



DRAFT DEED OF OBLIGATIONS (A): 9.11

Cory Decarbonisation Project

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Revision A



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DATED _____ 202[] _____

- (1) LONDON BOROUGH OF BEXLEY
- (2) CORY ENVIRONMENTAL HOLDINGS LIMITED
- (3) PEABODY TRUST

**DEED OF OBLIGATIONS AND OTHER
COVENANTS**

**pursuant to Section 111 of the Local
Government Act 1972 and Section 1 of the
Localism Act 2011 and all other powers
enabling relating to the Cory Decarbonisation
Project in the London Borough of Bexley**



Pinsent Masons

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DEED

relating to

Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 in relation to the development at Norman Road North, Belvedere, London, DA17 6JY.

THIS DEED is made on [REDACTED]

BETWEEN:

- (1) London Borough of Bexley, whose registered office is at Civic Offices, 2 Watling Street, Bexleyheath, DA6 7AT ("the **Council**");
- (2) Cory Environmental Holdings Limited, whose registered office is at Level 5, 10 Dominion Street, London, EC2M 2EF (company number 05360864) ("the **Developer**"); and
- (3) Peabody Trust, whose registered office is at 45 Westminster Bridge Road, London, SE1 7JB (company number RS007741) ("**Peabody**").

BACKGROUND:

- (A) The Council is the local planning authority for the purposes of s 106 of the 1990 Act for the area in which the Order land is situated and is the enforcing authority for the purposes of section 106 of the 1990 Act.
- (B) On 21 March 2024 the Developer submitted the Application to the Secretary of State for development consent to construct, operate and decommission the Project. The Application was accepted for examination by the Secretary of State on 18 April 2024.
- (C) It is intended that the Developer will be the undertaker for the purposes of the Development Consent Order and the Developer intends to construct, operate and decommission the Project.
- (D) Peabody are the owners of the BNG Opportunity Area Land and are working with the Developer to help facilitate delivery of off-site BNG and ecological compensation delivery.

IT IS AGREED:

1. INTERPRETATION

In this Deed unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

"1972 Act"	means the Local Government Act 1972;
"2008 Act"	means the Planning Act 2008;
"2011 Act"	means the Localism Act 2011;
"Application"	means the application for a development consent order under section 37 of the Planning Act 2008 in relation to the Project and submitted to the Secretary of State on 21 March 2024 and given reference number EN010128;
"Authorised Development"	has the same meaning as in Article 2 of the Development Consent Order;
"BNG Opportunity Area Land"	means the area labelled as the BNG Opportunity Area on the BNG Opportunity Area Plan;
"BNG Opportunity Area Land Plan"	means the plan at Appendix 1 to this Deed or such other replacement plan substituted by of the Parties;
"Commence"	has the same meaning as in Article 2 of the Development Consent Order and the words "Commencement" and "Commenced" and cognate expressions are to be construed accordingly;
"Date of Commencement"	means the date that the Authorised Development Commences;
"Date of Decommissioning"	means the date on which the Developer commences the decommissioning of the Project in accordance with the timetable set out in the Decommissioning Environmental Management Plan approved under requirement 23 of the Development Consent Order;
"Date of Final Commissioning"	has the same meaning as in Article 2 of the Development Consent Order;
"Deed"	means this deed made under section 106 of the 1990 Act;

“Development Consent Order”	means the development consent order to be made pursuant to the Application;
“Expert”	means the expert appointed pursuant to Clause 20;
“Notice”	means the written notification given by any Party to the other Parties of their intention to refer to the Expert any dispute arising between the Parties in respect of any matter contained in this Deed, such notice to specify the matters set out in Clause 19;
“Order land”	means the “Order land” as defined in Article 2 and Schedule 1 of, and to be authorised by, the Development Consent Order;
“Parties”	means the Council, the Developer and Peabody and “Party” means any one of them as the context so requires;
“Project”	means the Authorised Development;
“Secretary of State”	means the Secretary of State for Energy Security and Net Zero or such other Secretary of State of Her Majesty’s Government that has the responsibility for determining the Development Consent Order;
“Undertaking”	means the benefit of the Order to construct and/or operate Work No.1 as set out in Schedule 1 to the Development Consent Order; and
“Working Day”	means a day other than a Saturday or Sunday or public holiday in England.

