

THIS DEED OF UNILATERAL UNDERTAKING is made the 18 day of January 2021

1. BY

- 1.1 **TESCO STORES LIMITED** (Company Registration Number **519500**) of Tesco House, Shire Park, Kestrel Way, Welwyn Garden City AL7 1GA (“**Tesco**”); and
- 1.2 **REDROW HOMES LIMITED** (Company Registration No. **01990710**) of Redrow House, St David’s Park, Flintshire, CH5 3RX (the “**Developer**”)

To

- 1.3 **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF MERTON** of Merton Civic Centre London Road Morden Surrey SM4 5DX (the “**Council**”);

2. RECITALS

- 2.1. The Council is the local planning authority for the purposes of the Act for the Land and the highway authority for the purposes of the Highways Act 1980.
- 2.2. Tesco is registered at the Land Registry as the proprietor of the freehold interest in the Land which is registered under title numbers SGL429015 and SGL487650.
- 2.3. The Developer entered into a conditional contract with Tesco on 5 February 2019 for the grant of the Lease which is registered on Tesco’s freehold titles by way of a unilateral notice.
- 2.4. At its meeting on 13 February 2020, the Council’s Planning Committee resolved to refuse the planning permission (“the Refusal”) and the Developer appealed to the Secretary of State against the Refusal.
- 2.5. Tesco and the Developer have entered into this Deed to regulate the Development in the event that Planning Permission is granted pursuant to the Appeal.
- 2.6. This Undertaking contains planning obligations made pursuant to section 106 of the Act and Tesco and the Developer are satisfied that the obligations in this Undertaking are compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010.

3. DEFINITIONS

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

“ Act ”	means the Town and Country Planning Act 1990 (as amended);
“ Accredited Car Club Provider ”	means an organisation accredited in the United Kingdom by COMOUK which provides cars for use by members of a Car Club in consideration of payment therefor;
“ Additional Affordable Housing Scheme ”	means a scheme to be prepared by the Owner and submitted to the Council in accordance with Schedule 1 detailing the Additional Affordable Housing Units to be provided and which: (a) confirms which Open Market Housing Units are to be converted into Additional Affordable Housing Units and

	<p>to which tenure(s);</p> <p>(b) contains 1:50 plans showing the location, size and internal layout of each Additional Affordable Housing Unit;</p> <p>(c) provides an indicative timetable for construction and delivery of the Additional Affordable Housing Units;</p> <p>(d) sets out the amount (if any) of any financial contribution also payable towards offsite Affordable Housing if paragraph 5.5 of Schedule 1 applies;</p>
“Additional Affordable Housing Units”	means the Open Market Housing Units to be converted to Affordable Housing pursuant to the Additional Affordable Housing Scheme to be approved under paragraph 6 of Schedule 1;
“Affordable Housing”	<p>means London Affordable Rented Housing and London Shared Ownership Housing provided to Eligible Households whose needs are not met by the market and which housing should:</p> <p>(a) meet the needs of Eligible Purchasers or renters including availability at a cost low enough for them to afford, determined with regard to local incomes and local housing prices, and</p> <p>(b) include provision for the home to remain at an affordable price for future Eligible Households, or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision within Greater London (as defined in section 2 of the London Government Act 1963);</p>
“Affordable Housing Cap”	means a policy compliant amount of Affordable Housing being 50 per cent of Habitable Rooms within the Development;
“Affordable Housing Units”	means the one hundred and forty three (143) units of Affordable Housing for the Development comprising the London Affordable Rented Units and London Shared Ownership Housing Units;
“Air Quality Impact Contribution”	means the sum of nine thousand pounds (£9,000) Indexed towards the Air Quality Impact Purpose;
“Air Quality Impact Officer”	means the person appointed or employed by the Council to implement and monitor the Council’s Air Quality Action Plan;
“Air Quality Impact Purpose”	means in relation to the Air Quality Impact Contribution towards the Council’s Air Quality Action Plan;
“Air Quality Impact Service Contribution”	means the sum of twenty two thousand pounds (£22,000) Indexed towards the Air Quality Impact Service Purpose;
“Air Quality Impact	means in relation to the Air Quality Impact Service Contribution towards the employment of a dedicated Air Quality Impact

Service Purpose”	Officer over an 18 month period;
“Alternative Northern Boundary Landscaping Scheme”	means the alternative landscaping scheme for the northern boundary for the Land shown coloured green on Plan 2 which the Owner shall submit to the Council for approval pursuant to paragraph 11 of Schedule 1;
“Alternative Use Application”	means a planning application for the change of use of the Alternative Use Areas to be submitted by the Owner to the Council for additional commercial and retail uses (Class E of the Use Classes Order 1987 as amended unless otherwise agreed with the Council) at the Development to provide alternative frontage to the ground floor western elevation of the Development;
“Alternative Use Areas”	means those areas edged red on Plan 4;
“Alternative Use Marketing Strategy”	means a strategy to be approved by the Council for the intensive marketing of the Alternative Use Areas such marketing strategy to include but not be limited to details of: <ul style="list-style-type: none"> • the proposed lease to include but not be limited to proposed rent, floor space size, lease term and incentives; • the geographical location in which it is proposed to market; • the rent to be charged (which for the avoidance of doubt shall be the open market rent); • who will be undertaking the marketing exercise and where it will be published; and • the proposed marketing period
“Alternative Use Permission”	means the planning permission issued by the Council pursuant to the Alternative Use Application;
“ANB Landscaping Approval Date”	means the date the Council issues to the Owner written approval of the Alternative Northern Boundary Landscaping Scheme in accordance with paragraph 11 of Schedule 1;
“ANB Landscaping Notice”	means a notice to be served by the Council upon the Owner in accordance with the provisions of paragraph 11 of Schedule 1 which shall confirm that the Council has granted the Site RP3 Permission and that the Alternative Northern Boundary Landscaping Scheme is to be delivered;
“Appeal”	means a planning appeal under section 78 of the Act submitted in respect of the Refusal of the Application and given the reference APP/T5720/W/20/3250440 by the Planning Inspectorate to be determined by a Planning Inspector appointed by the Secretary of State;

“Appeal Decision Letter”	the decision letter to be issued by the Planning Inspector allowing the Appeal;
“Application”	means the planning application submitted to the Council (and allocated reference 19/P2387) for the Development
“Average Intermediate Housing Value”	means the average value of London Shared Ownership Housing floorspace per square metre at the relevant Review Date based on the relevant information provided to establish the Estimated GDV to be assessed by the Council and the Owner;
“Average Low Cost Rent Housing Value”	means the average value of London Affordable Rented Housing floorspace per square metre at the Review Date based on the relevant information provided to establish the Estimated GDV to be assessed by the Council and the Owner;
“Average Open Market Housing Value”	means the average value of Open Market Housing Unit floorspace per square metre on the Land at the Review Date based on the relevant information provided to establish the Estimated GDV to be assessed by the Council and the Owner;
“Build Costs”	<p>means the build costs comprising construction of the Development attributable to the Open Market Housing Units supported by evidence of these costs to the Council’s reasonable satisfaction including but not limited to:</p> <ul style="list-style-type: none"> (a) details of payments made or agreed to be paid in the relevant building contract; (b) receipted invoices; (c) costs certified by the Owner’s quantity surveyor, costs consultant or agent, <p>but for the avoidance of doubt build costs exclude:</p> <ul style="list-style-type: none"> (i) professional, finance, legal and marketing costs; and (ii) all internal costs of the Owner including but not limited to project management costs, overheads and administration expenses;
“Building Regulation”	means the set standards for the design and construction of buildings pursuant to the Building Regulations 2015;
“Bus Capacity Enhancements Contribution”	means the sum of four hundred and fifty thousand pounds (£450,000) Indexed towards the Bus Capacity Enhancements Purpose;
“Bus Capacity Enhancements Purpose”	means in relation to Bus Capacity Enhancements Contribution towards additional capacity for Bus route 131 by providing an extra journey in each peak period;

“Business Operator”	means a person or company operating a business from the Business Units;
“Business Parking Bay”	means a marked highway parking space designated by the Council by order under the Road Traffic Regulation Act 1984 the Road Traffic Regulations (Parking) Act 1986 the Parking Act 1989 or the Road Traffic Act 1991 (or other relevant legislation) for use by residents of the locality on which the Development is situated;
“Business Parking Permit”	means a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing a Motor Vehicle to park in a Business Parking Bay;
“Business Units”	means a business unit comprised in the Development being within the Business Use Area together with amenity space or a right to use the same (whether in common or not with others provided therewith) defined within the Use Classes Order;
“Business Use Area”	means that part of the Development measuring 499sqm provided at ground floor level designated as Class E use, as defined within the Use Classes Order or such other use permitted by the Planning Permission;
“Car Club”	means a car club operating and managed by an Accredited Car Club Provider in the vicinity of the Land which enables its members to have access to or share facilities of a private car on a short term basis as and when required subject to availability and which is made available to all residents who wish to become members of the scheme;
“Carbon Emissions Offset Contribution”	means the sum calculated in accordance with the Carbon Emissions Offset Contribution Formula as taken from the Sustainable Design and Construction SPG (2014) and being the sum of six hundred and fifty one thousand and sixty pounds (£651,060) Indexed towards the Carbon Emissions Offset Purpose;
“Carbon Emissions Offset Purpose”	means in relation to the Carbon Emissions Offset Contribution either: (a) carbon offset fund (to be subsequently awarded in accordance with the S.106 pooling restrictions); or (b) behavioural change / energy monitoring and non-infrastructure based projects;
“Challenge”	means the Planning Permission being the subject of statutory challenge proceedings pursuant to section 288 of the Act;
“Chargee”	means any mortgagee or chargee of the Registered Provider of the Affordable Housing Units or the Additional Affordable Housing Units (or any number of them) and any receiver (including an administrative receiver) and manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee

	or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator;
“Commencement of Development”	<p>means the earliest date upon which a material operation comprised in the Development is begun as defined by section 56(4) of the Act but for the purpose of this Deed excluding the following:</p> <ul style="list-style-type: none"> (a) demolition works; (b) archaeological works; (c) site surveys including bore holes; (d) site preparation; (e) environmental preparatory works; (f) the erection of fencing to enclose the Development or any part of the Development; (g) the laying out of temporary access roads for construction purposes; (h) the erection of temporary site buildings for construction purposes; (i) contamination tests; (j) remediation or trial pits; (k) works of decontamination; (l) remediation; and (m) the Tesco Car Park Works <p>(and “Commence the Development” and “Commenced” shall be construed accordingly);</p>
“Contributions”	means the Air Quality Impact Contribution, the Air Quality Impact Service Contribution, the Bus Capacity Enhancements Contribution, the Carbon Emissions Offset Contribution, the CPZ Contribution, the Pedestrian Crossing Facility and Junction Improvement Contribution and the Pedestrian, Cycle Infrastructure Contribution and the Play Space Contribution together towards the Purposes;
“CPZ”	means an area where the Council introduces restrictions on parking on the highway during certain times of the day or week for non-permit holders on the highway that abuts the Land;
“CPZ Consultation”	means a consultation to review the establishment of a CPZ covering Claremont Avenue, Cavendish Avenue, Belmont Avenue, Seaforth Link and those roads over the level crossing;

