

## DEFINITIONS

<p>"Foul/Surface Water Drainage and Sewerage"</p>	<p>means the sewers and drains to be constructed or completed within the Application Site pursuant to the Planning Permission or such sewers and drains that may already exist at the time Planning Permission is granted;</p>
<p>"SUDS"</p>	<p>means visible surface water drainage measures/features which will be located within the Application Site and which shall include the following to serve the Application Site:</p> <ul style="list-style-type: none"> <li>(a) swales watercourses and ditches;</li> <li>(b) attenuation ponds and infiltration basins;</li> <li>(c) soakaways;</li> </ul> <p>but shall exclude (unless otherwise specified on any application for Reserved Matters) any such measures or features located within the curtilage of any Dwelling constructed on the Application Site;</p>
<p>"SUDS Alternative Body"</p>	<p>means any statutory water undertaker that is legally permitted to adopt or otherwise manage and maintain surface water drainage features and measures;</p>
<p>"SUDS Commuted Sums"</p>	<p>means a commuted sum for maintenance of the SUDS (for 20 years) determined in accordance with Paragraph 2.1.3 of Part 2 of this Schedule;</p>
<p>"SUDS Completion Certificate"</p>	<p>means a certificate issued by the Council which shall be conclusive evidence that the SUDS have been laid out in conformity with this Deed to the reasonable satisfaction of the Council and the issue of a SUDS Completion Certificate shall commence the SUDS Maintenance Period in respect of the whole or part of the SUDS to which the SUDS Completion Certificate relates;</p>
<p>"SUDS Final Certificate"</p>	<p>a certificate to be issued by the District Council which shall be conclusive evidence that the SUDS have been properly maintained during the SUDS</p>

	Maintenance Period;
"SUDS Land"	means the land on which SUDS are to be located whose size and exact location shall be determined as a result of a Reserved Matters Application and whose exact size shall be approved pursuant to the SUDS Specification;
"SUDS Maintenance Period"	means: (a) in the event the SUDS are to be transferred to the Council the period shall be 12 months from the date of the SUDS Completion Certificate or such longer period as a statutory water undertaker that is legally permitted to adopt or otherwise manage and maintain surface water drainage features may reasonably require whether or not the SUDS are transferred to that statutory undertaker; or (b) the period shall be 12 months from the date of the SUDS Completion Certificate or such longer period as a statutory water undertaker that is legally permitted to adopt or otherwise manage and maintain surface water drainage features may reasonably require whether or not the SUDS are transferred to that statutory undertaker; or (c) in the event the SUDS are to be transferred to a statutory water undertaker that is legally permitted to adopt or otherwise manage and maintain surface water drainage features and measures the period shall be up to 24 months from the date of the SUDS Completion Certificate or such shorter period as agreed by that statutory undertaker;
"SUDS Specification"	means a detailed specification to be prepared by or on behalf of the Owner by a suitably qualified and professionally approved person carrying appropriate professional indemnity insurance and which detailed specification shall include (where applicable): (a) Hydraulic calculations; (b) Details of control devices and

	<p>flow control measures;</p> <p>(c) Geotechnical design criteria;</p> <p>(d) Permeability assessment;</p> <p>(e) Proposed design specification and landscaping and boundary treatments;</p> <p>(f) Life-saving equipment (e.g. lifebelts);</p> <p>(g) Warning and information signage;</p> <p>(h) Proposals to seek to minimise long term maintenance and a long term maintenance scheme ("the Maintenance Scheme"); and</p> <p>(i) Proposals to seek to maximise ecological benefit;</p> <p>(j) The exact location and dimensions of the SUDS;</p> <p>(k) A construction programme for the SUDS setting timings for commencement through to completion of the SUDS;</p> <p>(l) Both a ROSPA assessment/certificate and CDM designer's risk assessment evidencing that the SUDS can be operated safely;</p> <p>(m) Suitable Public Liability Insurance for the above</p>
<p>"SUDS Transfer"</p>	<p>means a transfer by the Owner of the unencumbered freehold interest in the SUDS on terms to be agreed but which shall nevertheless:</p> <p>(a) include terms which would not restrict public access;</p> <p>(b) include terms which would not directly or indirectly affect the construction servicing or occupation of the part of the Application Site that is retained by the Owner;</p> <p>(c) include reservation of rights of access over the SUDS;</p> <p>(d) include the grant of any rights reasonably necessary for the proposed end use of any adjoining land;</p> <p>(e) include for the benefit of the SUDS the grant of any rights of access over any adjoining land which rights are reasonably</p>

