

DATED 14 MAY

2018

(1) SWAN HOUSING ASSOCIATION LIMITED

(3) BASILDON BOROUGH COUNCIL

CPO INDEMNITY AGREEMENT

relating to

development of part of the Craylands Estate and the
former Fryerns School Site, Basildon, Essex

I certify this to be
a true copy of the original



Basildon,
Basildon Borough Council
14/5/18

AGREEMENT

THIS AGREEMENT is made on the 14 day of MAY 2018

BETWEEN:

- (1) SWAN HOUSING ASSOCIATION LIMITED a registered social landlord (registration number L4145) and an Industrial and Provident Society (registration number 28496R) of Pilgrim House, High Street, Billericay, Essex CM12 9XY (the "Developer")
- (2) BASILDON BOROUGH COUNCIL of The Basildon Centre, St Martin's Square, Basildon, Essex SS14 1DL: (the "Council");

TOGETHER referred to as "the Parties" and "Party" shall be construed accordingly

WHEREAS:

- (1) The Council wish to secure the carrying out of the Development of the Site in accordance with the Planning Permissions or such other planning permission as may be granted for the Development or any part thereof.
- (2) The Developer wishes to carry out the Development and entered into the CDA with the former Urban Regeneration Agency (now known as Homes England) and the Council to facilitate the carrying out of the Development.
- (3) The Council is prepared to support the necessary land acquisition programme as detailed in the CDA by making and promoting a CPO under Section 226 of the 1990 Act order to secure the necessary Land Interests and facilitate the development of the Site on the basis that it is indemnified by the Developer against the CPO Costs and the costs of the Highways Orders but only insofar as any costs are incurred by the Council and necessary related consents needed to facilitate and complete the development of the Site.

1. DEFINITIONS AND INTERPRETATION

In this Agreement including the recitals the following expressions shall have the meanings respectively assigned to them as follows:

"the 1990 Act"

means the Town and Country Planning Act 1990 and any Act of Parliament for the time being in force amending or replacing the same and all regulations and orders made thereunder and any other related legislation in force from time to time;

"Advance Payment"

means a payment which the Council is lawfully required to make in respect of the Site under the provisions of sections 52 and 52A of the Land Compensation Act 1973;

"Agreed Stages"

means the stages agreed between the Council and Swan as are shown in Schedule 2.

"Blight Notice"

means a notice served under sections 150, 161 or 162 of the 1990 Act;

"CDA"

means the Comprehensive Development Agreement dated 14 November 2008 made between the former Urban Regeneration Agency the Council and the Developer and as was varied by the same parties on 13 January 2010 09 April 2013 23 September 2014 and 24 March 2017;

"CPO"

means any one or more compulsory purchase orders to be made and promoted by the Council under the provisions of section 226 of the 1990 Act to acquire any Land Interests in order to enable the development of the Site to proceed in accordance with the terms of the CDA;

"CPO Costs"

means all proper and reasonable costs of the Council relating to the promotion or administration of the CPO or arising from or in connection with the making of the CPO any Highways Orders or related consents as set out in Schedule 1 and which have been agreed by the Council with the Developer before the Agreed Stages commence or as agreed with the Developer as the Agreed Stages are underway;

"Development"

means the development by partial demolition and redevelopment to provide up to 994 new dwellings (of which up to 521 are to be net new dwellings), a local centre comprising retail units, community, education and health uses together with associated road, car parking and landscaping as set out in the application for the Planning Permissions and including any variation thereto to which Homes England and the Council have given their prior written consent;

"Expert"

means an expert appointed pursuant to clause 9;

"GVD"

means a General Vesting Declaration pursuant to the Compulsory Purchase (Vesting Declarations) Act 1981;

"Highways Orders"

means any order under the 1990 Act or the Highways Act 1980 or other similar enabling legislation for the stopping up, diversion or traffic management of any highway required for the purposes of the development of the Site;

“Homes England”

means the statutory successor to the former Homes and Communities Agency and Urban Regeneration Agency

“Land Interest”

means a freehold and/or leasehold interest registered or unregistered in or any lease or tenancy and/or any other interest in the Site or any new right created over land at or in the vicinity of the Site or any part thereof in each case being land or an interest required for the construction or use of the development of the Site except for any interest held by Homes England or the Council and **“Land Interests”** shall be construed accordingly;