“CPZ Contribution”	means the sum of forty thousand pounds (£40,000) Indexed towards the CPZ Purpose;
“CPZ Implementation”	the implementation by the Council of any necessary changes arising from the findings of the CPZ Consultation;
“CPZ Purpose”	means in relation to the CPZ Contribution towards: <ul style="list-style-type: none"> (a) the CPZ Consultation; and (b) the CPZ Implementation in the event that the CPZ Consultation results find that the majority of respondents are in favour of changes to the CPZ hours and the Council’s Planning Committee formally passes a resolution to implement the changes within the CPZ;
“Deed of Nomination Rights”	means a deed substantially in the form of the draft attached at Schedule 2 to be made between the Council and the Registered Provider and under which the Council shall be entitled to nominate prospective tenants or occupiers for all the London Affordable Rented Units as and when they become available for occupation;
“Development”	means the development of the Land as set out in the Planning Permission;
“Development Viability Information”	means the information required by Formula 1a and Formula 2 being: <ul style="list-style-type: none"> (a) Estimated GDV; (b) Estimated Build Costs; (c) Average Open Market Housing Value; (d) Average Low Cost Rent Housing Value; and (e) Average Intermediate Housing Value; and including in each case supporting evidence to the Council’s reasonable satisfaction;
“Disabled Persons Badge”	means a disabled person’s badge issued pursuant to Section 21 of the Chronically Sick and Disabled Person’s Act 1970;
“Eligible Households”	means: <ul style="list-style-type: none"> (a) a Person or Persons with a Local Connection; or (b) a Person or Persons with a South West Sub-Region Connection who is in need of Affordable Housing and where relevant to a London Shared Ownership Units is also an Eligible Purchaser;
“Eligible Purchaser”	means a purchaser or purchasers whose Household Income at the date of purchasing the relevant London Shared Ownership Unit does not exceed the relevant upper limit specified in the

	latest London Plan Annual Monitoring Report such amount at the date of this Agreement being £90,000;
“Emerging Local Plan”	means the Council’s emerging local plan titled “Local Plan 2020” which is anticipated to be adopted in 2020 as consulted upon between 31 October 2018 and 28 January 2019 in which Site RP3 is proposed to be allocated for redevelopment;
“Estimated Build Costs”	means the sum of: (a) the estimated Build Costs remaining to be incurred at the Review Date; and (b) the actual Build Costs incurred at the Review Date;
“Estimated GDV”	means the price at which a sale of the Open Market Housing Units would have been completed unconditionally for cash consideration on the date of the submission of the Development Viability Information pursuant to paragraph 4 of Schedule 1 based on detailed comparable market evidence to be assessed by the Council and assuming: (a) a willing seller and a willing buyer; (b) that, prior to the date of valuation, there has been a reasonable period of not less than six months for the proper marketing of the interest (having regard to the nature of the property and the state of the market) for the agreement of the price and terms and for the completion of the sale; (c) that no account is taken of any additional bid by a prospective purchaser with a special interest; and (d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion;
“External Consultant”	means the external consultant(s) appointed by the Council to assess the information submitted pursuant to paragraph 4 of Schedule 1;
“First Occupation”	means the first Occupation of a specified part of the Development for the purposes permitted by the Planning Permission and references to “First Occupy” and “First Occupied” shall be construed accordingly;
“Formula 1a”	means the formula identified as “Formula 1a” within Annex 1 to this Deed;
“Formula 2”	means the formula identified as “Formula 2” within Annex 1 to this Deed;
“Framework Residential Travel Plan”	means the framework travel plan dated May 2019 as prepared by Mott McDonald in respect of the Development and submitted with the Application;

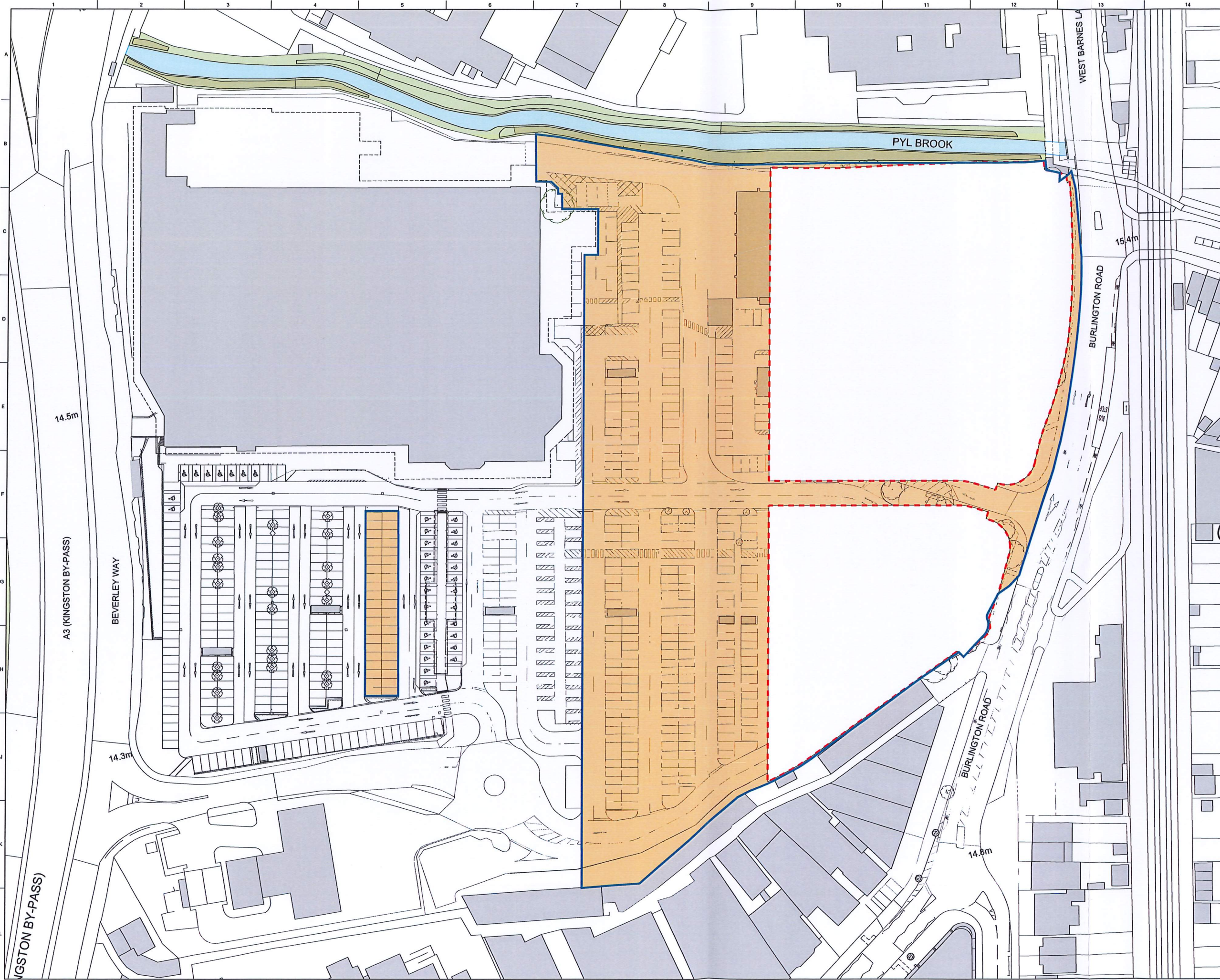
“GLA”	means the Greater London Authority or any successor in statutory function;
“Habitable Room”	means a room of a Residential Unit the intended purpose for which is for sleeping, living or dining and includes: (a) a living room; (b) a dining room; (c) a bedroom; and (d) separate kitchens of 13 square metres or more and “Habitable Rooms” shall be construed accordingly
“Head of Sustainable Communities”	means the person the Council shall appoint for the time being (and from time to time) as Head of Department responsible for planning services and “HSC” shall be construed accordingly;
“Highway Works Agreement”	means an agreement pursuant to s278 of the Highways Act 1980 to be entered into by the Owner and the Council (and TfL if necessary) for accessibility improvements for the following three bus stops: (a) Stop R (no. 9154) – Cavendish Road (b) Stop C (no. 9155) – Burlington Road/Shannon (c) Stop E (no. 27392) – West Barnes Level such works to be confined to land within the public highway and be limited to extension of bus cage road markings, upgrade to bus shelters and relocation of bus shelter, bus stop and in the case of Stop E relocation of the Council lamp column
“Household”	means, in relation to a person "A", A and all other persons who would, after purchasing a London Shared Ownership Housing Unit or share that London Shared Ownership Housing Unit with A and one another as the only or main residence of both A and such other persons;
“Household Income”	means: (a) in relation to a single Eligible Purchaser, the gross annual income of that Eligible Purchaser's Household; and (b) in relation to joint Eligible Purchasers the combined gross annual incomes of those Eligible Purchasers' Households;
“Indexation”	means in accordance with the formula whereby the relevant contribution is multiplied by the fraction A divided by B where B represents the value of the Retail Prices Index (All Items) as at the date of this Deed and A represents the value of the same index as at the date of payment of the relevant contribution to the Council;
“Land”	Means the land and property at 265 Burlington Road, New Malden, KT3 4NE registered at the Land Registry under title numbers SGL429015 and SGL487650 as edged red on the

	attached plan;
"Lease"	means the long lease of the Land granted by Tesco to the Developer for a term of 999 years;
"Local Plan"	means the Emerging Local Plan once adopted as the Council's planning policy;
"London Affordable Rent Housing"	<p>means rented housing provided by a Registered Provider that has the same characteristics as Social Rented Housing except that it is not required to be let at Target Rents but is subject to other rent controls that require it to be offered to eligible households in accordance with Part VI of the Housing Act 1996 at a rent that is:</p> <p>(a) including Service Charges, up to 80 per cent of local market rents; and</p> <p>(b) excluding Service Charges, no higher than the benchmark rents published by the GLA annually in accordance with the Mayor's Funding Guidance and updated annually in the London Plan Annual Monitoring Report ;</p>
"London Affordable Rented Units"	means eighty five (85) Affordable Housing Units which are to be delivered as London Affordable Rent Housing;
"London Boroughs"	means the London Boroughs of Croydon, Kingston, Lambeth, Merton, Richmond, Sutton and Wandsworth;
"London Plan Annual Monitoring Report"	means the monitoring report published annually by the Mayor of London reviewing the progress being made in implementing the policies and addressing the objectives of the London Plan or any replacement GLA guidance or policy;
"London Shared Ownership Housing"	means housing offered to Eligible Purchasers to be occupied partly for rent and partly by way of owner occupation on shared ownership arrangements as defined in section 70(4) of the Housing and Regeneration Act 2008 (or any amended or replacement provision) where the shared ownership lessee for the time being has the right to carry out Staircasing and dispose of the unit on the open market and on the basis that average annual housing costs, including Service Charges and mortgage payments (assuming reasonable interest rates and deposit requirements) must not exceed 28 per cent of the relevant annual gross income upper limit (such 28 per cent being equivalent to 40 per cent of net income, with net income being assumed to be 70 per cent of gross income) specified in the London Plan Annual Monitoring Report and "London Shared Ownership Lessee" shall be construed accordingly;
"London Shared Ownership Units"	means the fifty eight (58) Affordable Housing Units which are to be delivered as London Shared Ownership Housing and the term "Shared Ownership Unit" shall be construed accordingly;

“Management Monitoring Fee”	means the sum of thirty three thousand five hundred and fifty pounds and fifty three pence (£33,550.53) the Council’s proper and reasonable fees for monitoring the planning obligations in this Deed;
“Mayor’s Funding Guidance”	means “Homes for Londoners: Affordable Homes Programme 2016-21 Funding Guidance” published by the Mayor of London in November 2016 or any update or replacement guidance;
“Motor Vehicle”	means any mechanically propelled vehicles including electric vehicles intended or adapted for use on a road and / or highway;
“Occupy”	means beneficially occupy but not including occupation by persons engaged in construction fitting out or decoration or occupation as a showroom or sales office for advertising marketing or display purposes or occupation in relation to site security and management of the Land and not including occupation of the Tesco Car Park (and “Occupied” and “Occupation” shall be construed accordingly);
“Open Market Housing Units”	means the three hundred and thirteen (313) Residential Units which are to be sold or let on the open market and which are not Affordable Housing Units and the term “Open Market Housing Unit” shall be construed accordingly;
“Owner”	means Tesco unless and until a Lease is granted to the Developer, from which date of the Lease means the Developer;
“Pedestrian Crossing Facility and Junction Improvement Contribution”	means the sum of one hundred thousand pounds (£100,000) towards the Pedestrian Crossing Facility and Junction Improvement Contribution Purpose;
“Pedestrian Crossing Facility and Junction Improvement Contribution Purpose”	means in relation to the Pedestrian Crossing Facility and Junction Improvement Contribution towards the provision of pedestrian crossing facility and junction improvements at the Burlington Road/Claremont Avenue junction;
“Pedestrian and Cycle Infrastructure Contribution”	means the sum of one hundred and fifty thousand pounds (£150,000) towards the Pedestrian and Cycle Infrastructure Contribution Purpose;
“Pedestrian and Cycle Infrastructure Contribution Purpose”	means in relation to the Pedestrian and Cycle Infrastructure Contribution towards improving pedestrian and cycle infrastructure in the surrounding area of the Land;
“Person”	means a body of persons corporate or unincorporated;
“Person or Persons with a Local Connection”	means :- (a) a person or persons who immediately prior to taking up