	<p>required for the management and maintenance of the SUDS for its purpose for public open space, water attenuation and surface water drainage purposes;</p> <ul style="list-style-type: none"><li>(f) be at consideration of £1;</li><li>(g) include a covenant that the SUDS shall not be used for any purpose other than for public open space, water attenuation and surface water drainage purposes associated with the Development;</li><li>(h) include obligations on the part of the transferee to maintain the SUDS in full accordance with the Maintenance Scheme comprising part of the SUDS Specification; and</li><li>(i) include obligations on the part of the Owner to bear the reasonable legal and professional costs of the other parties to the transfer;</li></ul>
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**Part 1**  
**PROVISION OF SUDS**

The Owner and the Council covenant with each other as follows:

1. Prior to Commencement of Development and as part of the Reserved Matters Applications the Owner shall submit to the Council in writing for approval the SUDS Specification
2. Development shall not Commence until the Council has approved the SUDS Specification by way of Reserved Matters Applications.
3. Prior to the Occupation of any Dwelling or use of any buildings (being buildings other than those forming part of a Dwelling) the Owner shall layout install and complete the relevant SUDS:
  - 3.1 to the reasonable satisfaction of the District Council as evidenced by the issuing of a SUDS Completion Certificate; and
  - 3.2 in accordance with the approved SUDS Specification.
4. Following completion of the SUDS:
  - 4.1 The Owner shall serve notice, which shall include a report and set of 'as built' drawings from an independent and suitably qualified person, on the Council inviting them to inspect the SUDS in question and to issue a SUDS Completion Certificate confirming that such works have been completed to the Council's reasonable satisfaction PROVIDED THAT in order that the notice served by the Owner shall be validly served it shall be accompanied by a ROSPA assessment and certificate evidencing that the SUDS in their completed form can be operated safely;
  - 4.2 if the Council inspects the SUDS and identifies any defects requiring remedial works, the Council will notify the Owner of the defects within 15 Working Days of such inspection. The Owner shall complete any necessary remedial works to the reasonable satisfaction of the Council;
  - 4.3 upon completion of any remedial works, the Owner shall serve notice on the Council inviting them to inspect the remedial works identified by them pursuant to paragraph 4.2 and to issue a SUDS Completion Certificate confirming that such works have been completed to the Council's reasonable satisfaction  
PROVIDED THAT if the Council fails to inspect the SUDS within 30 Working Days of receipt of a notice of invitation from the Owner pursuant to paragraphs 4.1 or 4.3 or fails to issue a SUDS Completion Certificate within 30 Working Days of the inspection where no remedial works have been identified then the SUDS Completion Certificate shall be deemed to have been issued at the end of those specified periods PROVIDED FURTHER THAT the inspection procedure identified in paragraphs 4.1 and 4.3 shall be repeated until such time as the Council issue or are deemed to have issued a SUDS Completion Certificate in relation to the SUDS AND PROVIDED FURTHER THAT nothing shall prevent the Owner undertaking the SUDS in phases or in individual component parts and seeking SUDS Completion Certificates for each such phase or part of SUDS.
5. On expiration of the SUDS Maintenance Period the Owner shall:
  - 5.1 serve notice on the Council inviting them to inspect the SUDS and issue a SUDS Final Certificate confirming that such works have been maintained to the Council's reasonable satisfaction;
  - 5.2 if the Council inspects the SUDS and identifies all necessary remedial works, the council will notify the Owner of the required remedial works within 15 Working Days of such inspection and the Owner will thereafter complete such remedial works to the reasonable satisfaction of the Council;
  - 5.3 upon completion of all remedial works, serve notice on the Council inviting them to inspect the remedial works identified by them pursuant to paragraph

5.2 and issue a SUDS Final Certificate confirming at such works have been completed to their reasonable satisfaction

PROVIDED THAT if the Council fails to inspect the SUDS within 30 Working Days of receipt of a notice of invitation from the Owner pursuant to paragraphs 5.1 or 5.3 or fails to issue a SUDS Final Certificate within 30 Working Days of the inspection where no remedial works have been identified then the SUDS Final Certificate shall be deemed to have been issued at the end of those specified periods PROVIDED FURTHER THAT the inspection procedure identified in paragraphs 5.1 or 5.2 shall be repeated until such time as the Council issue or are deemed to have issued a SUDS Final Certificate in relation to the SUDS PROVIDED FURTHER THAT nothing shall prevent the Owner undertaking the SUDS in phases or in individual component parts and seeking SUDS Final Certificates for each such phase or part of the SUDS.