- 1.1 In this Deed, unless stated otherwise:
- 1.1.1 words incorporating the singular include the plural and vice versa and words importing any gender include every gender;
 - 1.1.2 words importing persons include firms, companies, corporations, and vice versa;
 - 1.1.3 references to the Council include the successor(s) to its statutory function as local planning authority;
 - 1.1.4 references to clauses, paragraphs and Schedule are unless otherwise stated references to the relevant clauses and paragraphs of and Schedule 1 to this Deed;

- 1.1.5 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction;
- 1.1.6 references in this Deed to statutes, by-laws, regulations, orders and delegated legislation shall include any statute, by-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same as current and in force from time to time;
- 1.1.7 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected, impaired or called into question;
- 1.1.8 the recitals and headings in this Deed are for ease of reference only and shall not affect its construction or otherwise have any binding legal effect;
- 1.1.9 in the event of any conflict between the provisions of this Deed and of any document annexed hereto or referred to herein, the provisions of this Deed shall prevail;
- 1.1.10 references to “notice” shall mean notice in writing;
- 1.1.11 references to “including” shall mean including without limitation;
- 1.1.12 the Interpretation Act 1978 shall apply to this Deed; and
- 1.1.1 the Deed shall be a local land charge in respect of all freehold or leasehold interests the Order land owned by the Developer and for the purposes of the Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.

2. **LEGAL EFFECT**

2.1 This Deed is made pursuant to section 111 of the 1972 Act, section 1 of the Localism Act 2011 and all other powers so enabling.

2.2 The obligations, covenants and undertakings on the part of the Developer and Peabody in this Deed are, subject to clause 8, entered into with the intent that they shall be enforceable by the Council against:

2.2.1 the Developer and any transferees or grantees of the benefit of the Undertaking pursuant to the Order and are entered into as obligations, covenants and undertakings in respect of all clauses not listed in clause 2.2.2; and

2.2.2 Peabody in respect of its covenants in Schedule 2 of this Deed;

in pursuance of the powers referred to in clause 2.1 with the intent that they shall be enforceable under contract.

3. **CONDITIONALITY**

3.1 Subject to Clause 3.2, this Deed is conditional upon and will not take effect until both the Development Consent Order has been granted and the Authorised Development has Commenced.

- 3.2 Clauses 1, 2, 3, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19 and 20 come into effect on the date of this Deed.
- 3.3 Where the Development Consent Order becomes the subject of any judicial review proceedings under section 118 of the 2008 Act:
- 3.3.1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed, will remain without operative effect unless the Project has been commenced; and
- 3.3.2 if following the final determination of such proceedings the Development Consent Order is capable of being commenced, then this Deed will take effect in accordance with its terms.
- 3.4 Wherever in this Deed reference is made to the final determination of judicial review proceedings (or cognate expressions are used) the following provisions will apply:
- 3.4.1 proceedings by way of judicial review are finally determined:
- (a) when permission to bring a claim for judicial review has been refused and no further application may be made;
 - (b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
 - (c) when any appeal is finally determined and no further appeal may be made.

4. THE DEVELOPER'S OBLIGATIONS

- 4.1 The Developer covenants with the Council to observe and perform the obligations, undertakings, covenants and agreements given to the Council on its part contained in Schedules 1 and 2.
- 4.2 The Developer covenants with Peabody to observe and perform the obligations, undertakings, covenants and agreements given to Peabody on its part contained in Schedule 2.

5. THE COUNCIL'S OBLIGATIONS

- 5.1 The Council covenants with the Developer to observe and perform the covenants and obligations on their part contained in Schedules 1 and 2.
- 5.2 The Council covenants with Peabody to observe and perform the covenants and obligations on their part contained in Schedule 2.

6. PEABODY'S OBLIGATIONS

- 6.1 Peabody covenants with the Developer to observe and perform the covenants and obligations on their part contained in Schedule 2.
- 6.2 Peabody covenants with the Council to observe and perform the covenants and obligations on their part contained in Schedule 2.

7. REGISTRATION AS LOCAL LAND CHARGE

7.1 This Deed shall be registered by the Council as a local land charge in the register of local land charges pursuant to the Local Land Charges Act 1975.

7.2 The Council must remove this Deed from the register of local land charges upon the Date of Decommissioning, unless already removed pursuant to clause 9.1

8. RELEASE AND ASSIGNMENT

8.1 No person shall be liable for any breach of the development obligations or other provisions of this Deed after:

8.1.1 in respect of the Developer, it shall have parted with its interest in the Order land or the relevant part thereof, or the Undertaking, under article 9 (consent to transfer the benefit of the Order) of the Development Consent Order; and

8.1.2 in respect of Peabody, it shall have parted with its interest in the BNG Opportunity Area Land;

but without prejudice to any rights of the Council or either of them in respect of any antecedent breach of those obligations.