“Overall Site”

means the land shown edged red on the attached Plan being the land which is the forms part of the Development;

“Plan ”

means the plan so marked and annexed hereto or such other plans as may be agreed by the Parties;

“Planning Permissions ”

means the outline planning permission (reference 06/00873/OUT) for the Overall Site, the hybrid planning permission ref (16/00898/OUT) for Phases North, South, West and Central phases and any details or reserved matters approval pursuant to it;

“Public Inquiry”

means a public inquiry called (if any) in respect of an objection to the CPO and related orders;

“Prescribed Rate”

means the rate of interest of three per cent (3%) per annum above the Base Rate from time to time of Barclays Bank plc or such other clearing bank as may be used by the Council from time to time;

“Purchase Notice”

means a notice served under section 137 of the 1990 Act;

“Secretary of State”

means the Secretary of State for Communities and Local Government and her successors in title;

“Site”

means the land together with the buildings or structures erected thereon in the vicinity of the former Fryerns School Site and the Craylands Estate, Basildon SS14 (being the land required for Phase North of the Development) as shown for identification purposes shaded blue within the land edged red on the attached Plan;

“Surveyor”

means a surveyor with a minimum of ten years practise experience being a member of the Royal Institution of Chartered Surveyors appointed by the Council and approved by the Developer;

“VAT”

means value added tax or any other tax of a similar nature;

“Working Day”

means any day (excluding Saturdays, Sundays and public holidays) on which the clearing banks are open in London to the public for normal business.

1.1 The following rules of interpretation apply to this Agreement:

1.1.1 Unless the context otherwise requires references to the singular shall include the plural and vice versa. References to persons shall include bodies corporate and vice versa and references to clauses shall be references to clauses of this Agreement unless otherwise provided.

1.1.2 Obligations undertaken by more than a single person are joint and several obligations and where more than one person is bound to an obligation or condition in this Agreement those persons are bound jointly and severally.

1.1.3 References to statutes or statutory provisions include that statute or provision as amended modified re-enacted or replaced from time to time whether before or after the date hereof and to any previous statute or statutory provision amended modified re-enacted or replaced by such statute or provision.

1.1.4 The clause and Schedule headings in this Agreement are inserted for convenience only and shall not affect the construction of the provisions to which they relate.

1.1.5 Where there is a requirement in this Agreement for a consent confirmation or approval to be given by one party to another it shall in all cases be deemed that such consent confirmation or approval shall not be unreasonably withheld or delayed.

2. THE DEVELOPER’S OBLIGATIONS

2.1 The Developer hereby agrees with the Council:

2.1.1 To indemnify the Council against the CPO costs and to make payment at the Agreed Stages or if earlier in accordance with clause 2.2.3

2.1.2 To use all reasonable endeavours to acquire all outstanding Land Interests by voluntary agreement on terms acceptable to the Developer and the Council (acting reasonably) and to keep and the Council fully informed of such negotiations in a format acceptable to and the Council including if required providing copies of relevant correspondence and documents.

2.2

2.2.1 Subject to clauses 2.2.2 and 2.2.3 the Developer will pay the CPO Costs incurred or due to be incurred by the Council by way of Agreement within 10 Working Days after receipt of a written demand provided that the Council shall be entitled to demand the payment of

any CPO Costs prior to such costs becoming due for payment provided further that the Council shall not demand any CPO Costs more than 15 Working Days prior to such costs being incurred or becoming due for payment.

2.2.2 Any demand for payment under clause 2.2.1 shall contain the following information and in the case of a Land Interest or an Advance Payment shall be certified by the Surveyor as correct and accurate:-

- A figure for the CPO Costs for which payment is sought
- A description of the work for which the payment is sought or the Advance Payment is being made or the Land Interest that is being acquired
- Confirmation that the amount being sought is fair and reasonable in relation to the work undertaken or the Advance Payment being made or the Land Interest being acquired
- Where appropriate supporting invoices (including VAT invoices)

2.2.3 In the event that the Council receives a valid request for an Advance Payment the Council shall within 10 Working Days of receipt notify the Developer and shall within a further period of 20 Working Days (if appropriate) notify the Developer of the amount of such Advance Payment the Council intends to make and the Developer shall within 20 Working Days of receiving such notification pay the requested sum to the Council. The Developer agrees that payment of an Advance Payment will be made within the requisite 3 months of receipt of a valid request for the same.