6. The Owner shall:
  - 6.1 maintain the SUDS in accordance with the approved SUDS Specification until such time as the SUDS are transferred to the Council or at the Council's election a SUDS Alternative Body pursuant to the Maintenance Scheme; and
  - 6.2 from the date the SUDS Completion Certificate is issued or of deemed issue of the SUDS Completion Certificate to allow free unrestricted use and access of the SUDS for the general public at all times of the day and night PROVIDED THAT use and access may be restricted in the following circumstances:
    - 6.2.1 in the event of emergency such that access and use by the general public should be prevented for reasons of health and safety;
    - 6.2.2 where any part of the SUDS shall for health and safety purposes be proposed to be permanently fenced off or where other means are used to permanently prevent use and access by the general public this shall be documented and approved in the SUDS Specification.
7. The Owner shall save as otherwise agreed in writing by the Council (acting reasonably):
  - 7.1 not locate any Utilities or Foul/Surface Water Drainage and Sewerage in on or under the SUDS Land other than those public surface water sewers directly associated with and connected to the SUDS features;
  - 7.2 not locate the SUDS Land within an area of the Application Site that at the time Planning Permission is granted already has Utilities or Foul/Surface Water Drainage and Sewerage located within such area; unless these are to be relocated.

## **Part 2**

### **TRANSFER OF THE SUDS LAND**

The Owner covenants with the Council as follows:

1. No later than 30 Working Days after the issue of a SUDS Completion Certificate to serve written notice on the Council either:
  - 1.1 offering to the Council the SUDS Land to adopt and offering to transfer to the Council the SUDS Land pursuant to the SUDS Transfer ;
  - 1.2 at the Council's election offering to transfer to a SUDS Alternative Body the SUDS Land pursuant to the SUDS Transfer.
2. In the event that the Council accepts the offer to adopt and take a transfer of any part of the SUDS Land then the Owner shall:
  - 2.1.1 following the issue or deemed issue of the SUDS Final Certificate in relation to the relevant part of the SUDS, execute and deliver to the Council the SUDS Transfer in respect of such part of the SUDS Land;
  - 2.1.2 the transfer will take place either

- (a) as soon as practicably possible after the issue of the relevant SUDS Final Certificate in relation to the SUDS for the whole of the SUDS Land; or
- (b) where individual SUDS Final Certificates are issued or deemed to be issued in relation to various parts of the SUDS the transfer of the relevant SUDS on which the said SUDS have received a SUDS Final Certificate will occur as soon as practicably possible after the SUDS Final Certificate has been or is deemed to have been issued in respect of the relevant SUDS

PROVIDED ALWAYS THAT the transfer(s) of the whole of the SUDS Land whether it occurs as a result of one or more transfers shall be completed prior to whichever shall be the first to occur of 75% of the Dwellings being Occupied within the relevant Area or the bringing into use of the last building (being buildings other than those forming part of a Dwelling) constructed as part of the Development and the Owner shall bear the reasonable legal and professional fees of the parties to the transfer(s) and any SDLT costs of the transfer (s).