8.2 In the event that:

8.2.1 any person other than the Developer is appointed as an “undertaker” (as defined in the Development Consent Order) for the purposes of the Development Consent Order; or

8.2.2 powers of the “undertaker” under the Development Consent Order are devolved or transferred to any other person in connection with the Project;

8.2.3 any person other than the Developer performs any physical works connected with “Work No.1” (as defined in the Development Consent Order);

8.2.4 and the provisions of this Deed are not otherwise made directly enforceable against any such person (the “Transferee”), the Developer will without delay require the Transferee to enter into a deed in favour of the Council that the Transferee shall observe and perform such of the covenants and obligations on the Developer under this Deed as relate to the exercise of the powers which have been transferred as though the Transferee had been an original party to this Deed.

9. FURTHER CONSENTS

Nothing in this Deed shall be construed as prohibiting or limiting the rights of the Developer to use or develop any part of the Order land in accordance with and to the extent permitted by a certificate of lawful use, planning permission, development consent order, consent under the Electricity Act 1989 or other statutory authority granted either before or after the date of this Deed, other than the Development Consent Order.

10. EXPIRY

If the Development Consent Order expires or is quashed or revoked prior to Commencement then this Deed shall immediately determine and cease to have effect and the Council shall cancel all entries made in their register of local land charges in respect of this Deed.

11. **CERTIFICATES OF COMPLIANCE**

The Council shall upon written request certify compliance with the development consent obligations in this Deed.

12. **NOTICES**

12.1 Any notice, consent or approval required to be given under this Deed shall be in writing and shall be sent to the address and marked for the attention of the persons identified below or instead to such other persons as may be substituted for them from time to time.

12.2 Any such notice must be delivered by hand or by pre-paid special delivery post (unless the receiving party agrees to receive the notice electronically) and shall conclusively be deemed to have been received:

12.2.1 if delivered by hand, on the next Working Day after the day of delivery; and

12.2.2 if sent by special delivery post and posted within the United Kingdom, on the day 2 Working Days after the date of posting.

12.3 A notice or communication shall be served or given:

12.3.1 on the Developer at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of [TBC];

12.3.2 on the Council at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of [TBC];

12.3.3 on Peabody at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of [TBC];

13. **APPROVALS**

Where any approval, agreement, consent, confirmation or an expression of satisfaction is required under the terms of this Deed such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

14. **THE COUNCIL'S POWERS**

Nothing in this Deed shall fetter the statutory rights, powers or duties of the Council as local planning authority or as highway authority as the case may be.

15. **GOOD FAITH**

The Parties agree with each other to act reasonably and in good faith in the discharge of the obligations contained in this Deed.

16. **RIGHTS OF THIRD PARTIES**

It is not intended that any person who is not a party to this Deed shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed

17. **JURISDICTION**

This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

18. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement.

19. **COSTS**

The Developer shall pay on completion of this Deed the reasonable legal and planning costs of the Council and Peabody incurred in the preparation, negotiation and execution of this Deed.

20. **DISPUTE RESOLUTION**

20.1 In the event of any dispute arising between any of the Parties in respect of any matter contained in this Deed, senior representatives of the Parties to the dispute in question shall meet to try and resolve the dispute within 10 Working Days of the dispute arising.

20.2 In the event of any dispute arising between the Parties not being able to be resolved pursuant to clause 20.1, that dispute may be referred to the Expert by any Party serving the other Party(s) to the dispute in question with a Notice.

20.3 The Notice must specify:

20.3.1 the nature, basis and brief description of the dispute;

20.3.2 the clause of this Deed to which the dispute has arisen; and

20.3.3 the proposed Expert.

20.4 The Expert shall be an independent person possessing expertise relevant to the dispute and in the event that the Parties are unable to agree whom should be appointed as the Expert within twenty (20) Working Days after the date of the Notice then any Party may request:

20.4.1 if such dispute shall relate to matters concerning the construction, interpretation and/or the application of this Deed, the Chairman of the Bar Council to nominate the Expert;

20.4.2 if such dispute shall relate to matters necessitating any calculation or otherwise concerning a financial aspect of this Deed, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert;

20.4.3 if such dispute shall relate to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert; or

- 20.4.4 in all other cases, the President of the Law Society to nominate the Expert.
- 20.5 The Expert shall act as an expert and not as an arbitrator and whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the Parties to the dispute in equal shares.
- 20.6 The Expert shall be appointed (through an agreed request statement setting out exactly the questions that he is to determine submitted jointly by the Parties) subject to an express requirement that he reaches his decision and communicates it to the Parties to the dispute within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days from the date of his appointment to act.
- 20.7 The Expert shall be required to give notice to each of the said Parties to the dispute inviting each of them to submit to him within twenty (20) Working Days from the date of his appointment written submissions and supporting material and shall afford to the said Parties an opportunity to make counter submissions within a further ten (10) Working Days in respect of any such submission and material.
- 20.8 In the absence of manifest error the Expert's decision shall be binding on the Parties.