	<p>occupation of a London Shared Ownership Unit:</p> <p>(i) was resident within Merton; or</p> <p>(ii) was employed within the Merton; or</p> <p>(iii) had one or more parent children brothers or sisters resident in Merton; or</p> <p>(b) a person or persons who were resident in Merton for a minimum of one year up to and including the date of their application or the date on which a decision is made on their application whichever is later; or</p> <p>(c) a person or persons detained in an institution or hospital who lived in Merton continuously for a minimum of one year prior to entering institution or hospital; or</p> <p>(d) a person or persons in the HM Armed Forces serving or having left services in the last 5 years;</p>
"Person or Persons with a South West Sub-Region Connection"	<p>means:-</p> <p>(a) a person or persons who immediately prior to taking up occupation of a London Shared Ownership Unit:</p> <p>(i) was resident within the London Boroughs; or</p> <p>(ii) was employed within the London Boroughs; or</p> <p>(iii) had one or more parent children brothers or sisters resident in the London Boroughs; or</p> <p>(b) a person or persons who were resident in the London Boroughs during at least six months in the period of twelve months expiring on the date on which that person or persons takes up occupation of a London Shared Ownership Unit; or</p> <p>(c) a person or persons who were resident in the London Boroughs during at least three years in the period of five years expiring on the date on which that person or persons takes up occupation of a London Shared Ownership Unit;</p>
"Petition"	<p>means a petition by residents living in Claremont Avenue, Cavendish Avenue, Belmont Avenue, Seaforth Avenue and Linkway requesting that the Council conducts a CPZ Consultation;</p>
"Petition Notification"	<p>means a written notification by the HSC to the Owner confirming receipt of the Petition;</p>
"Plan 1"	<p>means the plan identifying the Land and the Tesco Car Park attached hereto and marked "Plan 1";</p>

“Plan 2”	means the plan identifying the part of the Land subject to the Alternative Northern Boundary Landscaping Scheme attached hereto and marked “Plan 2”;
“Plan 3”	means the plan identifying Site RP3 attached hereto and marked “Plan 3”;
“Plan 4”	means the plan identifying the Alternative Use Areas attached hereto and marked “Plan 4”;
“Planning Inspector”	means a planning inspector appointed by the Secretary of State to determine the Appeal;
“Planning Permission”	means planning permission for the Development to be granted pursuant to the Appeal Decision Letter;
“Play Space Contribution”	means the sum of twenty four thousand six hundred pounds (£24,600) towards the Play Space Contribution Purpose;
“Play Space Contribution Purpose”	means in relation to the Play Space Contribution towards the provision of play space provision within the administrative area of the Council;
“Practical Completion”	means the practical completion of the Affordable Housing Units (excluding any snagging or other smaller items of work ordinarily falling to be completed by a contractor after the issue of a certificate of practical completion under a building contract) as evidenced by a certificate issued by the Owner’s architect project manager or other professional (and “Practically Completed” shall be construed accordingly);
“Purposes”	means in relation to the Contributions the Air Quality Impact Purpose , the Air Quality Impact Service Purpose, the Bus Capacity Enhancements Purpose, the Carbon Emissions Offset Purpose, the CPZ Purpose, the Pedestrian Crossing Facility and Junction Improvement Contribution Purpose the Pedestrian and Cycle Infrastructure Contribution Purpose and the Play Space Contribution Purpose;
“Registered Provider”	<p>means:</p> <ul style="list-style-type: none"> (a) a provider of Affordable Housing registered under section 111 of the Housing and Regeneration Act 2008 (or such other relevant previous or amended or replacement statutory provision); (b) an approved development partner of Homes England (or any successor agency) which is eligible to obtain grant funding; or (c) any other body specialising in the provision of Affordable Housing; <p>in each case either nominated or approved by the Council (such approval not to be unreasonably withheld or delayed);</p>



CLIENT
REDROW HOMES LTD

STRUCTURAL ENGINEER

SERVICES ENGINEER

CONSULTANT

KEY PLAN

PLAN 1

NOTES:

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NOTE: SERVICES AND STRUCTURE SHOWN INDICATIVELY, TO BE REVIEWED AND CONFIRMED BY STRUCTURAL MECHANICAL AND SERVICES ENGINEERS, BASED ON PREVIOUS LAYOUTS.

KEY

CAR PARKING AMENDMENTS

[Handwritten signatures]



No.	Date	Comment	JH	SB
Revisions				

Issue Status
PRELIMINARY

tp bennett
 architecture
 interiors
 planning

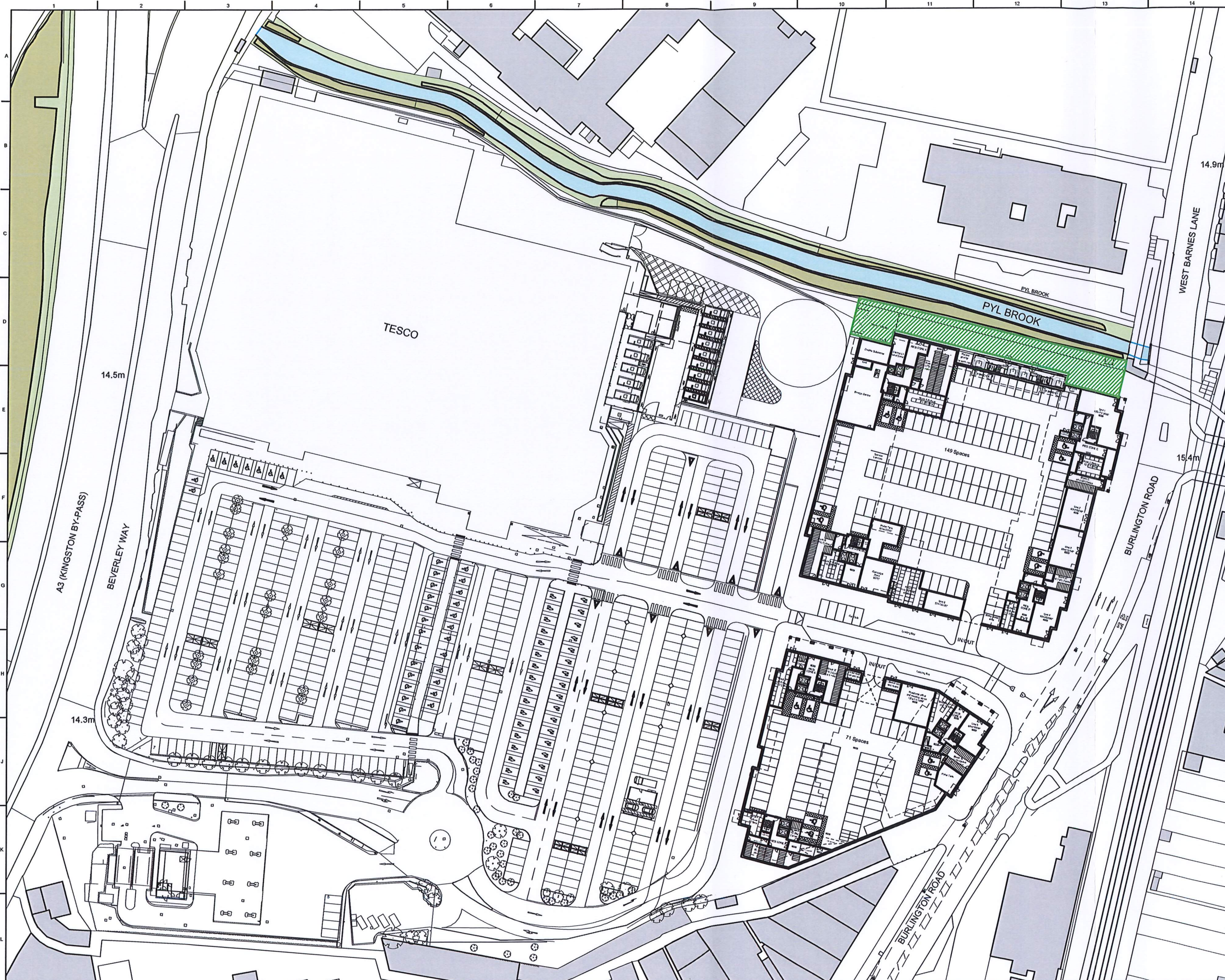
One America Street London SE21 0NE UK +44 (0) 20 7208 8000 www.tpbenett.com

Project
**265 Burlington Road
 New Malden**

Drawing Title
S.106 Plan

Drawn	Date	Scale	Alt. Ref.
SWB	Nov '20	1:500	-

ip bennett Project No.	Drawing Number	Rev
E1180	E 0017	P1

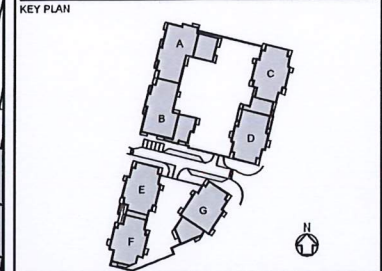


CLIENT
Redrow Homes Ltd

STRUCTURAL ENGINEER
Patrick Parsons

SERVICES ENGINEER
Silcock Dawson

CONSULTANT
Davies Murch



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KEY

ALTERNATIVE NORTHERN BOUNDARY LANDSCAPE PLAN

PLAN 2

N

P1 07.10.20 Issued for S.106 Agreement				SB	SB
No.	Date	Comment	Drawn	Checked	

Issue Status
PLANNING

tp bennett
architecture
landscape
planning

One Abchurch Lane, London EC4N 3DF UK +44 (0) 20 7600 0000 www.tpben.co.uk

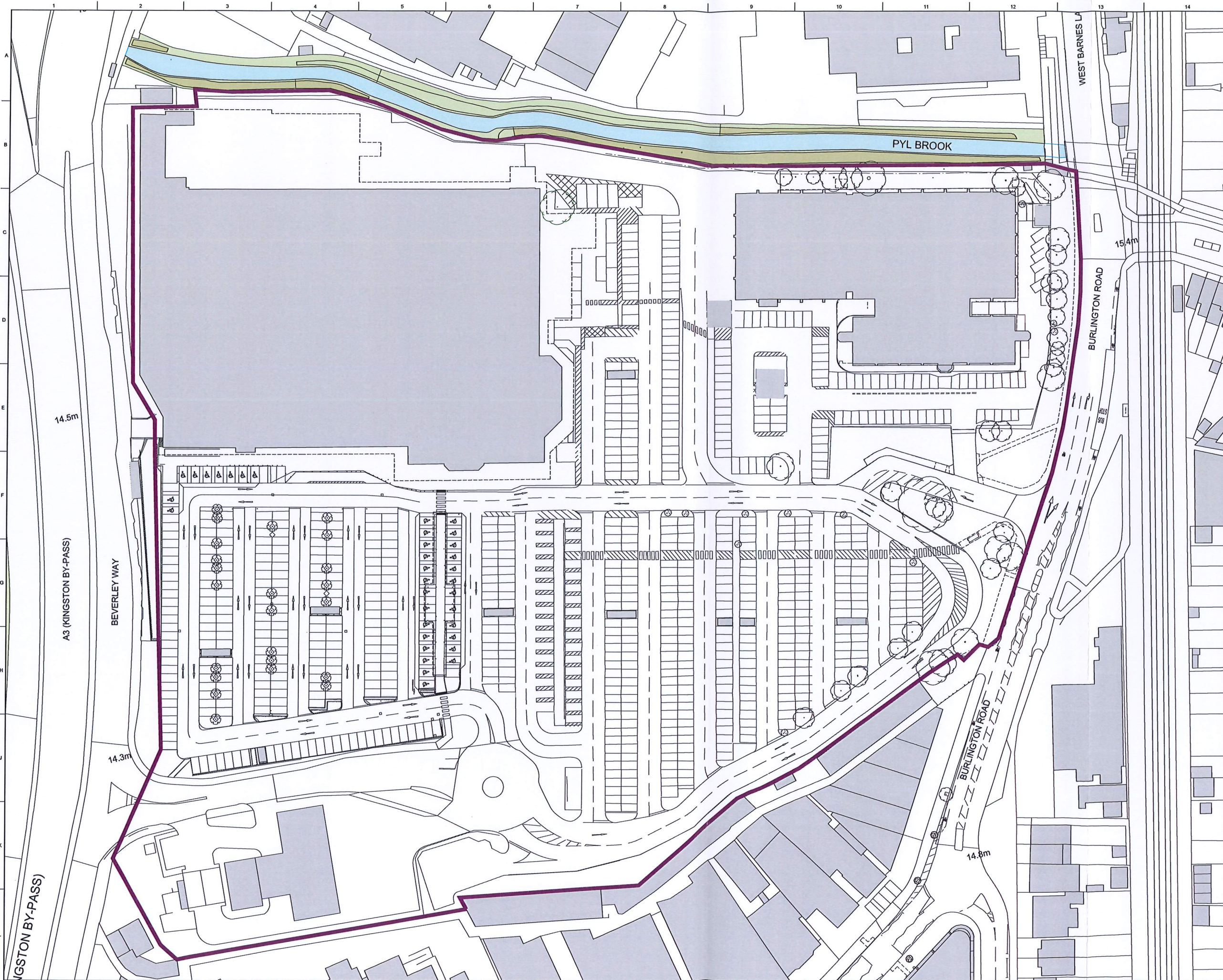
Project
265 Burlington Road
New Malden

Drawing Title
S.106
Alternative Northern Boundary
Landscape Plan

Drawn	Date	Scale	Alt. Ref.
SB	Oct 2020	1:500	-

tp bennett Project No.	Drawing Number	Rev
E1180	E 6103	P1

NOTED PL 6 BLACD: E P 90 8 2 7 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