- 2.1.3 on completion of such SUDS Transfer to pay to the Council the relevant proportion of the SUDS Commuted Sum (such proportion being calculated by reference to the area of the land being transferred against the total area of the SUDS Land within the Application Site) and the quantum of such commuted sum shall be agreed between the Owner and the Council prior to the date of transfer based on the details set out in the approved SUDS Specification and the Council will covenant in the transfer to thereafter maintain the SUDS in accordance with the Maintenance Scheme.
- 3. Where the Council elects not to accept the offer of the transfer of the SUDS Land to it the Council shall be entitled to notify the Owner in writing of an SUDS Alternative Body to whom the Council elects that the offer to transfer the SUDS Land should be made by the Owner PROVIDED THAT the Council shall notify the Owner in writing of any proposed election of a SUDS Alternative Body at any time before the date 20 Working Days after the receipt of the notice served pursuant to paragraph 1 of this Part 6 AND PROVIDED FURTHER THAT if the Council shall not have elected an SUDS Alternative Body by the expiry of the said 20 Working Days it shall be deemed that the Council does not wish to elect an SUDS Alternative Body and that the Council will accept the transfer to it of the SUDS Land.
- 4. Where the Council has elected an SUDS Alternative Body and has notified the Owner before the expiry of the 20 Working Days the Owner shall forthwith write to the SUDS Alternative Body offering to transfer the Open Space Land and/or SUDS Land pursuant to the Open Space Land Transfer to the SUDS Alternative Body.
- 5. In the event that the SUDS Alternative Body accepts the offer to transfer the SUDS Land to it the Owner shall:
  - 5.1.1 following the issue or deemed issue of the SUDS Final Certificate in relation to the relevant part of the SUDS, execute and deliver to the SUDS Alternative Body the SUDS Transfer in respect of such part of the SUDS Land;
  - 5.1.2 the SUDS Transfer will take place either:
    - (a) as soon as practicably possible after the issue or deemed issue of the relevant SUDS Final Certificate in relation to the SUDS for the whole of the SUDS Land; or
    - (b) where individual SUDS Final Certificates are issued or deemed to have been issued in relation to various parts of the SUDS the transfer of the relevant SUDS Land on which the said SUDS have

received a SUDS Final Certificate will occur as soon as practicably possible after the SUDS Final Certificate has been issued or deemed to have been issued in respect of the relevant SUDS

PROVIDED ALWAYS THAT the transfer(s) of the whole of the SUDS Land whether it occurs as a result of one or more transfers shall be completed prior to whichever shall be the first to occur of 75% of the Dwellings being Occupied or the bringing into use of the last building (being buildings other than those forming part of a Dwelling) constructed as part of the Development; and the Owner shall bear the reasonable legal and professional fees of the parties to the transfer(s) and any SDLT costs of the transfer(s)

- 5.1.3 on completion of such SUDS Transfer to pay to the SUDS Alternative Body the relevant proportion of the SUDS Commuted Sum (such proportion being calculated by reference to the area of the land being transferred against the total area of the SUDS Land within the Application Site) and the quantum of such commuted sums shall be agreed between the Owner and the Council prior to the date of transfer based on the details set out in the approved SUDS Specification and the SUDS Alternative Body will covenant in the transfer to thereafter maintain the SUDS in accordance with the Maintenance Scheme.
  6. No more than 75% (seventy five percent) of the Dwellings shall be permitted to be Occupied or the last building (being buildings other than those forming part of a Dwelling) constructed as part of the Development shall be permitted to be brought into use (whichever shall be the first to occur) until such time as :
    - 6.1 the whole of the SUDS Land has been offered to be transferred to either the Council or a SUDS Alternative Body; and
    - 6.2 a SUDS Final Certificate has been issued or deemed to have been issued in relation to all parts of the SUDS.
  7. Owner's Obligations to Transfer
    - 7.1 The Owner shall only transfer the SUDS Land to either:
      - (a) the Council, or
      - (b) a SUDS Alternative Body nominated by the Council.
- FOR THE AVOIDANCE OF DOUBT neither the Council nor the SUDS Alternative Body is obliged in any event to take a transfer of the SUDS Land in the event the SUDS have not been constructed in accordance with the approved SUDS Specification or a SUDS Final Certificate has not been issued but at all times the Council or the SUDS Alternative Body must act reasonably and in good faith and the Council must not unreasonably resist the transfer of the SUDS Land to it.
8. Any dispute under Parts 4, 5 or 6 of this Third Schedule shall be referred to arbitration in accordance with Clause 16 of this Deed.
  9. Where neither the Council nor any SUDS Alternative Body nominated by the Council are willing to take a transfer of the SUDS Land the Owner may upon Occupation of 75% (seventy five percent) of the Dwellings transfer the SUDS to a Management Company.
  10. The Owner covenants to transfer the SUDS to a Management Company on the basis that one of its primary objectives is to maintain and manage the SUDS to the reasonable satisfaction of the Council