2.3 In the event that the CPO is opposed the Developer will work with the Council with the aim of securing the withdrawal of every objection and will use all reasonable endeavours to support and assist the Council at any Public Inquiry including if so requested by the Council giving evidence directly or through its professional advisers in support of the Council's Statement of Case at the Public Inquiry or subsequent appeal or challenge to any decision of that Inquiry, and providing witnesses, proofs of evidence and such other assistance as may be reasonably required by the Council.

2.4 The Developer shall make application for the Highways Orders at such time as is reasonable so as to allow the Development of the Site to proceed without undue delay and so that any objections to the Highways Orders can be dealt with at any Public Inquiry as a conjoined inquiry.

2.5 In the event that the Developer and the Council agree that the Developer shall carry out all or part of the remaining phases of the Development then the Developer shall, if required by the Council (acting reasonably), enter into one or more further agreements (as appropriate) in terms similar to those of this Agreement

OBLIGATIONS OF THE COUNCIL

2.6 In the event that the CPO is opposed the Council will work with the Developer with the aim of securing the withdrawal of every objection to it and will use all reasonable endeavours to support and assist the Council's case at any Public Inquiry including if so requested by giving evidence directly or through its professional advisers in support of Council's Statement of Case at the Public Inquiry or subsequent appeal or challenge to any decision of that Inquiry, and providing witnesses, proofs of evidence and such other assistance as

may be reasonably required in exchange for the indemnity from the Developer as contained in clause 2.1.4 of this Agreement.

3. FURTHER OBLIGATIONS OF THE COUNCIL

3.1 The Council agrees with the Developer as follows:

3.1.1 subject to the provisions of the CDA and having first obtained the written approval of the Developer to proceed diligently and expeditiously to make the CPO and submit it to the Secretary of State and to take all appropriate steps to secure as soon as practicable the confirmation of the CPO and in consultation with the Developer to carry out the implementation of the CPO in respect of all Land Interests;

3.1.2 to carry out or to procure the carrying out of the referencing of Land Interests to be compulsorily acquired by drafting and serving requisitions for information on any affected parties pursuant to s.16 of the Local Government (Miscellaneous Provisions) Act 1976 s.330 of the 1990 Act or s.5A of the Acquisition of Land Act 1981 and also to prepare the Statement of Reasons and other related procedures in order to make the CPO;

3.1.3 to consult with the Developer as to the conduct and progress of the CPO and any evidence to be adduced for any Public Inquiry and related procedures;

3.1.4 to consult with the Developer prior to the making of any GVD or serving any notice to treat pursuant to the CPO;

3.1.5 not to negotiate for or contract to purchase or acquire or become liable to acquire any Land Interest without the prior consent of the Developer except:-

(a) where a GVD has been made or a notice to treat has been served by the Council ; or

(b) as a result of the service of a Blight Notice in which case the Council will consult with and have regard to the views of the Developer on the negotiations and will not agree to more than statutory compensation in respect of such Blight Notice;

3.1.6 to notify the Developer of the service of and provide the Developer with a copy of any Blight Notice served on the Council and where requested to do so in writing by the Developer within 20 Working Days of the delivery of the copy of the Blight Notice to them to serve a counter-notice unless the Council considers that there are no grounds for the service of a counter-notice;

3.1.7 not to withdraw the CPO (except in accordance with clause 20) or otherwise exclude from the CPO any Land Interest; **provided that** the Council shall be entitled to request from the Secretary of State such amendments or variations to the CPO as it shall reasonably determine to be necessary or desirable to assist in procuring the confirmation of the CPO save that no such amendment or variation shall be made without the consent of the Developer.

4. DECLARATION OF TRUST

4.1 As soon as the Council shall become entitled to a Land Interest for which the Developer has paid the CPO Costs the Developer may have the use of that land provided that:

4.1.1 it is vested in the Council with vacant possession;

- 4.1.2 that land shall be held on trust and absolutely by the Council for the Developer and subject to the Developer not being in breach of the terms of this Agreement shall be transferred at the direction of the Developer;
- 4.1.3 the Council shall not undertake any works (other than in accordance with the CDA) to any property within any Land Interest without the prior written approval of the Developer other than in the case of an emergency;
- 4.1.4 the Council shall maintain but shall not without the consent of the Developer improve (so as to add value) any interest in land at the Site held by the Council; and
- 4.1.5 the Developer shall indemnify the Council in respect of all actions, claims, costs, expenses, damages, awards, compensations, fines, and all other liabilities howsoever and whensoever arising out of or in connection with the use of the land by the Developer prior to the land being transferred to the Developer other than those arising from the acts of negligence of the Council.

