

**Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country
Planning Act 1990**

Relating to the development of land at Hollins
Cross Farm Planning Reference No.
FUL/2022/0149

Dated:

2023

- (1) BURNLEY BOROUGH COUNCIL
- (2) LANCASHIRE COUNTY COUNCIL
- (3) THE HONORABLE THOMAS EDWARD KAY-SHUTTLEWORTH

Anthony Collins
solicitors

PARTIES

- (1) BURNLEY BOROUGH COUNCIL of Town Hall, Manchester Rd, Burnley BB11 9SA ("the Council")
- (2) LANCASHIRE COUNTY COUNCIL of County Hall, Preston PR1 8RL ("the County Council")
- (3) THE HONORABLE THOMAS EDWARD KAY-SHUTTLEWORTH of Estate Office, Cowan Bridge, Carnforth, LA6 2HS ("the Owner")

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The County Council is the Education Authority and Highway Authority for the area in which the Site is situated.
- 3 The Owner is the freehold owner of the Site which is registered at HM Land Registry under Title Numbers LAN197831 and LAN197827.
- 4 The Owner has submitted the Application to the Council and the parties hereto have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 5 The Council resolved on to grant the Planning Permission under planning reference number subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART**1 DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	means the Town and Country Planning Act 1990 as amended
"Affordable Housing"	means affordable housing as defined in the National Planning Policy Framework
"Affordable Housing Scheme"	means a scheme providing for the types, size and tenure of the Affordable Housing Units including the Affordable Housing Mix and the percentage rent (relative to local market rents) to be paid for the Affordable Rented Units
"Affordable Housing Mix"	means a tenure split as agreed with the Council as part of the Affordable Housing Scheme providing:

	<ul style="list-style-type: none"> - A minimum of 8 Affordable Housing Units as Affordable Rented Units or Social Rented Housing Units; and - A minimum of 2 Affordable Housing Units as Intermediate Tenure Units.
“Affordable Housing Plan”	means the plan attached to this Deed with reference number
“Affordable Housing SPD”	means the Council’s Supplementary Planning Document in respect of Affordable Housing dated or where this document is superseded the Supplementary Planning Document in respect of Affordable Housing currently adopted by the Council
“Affordable Housing Units”	means a minimum of 20 Dwellings to be constructed on the Site which will be provided for the purposes of Affordable Housing in accordance with the Affordable Housing Mix together with rights and easements over the Site to provide access to the Dwelling and such entrance way corridors parking areas and other ancillary areas as are necessary for the enjoyment of such a Dwelling
“Affordable Rented Units”	means Affordable Housing to be constructed pursuant to the Affordable Housing Scheme and in accordance with Part 2 of the Second Schedule and rents shall initially be set at a rent of no more than 80% of market rent (inclusive of service charges where applicable) or such other rent level as shall be permitted to be charged by a Registered Provider or as a Registered Provider shall otherwise be permitted to charge as a matter of law and thereafter may be adjusted periodically in accordance with Homes England guidance for the Affordable Rent product
“Application”	means the application for full planning permission submitted to the Council for the Development on the 22nd March 2022 and allocated reference number FUL/2022/0149
“Biodiversity Net Gain Contribution”	means the sum of £384,600 (three hundred and eighty four thousand and six hundred pounds) which shall be used towards off-site mitigation to secure a biodiversity net gain of 10% above the baseline and which shall be paid in accordance with Part 3 of the Second Schedule
“Bus Service Contribution”	means the sum of £60,000 (sixty thousand pounds) to be used towards the provision of an enhanced am and pm peak bus service serving the Development over a 5 year period
“Bus Stop Contribution”	means the sum of £30,000 (thirty thousand pounds) to be used towards the improvement of bus stops serving the Development