SCHEDULE 1

ACCESS IMPROVEMENTS

1. DEFINITIONS AND INTERPRETATION

- 1.1 Where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:

“Access Improvements” means improvements to existing public rights of way or routes otherwise utilised by pedestrians and cyclists in Belvedere or Thamesmead; and

“Access Improvements Contribution” means a contribution of [to be discussed with the Council] to the cost of the Access Improvements.

2. ACCESS IMPROVEMENTS

- 2.1 Prior to the Date of Final Commissioning, the Applicant covenants to the Council that it shall pay the Access Improvements Contribution to the Council.
- 2.2 The Council covenants to the Developer that it shall not spend the Access Improvements Contribution for any other purposes other than for Access Improvements.
- 2.3 The Council covenants to the Developer that if it has not spent the Access Improvements Contribution within five years of the date that the Access Improvements Contribution is received, it shall pay back the Access Improvements Contribution to the Developer.

SCHEDULE 2

ECOLOGY

1. DEFINITIONS AND INTERPRETATION

- 1.1 Where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:

“Alternative Off-Site Delivery Mechanism” means an alternative strategy proposed by the Developer, as an alternative to the BNG Opportunity Area, or if the BNG Opportunity Area is to be utilised but is not sufficient, to ensure that a minimum 10% biodiversity net gain in habitats units is achieved as a result of the Project and that the off-site ecological compensation to be set out in the Landscape, Biodiversity, Access and Recreation Delivery Strategy is delivered, and which ensures that any such strategy is maintained for 30 years;

“Approved Ecological Works” means any ecological works within the BNG Opportunity Area Land approved as part of the Landscape, Biodiversity, Access and Recreation Delivery Strategy;

“Approved BNG Opportunity Area Management Measures” means the ecological management measures for the BNG Opportunity Area land required by the Landscape, Biodiversity, Access and Recreation Delivery Strategy;

“BNG Opportunity Area Delivery Contribution” means a contribution of [to be discussed with the Council and Peabody] to enable the delivery of the BNG Opportunity Area;

“BNG Opportunity Area Management Contribution” means a [annual] contribution to the costs of Peabody for undertaking the Approved BNG Opportunity Area Management Measures for 30 years from the date that the works to deliver the BNG Opportunity Area are completed that are related to having delivered the Approved Ecological Works, and not any costs arising from seeking to manage the BNG Opportunity Area Land as part of its wider landholdings;

“Landscape, Biodiversity, Access and Recreation Delivery Strategy” means the landscape, biodiversity access and recreation delivery strategy approved by the Council pursuant to paragraph 12 of Schedule 2 to the Development Consent Order;

“Off-Site Proposals” means the off-site elements for the delivery of biodiversity net gain and off-site ecological compensation included in the Landscape, Biodiversity, Access and Recreation Delivery Strategy, which must either include for the delivery of ecological works within the BNG Opportunity Area Land, or an Alternative Off-Site Delivery Mechanism or a mixture of both, in order to achieve a minimum 10% biodiversity net gain in habitats units as a result of the Project and the off-site ecological compensation requirements set out in the environmental statement submitted with the Application; and

“Stop Date” means the date eleven months prior to the estimated Date of Final Commissioning notified by the Developer pursuant to clause 3.3 of this Schedule.

2. ALTERNATIVE OFF-SITE DELIVERY MECHANISM

- 2.1 The Developer covenants to the Council that pursuant to the provisions of this Deed, or otherwise at the Developer's discretion, that if the Off-Site Proposals do not from the outset include delivery of the BNG Opportunity Area or the Landscape, Biodiversity,

Access and Recreation Delivery Strategy indicates that more than the BNG Opportunity Area is required to deliver a 10% biodiversity net gain in habitats units as a result of the Project and/or is required for off-site ecological compensation, then the Off-Site Proposals must include the Alternative Off-Site Delivery Mechanism, and the Developer must put in place that Alternative Off-Site Delivery Mechanism prior to the Date of Final Commissioning.