5. LANDS TRIBUNAL

- 5.1 In the event that the Surveyor is unable to agree the amount of any compensation payable in relation to a Land Interest the Council shall when it deems appropriate:-
 - (a) refer the matter to the Lands Tribunal; and
 - (b) liaise with the Developer in relation to the reference and supply to the Developer copies of all correspondence papers and documents as the Developer shall reasonably require
- 5.2 In relation to any matter referred to the Lands Tribunal as mentioned in clause 6.1 (a) or by any third party the Council shall:
 - (a) have conduct of the reference and any associated negotiations and shall keep the Developer informed of the progress of the reference **provided that** the Council shall conduct the reference and any negotiations with the objective of securing an order or settlement at the lowest reasonably achievable figure consistent with its statutory duties and responsibilities;
 - (b) liaise with and have due regard to (but shall not be bound by) the views of the Developer in connection with the preparation for the hearing of the reference;
 - (c) liaise with and have due regard to (but shall not be bound by) the views of the Developer in relation to any appeal against any decision of the Lands Tribunal.

6. LEGAL PROCEEDINGS

- 6.1 In the event that:
 - 6.1.1 the Secretary of State declines to confirm the CPO whether as to the whole or some part thereof (other than the exclusion from the CPO of some interest or right which does not materially adversely affect the carrying out of the Development); or
 - 6.1.2 a third party applies to the Court to challenge the decision of the Secretary of State;

the Council shall (in either event) consult with (but not be bound by) the Developer as to the appropriate reasonable manner in which to respond to such decision or challenge in order to facilitate the implementation of the Development but the Council's decision on this issue shall be final

6.2 If the Council decides to investigate the merits of:

(a) challenging the Secretary of State's decision; or

(b) (as the case may be) resisting such third party challenge

the Council shall as soon as reasonably practicable instruct Counsel for an opinion

6.2.2 on the merits of such action; and

6.2.3 as to the manner in which such action should be mounted

6.3 Unless Counsel advises that there is less than a 50% prospect of success by way of:

(a) an appeal to the High Court against non-confirmation or partial confirmation or an application for judicial review or other judicial remedy (whichever Counsel shall advise as being more appropriate in the circumstances); or

(b) (as the case may be) such action as Counsel shall advise as being appropriate in the circumstances to resist such third party challenge

the Council shall:

6.3.2 lodge such appeal or application for judicial review or (as the case may be) take such other action as Counsel shall advise in order to resist such third party challenge; and

6.3.3 supply copies of all relevant correspondence papers and other documents to the Developer and the Council; and

6.3.4 liaise with and have due regard to (but without being bound by) the views of the Developer and the Council as to the manner of prosecution of the relevant appeal/application/action; and

6.3.5 keep the Developer and the Council advised of the progress and result of the same.

7. COUNCIL'S STATUTORY POWERS

7.1 Nothing herein contained or implied shall prejudice or affect the rights powers duties and obligations of the Council or fetter the discretion of the Council in the exercise of its functions.

7.2 The rights powers duties obligations and discretion of the Council under all public and private statutes bye-laws orders regulations and statutory instruments may be as fully and effectually exercised in relation to the Site as if the Council had not been entered into this Agreement.

8. EXPERT DETERMINATION

8.1 Any dispute or difference arising between the Parties as to their respective rights duties and obligations in this Agreement shall (subject to the jurisdiction of the Lands Tribunal where appropriate) be determined by an independent person ("the Expert") if so required by any of the Parties by notice to the other Parties.