<p>“Commencement of Development”</p>	<p>means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence” “Commenced” and “Commence Development” shall be construed accordingly</p>
<p>“Contributions”</p>	<p>means the [insert] and reference to “Contributions” shall be construed accordingly</p>
<p>“Development”</p>	<p>means the Development of the Site for the erection of 200 dwellings and associated works pursuant to the Planning Permission</p>
<p>"Development Standard"</p>	<p>means a standard to fully comply with the following:-</p> <ul style="list-style-type: none"> (a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015; (b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time (c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited (d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings) [<i>and</i> (e) <i>local requirements as set out in adopted local plan</i> <p>and the same may be amended by written agreement of the Parties in accordance with paragraph 5.1</p>
<p>“Dwelling”</p>	<p>means the Affordable Housing Units and the Open Market Housing Units and reference to “Dwelling” shall be construed accordingly.</p>
<p>“Education Contribution”</p>	<p>means the sum of £569,319 (five hundred and sixty nine thousand three hundred and nineteen pounds) which shall be used for the purpose of providing additional secondary places at Unity College and/or Burnley High School and which shall be paid in accordance with Part 1 of the Third Schedule</p>

“Help to Buy Agent”	means agents appointed by Homes England to administer sales of Shared Ownership housing in the north of England
“Home Choice Allocation Scheme”	means the Council’s choice-based lettings scheme which relates specifically to the Affordable Housing Units or where this allocation scheme is superseded the Council’s housing allocations scheme in force at the time.
“Homes England”	means a body established under Part 1 of the Housing and Regeneration Act 2008 (as amended) as the national housing and regeneration agency for England or any such successor national housing and regeneration agency for England.
“Interest”	interest at 2% per cent above the base lending rate of the HSBC Bank Plc from time to time
“Intermediate Tenure”	means Affordable Housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market which shall include shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent).
“Intermediate Tenure Units”	means Affordable Housing to be constructed pursuant to the Affordable Housing Scheme and in accordance with Part 2 of the Second Schedule which shall be provided as Intermediate Tenure
“Monitoring Fee”	means in the case of the Council the sum of £ () and in the case of the County Council the sum of £ (pounds) paid to the Council and the County Council respectively for the purposes of monitoring and supervising compliance with the obligations contained in this Deed
“National Planning Policy Framework”	means the National Planning Policy Framework dated 20 th July 2021 or where the National Planning Policy Framework has been superseded such successor document.
“National Rent Regime”	means the regime under which the rents for tenants of Social Rented Units are set by The Regulator of Social Housing or its equivalent successor body
“Occupation and Occupied”	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

“Open Market Housing Units”	means dwelling houses constructed pursuant to the Planning Permission which are not Affordable Housing Units
“Plan”	means the plan attached to this Deed with reference number
“Planning Permission”	means the full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the First Schedule.
“Planning Obligation”	means those obligations contained in the Second Schedule and the Third Schedule to this Deed and reference to “Planning Obligation” shall be construed accordingly.
“Protected Tenant”	means any tenant or leaseholder who: <ul style="list-style-type: none"> (a) has exercised the right to acquire an Affordable Rented Unit or a Social Rented Unit (as the case may be) pursuant to the Housing Act 1996 or any statutory provision for the time being in force; or (b) has exercised any statutory right to buy an Affordable Rented Unit or a Social Rented Unit; or (c) purchased 100% of the equitable shares of a Shared Ownership Unit so that the said leaseholder or purchaser owns the Dwelling.
“Public Open Space Contribution”	means the sum of £75,000 (seventy five thousand pounds) to be used towards the improvement and maintenance of Scott Park to provide off-site public open space to serve the residents of the Development and which shall be paid in accordance with Part 3 of the Second Schedule
“Registered Provider”	means a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 who is registered with the Regulator of Social housing pursuant to Chapter 3 of Part 2 of the said Act and has not been removed from the register pursuant to Section 118 or Section 119 of that Act and which is party to the District Council’s Joint Commissioning Partnership or if not a party to the District Council’s Joint Commissioning Partnership or if not a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 as otherwise agreed in writing by the Council (acting reasonably).
“Regulator of Social Housing”	means a body established under section 80A of the Housing and Regeneration Act 2008 (as amended) as the body responsible for the regulation of social housing providers in England and shall include any