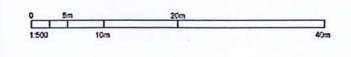


CLIENT
 REDROW HOMES LTD
 STRUCTURAL ENGINEER
 SERVICES ENGINEER
 CONSULTANT
 KEY PLAN

PLAN 3

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No.	Date	Comment	Drawn	Crkd
P1	17.11.20	First Issue	JH	SB

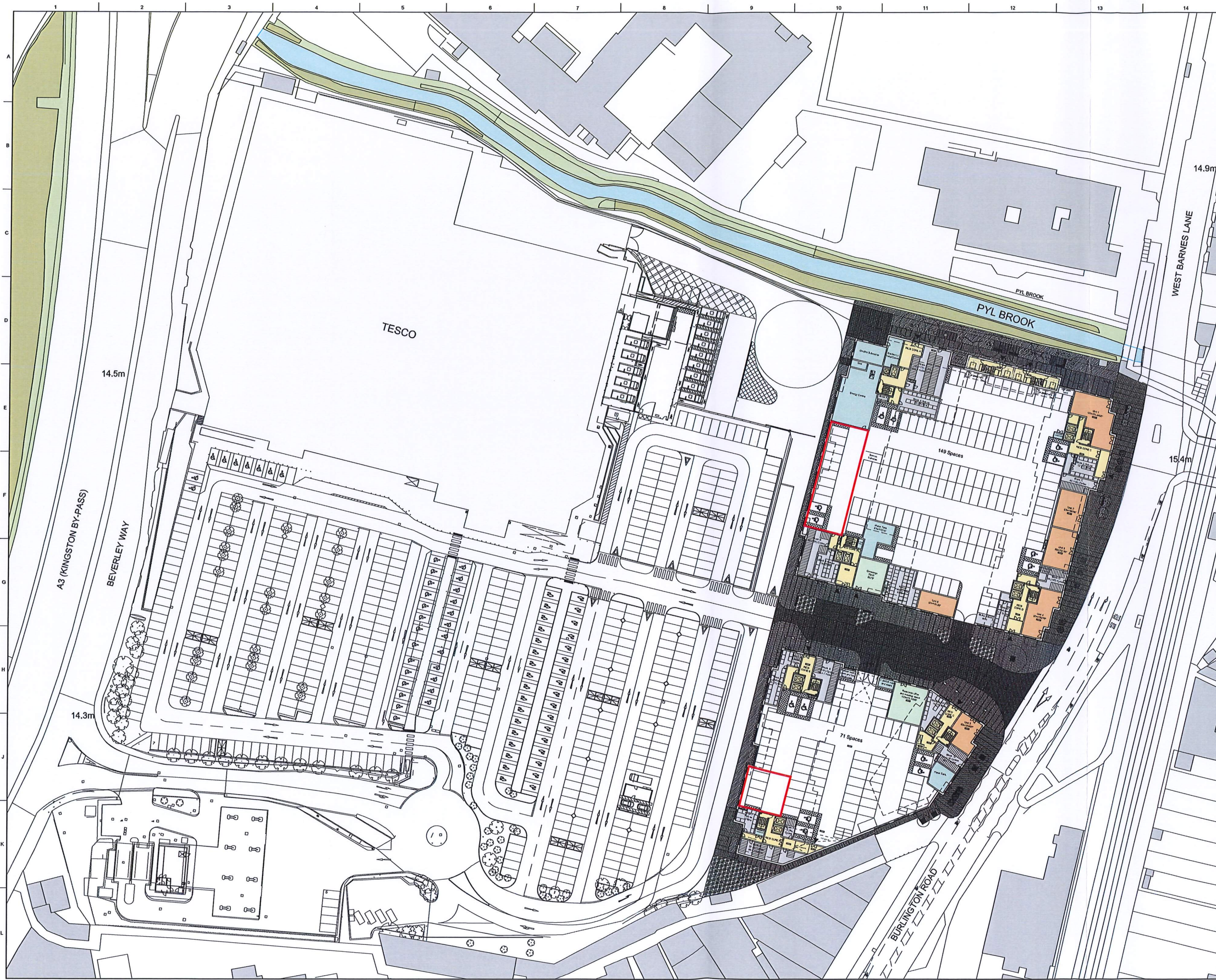
Issue Status
PRELIMINARY

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 architecture
 interiors
 planning
 One America Street London SE1 0HE UK +44 (0) 20 7308 2000 www.tpbenett.com

Project
 265 Burlington Road
 New Malden

Drawing Title
 Site RP3 Plan

Drawn	Date	Scale @ A1	Alt. Ref.
SWB	Nov '20	1:500	-
tp bennett Project No.	Drawing Number	Rev	
E1180	E 0019	P1	

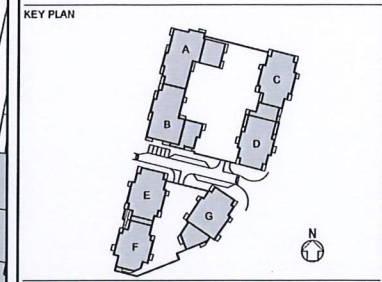


CLIENT
Redrow Homes Ltd

STRUCTURAL ENGINEER
Patrick Parsons

SERVICES ENGINEER
Silcock Dawson

CONSULTANT
Davies Murch



NOTES:

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NOTE: SERVICES AND STRUCTURE SHOWN INDICATIVELY, TO BE REVIEWED AND CONFIRMED BY STRUCTURAL, MECHANICAL AND SERVICES ENGINEERS, BASED ON PREVIOUS LAYOUTS.

- KEY
- COMMERCIAL SPACE
 - RESIDENTIAL ENTRANCES
 - RESIDENTIAL CONCIERGE AND MEETING SPACE
 - RESIDENTIAL PLANT ROOMS
 - RESIDENTIAL CYCLE AND BIN STORES
 - POTENTIAL FUTURE COMMERCIAL ACCOMMODATION

[Signature]

[Signature]

PLAN 4

P1 13.02.20 Issued for S.106 Agreement		SB	SB
No.	Date	Comment	Drawn

Issue Status
PLANNING

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architecture
interiors
planning

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Project
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New Malden

Drawing Title
S.106 Potential Future Commercial Accommodation to Western Elevation Ground Floor Plan

Drawn	Date	Scale	Alt. Ref.
SB	Feb 2020	1:500	E1180D6100P2
tp bennett Project No.	Drawing Number	Rev	
E1180	E 6101	P1	

“Rent Guidance”	means the Guidance on Rents for Social Housing and the Direction on the Rent Standard 2014 issued by the Department of Communities and Local Government in May 2014 or such other replacement guidance or direction or legislation;
“Rent Standard”	means the standard relating to rent set by the Regulator of Social Housing from time to time having regard to the Welfare Reform and Work Act 2016, the Rent Guidance and the Direction on the Rent Standard 2014 issued by the Department for Communities and Local Government in May 2014 together with the Rent Standard Guidance published by the Department for Communities and Local Government in April 2015 or such other replacement guidance or direction or legislation;
“Residential Occupier”	means any tenant or individual occupier or leasehold owner of a Residential Unit and for the avoidance of doubt the term “Residential Occupiers” shall be construed accordingly; and excludes any business or corporate body or bodies;
“Residents Parking Bay”	means a marked highway parking space designated by the Council by order under the Road Traffic Regulation Act 1984 the Road Traffic Regulations (Parking) Act 1986 the Parking Act 1989 or the Road Traffic Act 1991 (or other relevant legislation) for use by residents of the locality on which the Development is situate;
“Residents Parking Permit”	means a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing for a Motor Vehicle to park in a Residents Parking Bay;
“Residential Travel Plan”	means the travel plan to be prepared in respect of the Residential Units and which shall be based substantially on the Framework Residential Travel Plan as submitted as part of the Application;
“Residential Travel Plan Monitoring Fee”	means the sum of two thousand pounds (£2,000) being the Council’s proper and reasonable costs for monitoring the implementation of the Residential Travel Plan;
“Residential Units”	means the Affordable Housing Units and the Open Market Housing Units together as defined within class C3 of the Use Classes Order to be constructed pursuant to the Development together with any amenity space or any right to use the same (whether common or not with others therewith) and the term “Residential Unit” has been construed accordingly;
“Review Date”	means the date of the submission of the Development Viability Information pursuant to paragraph 4 of Schedule 1;
“Secretary of State”	means the Secretary of State for Housing, Communities and Local Government
“Service Charges”	means all amounts payable by a tenant or owner (as appropriate) of the relevant London Affordable Rented Housing Unit or London Shared Ownership Unit as part of or in

	addition to the rent and directly or indirectly for services, repairs, maintenance, improvements, insurance and/or the landlord's costs of management in relation to that London Affordable Rented Housing Unit or London Shared Ownership Unit;
"Site RP3"	means the remainder of the Land adjacent to the Development which is proposed to be allocated for residential-led mixed-use redevelopment in the Council's Emerging Local Plan as at the date of this Deed and given reference number RP3 - Burlington Road, Tesco, New Malden, KT3 4NH (and forming part of draft policy N3.4 – Raynes Park) the extent of which is shown on Plan 3;
"Site RP3 Permission"	means a planning permission for residential-led mixed-use development on Site RP3;
"Social Rented Housing"	means rented housing owned and managed by local authorities or Registered Providers and let at Target Rents;
"Staircasing"	means the acquisition by a London Shared Ownership Lessee of additional equity in a London Shared Ownership Unit up to a maximum of 100 per cent equity and "Staircased" shall be construed accordingly;
"Substantial Implementation"	means the occurrence of the following in respect of the Development: (a) Commencement of Development; and (b) construction of the ground floor slab across the building footprint of the Development;
"Substantial Implementation Documentary Evidence"	means evidence of Substantial Implementation which may include but is not limited to: (a) Contractor's statement; (b) Photographs; and (c) Accompanied site visit to enable inspection;
"Substantial Implementation Target Date"	means the date 36 months from but excluding the date of grant of the Planning Permission PROVIDED THAT if there is a Challenge the Substantial Implementation Target Date shall be extended by a period of time which is commensurate to the period of time commencing on the date the Secretary of State is served with proceedings relating to the Challenge and ending on the date on which the proceedings relating to the Challenge are finally disposed of;
"Substantially Commenced"	means, in respect of Site RP3, that all works to above ground floor slab for each and every building authorised by the Site RP3 Permission are completed;
"Target Rents"	means rents for Social Rented Housing conforming with the pattern produced by the rents formula set out in the Rent

	Guidance and subject to the limit on rent changes and rent caps set out therein and subject to indexation as permitted by the Rent Standard or Rent Guidance (as applicable) from time to time;
“Tesco Car Park”	means the area shown shaded orange on Plan 1;
“Tesco Car Park Works”	<p>means the alterations to the layout to the Tesco Car Park outside of the Land to include:</p> <ul style="list-style-type: none"> (a) Re-lining of spaces to provide 2.4m x 4.8m car parking spaces; (b) Removal of individual tree planters; (c) Relocation of the existing pedestrian crossing; (d) Flush kerbs to all new areas; (e) Relocation of existing trolley bays; (f) Relocation of the existing black bollards at 2400mm centres; (g) Relocation of existing signage; (h) Relocation of existing lamp stands; (i) Relocation of existing ANPR & trolley prevention systems; (j) New service road for delivery vehicles and Dot Com vans with associated prohibitive signage; (k) New turning bay for servicing area; (l) Changes to the layout of the Dot Com vans loading area; (m) Fence and 9m wide gate to service area; and (n) Relocation of the existing Click & Collect bay.
“Transfer”	means in respect of the Affordable Housing Units the grant of a lease for a term of at least one hundred and twenty five (125) years or the transfer of the freehold interest and "Transferred" shall be construed accordingly;
“Use Classes Order”	means the Town and Country Planning (Use Classes) Order 1987 (as amended);
“Working Day”	means any day excluding Saturdays, Sundays and any bank holidays in England and “Working Days” shall be construed accordingly