- 8.2 The Expert shall have been professionally qualified for not less than ten years and shall have substantial recent experience in respect of the subject matter of the dispute or difference and shall be a specialist in relation to such subject matter.
- 8.3 The Expert shall be appointed by agreement between the Parties or, failing such agreement within 10 Working Days of the notice referred to in Clause 9.1 shall be appointed on the application of any of the Parties by such one of the following persons as the Parties shall agree to be appropriate having regard to the nature of the dispute or difference in question:
- 8.3.1 the Chairman for the time being of the Bar Council;
- 8.3.2 the President for the time being of the Royal Institution of Chartered Surveyors;
- 8.3.3 the President for the time being of the Institute of Chartered Accountants in England and Wales; and
- 8.4 If within 15 Working Days after service of the notice referred to in Clause 9.1 the Parties have been unable to agree which of the persons referred to in Clause 9.3 is appropriate to appoint the Expert, the Expert will be appointed, on the application of any of the Parties by the President for the time being of the Law Society or his duly appointed deputy or any other person authorised by him to make appointments on his behalf.
- 8.5 Whenever the Expert is to be appointed under this Clause he shall act as an expert and not as an arbitrator and the following provisions shall have effect:
- 8.5.1 the Expert's decision shall be final and binding upon the Parties;
- 8.5.2 the Expert shall consider, inter alia, but shall not be bound by, any written representations on behalf of the Parties made within such time limits as he shall specify, which time limits shall be as short as he shall consider practicable in the circumstances;
- 8.5.3 the Expert shall make available to each Party copies of the other Party's representations and allow the other Party to make further written representations thereon to which Clause 9.5.2 shall apply;
- 8.5.4 upon receipt of any such representations the Expert shall forthwith inspect the relevant part of the Site if necessary and give notice of his instructions, if any, to the Parties and, if he shall so require, invite them or their advisers to attend his inspection and to make oral representations thereat;
- 8.5.5 the Expert shall as quickly as possible thereafter notify the Parties in writing of his determination of the dispute or difference referred to him;
- 8.5.6 the Parties shall use all reasonable endeavours to procure that the Expert shall give his decision with reasons as speedily as possible;
- 8.5.7 the costs of appointing the Expert and his costs and disbursements in connection with duties under this Agreement shall be shared between the Parties in such proportions as the Expert shall determine or in the absence of such determination equally between them;
- 8.6 If the Expert shall die or be or become unwilling or incapable of acting or in the reasonable opinion of any of the Parties shall delay his determination avoidable or if for any reason he shall not deliver his decision, any Party shall be entitled to apply to the President for the time being of the relevant professional institution to discharge the expert and appoint another in his place.

9. ASSIGNMENT

None of the Developer or the Council shall assign or transfer or purport to assign or transfer any of their respective rights or obligations hereunder without the prior written consent of the other Parties.

10. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties and supersedes any prior understanding and/or agreement between the Parties respecting the subject matter of this Agreement. There are no representations agreements arrangements or understandings implied and/or written between the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

11. GOOD FAITH

The Parties hereby acknowledge a duty of good faith to each other in relation to all matters arising under this Agreement.

12. VAT

All sums payable or deemed to be payable under this Agreement which may be subject to VAT are tax exclusive sums and (subject to the receipt by the paying party of a valid VAT invoice) VAT is payable in addition to such sums.

13. INTEREST

If payment due to the Council under this Agreement is not made on the due date the Developer shall pay to the Council interest at the Prescribed Rate on such sums from the date they were incurred until the date of payment.

14. EXCLUSION OF THIRD PARTY RIGHTS

Each Party confirms that no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

15. CONTINUANCE OF AGREEMENT

Notwithstanding the completion of any of the transfers of land envisaged by this Agreement this Agreement shall remain in full force and effect in relation to anything remaining to be done performed or observed hereunder on the part of any of the Parties.

16. CONFIDENTIALITY

None of the Parties shall without the prior written consent of the others disclose or publish or permit or cause disclosure of any financial details whatsoever relating to the transaction hereby effected save only for:

- 16.1 any particular extracts or details which must be the subject of disclosure by a Party in order to comply with any binding Stock Exchange or statutory requirements or the lawful requirements of any regulatory bodies;
- 16.2 any details given to professional advisers and such employees and committee members of each of the Parties who need to know such details:
- for the purpose of enforcing rights;
 - for the purpose of obtaining funding;
 - for the purpose of giving advice;
 - in order to discharge their duties;
 - otherwise as required by law;
- 16.3 matters then already within the public domain;
- 16.4 this clause shall remain in effect until the satisfaction of all the obligations on the Parties under this Agreement; and
- 16.5 this clause shall not apply to the confidential disclosure by or on behalf of any of the Parties to any third party and/or its professional advisers in pursuance of bona fide negotiations relating to any permitted dealing by the relevant Party with its interest in any part of the Site, nor to a disclosure which the Council is required by law to make by way of report in the administration of the Council business or governance.

