Park Racecourse.
- Will ensure the provision of heat, light and water (as applicable) and such other amenities as required for the facilities and their intended use.
- Will ensure that the community use facilities comply with all legislation and guidance in force at the time of this Agreement relating to access for disabled users.
- Will cover the cost of gas, fuel, oil, electricity, water, rates and taxes that may be attributable to the use of the community use facilities.

7. Monitoring and Review

The Review Committee shall meet annually to discuss the community use of the facilities.

One month prior to the date of the Review Committee meeting, Jockey Club Racecourses shall make available to the Review Committee details of the proposed:

Days and hours of use
Pricing policy
Maintenance

For the following year. The Review Committee will consider how the Community Use of the Facilities can be further developed and improved. Jockey Club Racecourses shall implement all reasonable recommendations of the Review Committee as soon as reasonably practicable.

8. Duration of Agreement

This Agreement shall operate for so long as the Family Enclosure and Community Use Facilities are provided in accordance with the Planning Permission and are economically viable or as otherwise agreed with the Council. In the event that the use of the racecourse as a racecourse should cease, but where existing buildings continue to be used for conference and events business, reasonable endeavours will be made to ensure the continued operation of the community use facilities for community use.

9. Authority

Jockey Club Racecourses warrants that it has the full right and authority to enter into this agreement.

10. Variations

This Agreement may only be varied in writing by a document executed by the all of the parties hereto.

11. No Agency or legal relationship

Nothing in this Agreement shall be construed as creating a partnership, a joint venture, a contract of employment or any form of legal relationship including that of principal and agent between the parties hereto.

Severability

12. If any term condition or provision contained in this Agreement shall be held to be invalid unlawful or unenforceable to any extent such term condition or provision shall (save where it goes to the root of this Agreement) not affect the validity legality or enforceability of the remaining parts of this Agreement.

Non-Assignability

13. This agreement is personal to the parties and none of them shall assign sub-contract or otherwise deal with their rights or obligations without the prior written consent of the others (which is not to be unreasonably withheld).

SCHEDULE 1

1. The outdoor recreational areas and facilities, comprising the Family Enclosure and Community Use Facilities will be identified on a plan appended to the agreement, and shall include facilities such as the following:
 - Young children’s play area;
 - Older children’s play area;
 - Open park space; and
 - Cycle track.
2. The indoor facilities, together with any ancillary facilities (of the Family Enclosure and Community Use Facilities) will be identified on a plan appended to the agreement, and shall include facilities such as the following:
 - Family Zone Café, and
 - Soft-play area.

SCHEDULE 2

Hours of Access

Race days (Race Day Family Enclosure): During race day opening hours

Non-race days: Open most days of the year, subject to demand and racecourse operational requirements, at times to be defined. These times to be agreed by the Review Committee in advance

SCHEDULE 3

Arrangements for Family Enclosure and Community Use Facilities

Users

1. The Community Race Day shall include a JCR/resident “meet and greet” event.
2. The Community Use Facilities shall be made available for Community Use on dates to be confirmed.
3. On race days, including the Community Race Day, the Family Enclosure shall be made accessible to ticket holders to race meetings.
4. All users of the facility to adhere to a Code of Conduct and Etiquette Policy to be appended to the Agreement.
5. An agreed number of parking spaces shall be available for the sole use of visitors to the Community Use Facilities.

Pricing

1. Mechanisms to agree between the Parties appropriate pricing structures including discounts for local residents

SCHEDULE 4

Review Committee Membership

Elmbridge Borough Council: 1 representative

Name:

Position: Senior Sports Development Officer (or some other authorised person who may be appointed to this post or a post with a similar job title)

Jockey Club Racecourses: 1 representative

Name:

Position:

August 2020

SCHEDULE 7 – INDICATIVE PHASING INFORMATION

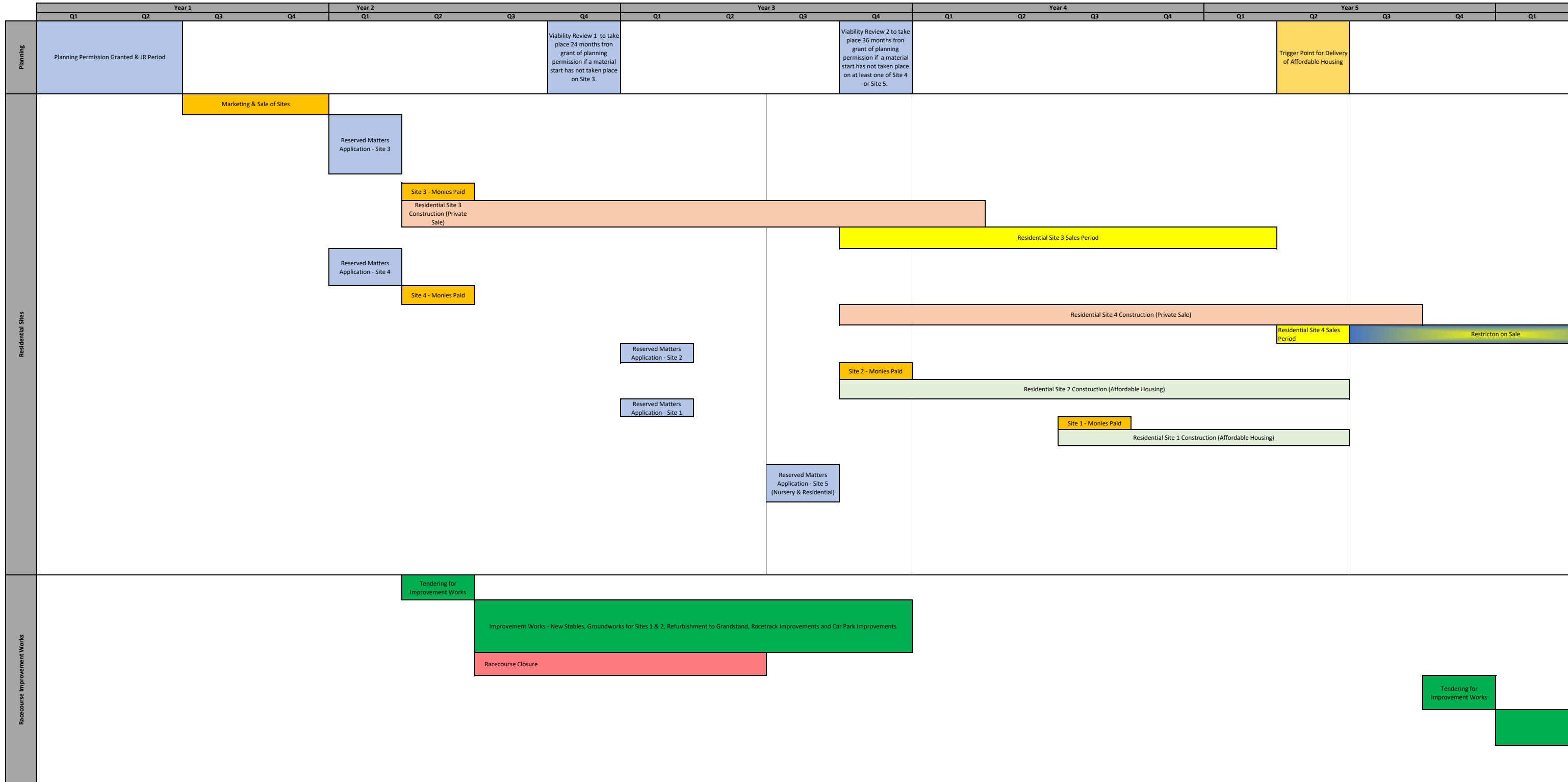
Indicative Phasing Plan

Key:

| |
|---------------------------------------|
| Planning Actions |
| Residential Construction (Private) |
| Residential Construction (Affordable) |
| Residential Sales |
| Improvement Works |
| Racecourse Closure |
| Marketing / Site Sale Information |

Indicative Delivery of Private & Affordable Housing. Trigger Point of Affordable is two-thirds through Site 4

| Site | Private Sales | Affordable | % Delivery | Tenure |
|--------------|---------------|------------|------------|------------|
| Site 3 | 114 | | 50% | Private |
| Site 4a | 13 | | | |
| Site 2 | | 49 | 100% | Affordable |
| Site 1 | | 15 | | |
| Site 4b | 59 | | | |
| Site 5 | 68 | | 50% | Private |
| Total | 254 | 64 | | |



Based on:
 Leslie Clarke construction estimates, sales rates of 6-9 units per month
 Indicative site work timescales (these need to be confirmed)

| Year 6 | | | Year 7 | | | | Year 8 | | | | Year 9 | | | | Year 10 | | | |
|--------|----|----|--------|----|----|----|--------|----|----|----|--------|----|----|----|---------|----|----|----|
| Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 |

Viability Review 3 to take place on either the sale or letting of 75% of the Market Sale Units - the 191st Market Sale Unit

Site 5 - Monies Paid

Nursery Construction

Residential Site 5 Construction

Residential Site 5 Sales Period

Realignment of internal roads, parking improvements (Site F) & new hotel

Tendering for Improvement Works

New Family Zone (Site C)



EXECUTED as a deed by
ELMBRIDGE BOROUGH COUNCIL
by affixing the Common Seal:

| |
|--|
| |
|--|

in the presence of

Authorised Signatory:

Seal No:

| |
|--|
| |
|--|

EXECUTED as a deed by
SURREY COUNTY COUNCIL
by affixing the Common Seal:

| |
|--|
| |
|--|

in the presence of:

Authorised Signatory:

Seal No:

| |
|--|
| |
|--|

EXECUTED as a deed by
**JOCKEY CLUB RACECOURSES
LIMITED**
acting by a director, in the presence of:

| | |
|-------------------|----------|
| <i>Signature</i> | |
| | Director |
| <i>Print name</i> | |

Witness signature _____

Name (in BLOCK CAPITALS) _____

Address _____