4. INTERPRETATION

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

- 4.1. the headings are for ease of reference and shall not affect interpretation;
- 4.2. words importing the singular include where the context so admits the plural and vice versa;
- 4.3. references to clauses paragraphs plans drawings and schedules are references to clauses paragraphs plans and drawings and schedules annexed to this Agreement;
- 4.4. references to the Owner shall include successors in title and assigns of the Land;
- 4.5. references to the Developer shall include successors in title and assigns of their interest in the Land;
- 4.6. references to the Council shall include any successor to its functions as local planning authority;
- 4.7. any covenant not to do any act or thing includes an obligation not to knowingly allow permit or suffer that act or thing to be done by another person and any covenant to do any act or thing includes an obligation to procure the doing of that act or thing by any other person; and
- 4.8. where the agreement approval consent confirmation or an expression of satisfaction is required by the Owner or by the Council under the terms of this Agreement that agreement approval consent confirmation or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

5. STATUTORY AUTHORITY AND LEGAL EFFECT

- 5.1. The Deed is made pursuant to:
 - 5.1.1. section 106 of the Act;
 - 5.1.2. section 1 of the Localism Act 2011;
 - 5.1.3. section 111 of the Local Government Act 1972; and
 - 5.1.4. section 16 of the Greater London Council (General Powers) Act 1974and all other enabling powers and enactments which may be relevant for the purposes of giving validity to this Deed.
- 5.2. This Deed contains planning obligations for the purposes of section 106 and also provides undertakings for the purposes of section 16 (and for the avoidance of doubt the requirements in paragraph 9 of Schedule 1 are undertakings but are not planning obligations),
- 5.3. This Deed is conditional and shall only become binding and take effect from:-
 - 5.3.1. the grant of the Planning Permission ; and
 - 5.3.2. the Commencement of Development,

and the planning obligations set out in Schedule 1 shall only come into effect on the Commencement of Development save for the provisions of paragraph 1.2 (Notices) and 7.8 (Fees) at Schedule 1 which shall come into effect on completion of this Deed.

5.4. In the event that the Planning Inspector:-

5.4.1. is not fully satisfied that one or more of the provisions of this Deed is in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010; and/or

5.4.2. imposes a condition upon the Planning Permission instead of one or more of the planning obligations in this Deed;

then the said provisions of this Deed shall thereafter have no legal effect but the remainder of the planning obligations in this Deed (if any) shall remain legally effective and binding.

5.5. The obligations of the Owner in this Deed are planning obligations for the purpose of section 106 of the Act which are binding on the Land and are enforceable by the Council as local planning authority.

5.6. Subject to the following provisions of this clause 5 and subject to clause 10 and Clause 12 of this Deed the Owner undertakes to the Council that the provisions of this Deed shall be enforceable without limit of time against the Owner and its successors in title and assigns (including any person deriving title through or under it) to the Land or any part or parts of it as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person PROVIDED ALWAYS that the Developer shall have no liability pursuant to this Deed unless and until:

5.6.1. it acquires a leasehold interest in the Land; and

5.6.2. it Commences the Development (save for the provisions of paragraph 1.2 (Notices) and 7.8 (Fees) at Schedule 1 which shall apply from the date of 5.6.1 above)

5.7. Nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

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

6. PLANNING OBLIGATIONS

The Owner undertakes to the Council to meet the planning obligations as set out in Schedule 1.

7. INVALIDITY

It is agreed and declared that 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 to the specific persons executing this Deed as the Owner and their successors in title (if any) 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. LOCAL LAND CHARGE

This Deed may be registered as a Local Land Charge by the Council.

10. RELEASE

This Deed shall be deemed to have been revoked and be of no effect (without any further act or deed on the part of the Owner) if the Planning Inspector refuses to grant the Planning Permission or if Commencement of Development has not taken place within 3 years of the date of the Planning Permission or the Planning Permission having been granted shall be varied or revoked other than at the request of the Owner or the Planning Permission having been granted is quashed following a successful legal challenge.

11. VARIATIONS

11.1. In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the Act and unless otherwise agreed between the parties:-

11.1.1. the obligations in this Deed shall relate to and bind any subsequent planning permission(s) granted pursuant to Section 73 of the Act in respect of the Land ; and

11.1.2. the definitions of Application, Development and Planning Permission in this Deed shall be construed to include reference to any such application under Section 73 of the Act the planning permission(s) granted thereunder and the development permitted by such subsequent planning permissions(s)

PROVIDED THAT nothing in this clause shall restrict or fetter the discretion of the Council when determining such application submitted under Section 73 of the Act relating to the Land from requiring any consequential obligations of an appropriate nature and/or quantum (so far as they are materially different to those contained in this Deed) be secured by way of a new deed as the case maybe pursuant to section 106 of the Act.

12. OBLIGATIONS NOT BINDING AND RELEASE

12.1. No person (including for the avoidance of doubt any chargee or mortgagee) shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or the relevant part thereof but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

12.2. The obligations in Schedule 1 to this Deed shall not be binding on:

12.2.1. occupiers or tenants or lessees or purchasers occupying or entitled to occupy any Residential Unit and those deriving from the same (including any sub-tenant lender chargee or mortgagee);

- 12.2.2. any lessee of a London Shared Ownership Unit or their mortgagee or chargee where such lessee or mortgagee or chargee has Staircased to 100 per cent of the equity in such London Shared Ownership Unit and any person who shall derive title directly or indirectly from any such lessee, mortgagee or chargee;
 - 12.2.3. a tenant or any occupant of an Affordable Housing Unit who has exercised a right to buy or right to acquire or similar statutory right to purchase or any successor in title to any such person or any mortgagee of a tenant who has exercised its right to buy, right to acquire or similar statutory right to purchase;
 - 12.2.4. any statutory undertakers or utilities companies in relation to any part of the Land required by them for electricity substations, gas governor stations and/or for the supply of any services;
 - 12.2.5. Tesco in the event of the grant of the Lease to the Developer;
 - 12.2.6. Subject to clauses 12.3 below, a Chargee;
- 12.3. In order to benefit from the protection granted by clause 12.2.6 above, a Chargee must:
- 12.3.1. first give written notice to the Council of its intention to dispose of the relevant Affordable Housing Units and/or Additional Affordable Housing 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 relevant Affordable Housing Units and/or Additional Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - 12.3.2. if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the relevant Affordable Housing Units and/or Additional Affordable Housing Units free from the affordable housing provisions in this Deed which provisions shall determine absolutely
- 12.4. This Deed shall not be enforceable against any mortgagee from time to time which shall have the benefit of a mortgage or charge of the whole or any part of the Land unless and until such mortgagee is in possession of the Land or that part of the Land over which it has a mortgage or charge, in which case it too will (in respect of the Land or the relevant part of the Land in which it has a mortgage or charge) be bound by the obligations as if it were a party deriving title from the Owner

13. CONDITIONALITY

The Contributions to be paid by the Owner to the Council pursuant to 7.1 to 7.6 of Schedule 1 of this Deed shall be paid within the timescales stipulated therein ON CONDITION THAT a separate undertaking is entered into by the Council to the Owner and Developer for the benefit of the Development (appended at Schedule 3 to this Deed) containing obligations as follows:

- (a) that the Contributions shall only be used for the purpose specified within this Deed and for no other purpose whatsoever; and

- (b) save as otherwise provided in Schedule 3 to this Deed if the Council has not expended the whole or part of Contributions within five (5) years of the date of payment, then the Council shall as soon as reasonably practicable repay the unexpended balance to the Owner together with any interest that has accrued thereon.

14. NOTICE

Any notices required to be served by one party on another under this Undertaking shall be deemed to be sufficiently served if served by first class prepaid post or by hand in the following manner:

- (a) on the Council at the address shown above marked "For the attention of the Head of Sustainable Communities; and
- (b) on Tesco at the address shown above marked "For the attention of Chris McCann and Louise Ford"; and
- (c) On the Developer at the address shown above.

15. JURISDICTION

This Undertaking is governed by and interpreted in accordance with the law of England and Wales.

SCHEDULE 1

UNDERTAKINGS BY THE OWNER

1. Notifications

The Owner undertakes:

- 1.1 to permit the Head of Sustainable Communities and any person or persons authorised by him reasonable access prior to Practical Completion to the Land or any part of it at all reasonable times on reasonable notice and in compliance with the Owner's reasonable requirements to permit him or them to inspect the Development for the purpose of securing compliance with the terms of this Deed.
- 1.2 to give to the Head of Sustainable Communities notice in writing, no later than seven days prior to the anticipated Commencement of Development, of the date of the anticipated Commencement of Development.
- 1.3 to give to the Head of Sustainable Communities notice in writing of the Commencement of Development no later than seven days following the occurrence of the same.
- 1.4 to notify the Head of Sustainable Communities in writing within seven (7) days of the First Occupation of the 60th Open Market Housing Unit

2. Affordable Housing

The Owner undertakes:-

- 2.1 to construct or procure the construction of the Affordable Housing Units pursuant to the Mayor of London's Housing Supplementary Planning Guidance
- 2.2 within 12 months of Commencement of Development to use reasonable endeavours to enter into a contract with a Registered Provider for the Transfer of the Affordable Housing Units
- 2.3 unless otherwise agreed in writing with the Head of Sustainable Communities not to Occupy nor permit the Occupation of more than 70% of the Open Market Housing Units until:
 - 2.3.1 the Practical Completion of the Affordable Housing Units; and
 - 2.3.2 the Transfer of the Affordable Housing Units to a Registered Provider who agrees to use reasonable endeavours to enter into and complete the Deed of Nominations Rights with the Council in respect of the London Affordable Rented Units
- 2.4 not to Occupy nor permit the Occupation of the London Affordable Rented Housing Units other than as London Affordable Rented Housing
- 2.5 subject to clause 12 above, not to use the Affordable Housing Units for any purpose other than for Affordable Housing or purposes ancillary thereto unless otherwise agreed in writing by the Council
- 2.6 to permit any duly authorised officer of the Council upon reasonable written notice being given to enter any part of the Land for the purpose of inspection and ensuring compliance with the provisions relating to Affordable Housing contained in this Deed

3. Submission of Viability Review and Use of Surplus Profit

3.1 The Owner shall notify the Council in writing of the date on which it considers that the Substantial Implementation has been achieved no later than 10 Working Days after such date and such notice shall be accompanied by:

3.1.1 the Substantial Implementation Documentary Evidence on an open book basis to enable the Council to independently assess whether the Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date; and

3.1.2 an accompanying letter from a Chartered Building Surveyor to the Council confirming that they have inspected the Land and that Substantial Implementation has occurred

3.2 In the event that the Council gives prior written notice to the Owner that it requires access to the Land pursuant to this paragraph 3 the Owner shall grant the Council the right to inspect the Land to ascertain whether it is satisfied that Substantial Implementation has indeed taken place on or before the Substantial Implementation Target Date

3.3 The Owner shall not Occupy the Development or any part thereof until it has complied with its obligations in paragraph 3.1.

4. Submission of Development Viability Information and other information

4.1 Where the Substantial Implementation has not occurred before the Substantial Implementation Target Date:-

4.1.1 the Owner shall submit the following information no later than 20 Working Days after the date on which the Owner notified the Council pursuant to paragraph 3.1 of this Schedule 1 that the Substantial Implementation has been achieved, on the basis that the Council may make such information publicly available:

4.1.1.1 the Development Viability Information;

4.1.1.2 a written statement that applies the applicable Development Viability Information to Formula 1a (PROVIDED ALWAYS THAT if the result produced by Formula 1a is less than zero it shall be deemed to be zero) and Formula 2 thereby confirming whether in the Owner's view any Additional Affordable Housing Units can be provided; and

4.1.1.3 where such written statement confirms that Additional Affordable Housing Units can be provided, an Additional Affordable Housing Scheme; and

4.1.2 paragraphs 5 and 6 of this Schedule 1 shall apply.