17. NOTICES

17.1 All notices and other communications required or permitted to be given hereunder shall be given in writing as follows:

17.1.1 To the Developer: at Pilgrim House, High Street, Billericay, Essex CM12 9XY

Attention: Luke Riley

 Fax Number: []

17.1.2 To the Council: at The Basildon Centre, St Martin's Square, Basildon, Essex SS14 1DL

Attention: Rab Fallon, Corporate Specialist, New Business Initiatives

Fax Number: 01268 294518

or in each case at such other address or place as such party may subsequently designate in writing.

17.2 Any notice sent by post shall be deemed (in the absence of evidence or receipt) to have been delivered two days after despatch and in proving the fact of despatch it shall be

sufficient to show that the envelope containing such notice was properly addressed and posted.

- 17.3 Any notice delivered personally or sent by facsimile or electronic transmission shall be deemed to have been delivered on the day of its despatch if transmitted during or prior to business hours but otherwise on the next Working Day thereafter.

18. NO PARTNERSHIP

This Agreement does not create, and shall not in any circumstances create, or be deemed to create, a legal partnership between the Parties.

19. CESSATION

19.1 Where:

- 19.1.1 there is a specific and material change in government policy which substantially prevents the proposed Development and the acquisition of the Land Interests; or
- 19.1.2 the CPO is not confirmed; or
- 19.1.3 the CPO is confirmed with modifications which in the opinion of either the Council or the Developer (having obtained a leading Counsel's opinion to that effect) have the effect that the primary objective of the CPO cannot be substantially achieved

either the Council or the Developer may give 6 months written notice to the other Parties after which time this Agreement shall cease to have effect

19.2 Where either the Council or the Developer has served a notice in accordance with clause 20.1 above:

- 19.2.1 the Developer shall (subject to the terms hereof) remain liable for any CPO costs incurred by the Council or the Council up to the date of the notice referred to in clause 20.1; and
- 19.2.2 This Agreement shall cease to have effect forthwith on written confirmation from the Council that the obligations under this Agreement have been discharged

19.3 This Agreement shall also cease to have effect in the event of the termination of the CDA in which case the Developer shall remain liable for any CPO Costs incurred by the Council up to the date of such termination.

IN WITNESS of which the Parties to this Agreement have executed it on the day and year first above written.

SCHEDULE 1

CPO COSTS

The following are the costs covered by the CPO Costs

1. The purchase price or any compensation for any Land Interest which the Council resolves to acquire and subsequently acquires with the agreement of the Developer or is required to purchase or otherwise acquire in connection with the Development as a result of any valid Blight Notice or any valid Purchase Notice.
2. Any payment under the Compulsory Purchase Act 1965 or the Land Compensation Acts 1961 and 1973 or any statutory amendment or modification thereof made as a result of the acquisition of any Land Interest or the displacement of any occupier from a property within the Site or as a result of the Highways or related Orders.
3. Any statutory interest payable and paid in connection with any sums paid hereunder including without prejudice to the generality of the foregoing interest which may be payable and paid by virtue of the Council taking possession of any land or interest referred to in paragraphs 1 and 2 of this Schedule before the amount of any payment payable under the said paragraphs has been agreed.
4. The Council's reasonable and proper internal and external costs including legal and surveying and other professional costs (including the costs of the Council's Solicitors) in connection with any litigation or legal challenge in relation to the CPO (other than any arising solely from negligence of the Council) which may be commenced after the expiry of 6 weeks following publication of notice of confirmation of the CPO.
5. The fees costs and expenses of the Surveyor.
6. The costs of any GVD or Notice to Treat or Notice of Entry or of implementing the Sheriff's warrant procedure and any other procedures necessary to secure possession.
7. Any legal valuation or other expenses which the Council is required to pay to an owner of any interest in any part of the Site in connection with the negotiation of compensation or the transfer of title.
8. All disturbance and other costs and home or other loss payments to which any owner or occupier is entitled or which the Council has agreed to pay to a displaced occupier pursuant to s.32 of the Land Compensation Act 1973 and is paid as a result of service of a Blight Notice Purchase Notice or notice to treat the making of a GVD or the taking of possession of the Site or any part thereof.
9. Compensation (including any payment for disturbance severance or injurious affection for any interest acquired by the Council) and any additional compensation to the Council is required to pay in respect of all or any part of the Site as the result of the severance of land in common ownership the cost of accommodation works the Council is required to carry out as a result of the CPO in respect of land not included in the CPO and not otherwise acquired by the Council for the development of the Site and any compensation payable under Part II of the Landlord and Tenant Act 1954.