3. BNG OPPORTUNITY AREA DELIVERY

3.1 The Developer and Peabody covenant to use all reasonable endeavours to enable the delivery of ecological works within the BNG Opportunity Area Land to be included as part of the Off-Site Proposals.

3.2 If the Off-Site Proposals include Approved Ecological Works:

3.2.1 the Developer covenants to Peabody and the Council that it shall pay the BNG Opportunity Area Delivery Contribution to Peabody to deliver the Approved Ecological Works no later than 1 month from the Date of Commencement; and

3.2.2 subject to clause 3.4 of this Schedule, Peabody covenants to the Developer and the Council to deliver the Approved Ecological Works in accordance with the Landscape, Biodiversity, Access and Recreation Delivery Strategy prior to the Date of Final Commissioning.

3.3 The Developer covenants to Peabody and the Council that it will notify both parties no later than twelve months before it estimates that it would formally notify the Council of the estimated Date of Final Commissioning as required by the Development Consent Order.

3.4 Unless otherwise agreed by the Parties, if the Approved Ecological Works are not completed by Peabody by the Stop Date:

3.4.1 the Parties agree that clauses 3.2 and 4 of this Schedule shall no longer apply;

3.4.2 Peabody covenants to the Developer that it will return that part of the BNG Opportunity Area Delivery Contribution not yet expended to the Developer within 30 Working Days of the Stop Date, which shall be provided with details of what the BNG Opportunity Area Delivery Contribution has been spent on to date, an explanation of which aspects of the Off-Site Proposals to be delivered on the BNG Opportunity Area Land have not yet been delivered (**the "Undelivered Off-Site Proposals"**) and a justification that the monies being returned reflect what has not been spent on the Undelivered Off-Site Proposals;

3.4.3 the Developer covenants to the Council that it will update the Landscape, Biodiversity, Access and Recreation Delivery Strategy and submit the updated version to the Council for approval to provide details of the Alternative Off-Site Delivery Mechanism that will be used to deliver the Undelivered Off-Site Proposals; and

3.4.4 the Developer covenants to the Council that it will put in place the Alternative Off-Site Delivery Mechanism to deliver the Undelivered Off-Site Proposals prior to the Date of Final Commissioning.

3.5 If the Developer disputes the monies returned to it or the information presented to it pursuant to clause 3.4.2 of this Schedule, it may refer the amount to dispute resolution under clause 20.

4. BNG OPPORTUNITY AREA MANAGEMENT

- 4.1 Peabody covenants to the Developer and the Council that, no later than 2 months prior to completion of the Approved Ecological Works, Peabody shall submit to the Developer its proposals for the value of the BNG Opportunity Area Management Contribution which shall be accompanied by an explanation of how they have been estimated.
- 4.2 The Developer may either approve the proposals presented to it pursuant to clause 4.1 of this Schedule, or it may refer the amount to dispute resolution under clause 20.
- 4.3 Peabody covenants to the Council and the Developer that:
- 4.3.1 it will notify the Council and the Developer that the Approved Ecological Works are complete; and
 - 4.3.2 it will manage and maintain the BNG Opportunity Area Land for a period of 30 years from the date that the Approved Ecological Works are completed in accordance with the Approved BNG Opportunity Area Management Measures.
- 4.4 Upon receipt of the notification under clause 4.3.1 of this Schedule and either:
- 4.4.1 it having approved the value of the BNG Opportunity Area Management Contribution, or
 - 4.4.2 the dispute resolution process under clause 20 having completed,
- the Developer covenants to Peabody and the Council that it will pay the BNG Opportunity Area Management Contribution to Peabody.

IN WITNESS whereof the parties hereto have executed this agreement as a deed on the date and year first before written

EXECUTED AS A DEED (but not delivered until dated) LONDON BOROUGH OF BEXLEY in the presence of:	
	Authorised signatory
EXECUTED AS A DEED (but not delivered until dated) by CORY ENVIRONMENTAL HOLDINGS LIMITED (but not delivered until dated) in the presence of:	
	Authorised signatory
EXECUTED AS A DEED (but not delivered until dated) by PEABODY TRUST in the presence of:	
	Authorised signatory

APPENDIX 1 – BNG OPPORTUNITY AREA LAND PLAN

DRAFT



DECARBONISATION

10 Dominion Street
Floor 5
Moorgate, London
EC2M 2EF
Contact Tel: 020 7417 5200
Email: enquiries@corygroup.co.uk
corygroup.co.uk