5. Assessment of Development Viability Information and other Information

- 5.1 In the event of a written request by the Council to pay its costs that are reasonably and properly incurred for instructing an External Consultant the Owner shall within 20 Working Days of such request pay those costs.
- 5.2 In the event that the Council instructs an External Consultant the External Consultant shall assess the information submitted pursuant to paragraph 4 of this Schedule 1 and assess whether in its view Additional Affordable Housing Units are required to be delivered in accordance with Formula 1a and Formula 2 and for the avoidance of doubt the Council will be entitled to rely on its own evidence in determining inputs into Formula 1a and Formula 2 subject to such evidence also being provided to the Owner.
- 5.3 In the event that the External Consultant requires further Development Viability Information or supporting evidence of the same then the Owner shall provide any reasonably required information to the Council or any External Consultant (as applicable and with copies to the other parties) within 10 Working Days of receiving the relevant request and this process may be repeated until the Council and/or any External Consultant (as applicable) has all the information it reasonably requires to assess whether in their view Additional Affordable Housing Units are required to be delivered in accordance with Formula 1a and Formula 2.
- 5.4 In the event that the Council assesses the information submitted pursuant to paragraph 4 of this Schedule 1 it may notify the Owner in writing of:-
- (a) its decision as to whether any Additional Affordable Housing Units are required and whether the submitted Additional Affordable Housing Scheme is approved; or
 - (b) of its conclusion that Additional Affordable Housing Units are required but the Owner's initial submission concluded otherwise and the Owner shall provide an Additional Affordable Housing Scheme to the Council for approval within 10 Working Days of the date on which it receives the Council's notice pursuant to this paragraph 5.4
- 5.5 In the event that the Council's assessment pursuant to paragraph 5.4 of this Schedule 1 concludes that:
- 5.5.1 a surplus profit arises following the application of Formula 1a but such surplus profit is insufficient to provide any Additional Affordable Housing Units pursuant to Formula 2; or
 - 5.5.2 a surplus profit arises following the application of Formula 1a but such surplus profit cannot deliver a whole number of Additional Affordable Housing Units pursuant to Formula 2;

then in either scenario the Owner shall pay any such surplus profit allocable to any incomplete Additional Affordable Housing Unit to the Council as a financial contribution towards offsite Affordable Housing.

6. Delivery of Additional Affordable Housing

- 6.1 In the event that it is determined pursuant to paragraph 5.4 of this Schedule 1 that one or more Additional Affordable Housing Units are required the Owner shall:
- 6.1.1 practically complete all of the Additional Affordable Housing Units in accordance with the Additional Affordable Housing Scheme and make them available for Occupation; and

6.1.2 pay any remaining surplus profit pursuant to paragraph 5.5 of this Schedule 1 to the Council towards the delivery of offsite Affordable Housing within the Council's administrative area

and shall use reasonable endeavours to do so prior to Occupation of not more than 70% of the Open Market Housing Units.

6.2 The terms of paragraphs 1 and 2 of this Schedule 1 shall apply mutatis mutandis to the provision of any Additional Affordable Housing Units.

6.3 The total sum of the Affordable Housing Units and any Additional Affordable Housing required pursuant to paragraphs 5 and 6 of this Schedule shall not exceed the Affordable Housing Cap

7. Fees

Subject to clause 13 of this Deed the Owner undertakes to pay to the Council the Contributions as follows:

7.1 the Air Quality Impact Contribution and the Air Quality Impact Service Contribution within 28 days of Commencement of Development

7.2 the Bus Capacity Enhancements Contribution in five equal annual instalments of NINETY THOUSAND POUNDS (£90,000.00) of which:-

7.2.1 the first instalment is to be paid prior to Occupation of the Development; and

7.2.2 the second and subsequent instalments are to be paid on the first second third and fourth anniversaries of the date of payment of the first instalment

7.3 the Carbon Emissions Offset Contribution as follows:

7.3.1 50% within 28 days of Commencement of Development; and

7.3.2 50% prior to Occupation of the Development.

7.4 the CPZ Contribution within one calendar month of the receipt of the Petition Notification by the Owner, provided that Commencement of Development has occurred and the Petition Notification is received no later than three (3) years of the date of First Occupation of the Development

7.5 the Pedestrian Crossing Facility and Junction Improvement Contribution as follows:

7.5.1 50% within 28 days of Commencement of Development; and

7.5.2 50% prior to Occupation of the Development.

7.6 the Pedestrian and Cycle Infrastructure Contribution as follows:

7.6.1 50% within 28 days of Commencement of Development; and

7.6.2 50% prior to Occupation of the Development.

7.7 the Play Space Contribution as follows:

7.7.1 50% within 28 days of Commencement of Development; and

7.7.2 50% prior to Occupation of the Development.

7.8 the Management Monitoring Fee prior to Commencement of Development.

8. Car Club Provision and Free Car Club Membership

The Owner undertakes:

8.1 On or prior to the First Occupation of each Residential Unit to notify in writing the first household of each Residential Unit of its entitlement to 3 years free membership of a Car Club from the date of its Occupation.

8.2 Within ten (10) Working Days of the first Occupation of each Residential Unit to notify the Council that every first Residential Occupier of each Residential Unit to be Occupied has been notified in writing in accordance with the requirements of paragraph 8.1 of this Schedule 1 of its entitlement to 3 years free membership of a Car Club from the date of its occupation.

8.3 Subject to any household as referred to in Paragraph 8.1 above having confirmed that it wishes to accept the proposal and an Occupant being legally entitled to drive a Motor Vehicle to provide that household with free membership of a Car Club for 3 years commencing on the date of its Occupation.

8.4 In the event that the Car Club Provider is no longer able to provide the Car Club for the Residential Units the Owner shall then use all reasonable endeavours to secure another Accredited Car Club Provider for the Development and shall take out replacement memberships for any occupiers of the Residential Units within the Development whose three (3) year Car Club membership entitlement (as referred to in Paragraph 8.1 of this Schedule 1 above) has not at that date expired for such duration of the said three (3) year period as remains unexpired

9. Car Parking Permits

The Owner undertakes:

9.1 That in the event that a CPZ is established in the future any Residential Occupier will not be entitled to a Residents Parking Permit for the CPZ established by the Council unless the Residential Occupier is or becomes entitled to a Disabled Persons Badge and has first notified the Council in writing of such entitlement and upon the first and any subsequent disposition of the Residential Unit the Occupier shall procure that the restrictions set out in this paragraph 9.1 of Schedule 1 above are included in any lease option licence or other disposal of a Residential Unit to any person; and

9.2 that any Business Operator will not be entitled to a Business Parking Permit for the CPZ established by the Council unless the Business Operator is or becomes entitled to a Disabled Persons Badge and has first notified the Council in writing of such entitlement and upon the first and any subsequent disposition of the Business Units the Business Operator shall procure that the restrictions set out in paragraph 9.2 of this Schedule 1 above are included in any lease option licence or other disposal of a Business Units to any person

10. Residential Travel Plan

The Owner undertakes:

10.1 Not to Occupy any Residential Unit unless and until the Residential Travel Plan has been submitted to the Council for approval.

- 10.2 To submit to the Council reports on progress in achieving the objectives set out in the Residential Travel Plan at six monthly intervals for the first twelve months from the date of Occupation and thereafter annual reports for a period of two years.
- 10.3 Not to amend the approved Residential Travel Plan without further written approval of the Council.
- 10.4 To implement the approved travel plan at all times from Occupation of the Residential Units, unless otherwise agreed in writing by the Council.
- 10.5 Not to Occupy the Residential Units unless and until the Residential Travel Plan Monitoring Fee has been paid in respect of the Residential Travel Plan.

11. Northern Boundary Improvement Work

11.1 In the event that:

- 11.1.1 the Emerging Local Plan is adopted and
- 11.1.2 Site RP3 is retained in the Local Plan for residential-led mixed-use development; and
- 11.1.3 the Council grants the Site RP3 Permission; and
- 11.1.4 the Site RP3 Permission is Substantially Commenced,

the Council may serve the ANB Landscaping Notice upon the Owner.

11.2 In the event that the Council serves the ANB Landscaping Notice upon the Owner pursuant to paragraph 11.1 above then the Owner undertakes to submit to the Council for approval an Alternative Northern Boundary Landscaping Scheme and once approved deliver the approved Alternative Northern Boundary Landscaping Scheme within 12 months of the ANB Landscaping Approval Date PROVIDED ALWAYS THAT the Owner shall not be required to submit the Alternative Northern Boundary Landscaping Scheme:

- (a) before Commencement of Development and until the requirements of paragraphs 11.1.1 - 11.1.4 above have been satisfied; or
- (b) where the Owner has not received the ANB Landscaping Notice within fifteen (15) years of the date of this Deed upon which date the obligations set out in this paragraph 11 of this Schedule 1 shall cease to apply.

12. Highway Works Agreement

The Owner undertakes to enter into the Highway Works Agreement prior to Occupation of the Residential Units and not to Occupy any Residential Unit unless and until the Highway Works Agreement has been completed.

13. Alternative Use Scheme

The Owner covenants:

13.1 In the event that:

- 13.1.1 the Emerging Local Plan is adopted; and
- 13.1.2 Site RP3 is retained in the Local Plan for residential-led mixed-use development; and
- 13.1.3 the Council grants the Site RP3 Permission; and
- 13.1.4 the Site RP3 Permission is Substantially Commenced

unless otherwise agreed with the Council in writing, the Owner shall submit to the Council the Alternative Use Application PROVIDED ALWAYS THAT the Owner shall not be required to submit the Alternative Use Application

- (a) before Commencement of Development and until the requirements of paragraphs 13.1.1 - 13.1.4 above have been satisfied; or
- (b) more than fifteen (15) years after the date of this Deed upon which the obligations set out in this paragraph 13 of this Schedule shall cease to apply.

13.2 Subject at all times to paragraphs 13.3 to 13.6 of this Schedule, unless otherwise agreed in writing with the Council the Owner covenants to provide the Alternative Use Areas or an Alternative Use Area pursuant to the Alternative Uses Permission

13.3 In the event that:

- 13.3.1 the Council grants the Alternative Use Permission; and
- 13.3.2 the Owner decides to provide the Alternative Use Area pursuant to the Alternative Uses Permission

then the Owner shall submit the Alternative Use Marketing Strategy to the Council for its approval and thereafter implement the Alternative Use Marketing Strategy once approved by the Council

13.4 In the event that an Alternative Use Area is not let or occupied or contracted to be let or occupied within 6 months after the date of approval of the Alternative Use Marketing Strategy pursuant to paragraph 13.3 above then for each Alternative Use Area the Owner shall submit to the Council detailed evidence in writing demonstrating:-

- 13.4.1 the results of the Alternative Use Marketing Strategy for a period of at least 6 months after the date of approval of the Alternative Use Marketing Strategy;
- 13.4.2 that it has used reasonable endeavours to find a tenant for that Alternative Use Area during the period of marketing; and
- 13.4.3 why it considers it was unable to let that Alternative Use Area

13.5 In the event that the Council accepts that the Owner has demonstrated that it used reasonable endeavours to implement the agreed Alternative Use Marketing Strategy after the date of approval of the Alternative Use Marketing Strategy to secure a tenant of the Alternative Use Areas the Council will confirm the same in writing to the Owner (***the Alternative Use Areas Acceptance Notice***), such notice to be given within 20 Working Days of receipt of the detailed evidence from the Owner pursuant to paragraph 13.4 above.

13.6 In the event that that the Council considers that the Owner has not used reasonable endeavours to secure an occupant or tenant of an Alternative Use Area pursuant to the

Alternative Use Marketing Strategy the Council shall confirm the same in writing to the Owner and the Owner shall continue to market the Alternative Use Area pursuant to the Alternative Use Marketing Strategy for a further period of 3 months PROVIDED ALWAYS THAT the Owner shall then be released from the obligation in paragraph 13 of this Schedule after the expiry of that additional marketing period if no tenant has been secured for an Alternative Use Area.