10. Any Advance Payment which the Council is required to make in respect of all or any part of the Site under the provisions of Sections 52 and 52A of the Land Compensation Act 1973.
11. Any compensation payable pursuant to the provisions of Section 10 of the Compulsory Purchase Act 1965 or Sections 236, 237 or 250 of the Town and Country Planning Act 1990, or if repealed, such other act currently in force.
12. Any payments made by the Council under Parts I and II of the Land Compensation Act 1973 arising from the carrying out or use of the development of the Site or any public works (as defined in Section 1(3) of the said Act) necessitated by and undertaken in consequence of such development.
13. Any expenses properly incurred by the Council pursuant to the provisions of Sections 39-43 of the Land Compensation Act 1973 arising from the development of the Site.
14. Stamp duty land tax and Land Registry fees arising out of the purchase of any interest in any part of the Site and other costs necessarily incurred in the promotion and/or implementation of the CPO, Highways Orders or related consents.
15. Any monies awarded to a person interested in any part of the Site as a result of any reference to the Lands Tribunal and any costs awarded to such person by the Lands Tribunal and the costs of the Council in connection with any reference to the Lands Tribunal or any litigation arising therefrom.
16. A sum or sums equal to any VAT which is paid by the Council (for whatever reasons and whether directly or indirectly) in respect of any of the CPO Costs as set out in this Schedule (whether or not the same consist of consideration for a supply of goods or services to the Council) which is not recoverable by the Council from HM Revenue and Customs.
17. Any associated costs and sums payable by the Council in connection with a transfer under clause 4.1.2 or maintenance and repairs under clause 4.1.4 hereof.
18. All of the Council's reasonable and proper internal and external costs, expenses and professional fees (including but not limited to the costs of the Council's Solicitors and Surveyors) in connection with providing support and assistance to either the Council or the Developer in pursuing and obtaining the CPO and securing the withdrawal of objections to it including (but not limited to) support and assistance at any Public Inquiry or subsequent appeal or challenge to any decision of that Public Inquiry together with any such other assistance as may be reasonably required by the Council.
19. All costs covered under this Schedule include any retrospective costs, expenses or professional fees relating to the Site and incurred prior to the date of this Agreement which have previously been agreed by both parties.

SCHEDULE 2

AGREED STAGES

- i) Stage 1 - Making of Resolutions by the Council's Cabinet to make a CPO for any Land Interest.
- ii) Stage 2 – Completion of the Land Referencing Process (with Swan being provided with details of the proposed Land Interests) and the making and publishing of the CPO
- iii) Stage 3 – After any public inquiry or conclusion of written representations procedure or following any legal challenges to the CPO
- iv) Stage 4 following the completion of each reference to the Upper Tribunal (Lands Chamber) or the other determination or agreement of any compensation or other such payment in respect of a Land Interest
- v) Stage 5 – Following the vesting of any Land Interest (not by then acquired) in the Council
- vi) Stage 6 any remaining CPO Cost not covered above

Executed as a deed by SWAN HOUSING)
ASSOCIATION LIMITED)
in the presence of:)

Director

Director/Secretary

The COMMON SEAL of BASILDON BOROUGH)
COUNCIL was hereunto affixed by Order)

Sheld

Solicitor to the Council

Assistant
Solicitor to the Council





HITMORE WAY

Debi
Assistant
Solicitor to the Council



Planning Application Boundary
CPO Boundary



Notes

Revisions

Revisions

Revisions

Revisions

DRAFT ISSUE	
Issue No.	1
Date	12/11/2011
Author	Debi
Checked by	
Approved by	
Scale	1:1000
Sheet No.	1 of 1