	predecessor (where the context so allows) or successor regulatory body for social housing providers.
“Relevant Index”	means the appropriate index utilised and calculated in accordance with the Fifth Schedule.
“SDLT”	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
“Secretary of State”	means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function
“Section 73 Consent”	means a planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes any condition to which the Planning Permission and/or to which such planning permission granted pursuant to Section 73 of the 1990 Act was granted subject to
“Serviced Condition”	means access to services including roads sewers gas electricity water and telecommunications up to the boundary of each Affordable Housing Unit rendering them ready for immediate Occupation
“Shared Ownership”	means Affordable Housing Units where an initial equity share is sold by the Registered Provider to qualifying persons under the Home Choice Allocation Scheme and via the Help To Buy Agent with a rent charged on the unsold equity. Where Shared Ownership is allowed the initial mortgage cost for each Shared Ownership Unit must be no more than three and a half times the average household income of newly forming households within
“Shared Ownership Lease”	means a lease including the covenants set out in the Shared Ownership Lease published by the Regulator Of Social Housing granted to a qualifying person by the Registered Provider on an equity share basis whereby the qualifying person shall pay for the initial percentage in multiples of 25% or such other multiples of percentage of equity share the Registered Provider in conjunction with the Council may require PROVIDED THAT such initial percentage SHALL NOT exceed 75% in the first instance and the qualifying person being entitled to purchase the remaining percentage of equity share in further tranches to enable 100% ownership.
“Shared Ownership Unit”	means such Affordable Housing Units that will be made available by way of a Shared Ownership Lease with a Registered Provider.
“Site”	means the land which is the subject of the Application and against which this Deed may be enforced as shown edged red on the Plan.

“Social Rented Housing”	means Affordable Housing where the rents are subject to the National Rent Regime.
“Social Rented Housing Units”	means Affordable Housing to be constructed pursuant to the Affordable Housing Scheme and in accordance with Part 2 of the Second Schedule which shall be provided as Social Rented Housing
“Traffic Signal Contribution”	means the sum of £70,000 (seventy thousand pounds) to be used towards improvements to the signal junction at Glen View Road – Manchester Road and which shall be paid in accordance with Part 1 of the Third Schedule.
“Wheelie Bin Contribution”	means the sum of £26,140 (twenty six thousand and one hundred and forty pounds) to be used towards the provision of wheelie bins for residents of the Development and which shall be paid in accordance with Part 3 of the Second Schedule
“Working Day”	means any day upon which the London clearing banks are open for business.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions save where specifically provided to the contrary by this Deed.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act.

- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council in their respective statutory capacities against the Owner, the successors in title of the Owner and any persons claiming through or under the Owner an interest or estate in the Site or any part thereof.
- 3.3 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to powers contained in Section 111 of the Local Government Act 1972 and Sections 1 to 8 of the Localism Act 2011.

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

SAVE FOR the provisions of Clauses 8.1, 16, 17 and 18 (legal costs clause arbitration jurisdiction and delivery clauses) which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council to observe and perform the covenants as set out in the Second Schedule.
- 5.2 The Owner covenants with the County Council to observe and perform the covenants as set out in the Third Schedule.

6 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner to observe and perform the covenants as set out in Part 1 of the Fourth Schedule; and
- 6.2 The County Council covenants with the Owner to observe and perform the covenants as set out in Part 2 of the Fourth Schedule.

7 CONFIRMATION OF INTEREST

The Owner hereby warrants and confirms that apart from the parties hereto there are no other persons with a legal and equitable interest in the Site or any part thereof.

8 MISCELLANEOUS

- 8.1 The Owner shall pay to the Council and County Council on completion of this Deed the reasonable legal costs of the Council and County Council incurred in the negotiation, preparation and execution of this Deed.
- 8.2 The Owner shall notify the Council's Head of Development Services in writing of the Commencement of Development.
- 8.3 It is hereby agreed and declared that unless specifically agreed no provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 8.4 This Deed shall be registrable as a local land charge by the Council.