- 13.7 The Owner shall be released from the obligation in paragraph 13 of this Schedule on receipt of the Alternative Use Areas Acceptance Notice

SCHEDULE 2

DEED OF NOMINATION RIGHTS

DATED

2020

REGISTERED PROVIDER

AND

**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF MERTON**

DEED OF NOMINATION RIGHTS

Land at 265 Burlington Road, New

Malden, KT3 4NE

Head of South London Legal Partnership
London Borough of Merton
Merton Civic Centre
London Road
Morden
Surrey SM4 5DX
Ref: LEG/CS/HB/511-1019
Tel: 020-8545-3345
DX.41650 MORDEN

"Permission"	planning appeal given the reference APP/T5720/W/20/3250440;
"Principal Agreement"	the Agreement made under Section 106 of the Town and Country Planning Act 1990 between (1) the Council (2) Tesco Stores Limited and (3) Redrow Homes Limited
"Registered Provider"	<p>(a) a provider of Affordable Housing registered under section 111 of the Housing and Regeneration Act 2008 (or such other relevant previous or amended or replacement statutory provision);</p> <p>(b) an approved development partner of Homes England (or any successor agency) which is eligible to obtain grant funding; or</p> <p>(c) any other body specialising in the provision of Affordable Housing</p> <p>in each case either nominated or approved by the Council (such approval not to be unreasonably withheld or delayed)</p>
"Rented Unit"	means "London Affordable Rented Unit" as the defined in the Principal Agreement
"Request for a Nomination"	a written request given by the Association to the Council in the form contained in Schedule 1 or such other form as may be agreed in writing by the Council and the Association from time to time;
"Rules"	the Association's rules memorandum and articles trust deed or other current document from time to time governing the powers constitution administration and activities of the Association together with the Association's lettings policies from time to time in place;
"Site"	the 'Land' as defined in the Principal Agreement;
"Tenancy Agreement"	an assured tenancy agreement in a form prepared by the Association whose terms are not in breach of the latest guidance on housing management issued by the Homes England pursuant to Section 36 of the Housing Act 1996 PROVIDED THAT in the event of any statutory provision relating to assured tenancies having been amended or replaced during the currency of this Agreement a reference to an assured tenancy agreement shall be deemed to be a reference to a tenancy of a type provided for by such amended or replacement statutory provision and if there is none such to the form of tenancy agreement issued by the Association on provision of residential accommodation generally from time to time PROVIDED FURTHER THAT in respect of each Rented Unit there will initially be granted a starter tenancy agreement which after a period of 12 months and provided that there has been no breach of the starter tenancy agreement will automatically become an assured tenancy agreement;

"True Voids" means:-

- Voids within new developments;
- Voids created by tenant moves to other landlords where no reciprocal arrangement exists;
- Voids created by the death of a tenant where no succession takes place;
- Voids created by tenants buying private sector properties;
- Voids created by eviction or abandonment; and
- Voids created by Decants.

"Void(s)" means a Rented Unit which is unlet or unoccupied

"Working Day" any day except any Saturday Sunday and any bank or public holiday

1.2 In this Agreement where the context admits:-

1.2.1 the singular shall include the plural and the plural shall include the singular;

1.2.2 references to clauses shall be deemed to be reference to the clauses of this Deed;

1.2.3 words importing one gender shall be construed as importing any other gender and vice versa;

1.2.4 reference to statutory provisions shall be deemed to include reference to any such provisions as may from time to time be amended, varied, replaced, extended or re-enacted and to any orders or regulations made thereunder;

1.2.5 references to a Schedule shall be deemed to be references to a schedule to this Agreement;

1.2.6 in this Agreement clause headings are included for ease of reference only and shall not affect this Agreement or the interpretation thereof; and

1.2.7 the provisions of the schedules hereto are to apply as if incorporated in the main body of this Agreement.

2. NOMINATION RIGHTS ON FIRST OCCUPATION

General Obligation: First Request for Nomination Notice

2.1 The Association shall not cause or permit any Rented Unit to be occupied following its construction unless it has first served on the Council a Request for Nomination in respect of such Rented Unit and thereafter complied with the remaining provisions of this Clause 2.

Time for Service of Request for Nomination Notice

- 2.2 The Request for a Nomination served pursuant to Clause 2.1 shall be served as soon as reasonably practicable prior to the Rented Unit to which it applies becoming available for occupation.

Service of Nomination Notice by the Council

- 2.3 Within five (5) Working Days of receipt of a Request for Nomination in respect of a Rented Unit the Council shall serve on the Association a Nomination Notice and subject to Clause 5 the Association shall as soon as reasonably practicable thereafter offer a Tenancy Agreement of the Rented Unit to the Nominee named in such Nomination Notice and shall use its reasonable endeavours to arrange for the Nominee to view the Rented Unit.

Deemed Rejection on Nominee's Failure to Sign Tenancy Agreement

- 2.4 If a Nominee fails to execute a Tenancy Agreement for the Rented Unit within three (3) Working Days of being offered a Tenancy Agreement of the Rented Unit then such Nominee shall be deemed to have rejected the Association's offer PROVIDED ALWAYS that the Nominee has been offered a reasonable opportunity of viewing the Rented Unit within or prior to the said period of three (3) Working Days and PROVIDED FURTHER that if in the view of the Association in consultation with the Council the Nominee has reasonable grounds for delay the Nominee shall not be deemed to have rejected the Association's offer in which case the offer shall be held open for an additional period determined by the Association acting reasonably and in consultation with the Council and if after that additional period the Nominee has failed to execute a Tenancy Agreement for the Rented Unit then such Nominee shall be deemed to have rejected the Association's offer.

Second Request and Third Request for a Nomination if the Nominee Rejects

- 2.5 If the Nominee named in the Nomination Notice served by the Council in response to the Association's first Request for a Nomination rejects or is deemed to have rejected under Clause 2.4 hereof) the Association's offer of a Tenancy Agreement or shall have been rejected by the Association under Clause 5 hereof the Association shall within five (5) Working Days of the rejection serve on the Council a second Request for a Nomination whereupon the procedure in Clause 2.3 shall be repeated and in the event that the Nominee named in the Nomination Notice served by the Council in response to the second Request for a Nomination rejects (or is deemed to have rejected under Clause 2.4 hereof) the Association's offer of a Tenancy Agreement or shall have been rejected by the Association under Clause 5 hereof the Association shall within 5 Working Days of the rejection serve on the Council a third Request for a Nomination whereupon the procedure in Clause 2.3 shall be repeated.

If All Nominees Reject Offer of Tenancy Agreement

If all Nominees named in the Nomination Notices served by the Council in response to the Association's first second and third Requests for a Nomination in respect of a Rented Unit reject (or are deemed to have rejected under Clause 2.4 hereof) the Association's offer of a Tenancy Agreement for that Rented Unit or shall have been rejected by the Association under Clause 5 hereof then the Association shall be at liberty to arrange for such Rented Unit to be occupied by a person of its own choosing

Fulfilment of Association's Obligation on First Occupations

- 2.6 The Association shall have the right to let the Rented Unit to a person of its own choosing if the Council fails to serve a Nomination Notice in respect of that Rented Unit within ten (10) Working Days of the service by the Association of a Request for a Nomination and

the Association's obligations under this Clause 2 shall cease in respect of that Rented Unit.

- 2.7 The Association's obligations under this Clause 2 shall cease in relation to each Rented Unit when it shall have first been occupied.

3. NOMINATION RIGHTS ON TRUE VOIDS

General Obligation

- 3.1 The Association shall:-

3.2 ensure (unless prevented by circumstances beyond its reasonable control of which reasonable written evidence has been provided to the Council) with effect from the date on which the last Rented Unit is occupied following its construction that thereafter one hundred per cent (100%) of the occupations pursuant to True Voids occurring in the Rented Unit in any period of one year shall be by Nominees on a Tenancy Agreement; and

- 3.3 in pursuance of its obligations at (a) above comply with the remaining provisions of this Clause 3.

Monitoring of True Voids

- 3.4 The Association shall monitor the number of True Voids in order to ensure that it complies with its obligations under Clause 3.2.

Service of First Request for a Nomination

- 3.5 If the Association determines that a Tenancy Agreement of a Rented Unit should be offered to a Nominee the Association shall within five (5) Working Days of such determination serve on the Council a Request for a Nomination in respect of that Rented Unit.

Service of Nomination Notice by the Council

- 3.6 Within five (5) Working Days of receipt of a Request for a Nomination in respect of a Rented Unit the Council shall serve on the Association one Nomination Notice and subject to Clause 5 the Association shall as soon as reasonably practicable thereafter offer a Tenancy Agreement of the Rented Unit to the Nominee named in such Nomination Notice and shall use its reasonable endeavours to arrange for the Nominee to view the Rented Unit.

Deemed Rejection on Nominee's Failure to Sign Tenancy Agreement

- 3.7 If a Nominee fails to sign a Tenancy Agreement for the Rented Unit within three (3) Working Days of being offered a Tenancy Agreement of it then such Nominee shall be deemed to have rejected the Association's offer PROVIDED ALWAYS that the Nominee has been offered a reasonable opportunity of viewing the Rented Unit within or prior to the said period of three (3) Working Days and PROVIDED FURTHER that if in the view of the Association in consultation with the Council the Nominee has reasonable grounds for the delay then the Nominee shall not be deemed to have rejected the Association's offer in which case the offer shall be held open for an additional period determined by the Association acting reasonably and in consultation with the Council and if after that additional period the Nominee has failed to execute a Tenancy Agreement for the Rented Unit then such Nominee shall after consulting with the Council be deemed to have rejected the Association's offer.

Second Request and Third Request for a Nomination if the Nominees Reject

- 3.8 If the Nominee named in the Nomination Notice served by the Council in response to the Association's first Request for a Nomination rejects (or is deemed to have rejected under Clause 3.7 hereof) the association shall within five (5) Working Days of the rejection serve on the Council a second Request for a Nomination whereupon the procedure in Clause 3.6 shall be repeated and in the event that the Nominee named in the Nomination Request served by the Council in response to the second Request for a Nomination rejects (or is deemed to have rejected under Clause 3.7 hereof) the Association's offer of a Tenancy Agreement for that Rented Unit or shall have been rejected by the Association under Clause 5 hereof then the Association shall within five (5) Working Days of the rejection serve on the Council a third Request for Nomination whereupon the procedure in Clause 3.5 shall be repeated.

If All Nominees Reject Offer of Tenancy Agreement

- 3.9 If all Nominees named in the Nomination Notice served by the Council in response to the Association's first second and third Requests for a Nomination in respect of a Rented Unit reject (or are deemed to have rejected under Clause 3.7 hereof) the Association's offer of an Tenancy Agreement for that Rented Unit or shall have been rejected by the Association under Clause 5 hereof then the Association shall be at liberty to arrange for such Rented Unit to be occupied by a person of its own choosing.
- 3.10 The Association shall have the right to let a Rented Unit to a person of its own choosing in the event of the Council's failure to serve a Nomination Notice in respect of that Rented Unit within five (5) Working Days of the Association's Request for a Nomination and the Association's obligations under this Clause 3 shall cease in respect of that Rented Unit.

4. EXCEPTION TO OBLIGATION TO OFFER TENANCY AGREEMENT TO NOMINEE

It is hereby agreed that subject to the Association having provided copies of its Rules and its allocations policy (as may be amended from time to time) the Association shall not be obliged to offer a Tenancy Agreement to a Nominee and may, accordingly, reject the same unless it is satisfied acting reasonably that the Nominee falls within the categories of persons it is appropriate for the Association to house in accordance with its Rules and its allocation policy.

5. OBLIGATIONS TO SUPPLY INFORMATION

Association's Rules Etc.

- 5.1 At least one month prior to the service of the first Request for a Nomination pursuant to Clause 2.1 the Association shall supply to the Council full details of its Rules and shall thereafter supply full details of any amendments made thereto within five (5) Working Days of the amendment taking effect.

Decisions on Offers of Tenancy Agreements

- 5.2 The Association shall provide to the Council full details of:-

- 5.2.1 any offer of a Tenancy Agreement made by the Association to a Nominee; and
- 5.2.2 the reasons for any decision by the Association pursuant to Clause 5 not to offer a Tenancy Agreement to a Nominee; and

5.2.3 whether any offer of a Tenancy Agreement made to a Nominee has been accepted or rejected and if rejected the reasons given by the Nominee for the rejection (if any).

5.3 The details required to be provided to the Council pursuant to Clause 5.2 shall be provided within three (3) Working Days of the decision or event to which they relate.

Quarterly Monitoring

5.4 On the expiry of each period of three (3) months following the date of this Agreement the Association shall produce to the Council monitoring information as to Voids occurring in and re-occupations of the Rented Unit in substantially the form set out in Schedule 3.

Ethnic Origin Monitoring

5.5 The Council shall use reasonable endeavours to provide details of the ethnic origin of Nominees to enable the Association effectively to monitor the number and proportion of ethnic minority households it is housing in substantially the form set out in Schedule 4.

