

Dated \_\_\_\_\_

2020

(1) **JOCKEY CLUB RACECOURSES LIMITED**

- To -

(2) **ELMBRIDGE BOROUGH COUNCIL**

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

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Mishcon de Reya LLP  
Africa House  
70 Kingsway  
London WC2B 6AH  
Phone: +44 (0)20 3321 7000  
Fax: +44 (0)20 7404 5982  
Ref: 61373.1  
Email: [anita.rivera@mishcon.com](mailto:anita.rivera@mishcon.com)

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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: [cil@elmbridge.gov.uk](mailto:cil@elmbridge.gov.uk) 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: [william.gittus@thejockeyclub.co.uk](mailto:william.gittus@thejockeyclub.co.uk) 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.

## 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.

**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 \_\_\_\_\_

\_\_\_\_\_