- 8.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council and/or the County Council under the terms of this Deed or the Owner is required to serve notice upon the Council and/or the County Council:
- (i) such agreement, approval or consent or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction;
 - (ii) shall be given on behalf of the Council by the Head of Development Services and on behalf of the County Council by the Strategic Director of Communities or their nominee;
- 8.6 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon written request from the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or expires prior to the Commencement of Development.
- 8.9 No person 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 Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 8.11 Nothing contained or implied in this Deed shall prejudice or otherwise affect the rights powers duties and obligations of the Council in the exercise of its functions either as Local Planning Authority or in any other capacity and that all rights powers duties and obligations under any public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council was not a party to this Deed.
- 8.12 If there is any conflict between the terms of this Deed and any conditions attached to the Planning Permission the latter shall take precedence.
- 8.13 If there is any conflict between the terms of this Deed and the terms of any previous agreement the terms of this agreement shall take precedence.
- 8.14 The Planning Obligations herein shall not be enforceable against any chargee or mortgagee who acquires an interest in the Site by virtue of a charge or mortgage over the Site after the date hereof unless or until said chargee or mortgagee becomes a chargee or mortgagee in possession of the Site (or part thereof).

9 MONITORING

- 9.1 The Owner hereby agrees to notify the Council and the County Council of the Commencement of Development within 21 (twenty one) days of the occurrence of the same PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent the Commencement of Development or the operation of this Deed.

- 9.2 The Owner hereby agrees to notify the Council and where appropriate the County Council of the reaching of any of the Occupation or completion thresholds contained in this Deed such notification to be given within 7 (seven) days of the reaching of such threshold PROVIDED THAT default in giving notice shall not prevent the continuation of the Development or operation of this Deed.
- 9.3 Immediately upon the Commencement of Development the Owner shall pay to the Council and the County Council the Monitoring Fees which shall be used by the Councils for the purpose of monitoring and supervising compliance with the obligations contained in this Deed.

10 NOTICES

- 10.1 Any notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first-class post or Recorded Delivery post or facsimile transmission.
- 10.2 The address for service of any such notice consent or approval as aforesaid shall be on the Council, the County Council and the Owner at the addresses aforesaid or such other address for service as shall have been previously notified in writing by the Council, the County Council and the Owner to all the other parties to this Deed save that payments of any monies to the Council shall be addressed specifically for the attention of the Head of Development Services and detailing the obligations to which the payment relates.
- 10.3 The address for service of any such notice consent or approval as aforesaid shall be on the County Council addressed to the.
- 10.4 A notice consent or approval under this Deed shall be deemed to have been served as follows:
- 10.4.1 if personally delivered at the time of delivery
- 10.4.2 at the expiration of forty-eight hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom
- 10.4.3 if sent by facsimile transmission at the time of successful transmission
- 10.5 In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a prepaid first class or Recorded Delivery envelope (if appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be.

11 WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

12 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to any disposal of an individual completed Dwelling within the Development.

13 INDEXATION

Any sum referred to in the Second or Third Schedule shall be increased by an amount equivalent to the increase in the Relevant Index from the date of this Deed (or if later, the date the amount (where not fixed in this Deed) is finally agreed or determined) until the date on which such sum is payable.

14 INTEREST

If any payment due under the Second or Third Schedule is paid late, Interest will be payable from the date payment is due to the date of payment.

15 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

16 ARBITRATION

In the event of any dispute or difference arising out of this Deed between the parties (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Deed) such dispute or difference shall be referred to a sole arbitrator to be agreed between the parties and being a member of the Royal Institution of Chartered Surveyors or in the absence of agreement on the application of any party by the President of the Royal Institution of Chartered Surveyors and in these respects these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 the cost of such referral to be borne equally by the Parties.

17 JURISDICTION

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

18 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

19 LIABILITY OF INDIVIDUAL HOUSEHOLDERS UTILITY COMPANIES AND REGISTERED PROVIDERS

19.1 The covenants contained in this Deed shall not be enforceable against individual purchasers or lessees or their respective mortgagees and successors in title of each of the Dwellings on the Site constructed pursuant to the Planning Permission or any Protected Tenant nor shall any obligation be enforceable against utility companies in relation to any parts of the Site acquired by them for electricity sub-stations gas governor stations or pumping stations or any of the operational functions of such companies or against anyone whose only interest in the Site or any part of it is in the nature of the benefit of an easement or covenant.