6. COUNCIL NOT TO OFFER TENANCY PENDING REJECTION OF OFFER

The Council agrees with the Association that where the Association has offered a Tenancy Agreement to a Nominee then unless the Association shall have agreed to the contrary (such agreement not to be unreasonably withheld or delayed) the Council shall not offer any tenancy to a Nominee or arrange for any other prospective landlord to offer any tenancy to a Nominee until such time as the Nominee has rejected or has been deemed to have rejected the Association's offer of a Tenancy Agreement or has been rejected by the Association under Clause 5 hereof.

7. RENT LEVELS OF THE RENTED UNIT

The Association shall ensure that the rent charged to Nominees for the Rented Unit shall not be inconsistent with any requirements specified by the Greater London Authority.

8. IF ASSOCIATION DISPOSES OF ITS INTEREST IN THE PROPERTY

8.1 Subject to Clause 8.2 the Association covenants with the Council not to sell transfer lease or otherwise dispose of its interest in the whole or part of the Rented Unit to another Registered Provider without first procuring that the disponent has entered into and executed a deed of nomination rights in favour of the Council identical in all material respects to this Agreement in which event the Association shall be released from its obligations contained in this Agreement excepting liability for existing breach.

8.2 Clause 8.1 shall not apply to or bind:-

8.3 the tenancies referred to in Clauses 2 and 3 in this Agreement;

8.4 anyone referred to in or any disposal contemplated by Clause 9.6;

8.5 In the event of the Rented Unit being disposed of as a consequence of any statutory right to buy or right to acquire or equivalent or similar scheme approved by the Homes Communities Agency then all of the Association's obligations hereunder in relation to such Rented Unit shall cease to apply.

9. GENERAL CLAUSES

Notices Etc. to be in Writing

- 9.1 All notices agreements information details consents requests and offers served or given or made pursuant to this Agreement shall be in writing.

Method of Service

- 9.2 Any notice or other document required to be served hereunder shall be sufficiently served on the recipient indicated above or such other address notified by one party to the other (if any) and any such notice shall be deemed to have been served two (2) Working Days after posting.

Saving for Council's Powers and Duties

- 9.3 Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council.
- 9.4 If any provision of this Agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law then such provision shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

Arbitration

- 9.5 If there shall be any difference or dispute on any matter arising from this Agreement or as to the construction of this Agreement then any such difference or dispute shall be referred to a single arbitrator to be agreed between the Parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Housing in accordance with an subject to the provisions of the Arbitration Act 1996 or any re-enactment or modification thereof for the time being in force.

Mortgage Protection

- 9.6 For the avoidance of doubt it is hereby agreed that the provisions of this Agreement shall not be binding on:-
- (a) any mortgagee or chargee ("Mortgagee") of a Registered Provider or any receiver (including an administrative receiver) or manager appointed by such Mortgagee or any administrator (howsoever appointed) including a housing administrator or any persons deriving title through, under or at the direction or requirement of any Mortgagee or receiver of manager;
 - (b) any Mortgagee or residential tenant (and for the avoidance of doubt including the tenants) or any receiver or manager appointed by such Mortgagee or any persons deriving title through, under or at the direction or requirement of any Mortgagee or receiver or manager;
 - (c) any tenant of any Rented Unit who has exercised a statutory right to buy or any equivalent contractual or statutory right of any person deriving title through or under any such tenant;
 - (d) any tenant of any Rented Unit who has exercised any statutory right to acquire or any equivalent contractual statutory right or any person deriving title through or under such tenant;
 - (e) any statutory undertakers or utilities companies in relation to any part of the Property required by them for electricity substations, gas governor stations and/or for the supply of any services; and

- (f) any successors in title to or persons deriving title through or under any of the persons listed in sub-clauses 9.6(a) to 9.6(e) (inc);
- (g) with the intent that any of the above shall be entitled to sell let charge or otherwise deal with the Rented Unit or any part of it free of the provisions of this Agreement.

9.7 The Council shall exercise its rights of nomination in accordance with its obligations under the Housing Act 1996 or any re-enactment or modification thereof for the time being in force.

Clause Headings

9.8 The clause heading in this Agreement are for ease of reference only and shall not be deemed to affect the meaning thereof.

IN WITNESS whereof with the intent that these presents should be executed as a Deed the parties hereto have duly executed the same the day and year first before written

THE MAYOR AND BURGESSES)
OF THE LONDON BOROUGH OF)
MERTON was)
 hereunto affixed in the presence of:-)

Authorised Officer

Seal Reg. No.

SCHEDULE 3

DATED

2020

(1) London Borough of Merton

to

(2) Tesco Stores

and

(3) Redrow Homes Limited

DEED OF UNDERTAKING

This **DEED OF UNDERTAKING** is dated

and is made by

(1) **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF MERTON** of Merton Civic Centre London Road Morden Surrey SM4 5DX (the "Council")

To

(2) **TESCO STORES LIMITED** (Company Registration Number 519500) of Tesco House, Shire Park, Kestrel Way, Welwyn Garden City AL7 1GA ("Tesco"); and

(3) **REDROW HOMES LIMITED** (Company Registration No. 01990710) of Redrow House, St David's Park, Flintshire, CH5 3RX (the "Developer")

Recitals

1. The Council is the local planning authority for the purposes of the Act for the Land.
2. Tesco is registered at the Land Registry as the proprietor of the freehold interest in the Land which is registered under title numbers SGL429015 and SGL487650.
3. The Developer entered into a conditional contract with Tesco on 5 February 2019 for the grant of the Lease which is registered on Tesco's freehold titles by way of a unilateral notice.
4. This deed of undertaking ("the Deed") is made by the Council pursuant to section 106 of the Act in connection with the Contributions payable by the Owner to the Council pursuant to the Principal Deed

1. INTERPRETATION

- 1.1 This Deed shall be interpreted in accordance with clauses 3 and 4 of the Principal Deed (except where the context otherwise requires)

2. DEFINITIONS

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

"Contributions"	means the financial contributions paid by the Owner to the Council pursuant to paragraphs 7.1 to 7.6 of Schedule 1 to the Principal Deed
"Coronavirus (Covid-19)"	means the impact of: (a) the Coronavirus (Covid-19) epidemic or pandemic and/or any other epidemic or pandemic; and/or (b) the actions of the UK Government or other relevant governmental or regulatory bodies in the UK or abroad in response to the Coronavirus (Covid-19) epidemic or pandemic and/or any other epidemic or pandemic;
"Coronavirus (Covid-19) Delay"	means any delay in spending the Contributions paid to the Council (pursuant to the Principal Deed) resulting from Coronavirus (Covid-19) including (but not limited to):

	<p>(a) Disruption to normal working practices for members of the Council including the temporary closure of offices;</p> <p>(b) Disruption to domestic UK travel/public transport restrictions affecting the free movement of labour or materials;</p> <p>(c) The non-availability of labour or materials needed to carry out the works for the which relevant Contribution was paid to the Council</p>
“Principal Deed”	means the deed of unilateral undertaking given by Tesco Stores Limited and Redrow Homes Limited to the London Borough of Merton relating to planning application 19/P2387
“Repayment Date”	means the date being within five (5) years of the date on which the final Contribution is paid to the Council pursuant to paragraph 8 of Schedule 1 to the Principal Deed
“Revised Repayment Date”	means the required period of extension to the Repayment Date sought by the Council where such extension shall be commensurate with the expected period of delay

NOW THIS DEED WITNESSETH as follows:-

2. For the purposes of paragraph 7 of Schedule 1 of the Principal Deed the Council hereby undertakes in favour of the Owner and the Developer as follows:
 - 2.1 That the Contributions shall only be used for the purpose specified within the Principal Deed and for no other purpose whatsoever
 - 2.2 If the Council has not expended the whole or part of the Contributions by the Repayment Date, then the Council shall immediately and no later than the 5th anniversary of the date of payment repay the Contributions or the unexpended balance to the Owner together with any interest that has accrued thereon.
 - 2.3 If, prior to the Repayment Date, due to any unavoidable cause incident or accident beyond the Council's control (including for the avoidance of doubt and without limitation a Coronavirus (Covid-19) Delay) the Council is delayed in spending the Contributions paid to it by the Owner pursuant to the Principal Deed the Council shall on becoming aware of the cause incident or accident give immediate notice to the Owner in writing, prior to the Repayment Date, specifying:
 - (a) the nature and extent of the cause incident or accident;
 - (b) the expected period of delay as a result of the cause incident or accident and the Revised Repayment Date
 - 2.4 Following service of a notice pursuant to clause 2.3 the Repayment Date shall be deemed to be the Revised Repayment Date
 - 2.5 For the avoidance of doubt:
 - (a) the provisions of Clause 2.3 and 2.4 may be invoked by the Council on more than one occasion;

- (b) In no circumstances shall the Revised Repayment Date be extended beyond the date that is ten years from the grant of the Planning Permission

IN WITNESS whereof this Deed has been duly executed the day and year first above written

**THE COMMON SEAL of THE MAYOR AND
BURGESSES OF THE LONDON BOROUGH**

OF MERTON was hereunto affixed

as a deed in the presence of:

Signature _____

Name _____

Authorised Signatory

Seal Register No. _____

ANNEX 1

FORMULA 1a (Surplus profit available for additional on-site affordable housing)

$$\text{"Surplus profit"} = ((A - B) - (D - E)) - P$$

Where:

A = Estimated GDV (£)

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

C = Percentage change in the Land Registry House Price Index for the Council's administrative area from grant of Planning Permission to Review Date (using the latest index figures publicly available) (%)

D = Estimated Build Costs (£)

E = $D \div (F + 1)$

F = Percentage change in the BCIS All in Tender Index ("BCIS TPI") from grant of Planning Permission to Review Date (using the latest index figures publicly available) (%)

P = $(A - B) * Y$

Y = 20% being developer profit as a percentage of GDV for the private residential component as determined as part of the review (%)

FORMULA 2 (Additional affordable housing)

X = Additional London Affordable Rented Housing requirement (Habitable Rooms)

X = $((E * F) \div (A - B)) \div D$

Y = Additional London Shared Ownership requirement (Habitable Rooms)

Y = $((E * G) \div (A - C)) \div D$

Where:

A = Average Open Market Housing Value (£ per m²)

B = Average Low Cost Rent Housing Value (£ per m²)

C = Average Intermediate Housing Value (£ per m²)

D = Average Habitable Room size for the Development

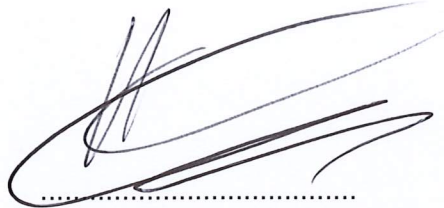
E = Surplus profit available for Additional Affordable Housing Units as determined in Formula 1a (£)

F = Percentage of surplus profit available for Additional Affordable Housing Units to be used for London Affordable Rented Housing (%)

G = Percentage of surplus profit available for Additional Affordable Housing Units to be used for London Shared Ownership Housing (%)

IN WITNESS whereof with the intent that these presents should be executed as a Deed the parties hereto have duly executed the same the day and year first before written

EXECUTED as a DEED)
as an attorney for)
TESCO STORES LIMITED)



Under a power of attorney)
in the presence of:)

Tesco Stores Limited

Name of witness:

CHRYSTAL MCGANN

Signature of Witness:



Address:

TESCO STORES LTD, SHOPS PARK, WELWYN GARDEN CITY
AL7 1QA

Occupation:


DEVELOPMENT EXECUTIVE

EXECUTED as a DEED by

as attorney for

REDROW HOMES LIMITED

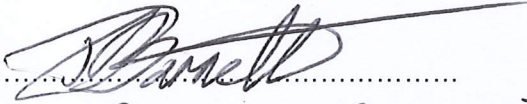
in the presence of:-

(Cristina Rossetti) 

as attorney for REDROW HOMES

LIMITED

Signature of witness



Name (in BLOCK CAPITALS)

DESNE BARNETT

Address... 3 FRITH MANOR FARM COTTAGES

LONDON

N12 7BS

EXECUTED as a DEED by

Mark ELSON as attorney for

REDROW HOMES LIMITED

in the presence of:-



as attorney for REDROW HOMES

LIMITED

Signature of witness



Name (in BLOCK CAPITALS)

ANGELICA ROSSETTI

Address... 2, HANDSIDE CLOSE

WELWYN GARDEN CITY

HERTFORDSHIRE AL8 6SR