

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 initially 20% of the total number of Residential Units or such other proportion 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 total sum of £30,000 (thirty thousand pounds) Index Linked to be applied towards the preparation and 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;

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 Work 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 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 clause 6.1 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: cil@elmbridge.gov.uk 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: tdpelmbridge@surreycc.gov.uk 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: william.gittus@thejockeyclub.co.uk 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 £10,000 (ten thousand pounds) (Index Linked) prior to Commencement of the Development; and

I.1.2 a final payment of £20,000 (twenty thousand pounds) (Index Linked) prior to First Occupation of a Residential Unit

APPENDIX – COPY UNILATERAL UNDERTAKING

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 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.

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. If the Littleworth Common Contribution (or any part of such contribution) has not been used for the stated purpose within five years of 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

SCHEDULE 7 – INDICATIVE PHASING INFORMATION

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 _____