20 FURTHER SECTION 73 CONSENT

- 20.1 If any Section 73 Consent is granted after the date of this deed:
- 20.2 the obligations in this deed shall relate to and bind such Section 73 Consent; and
- 20.3 the definitions of Application, Development and Planning Permission (other than for the purpose of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself.

PROVIDED THAT:

- 20.4 nothing in this clause shall fetter the discretion of the Council or the County Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;
- 20.5 to the extent that any of the obligations in this deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and
- 20.6 the Council and the County Council reserve the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if they (acting reasonably) consider it desirable to do so.
- 20.7 In the event of a different s.106 obligation agreed by the Council being binding on any Section 73 Consent, this obligation shall not apply to that Permission if that separate s.106 obligation expressly states that it is in substitution for the obligations in this Deed

21 EXECUTION

This Deed may be executed in any number of counterparts each of which when executed and delivered shall be an original and all the counterparts together shall constitute one and the same instrument.

22 SEVERABILITY

If any part of this Deed shall be declared unlawful or invalid by a court of competent jurisdiction or a Planning Inspector or the Secretary of State on Appeal finds that one or more of the Planning Obligations are not compliant with the CIL Regulations then (to the extent possible) the offending provisions or each one or more of the Planning Obligations as the case may be will be severed from this Deed and the remainder of this Deed shall continue with full force and effect.

FIRST SCHEDULE

Form of notice of planning permission

SECOND SCHEDULE

The Owner's Covenants with the Council

PART 1

AFFORDABLE HOUSING

- 1.1. Prior to the Commencement of Development the Owner shall submit the Affordable Housing Scheme for the approval of the Council and shall notify the Council in writing of the anticipated date for completing the construction of the Affordable Housing Units within the Development.
- 1.2. The Owner covenants that the Affordable Housing Units shall be allocated to persons registered on Home Choice Allocation Schemes.
- 1.3. The Affordable Housing Units shall not be Occupied other than as Affordable Housing.
- 1.4. The Owner covenants not to dispose of their interest in the freehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to a Registered Provider
- 1.5. The Owner covenants that the Affordable Housing Units shall be provided in a Serviced Condition and in any event of any disagreement as to whether the Affordable Housing Units are in a Serviced Condition a dispute shall be taken to have arisen which shall be dealt with under the provisions of Clause 16 of this Deed.
- 1.6. The Owner covenants with the Council not to cause suffer or permit Occupation of more than 50% of the Open Market Housing Units until 50% of the Affordable Housing Units have been provided in a Serviced Condition in accordance with the provisions of this Schedule.
- 1.7. The Owner covenants with the Council not to cause suffer or permit Occupation of more than 95% of the Open Market Housing Units until all of the Affordable Housing Units have been provided in a Serviced Condition in accordance with the provisions of this Schedule.
- 1.8. The affordable housing provisions in Part 2 of the Second Schedule of this Agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) 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 (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
 - 1.8.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the 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 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
 - 1.8.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the

affordable housing provisions in Part 2 of the Second Schedule of this Agreement which provisions shall determine absolutely

PART 2

FINANCIAL CONTRIBUTIONS

PUBLIC OPEN SPACE CONTRIBUTION

1. The Owner covenants with the Council to pay the Public Open Space Contribution to the Council in the following instalments:
 - 1.1. The first instalment of 50% of the Public Open Space Contribution prior to Occupation of the first Dwelling.
 - 1.2. The remaining 50% of the Public Open Space Contribution prior to Occupation of the 100th Dwelling.

WHEELIE BIN CONTRIBUTION

2. The Owner covenants with the Council to pay the Wheelie Bin Contribution to the Council prior to first Occupation.

BIODIVERSITY NET GAIN CONTRIBUTION

3. The Owner covenants with the Council to pay the Biodiversity Net Gain Contribution to the Council prior to Commencement of Development.

THIRD SCHEDULE
THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL

PART 1

FINANCIAL CONTRIBUTIONS

The Owner covenants with the County Council as follows:

EDUCATION CONTRIBUTION

1. To pay Education Contribution to the County Council prior to Occupation of the first Dwelling

BUS SERVICE CONTRIBUTION

2. To pay the Bus Service Contribution to the County Council prior to

BUS STOP CONTRIBUTION

3. To pay the Bus Stop Contribution to the County Council prior to

TRAFFIC SIGNAL CONTRIBUTION

4. To pay the Traffic Signal Contribution to the County Council prior to

FOURTH SCHEDULE

THE COUNCILS AND COUNTY COUNCILS COVENANTS

PART 1

Council's Covenants

Repayment of contributions

- 1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall reasonably agree PROVIDED THAT such purposes comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 2 The Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within five years of the date of receipt by the Council of the final instalment of such payment.
- 3 The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed PROVIDED THAT such request shall be made in writing to the Council's [insert] where the sum relates to open space provision or the Housing Strategy Manager where the sum relates to affordable housing.

Discharge of obligations

- 4 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

PART 2

County Council's Covenants

Repayment of contributions

- 1 The County Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the County Council shall reasonably agree PROVIDED THAT such purposes comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 2 The County Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the County Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within five years of the date of receipt by the County Council of the final instalment of such payment.
- 3 The County Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed PROVIDED THAT such request shall be made in writing to the County Council's [insert].

Discharge of obligations

- 4 At the written request of the Owner the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

FIFTH SCHEDULE

INDEXATION

- 1 In this Schedule:
- 1.1 **“Relevant Index”** means:
- 1.1.1 In respect of the [insert] the All Terms Retail Prices Index published by the Office of National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substitution therefor) or such other index as may from time to time be published in substitution therefor or if for any reason the index shall be abolished there shall be substituted for the purposes of this Schedule such index of food price costs (including the altered All Items Retail Prices Index) as may from time to time be published by or under the authority of any Ministry or Department of her Majesty’s Government and if no such index is published the parties thereto shall endeavour to agree such other index as shall most closely reflect changes in the costs of living; and
- 1.1.2 In respect of the, [insert], the All in Tender Price Index of Buildings Cost Information Services (“BCIS”) as published by the Royal Institute of Chartered Surveyors (“RICS”) or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the parties hereto shall agree or in default of agreement such index as shall be determined by the Arbitrator appointed by the President of the RICS of the purposes of this Deed in all cases to ensure as nearly as possible that the sum of money involved shall fluctuate in accordance with the general level of the building industry costs.
- 1.2 **“Base Index Date”** means the date of the grant of Planning Permission or such other date in respect of a particular sum as may be specified in this Deed with particular reference to Clause 13 hereof in respect of sums not fixed in this Deed but remaining to be agreed or determined at a later date.
- 1.3 **“Base Index Figure”** means the figure published in respect of the Relevant Index immediately prior to the Base Index Date
- 1.4 **“Final Index Date”** means the figure published or otherwise agreed or determined in respect of the Relevant Index immediately prior to the respective dates upon which the Contributions are paid.
- 2 The Contributions shall be increased to such sum if any in pounds sterling as shall be equal to the sum calculated according to the following formula:
- $$\text{Increased Sum} = \frac{\mathbf{A} \times \mathbf{C}}{\mathbf{B}}$$
- Where “A” equals the Contribution
- “B” equals the Base Index Figure
- “C” equals the Final Index Figure
- 3 If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Relevant Index are calculated, the figure taken to be shown in the Relevant Index after such change shall be the figure which would have been shown in the Relevant Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made.
- 4 If any substitution for the said All Items Retail Prices Index or the BCIS Index or any index previously substituted therefor shall occur the parties hereto shall endeavour to agree the appropriate

reconciliation between the Relevant Index substituted on the one hand and the All Items Retail Prices Index or the BCIS Index or or any index previously substituted therefor on the other hand.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

THE COMMON SEAL OF [INSERT] COUNCIL)
was affixed in the presence of:)

Authorised Signatory:

THE COMMON SEAL OF [INSERT] COUNTY COUNCIL)
was affixed in the presence of:)

Authorised Signatory:

EXECUTED AS A DEED by)
in the presence of:)

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address:

EXECUTED AS A DEED by)
in the presence of:)

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address: