

**Section 106 Precedent Agreement:**

(1) [INSERT NAME OF LANDOWNER]

-and-

(2) [INSERT NAME OF REGISTERED PROVIDED IF APPLICABLE]

-and-

(3) [INSERT NAME OF LANDOWNER'S MORTGAGEE/CHARGE IF APPLICABLE]

-and-

(4) [INSERT NAME OF REGISTERED PROVIDER'S MORTGAGEE/CHARGE IF APPLICABLE]

-and-

(5) NAME OF COUNCIL

**AGREEMENT**

pursuant to s.106 Town and Country Planning Act 1990

in relation to [APPLICATION SITE DETAILS]

[PLANNING APPLICATION REFERENCE]

[PLANNING APPEAL REFERENCE IF APPLICABLE]

One Legal

Council Offices

Gloucester Road

Tewkesbury

[FEE EARNER INITIAL AND SOLCASE REF.]

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ two thousand and \_\_\_\_\_

BETWEEN:

- (1) **NAME OF OWNER** [(Company Registration Number \_\_\_\_\_)] [whose registered office is at \_\_\_\_\_] or [of address] (“**the Owner**”); and
- (2) **NAME OF DEVELOPER** [(Company Registration Number \_\_\_\_\_)] [whose registered office is at \_\_\_\_\_ or [[of address] and;
- (3) **[INSERT NAME OF REGISTERED PROVIDED]** of [address] (“**the Registered Provider**”); and
- (4) **[INSERT NAME OF LANDOWNER’S MORTGAGEE/CHARGE]** of [address] (“**the [First] Mortgagee/Charge**”); and
- (5) **[INSERT NAME OF REGISTERED PROVIDER’S MORTGAGEE/CHARGE]** of [address] (“**the [Second] Mortgagee/Charge**”); and
- (6) **NAME OF COUNCIL** of [address] (“**the Council**”)

## 1. INTRODUCTION:

1. The words and phrases used in this Agreement are defined in Clause 1
2. The Council is the Local Planning Authority for the purposes of the Act and is also the Housing Authority for the purposes of the Housing Act 1996 and is entitled to enforce the planning obligations contained in this Agreement
3. The Owner is registered as the proprietor of the freehold of the Site with absolute title at the Land Registry under title number [xxxxxxx]
4. The [Owner/Developer] has submitted the Application to the Council **AND if planning appeal** [The Owner/Developer has appealed to the Secretary of State against the Council’s [refusal/non-determination] of the Application with Appeal Reference \_\_\_\_\_]
5. The Owner has agreed to enter into this Agreement in accordance with s.106 of the Act in order to facilitate the Development and deliver the necessary planning obligations as set out in this Agreement **OR if planning appeal** [The Owner enters into this Agreement to the intent that objections of the Council to the grant of planning permission are overcome

6. The Developer enters into this Agreement to consent to the Owner entering into this Agreement and acknowledges that the Site shall be bound by the obligations contained within this Agreement
7. The [Registered Provider] has agreed to enter into this Agreement for the purpose of securing the delivery of the Affordable Housing
8. The [Mortgagee] has a registered charge over [that part of] the Site [registered under title number [xxxxx]]

**1.1. NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS:**

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

- 1.2. **“Act”** means the Town and Country Planning Act 1990 or any re-enactment or modification thereof for the time being in force
- 1.3. **“Additional Affordable Housing Contribution”** means the assessed increase in profitability as set out by the Independent Assessor in the Review Report to be used towards affordable housing in the Council’s administrative area
- 1.4. **“Additional Affordable Housing Units”** means provision of Affordable Rented Units and/or Shared Ownership Units (in accordance with Annex 2 of the NPPF) to be provided in the sizes tenure types and locations proposed by the Owner and agreed with the Council in the Revised Viability Appraisal and agreed by the Independent Assessor in the Review Report subject to a maximum percentage of Affordable Housing which accords with the adopted policy position prevailing at the date of the Review Report.

- 1.5. “Affordable Housing”** means affordable housing as that term is defined in Annex 2 of the National Planning Policy Framework dated 20<sup>th</sup> July 2021 as updated from time to time or as defined in any government documentation that shall supersede it
- 1.6. “Affordable Housing Contribution”** means the sum of money calculated in accordance with Schedule 2 Part II Paragraph ( ) hereof as is the difference between the whole number of Affordable Housing Units to be provided on the site and the financial contribution that would take the overall contribution (the Affordable Housing Units and financial payment) to 40% of the Dwellings being Affordable Dwellings and payable upon completion of 90% of the Market Dwellings.
- 1.7. “Affordable Housing Land”** means the land upon which the Affordable Housing is to be constructed including all curtilages and communal areas associated with it as identified on Plan [x]
- 1.8. “Affordable Housing Provider”** means any one of the following:
- (a. A body that meets the definition of ‘Housing Association’ in section 1(1a) of the Housing Associations Act 1985; or
  - (b. A private registered provider as defined in Section 80 of the Housing and Regeneration Act 2008 or body registered with Homes England; or
  - (c. A body approved and accredited by Homes England or equivalent successor body whose terms of approval or accreditation have been evidenced to

- the satisfaction of the Council in writing;  
or  
(d. Any other body previously agreed in writing by the Council

**1.9. “Affordable Housing Scheme”**

means a scheme to provide the Affordable Housing Units on the site to be submitted to the Council pursuant to Part 1 paragraph 1 of Schedule 2 (and which may be amended by written agreement between the Owners and the Council provided that such scheme remains in accordance with approval of relevant Reserved Matters) and such scheme shall meet the following criteria:-

- i) The scheme shall detail the general location design property type size and tenure of the each of the Affordable Housing Units within the Site and shall be identified on a plan of the Site and shall accord with the table within Part I paragraph [6.1] of Schedule 1 (subject to any amendments agreed to that table at the Reserved Matters Stage by the Owners and the Council); and shall be in accordance with the Clustering Strategy
- ii) Provide for policy compliant Affordable Housing Units on every Phase that includes Dwellings (NB: only if Phase is relevant)

**1.10. “Affordable Housing Units”**

means those dwellings provided/to be provided as Affordable Housing comprising the Affordable Rented Units, the Social Rented Units and the Shared Ownership

Units and the Discounted Market Sale Units to be indistinguishable in appearance from Open Market Units and built to Part M4 Category 1 Standard of Schedule 1 and any bungalows shall be built to Part M Category 3 to the current Building Regulations 2010 (or as subsequently amended) together with:

- Associated parking
- Soft landscaped areas
- Landscaping to private areas

and “Affordable Housing Unit” shall be construed accordingly.

**1.11. “Affordable Rent”**

means rented housing provided by an Affordable Housing Provider subject to rent controls other than the national rent scheme that requires housing to be offered at a rent (inclusive of Service Charge where applicable) of up to 80% of local Open Market Rents and using the Royal Institution of Chartered Surveyors approved valuation methods and not to exceed the Local Housing Allowance levels or the equivalent replacement assessment

**1.12. “Affordable Rented Units”**

means Dwellings that are to be rented by the Affordable Housing Provider at an Affordable Rent to Eligible Persons and “Affordable Rented Unit” is to be construed accordingly.

**1.13. “Application”**

means the application for [full]/[outline] planning permission submitted to the Council for the Development and allocated reference number []

- 1.14. “Approved Purchaser(s)”** means a person or persons in need of a Shared Ownership Unit or a Discount Market Sale Unit who are registered with the Help to Buy Agent and whose needs are not met by the market (or as otherwise approved in writing by the Council) and who shall occupy the Shared Ownership Unit or the Discounted Market Sale Unit as their principal or main home and who have a Local Connection
- 1.15. “BS Standard”** means the appropriate British Standard relating to playing field and play equipment currently BS En 1176 and BS EM 1177 or any amendment or replacement thereof
- 1.16. “Building Regulations”** means the approved documents that are used to approve the standards of buildings in England and Wales
- 1.17. “Category 2 Housing”** means housing that complies with the discretionary Building Regulations as set out in Approved Document M4(2) Cat 2 (access to and use of buildings) of the Building Regulations 2010 as amended or subsequent revision or replacement standard current at the time of submission of the relevant application for Building Regulations approval
- 1.18. “Category 3 Housing”** means housing that complies with the discretionary Building Regulations standard for wheelchair user dwellings as set out in Approved Document M4(3)(2)(b) (access to and use of buildings) of the Building Regulations 2010 as amended or subsequent revision or replacement standard current at the time of submission

of the relevant application for Building Regulations approval

**1.19. “Clustering Strategy”**

means in relation to the Affordable Housing Units the location of the said Units in dispersed locations across the Development with each cluster of Affordable Housing Units not exceeding eight (8) units unless otherwise agreed in writing by the Council and the Clustering Strategy shall also ensure that no group of Affordable Housing Units will be located contiguously to any other group of Affordable Housing Units (unless otherwise agreed in writing between the Owners and the Council)

**1.20. “Commencement of Development”**

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 (including vegetation) demolition work investigations for the purpose of assessing ground conditions archaeological investigations 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 construction of temporary accesses or temporary works erection of hoardings and fencing and other site security measures during construction including the provision of site compounds and “Commence Development” shall be construed accordingly



- 1.21. “Contributions”** means all and any contributions payable under this Agreement including for the avoidance of doubt [insert list of contributions]
- 1.22. “Development”** means [insert description as per the Planning Application] as set out in the Application
- 1.23. “Discounted Price”** means up to 75% of the Open Market Value and affordable with regard to local incomes and local house prices
- 1.24. “Discounted Market Sale Unit(s)”** means those Affordable Housing Units shown as Discounted Market Sale Units on Plan [x] and to be sold to an Approved Purchaser at the Discounted Price such Dwellings to be constructed on no less favourable terms than the Open Market Units and subject to the applicable provisions of Part I Schedule 2
- 1.25. “Dwelling”** means a dwelling to be constructed pursuant to the Planning Permission and for the avoidance of doubt includes the Affordable Housing Units and the Open Market Units and “Dwellings” is to be construed accordingly
- 1.26. “Eligible Person(s)”** means a person or persons who:  
either  
i) are in need of an Affordable/Social Rented Unit and are registered on the Homeseeker Plus Scheme and meet the criteria set out within the allocations policy of the Homeseeker Plus Policy; and have a Local Connection; or

ii) are approved in writing by the Council as someone otherwise in need of Affordable Housing

**1.27. “Expert”**

means the independent expert appointed for the purposes of clause 17

**1.28. “Fields in Trust Standards”**

The charitable organisation championing the need for equitable access to green space these core principles of provision can help to create happier, healthier communities of any successor thereto.

**1.29. “Final Certificate”**

means in relation to the On Site Open Space the certificate issued by the Council in accordance with Schedule 2 [Part xxxx paragraph xxxx] stating that the On Site Open Space is in a condition that is suitable for transfer to a Management Company pursuant to Schedule 2 [Part xxx paragraph xxx]

**1.30. “Fully Serviced”**

means that the Affordable Housing Units shall be provided with full service provision as are the Open Market Units which shall include as appropriate vehicular access and parking foul and surface water drainage mains water electricity and telecommunications access to allow the Occupation of the Affordable Housing Units which shall be connected to the appropriate services constructed for the remainder of the Development

**1.31. “Help to Buy Agent”**

means the Government appointed Help to Buy Agent from time to time or any body exercising the functions that are now the duty of the Help to Buy Agent that holds the register for the occupation of (inter alia)

Shared Ownership Units and Discount  
Market Sale Units

**1.32. “Homes England”**

means Homes England of 110 Buckingham Palace Road London SW1W 9SA or such successor body for the time being having or being entitled to exercise the power to regulate registered providers now conferred on such organisation under the Housing and Regeneration Act 2008 or any legislation amending or replacing the same and the national government agency for the administration of affordable housing subsidy and that funds new Affordable Housing and means any successor agency/organisation taking over such functions

**1.33. “Homeseeker Plus Policy”**

means the document so called and prepared and published and amended from time to time jointly by the local housing authorities in Gloucestershire and West Oxfordshire available at [www.homeseekerplus.co.uk](http://www.homeseekerplus.co.uk) which governs the housing allocation procedure

**1.34. “Homeseeker Plus Scheme”**

means a letting scheme set out in the Homeseeker Plus Policy where applicants are invited to express interest in an available home in accordance with the procedure detailed in the Homeseeker Plus Policy

**1.35. “Housing Mix”**

means the proportion of Affordable Housing Units to Open Market Units

**1.36. “Independent Assessor”**

means the person appointed by the Council to review the Viability Case and Revised Viability Appraisal and prepare a Review Report (if applicable) in accordance with

- Part I paragraph 9 of Schedule 2 of this Agreement
- 1.37. “Index”** means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation
- 1.38. “Interest”** means interest at four per cent (4%) above the base lending rate of the Barclays Bank Plc from time to time
- 1.39. “LEAP”** means an equipped play area for children to be delivered on the Site in the position shown as a play space on Plan xx the specification of which shall be in accordance with the Fields in Trust Standard(s) current at the time of submission of the details and as approved by the Council pursuant to Part II paragraph 2 of Schedule 2
- 1.40. “Lender”** means any mortgagee or chargee of an Affordable Housing Provider or any administrator fixed charge receiver including any receiver appointed under the Law of Property Act 1925 administrative receiver or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security
- 1.41. “Lettings Plan”** means a plan produced by the Council and agreed in writing with the Owner/Affordable Housing Provider setting specific lettings requirements in accordance with the Homeseeker Plus Policy in respect of the Affordable Rented Units
- 1.42. “Local Connection”** means a local connection (as defined in section 199 of the Housing Act 1996 and in accordance with any timescales contained in the Homelessness Code of Guidance for

Local Authorities or any replacement therefor) in the following order of priority and with a local connection to:

- (i. the administrative area of the Council or if agreed with the Council in writing the administrative areas of the Council [Cheltenham Borough Council and/or Gloucester City Council]
- (ii. the Gloucestershire administrative area

But if no persons qualify pursuant to i) or ii) above the occupation must be to a person or persons ordinarily resident in the United Kingdom and who is approved in writing by the Council in five (5) Working Days from receipt of their application on to the Homeseeker Plus Scheme or with the Help to Buy Agent as being in need of Affordable Housing and such consent shall not be unreasonably withheld or delayed means the rent rate set annually by the Valuation Office (or any successor body thereof) for the area within which the Affordable Rented Housing Units are located and which is used to calculate the maximum housing benefit entitlement for each tenant thereof or any scheme which supersedes it

**1.43. “Local Housing Allowance”**

**1.44. “Management Company”**

means a limited company registered at Companies House which is incorporated in England Wales or Scotland and has its registered office in England

- 1.45. “Maintenance Period”** means a period of twelve (12) months after the date of issue of the Provisional Certificate
- 1.46. “Monitoring Fee”** means the sum of £ ( pounds) payable to the Council upon the completion of this Agreement/first Reserved Matters Application/Commencement of Development to allow the Council to monitor the compliance of the Owners with their obligations hereunder
- 1.47. “MUGA”** means a multi-use games area to be delivered on the Site in the position shown indicated in the area identified on the Illustrative Master Plan or other area agreed in writing with the Council the specification of which shall be in accordance with the Fields in Trust Standard(s) current at the time of the submission of the details therefor and approved by the Council pursuant to Schedule 2 Part II Paragraph
- 1.48. “Net Capital Receipts”** means the amount received by the Owners after deduction of all legal and other proper costs reasonably incurred in connection with the sale of any Affordable Housing Units and any sums to be repaid to a grant or mortgage provider
- 1.49. “Occupation(s)” 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 during construction and “Occupied” and “Occupier(s)” shall be construed accordingly

**1.50. “On Site Open Space”**

means such areas of land as shown on Plan xx to be provided as public open space on site as part of the Development including the LEAP/MUGA and items of natural play equipment as approved pursuant to Part II paragraph 2 of Schedule 2

**1.51. “Open Market Rent”**

means the rent charged for comparable properties rented on the open market (inclusive of service charges where applicable) within the same local area or such rent as valued by a qualified valuer (who is a member of the Royal Institute of Chartered Surveyors) as being the open market rent using the Royal Institute of Chartered Surveyors approved valuation methods and “Open Market Rents” shall be construed accordingly

**1.52. “Open Market Units”**

means the Dwellings forming part of the Development (and assuming no restriction on use as Affordable Housing) on the Site that are not Affordable Housing Units and “Open Market Unit” is to be construed accordingly

**1.53. “Open Market Valuation”**

means the valuation of the price properly obtainable for the Dwelling (and assuming no restriction on use as Affordable Housing) on a sale at arms’ length of the freehold or a long leasehold interest ( as applicable) of it as would be achieved if on the open market ( without restrictions on price or occupation) between a willing vendor/lessor and willing purchaser/lessee with vacant possession and free of any subleases or other encumbrances after proper marketing wherein the parties had acted knowledgeably prudently and without compulsion

- 1.54. “Open Space Commuted Sum”** means if the On Site Open Space is transferred to the Council [a sum calculated by reference to the applicable entries within the Schedule of Rates set out in Part II paragraph 14 of Schedule 2] [the sum of xxx pounds (£xxxxx)] in relation to the area of On Site Open Space transferred
- 1.55. “Original Viability Appraisal”** means the appraisal dated xx xxxxxxxx xxxx made by the Independent Assessor of the Viability Case in connection with the Development
- 1.56. “Partnership Design Standard”** means the design standards and minimum space standards to be agreed by the Council as set out in Gloucester Cheltenham and Tewkesbury JCS Partnership Guidance Note to support the application of affordable housing policies which can be accessed on the Joint Core Strategy website at [www.gct-jcs.org](http://www.gct-jcs.org)
- 1.57. “Phase”** means each phase of the Development as shown numbered [x-x](inclusive) on the Phasing Plan
- 1.58. “Phasing Plan”** means plan number [xxxxxxx] annexed hereto subject to any variations to the phases that may be proposed by the Owner and approved in writing by the Council from time to time
- 1.59. “Plan 1”** means the plan attached to this Agreement marked 'Plan 1'



- 1.60. “Plan 2”** means the plan attached to this Agreement marked 'Plan 2'
- 1.61. “Planning Appeal”** means a planning appeal submitted under Section 78(1) of the Act in respect of the Council’s refusal/none determination of the Application which has been given reference
- 1.62. “Planning Permission”** means the planning permission (if any) granted by the Council or the Secretary of State or Secretary of State's inspector in respect of the Application and includes the approved plans thereto and any duly authorised non-material amendments thereto
- 1.63. “Play Equipment Contribution”** means the sum of [ Pounds (£ )] to be spent at or such other alternative location within the general vicinity of the Site as is agreed between the parties
- 1.64. “Preferred Provider”** means an Affordable Housing Provider as appears on a list (if any) prepared and published from time to time by the Council or the Council jointly with Cheltenham Borough Council and/or Gloucester City Council as a preferred provider of the Affordable Rented Units and the Shared Ownership Units on the Site
- 1.65. “Provisional Certificate”** means the written certificate to be issued by the Council in accordance with Part III paragraph 8 of Schedule 2

- 1.66. “Refuse and Recycling Contribution”** means the sum of £73.00 (Seventy Three Pounds) per Dwelling which shall be used for the provision of refuse and recycling bins for the Dwellings on the Site under Schedule 2 Part III Paragraph [1]
- 1.67. “Regulator of Social Housing”** means the regulator of social housing of level 1A-City Tower Piccadilly Plaza Manchester M1 4BT
- 1.68. “Reserved Matters Stage”** means the stage of the planning process following grant of outline planning permission that deals with some or all of the outstanding details of the outline application proposal and “Reserved Matters” and “Reserved Matters Approval” shall be construed accordingly
- 1.69. “Review Report”** means a written report by the Independent Assessor in response to the Revised Viability Appraisal which shall confirm if Additional Affordable Housing Provision is appropriate and include approval of percentage sizes tenure types and location and timing for delivery of the Affordable Housing Provision if applicable and such report shall not be final until the Council and the Owner have each had one calendar month to comment on the findings of the report and supply further information if applicable
- 1.70. “Revised Viability Appraisal”** means a new viability appraisal for the Development to be undertaken by an Independent Assessor based upon and revising the Original Viability Appraisal to be prepared by the Owner at its own expense

in accordance with Part I paragraphs 6 and 7 of Schedule 1

**1.71. "Sales Plan"**

means

- i) for the Shared Ownership Units a plan produced by the Owner/Affordable Housing Provider and agreed in writing by the Council setting out the price of each Shared Ownership Unit and the method of marketing the Shared Ownership Units to Approved Purchasers
- ii) for the Discount Market Units a plan produced and agreed in writing by the Council and the Owner setting out the price of each Discount Market Unit and the method of marketing the Discount Market Units to Approved Purchasers

**1.72. "Service Charge"**

means a charge made to the Occupiers of individual Dwellings or in the case of the Affordable Rented Units and the Shared Ownership Units a charge made to the Affordable Housing Provider to cover the reasonable cost of the yearly maintenance and management of common parts communal gardens or landscaping areas of the Development that directly benefit the Affordable Housing Units to a standard reasonably required but for the avoidance of doubt shall not include any charge made in respect of the provision of health care services and utilities supplied to or used by Occupiers of an individual Dwelling

**1.73 "Shared Ownership"**

Means subsidised housing provided by an Affordable Housing Provider for sale by way

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of a standard Homes and Communities Agency model Shared Ownership Lease applicable to shared ownership accommodation granted on a premium payable on completion or raised by mortgage or charge under which the initial purchaser acquires an initial share of the equity in that Affordable Housing Unit and pays a rent element if required

**1.73. “Shared Ownership Lease”**

means a shared ownership lease granted at a premium to be paid by the lessee or sub lessee upon completion or raised by mortgage or charge and under which the initial purchaser or lessee acquires an initial share of the equity in that Affordable Housing Unit and pays a rental element if required by the Affordable Housing Provider and which permits staircasing

**1.74. “Social Rented”**

means housing that is owned by local authorities and private registered providers for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements as agreed with the local authority or with the Homes England or Regulator of Social Housing or as social rented housing as that term is defined in any Affordable Housing definition as within Annex 2 of the National Planning Policy Framework dated 20<sup>th</sup> July 2021 as updated from time to time or as defined in any government documentation that shall supersede it

**1.75. “Social Rented Unit”**

means Dwellings that are to be rented by

the Affordable Housing Provider as Social Rented Housing to Eligible Persons and "Social Rented Units" shall be construed accordingly;

**1.76. "Site"**

means the land against which this Deed may be enforced as shown edged red on Plan 1 for identification purposes only and as more particularly described in Schedule 1

**1.77. "Viability Case"**

**means a viability study by the Owner** justifying a reduced percentage of Affordable Housing comprised in the Development on the grounds of viability in accordance with Part 1 paragraph 9 of Schedule 2

**1.78. "Working Day(s)"**

means any day except Saturday and Sunday or a bank holiday or any days which in England and Wales are public holidays

**CONSTRUCTION OF THIS DEED:**

**1.79.** Where in this Agreement 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 Agreement

**1.80.** Words importing the singular meaning where the context so admits include the plural meaning and vice versa

**1.81.** 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

**1.82.** 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

- 1.83. 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
- 1.84. References to any party to this Agreement 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 the successors to its respective statutory functions
- 1.85. "including" means including without limitation.
- 1.86. References to "the Site" include each and every part thereof
- 1.87. The clause headings herein do not form part of this Agreement and shall have no effect upon the meaning or construction of the provisions of this Agreement
- 1.88. Except where expressly stated to the contrary where agreement approval consent or expression of satisfaction is required from the Council under the terms of this Agreement such agreement approval consent or expression of satisfaction shall not be unreasonably withheld or delayed
- 1.89. Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing

## **2. LEGAL BASIS:**

- 2.1. This Agreement is entered into as a Deed pursuant to section 106 of the Act. To the extent that the obligations fall within the terms of section 106 of the Act the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council
- 2.2. To the extent that any of the obligations contained in this Agreement 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 section 1 of the Localism Act 2011 and all other enabling powers
- 2.3. The covenants restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority

**3. CONDITIONALITY:**

- 3.1. This Agreement shall be (save for Clauses 2.1 to 2.10 7.1 7.2 7.3 7.5 8 9 13 and 14 which shall be of immediate effect) (and subject to Clause 4.2) conditional on and shall only take effect on the grant of the Planning Permission
- 3.2. The covenants within Clause 5 of this Agreement are conditional upon the completion of this Agreement/First Application for Reserved Matters/Commencement of Development (except those matters that state they must be complied with before that date which shall be of immediate effect)

**4. THE OWNER'S COVENANTS:**

- 4.1. The Owner/Developer covenants with the Council as set out in Schedule/s [X]
- 4.2. Not to develop or cause or permit the Site or any part or parts of the Site to be developed pursuant to the Planning Permission otherwise than in strict conformity with the terms of this Agreement

**5. THE COUNCIL'S COVENANTS:**

- 5.1. The Council covenants with the Owner as set out in Schedule [X]

**6. MISCELLANEOUS:**

- 6.1. No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 6.2. The Owners/Developers hereby consent to the registration of the Agreement as a local land charge
- 6.3. Any notices required to be given under this Agreement shall be in writing and shall be delivered personally or sent by pre-paid recorded delivery post to the principal address or registered office or last known address of an individual (as appropriate) of the relevant party and shall be deemed to have been served as follows:
  - 6.3.1. If personally delivered at the time of delivery; and

**6.3.2.** If sent by recorded delivery post 48 hours after the envelope was delivered into the custody of the postal authority within the United Kingdom

- 6.4.** Insofar as any clause or clauses of this Agreement 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 Agreement
- 6.5.** This Agreement 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
- 6.6.** Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission or any other one relating to the Development) granted (whether or not on appeal) after the date of this Agreement

**7. 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 Agreement 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

**8. CHANGE IN OWNERSHIP:**

The Owner will give to the Council immediate written notice of any change in ownership of the Site occurring before all the obligations under this Agreement 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 transfers of individual Dwellings nor any transfer to a statutory undertaker or service or utility company

**9. INDEXATION:**

Any Contribution referred to in this Agreement shall be increased or decreased by an amount equivalent to the increase or decrease in the Index from the date hereof until the date on which such Contribution is payable



**10. INTEREST:**

If any payment due under this Agreement is paid late Interest will be payable from the date payment is due to the date of payment

**11. VAT:**

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

**12. JURISDICTION:**

This Agreement is governed by and interpreted in accordance with the law of England

**13. DELIVERY:**

The provisions of this Agreement (save this clause) shall be of no effect until it has been dated

**14. EXCLUSIONS/LIABILITY FOR BREACH OF COVENANTS:**

**14.1.** No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site or that part of the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT the reservation of any rights of access and/or to lay or maintain equipment shall not constitute an interest in the Site for the purpose of this Clause 15.1

**14.2.** This Agreement shall not be enforceable against:

**14.2.1.** any owner or occupier or tenant of the Open Market Units nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing (save for those provisions of this Agreement that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged);

- 14.2.2.** save for the obligations in Part I of Schedule 2 and those provisions of this Agreement that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged any owner or occupier or tenant of the Affordable Housing Units nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing
- 14.2.3.** any statutory undertaker or service company who acquires an interest in the Site for the purposes of its undertaking; or
- 14.2.4.** save for the obligations in Part I of Schedule 2 and those provisions of this Agreement that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged any Affordable Housing Provider so far as the obligations attach to those parts of the Site that do not comprise Affordable Housing Land nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing

**15. WARRANTY:**

The Owner/Developer hereby warrants to the Council that as at the date hereof it has not leased mortgaged charged or otherwise created any interests in the Site other than those contained mentioned or referred to in title number [xxxxxxx] as at the [insert date]

**16. DISPUTE RESOLUTION:**

- 16.1.** In the event of any dispute or difference relating to any matter contained in this Agreement any party to the dispute (including successors in title to the parties to this Agreement) may by serving notice of the same on the other party or parties require it to be referred for determination by an Expert (who will act as an expert not an arbitrator) appointed under clause 17.2 below acting in accordance with clauses 17.3 to 17.9
- 16.2.** If the parties do not make the appointment of the Expert by agreement within 14 days of service requiring reference of the dispute the Expert shall be nominated upon the application of either party by the President (or other officer to whom the making of such appointment is for the time being delegated) of the Law Society and the Expert shall be an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than 10 years

- 16.3. Unless the Expert shall direct to the contrary not more than 28 days after his appointment the parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon
- 16.4. The Expert shall be at liberty to visit the Site relevant to the dispute unaccompanied and to call for such written evidence from the parties as he may require
- 16.5. The Expert shall not unless he directs to the contrary hear oral representations from any party to the dispute
- 16.6. The Expert shall fully consider all submissions and evidence when making his decision
- 16.7. The Expert shall give his decision in writing and shall give reasons
- 16.8. The Expert shall use reasonable endeavours to give his decision and the reason for it as speedily as possible and in any event within forty two (42) days of his appointment.
- 16.9. The Expert's decision (save in the case of manifest or legal error) including his decision as to costs shall be final and binding. The Expert's fees shall be payable by the parties in such proportions as he shall determine and in default of such determination equally between them

**17. EVIDENCE OF COMPLIANCE:**

In addition and without prejudice to the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation to the Site or otherwise the Owner shall if and when required by the Council from time to time provide the Council (without charge and within ten Working Days) with such information including any copies of any documents as the Council may reasonably request for the purpose of ascertaining whether there has been compliance with or any breach of the requirements of this Agreement and the Schedules hereto

**18. SECTION 73 VARIATION:**

In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the Act in respect of the conditions relating to the Planning Permission, save and in so far as the Deed has been amended by way of a deed of variation prior to the grant of such planning permission, references in this Deed to the Application shall (save for the purposes of the definition of Planning Permission in relation to Clauses ( ) and ( ) be deemed to

include any such subsequent planning applications as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly

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

**SCHEDULE 1:**

**The Owners Title and Site Description:**

<b>Title Number</b>	<b>Description of Site</b>	<b>Owner</b>
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**Schedule 2**

**The Owner's Covenants with the Council**

**Part I**

**Affordable Housing Obligations:**

1. Prior to any Reserved Matters Application /Commencement of Development to submit to the Council for approval the proposed Affordable Housing Scheme and the Owners may submit as many as they may choose until one is approved
2. In respect of each Phase to submit a draft Affordable Housing Scheme for that Phase to the Council for approval prior to Commencement of Development in respect of that Phase and the Owners may submit as many as they may choose until one is approved
3. The Affordable Housing Units shall be provided in accordance with the relevant approved Affordable Housing Scheme and approved Reserved Matters
4. That [forty per cent (40%)] of the Dwellings to be constructed as part of the Development shall be Affordable Housing Units but for the avoidance of doubt if the Planning Permission is amended or modified with the result that the number of Dwellings is increased or decreased the number of Affordable Housing Units shall be recalculated but the number shall not be less than [forty per cent (40%)] of the total number of Dwellings rounded to the nearest whole number PROVIDED FURTHER that at each and every Phase of the Development or application at Reserved Matters Stage the Owner shall ensure that [forty per cent (40%)] of the Dwellings in such Phase or contained within such an application at the Reserved Matters Stage are Affordable Housing Units
5. The Affordable Housing Units (other than the Discounted Market Sale Units) on any Phase shall not be Occupied until the relevant Affordable Rented/Social Rent Units and the Shared Ownership Units that are ready to be Occupied are transferred to an Affordable Housing Provider in accordance with paragraph 12 below
6. [That unless otherwise agreed at the Reserved Matters Stage (or at any other time between the Owners and the Council)] The Affordable Housing Units shall be provided as follows:

In the following proportions:

<b>House Type</b>	<b>Area (m<sup>2</sup>)</b>	<b>Affordable Rent</b>	<b>Social Rent</b>	<b>Shared Ownership/Discount Market</b>	<b>Total</b>	<b>%</b>

- 6.1. in the locations of the size and design and Occupied only in accordance with the tenures shown on Plan [X] unless otherwise agreed in writing with the Council and the Shared Ownership Units will only be Occupied via a Shared Ownership Lease and the Affordable Rented/Social Rent Units shall only be let at an Affordable Rent/Social Rent
7. To ensure that the Shared Ownership Units and the Discount Sale Market Units will be delivered at a level that is affordable with regard to local income and house prices the Open Market Values of the Units Shared Ownership Units and the Discount Sale Market Units shall be submitted in writing to the Council twenty eight (28) days prior to being advertised to prospective purchasers
8. Not to use or permit the Affordable Housing Units to be used for any other purpose than as Affordable Housing in accordance with this Agreement

**9. Viability Review:**

- 9.1. In the event that the Owner considers that the Development cannot provide forty per cent (40%) Affordable Housing for reasons of viability then prior to Commencement of Development the Owners shall: -
- (i) agree the methodology for a Viability Case in writing with the Council; and
  - (ii) thereafter submit the Viability Case to the Council for appraisal by the Council's Independent Assessor
- 9.2. If applicable the Owner shall not Commence Development unless and until it has agreed the methodology for the Viability Case with the Council in writing AND has thereafter submitted the Viability Case to the Council and the Viability Case has been considered by the Council's Independent Assessor and the Council has thereafter confirmed in writing that the Development cannot provide forty per cent (40%) Affordable Housing
- 9.3. In the event that:
- i) the Development has not been commenced within twenty four (24) months of the date the Planning Permission is granted and is thereafter being diligently proceeded with;
- OR
- ii) where applicable before Commencement of any subsequent Phase of the Development
- the Owner shall submit to the Council a Revised Viability Appraisal (using a methodology as close as reasonably possible to that contained in the Original Viability Appraisal) and shall pay

immediately upon receipt of written request to the Council the full reasonably and properly incurred costs of its Independent Assessor who shall produce a Review Report

- 9.4. If the Review Report shows an increase in profitability of the Development at the time it is independently assessed by the Council when compared against the Original Viability Assessment the Council shall notify the Owner in writing within twenty one (21) Working Days of the date of the Independent Assessor's Report whether the Owner is required to provide: -
- (i) Additional Affordable Housing Units on any future Phase(s) of Development;

OR

- (ii) Where Additional Affordable Housing Units cannot be provided on any future Phase(s) of Development the Owner shall pay an "Additional Affordable Housing Contribution" to the Council plus any Indexation within twenty one (21) Working Days of the date of the Council's notice to the Owner of the additional liability AND for the avoidance of doubt the Additional Affordable Housing Contribution is payable by the Owner to the Council in addition to providing the Affordable Housing Units in accordance with terms of this Schedule

#### **10. Clustering Strategy:**

- 10.1. To provide the Affordable Housing Units [in each Phase] in accordance with the Clustering Strategy provided pursuant to paragraph 10.2 below as approved by the Council
- 10.2. No development shall take place [in any Phase] unless and until a Clustering Strategy has been submitted to and approved in writing by the Council [for that Phase].

#### **11. Design and Construction:**

- 11.1. To ensure the seamless integration of the Affordable Housing Units with the Open Market Units to the extent that the Affordable Housing Units shall be indistinguishable in appearance from the Open Market Units
- 11.2. All ground floor apartments and bungalows of the Affordable Housing Units shall be built to Part M Category 2 and a minimum of two per cent (2%) with a minimum of One (1) of Affordable Housing Units shall be built to part M Category 3. (may vary depending on the scheme)

#### **12. Preferred Providers [strategic allocation sites only]:**

- 12.1. The Owners shall use reasonable endeavours to conclude an agreement with a Preferred Provider for the transfer of the Affordable Housing Units (such endeavours being evidenced in writing to the reasonable satisfaction of the Council) the Affordable Housing Units being sold to that Preferred Provider for letting or disposal as appropriate to Eligible Persons and Approved Purchasers in accordance with the terms of this Agreement
- 12.2. Pursuant to paragraph 12.1 above should it become necessary for the Owners to seek an alternative Affordable Housing Provider(s) to the Preferred Providers the Owners shall give written notice to the Council specifying the reasons therefore and supplying appropriate evidence the Owners shall consult with the Council on the selection of any such alternative Affordable Housing Provider and the Council's decision on selection shall be given in writing with both parties acting reasonably in the matter and will be abided by the Owners
- 12.3. Prior to Occupation of Development [of any Phase] the Owner shall submit to the Council a plan for the marketing of the Affordable Rented/Social Rent Units and the Shared Ownership Units [within that Phase] to Affordable Housing Providers and such marketing shall include marketing the Affordable Rented/Social Rent Units and the Shared Ownership Units [within the Phase] to the Preferred Providers
- 12.4. Not to permit Occupation of the Development unless and until the Owners have submitted a plan for the marketing of the Affordable Rented/Social Rent Units and agreed a Lettings Plan in writing with the Council in accordance with paragraphs 12.3 above and 13.1 below

### **13. Lettings Plan and Sales Plan:**

- 13.1. Prior to the commencement of advertising any of the Affordable Rented/Social Rent Units [of any Phase] the Owner shall agree the Lettings Plan in writing with the Council for the Affordable Rented/Social Units [within the Phase]
- 13.2. Within twenty eight (28) days of the Shared Ownership Units within the Phase being transferred to the Affordable Housing Provider and prior to the Shared Ownership Units being advertised or marketed in any way the Affordable Housing Provider shall agree the Sales Plan in writing with the Council for the Shared Ownership Units
- 13.3. The Owners shall agree the Sales Plan in writing with the Council for the Discount Sale Units prior to commencement of advertising any of the Dwellings on the Phase

### **14. Restrictions on Occupations, Lettings and Management:**



- 14.1. Not to cause or permit the Occupation of more than fifty per cent (50%) of the Open Market Units [on any Phase] until fifty per cent (50%) of the Affordable Housing Units [on that Phase] have been completed and made available for Occupation and fifty per cent (50%) of the Affordable Rented/Social Rent Units and the Shared Ownership Units [in that Phase] have been transferred on the terms set out in paragraph 13 below and not to cause or permit the Occupation of more than ninety per cent (90%) of the Open Market Units [on any Phase] until all of the Affordable Housing Units [on that Phase] have been completed and made available for Occupation and all of the Affordable Rented/Social Rent Units and the Shared Ownership Units in that Phase have been transferred on the terms set out in paragraph 14.2 below unless otherwise agreed in writing by the Council
- 14.2. Not to Occupy or allow the Occupation of the Affordable Housing Units [on each Phase] unless and until:
- 14.2.1. the Affordable Housing Land on which the Affordable Housing Unit that is ready to be Occupied (save for the Discount Market Sales Units upon it) has been transferred to an Affordable Housing Provider:
- i) at a cost that will ensure that the Affordable Rented Units will be let at Affordable Rents and that the Shared Ownership Units will be let or sold as Affordable Housing
  - ii) with a good and marketable freehold title having been deduced and the Affordable Housing Land (save for the Discount Market Sales Units upon it) having been transferred with full title guarantee (save that the transferor shall not be liable under the covenants implied by section 2 and 3 of the Law of Property (Miscellaneous Provisions) Act 1994 by reason of the Affordable Housing Land (save for the Discount Market Sales Units) being transferred subject to disclosed subjections and all matters imposed and rights conferred by or under any statute and for the purposes of such Act all matters then recorded in registers open to public inspection shall be considered within the actual knowledge of the transferee) or in any case where the transferor only holds the legal interest to be transferred as a trustee or trustees with limited title guarantee and with vacant possession free of any registered charges (save for this Agreement)
  - iii) on the Standard Conditions of Sale (current at time of transfer) which shall apply insofar as the same are not inconsistent with the expressed terms in this Agreement with such amendments as a reasonable seller and buyer would incorporate

- 14.2.2. Provision has been made for a vehicular access foul and surface water sewers and water electricity and telecommunications services and all other services necessary for the occupation of each Affordable Housing Unit linking in each case to estate roads sewers and services systems to be constructed and laid as part of the remainder of the Site and connected ultimately to highways and sewers maintainable at public expense (where required) and the transfer shall include all necessary easements to be in place to use and maintain the same
- 14.3. Not to permit the letting and management of the Affordable Rented/Social Rent Units and the Shared Ownership Units otherwise than by an Affordable Housing Provider
- 14.4. Not to permit the letting and Occupation of any Affordable Housing Unit otherwise than in accordance with Part I paragraph 16 below and:
  - 14.4.1. in respect of the Shared Ownership Units and the Discount Market Sale Units other than by Approved Purchasers
  - 14.4.2. in respect of the Affordable Rented/Social Rent Units other than by an Eligible Person
- 14.5. Not to permit the letting of each of the Affordable Rented/Social Rent Units to an Eligible Person unless:
  - 14.5.1. On the first letting of each of the Affordable Rented/Social Rent Units and Category 2 Housing and Category 3 Housing the Council shall at all times be entitled to nominate the Eligible Person for one hundred per cent (100%) of the Social Rented/Affordable Rented Units; and
  - 14.5.2. On subsequent re-lettings of the Affordable Rented/Social Rent Units the Council shall at all times be entitled to nominate the Eligible Person for seventy five per cent (75%) of the Affordable Rented/Social Rent Units and Category 2 and Category 3 Housing subsequently rented unless otherwise agreed in writing between the Council and the Affordable Housing Provider with the remainder lettings made by the Affordable Housing Provider in accordance with the requirements of this Agreement and details to be provided in writing annually to the Council and IN ADDITION details of the lettings for the remaining twenty five per cent (25%) shall also be reported in writing annually to the Council and;
  - 14.5.3. That if at any time prior to the entering into a contract with the Affordable Housing Provider the originally agreed Affordable Housing Provider shall no longer wish to be or is not capable for any reason of so being the Affordable Housing Provider for

the relevant Affordable Rented/Social Rent Units and the Shared Ownership Units the Owner shall immediately it is so aware arrange for an alternative Affordable Housing Provider to be appointed in their place and as so soon as is reasonably practical arrange for them to take a novation of any (or enter into new contracts if applicable) development agreement and all other relevant rights and duties of the original Affordable Housing Provider

- 14.6. No Service Charge will apply to the Affordable Housing Units unless all elements of the Service Charge are eligible for Local Housing Allowance or equivalent subsequent scheme
- 14.7. Not to permit the Occupation and management of the Affordable Rented/Social Rent Units and the Shared Ownership Units otherwise than through an Affordable Housing Provider

### **15. Mortgagee in Possession & Exclusions:**

15.1. The Affordable Housing provisions in this Schedule 2 Part I 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 relevant Affordable Housing Units or any persons or bodies deriving title through such mortgagee or charge or Receiver PROVIDED THAT: such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the relevant 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 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

15.1.1. if such disposal has not completed within the three month period, the mortgagee or chargee or Receiver shall be entitled to dispose of the relevant Affordable Housing Units free from the affordable housing provisions in this Part I of Schedule 2 which provisions shall determine absolutely.

15.2. The covenants in this Part I of this Schedule shall not be binding on:

15.2.1. any person exercising a statutory right to acquire any of the Affordable Rented or Social Rented Units;

- 15.2.2. any person or occupier who staircases out to one hundred per cent (100%) ownership of any Shared Ownership Unit;
- 15.2.3. any person exercising a statutory right to buy introduced in favour of the occupiers of the Affordable Rented or Social Rented Units or similar statutory right introduced in favour of occupiers of them; and
- 15.2.4. any successor in title to the persons in 15.2.1 to 15.2.3

## **16. CAPITAL RECEIPTS:**

- 16.1 Subject to the requirements of any relevant grant funding agreement or the requirements to repay any such sums to the Affordable Housing Provider's lender (which requirements shall take precedent over the obligations in this paragraph, the Affordable Housing Provider shall use reasonable endeavours to reinvest any Net Capital Receipts from future release of equity in the Social Rented Units for the provision of Affordable Housing in the Councils area

## **17. Discounted Market Sale Units:**

- 17.1 In order that the future ownership and selling price of the Discounted Market Sale Units shall be controlled so as to ensure that the Discounted Market Sale Units remain as such in perpetuity the Owner shall include within the transfer or lease of each Discounted Market Sale Unit a covenant requiring that all subsequent sales and purchases of the Discounted Market Sale Unit shall be at the Discounted Price to an Approved Purchaser and further that the Owner shall also include within the transfer or lease of each an application for a restriction on the Register as set out below
- 17.2 Each transfer of the freehold or long leasehold interest of each Discounted Market Sale Unit from time to time will contain an application to the Chief Land Registrar to place the following restriction (or a different restriction as the Council and Owner may agree) in the Proprietorship Register of the title to the Discounted Market Sale Unit (or in such other form as the Chief Land Registrar shall deem appropriate).

“Except under an order of the Registrar no transfer or lease of the land is to be registered unless the application for registration shall be accompanied by a certificate from the solicitors of or acting for the Council confirming that the disposition either complies with the provisions of this Schedule or that those provisions do not apply to the disposition”
- 17.3 Prior to the disposal of any Discounted Market Sale Unit by the Owner the Open Market Value shall be determined and agreed as follows:

- 17.3.1 The owner for the time being shall obtain written Open Market Valuations from two estate agents experienced in selling residential properties in the District of the Open Market Value of the Discounted Market Sale Unit that is being disposed of and the Open Market Value shall be the average of the Open Market Valuations provided by the two estate agents.
- 17.3.2 The owner for the time being shall provide the two written Open Market Valuations to the Council who shall have the right to make reasonable objections to the Open Market Valuations within twenty-eight (28) days of receipt of the valuations in accordance with paragraph 17.3 below (and for the avoidance of any doubt if it does not object within such period then the deemed Open Market Value shall be the average of the two valuations)
- 17.3.3 If the Council objects to the Open Market Value as evidenced by two written Open Market Valuations then the Council will state in writing the reason why it objects and the owner for the time being and the Council shall endeavour to agree the Open Market Value but at any time the owner for the time being or the Council may require by written notice served upon the other the Open Market Value to be determined by a valuer appointed pursuant to paragraph 17.3.4 below (“the Valuer”).
- 17.3.4 The Valuer shall be appointed by agreement between the parties or in default of agreement by the President of the Royal Institution of Chartered Surveyors (“the President”) (or his duly appointed deputy) on application of either party.
- 17.3.5 In determining the Open Market Value the Valuer shall:
- i) act as an expert not as an arbitrator and shall so far as is practicable issue his decision within twenty-eight (28) days of the matter being referred to him
  - ii) require receive and consider all representations submitted to him and shall invite and consider any counter representation and shall issue a reasoned decision
- 17.3.6 The fees of the Valuer and the President shall be paid equally by the parties referring the matter to the Valuer or to the President as the case may be unless the Valuer determines otherwise and the Valuer’s decision shall be binding on the parties.

- 17.3.7 The Owner covenants with the Council subject to the provisions of this Schedule that the Discounted Sale Units shall both on initial disposals and any subsequent disposals each only be disposed of to an Approved Purchaser at the Discounted Price.
- 17.3.8 To use reasonable endeavours to reinvest any Net Capital Receipts from future release of equity in the Affordable Housing Units for the provision of Affordable Housing in the Councils area

## **PART II**

### **PUBLIC OPEN SPACE**

1. To submit for approval by the Council a detailed specification for the laying out and maintenance of the Open Space to be provided on the Site (including vehicular and pedestrian accessways to access the same) prior to the first Reserved Matters application and not to Commence Development until such approval has been obtained
2. Prior to Occupation of fifty per cent (50%) of the Dwellings on the Site to lay out the Open Space to be on the Site in accordance with the specification approved by the Council in accordance with Part II paragraph 1 above
3. On completion of the laying out of the Open Space on the Site to serve written notice on the Council indicating that they wish to transfer the Open Space to a Management Company or to the Council and that the Owner considers the work on the Open Space to be completed in accordance with the specification approved by the Council
4. After receiving the notice set out in Part II paragraph 3 above the Council shall satisfy themselves as to whether or not the Open Space to be provided within the Site has been completed in accordance with the specification approved under paragraph 1 above (or as may have been amended in writing following agreement with the Council) and if then satisfied shall issue a Provisional Certificate to that effect within twenty (20) Working Days
5. If the Council are not satisfied as provided in Part II paragraph 4 above then the Owner will be notified in writing within twenty (20) Working Days of receiving the written notice referred to in Part II paragraph 4 above which shall set out the works of rectification required to remedy any defects or omissions which are not in accordance with the approved specification and the process described in Part II paragraphs 3 and 5 shall be repeated until

the Council issues the Provisional Certificate whereupon the Maintenance Period shall commence

6. The Owner shall maintain the Open Space to be provided within the Site for the Maintenance Period and if any damage shall appear arise or occur then the Owner shall at their own expense as soon as practicable after such damage shall appear arise or occur make good the same to the reasonable satisfaction of the Council
7. Two (2) months prior to the expiry of the Maintenance Period the Owner will notify the Council in writing of the date the Maintenance Period in respect of the Open Space on the Site expires and if the Council desires the Council will make any inspection within twenty (20) Working Days of that notice and within fifteen (15) Working Days of the date of the inspection the Council will notify the Owner in writing of any defects or damage arising which is required to be remedied before the issue of the Final Certificate and the Council will if then satisfied that any damage or defects have been made good by the Owner to the reasonable satisfaction of the Council issue the Final Certificate to that effect within twenty (20) Working Days
8. If within the twenty (20) Working Days specified in Part II paragraph 7 above the Council has not inspected the Open Space on the Site and the Owner has not agreed an extension thereto then the Council shall be deemed to have inspected the same and found it satisfactory and shall issue the Final Certificate when requested so to do by the Owner
9. Following the issue of the Final Certificate in respect of the Open Space to be provided within the Site the Owner shall either
  - i. transfer such Managed Land to a Management Company (whose principal objects include the maintenance of the Open Space) or
  - ii. Offer to Transfer in accordance with Schedule 4 to the Council or the Council's nominee the Open Space and shall pay the transferee the Open Space Commuted Sum on the date of the transfer (subject to Part II paragraph 10 below)
10. Unless and until any transfer of the Managed Land provided on the Site to the Management Company the Council or the Council's nominee pursuant to any offers made in accordance with Part II paragraph 9 above the Owner shall maintain the Open Space provided within on the Site in accordance with the specification approved pursuant to Part II paragraph 1 above and shall allow the use of the Open Space provided thereon by the general public from the date the Provisional Certificate is issued and maintain public indemnity insurance in the sum of at least five million pounds (£5000000) (in aggregate) in respect of the same

- 11.** If the Owner wishes to transfer any of the Managed Land on the Site to a Management Company in accordance with Part II paragraph 9(a) above the transfer shall require the Management Company to maintain such Open Space to be provided within on the Site in accordance with the specification approved pursuant to Part II paragraph 1 above and shall allow the use of the Open Space to be by the general public and shall maintain public indemnity insurance in the sum of at least five million pounds (£5000000) (in aggregate) in respect of the same
- 12.** The standard Conditions of Sale (current at the time of the transfer) shall apply to any transfers referred to in Part II paragraph 9 above insofar as the same are not inconsistent with the expressed terms of this Agreement
- 13.** If the Owner shall transfer the Open Space to the Council the Owner shall pay to the Council upon the date of such transfer the Open Space Commuted Sum
- 14.** The Open Space Commuted Sum shall be calculated on the following basis:



<b>Description:</b>	<b>15 yr maintenance cost:</b>	<b>Rate:</b>
Flail Cutting	£3.37	m <sup>2</sup>
Standard Amenity Mowing	£3.80	m <sup>2</sup>
Maintain newly planted shrubbed/woodland area	£33.12	m <sup>2</sup>
Hedge Maintenance	£33.87	m <sup>2</sup>
Leaf Clearance	£0.87	m <sup>2</sup>
Sweep/Spray Hardstandings	£3.21	m <sup>2</sup>
Maintain footpaths (hoggin/rolled stone)	£5.54	m <sup>2</sup>
LAP play space maintenance/management	£19,112	per space
LEAP equipped play area or skateboard park maintenance/management	£38,282	per play area
Maintain nursery standard tree	£191	per tree
Maintain balancing ponds	£7.44	m <sup>2</sup>
Maintain headwall grills	£3,258	each
Maintain wooden/metal fencing	£22.09	lin m
Maintain watercourse dishes	£50.81	lin m
MUGA	£18,759	each
Mature tree maintenance	£2,535	per tree
Off-site contribution	£802.00	per household

15. To take the reasonable steps to notify the owners and other potential occupiers of the Dwellings of the existence nature and location of the On Site Open Space before any

contract to purchase or occupy any Dwelling has been entered into between the Owner/Developer and other potential occupiers

## **PART III**

### **LEAP**

1. To take reasonable steps to notify potential occupiers of the Dwellings of the existence nature and location of the LEAP before any contract to purchase or occupy any Dwelling has been entered into between the potential occupiers and the Owner
2. To submit for approval by the Council a detailed specification for the laying out and maintenance of the LEAP (including vehicular and pedestrian accessways to access the same) prior to Commencement of Development and the same shall accord with the appropriate BS Standard and Fields in Trust standard at the time and not to Commence Development until such approval has been obtained
3. Prior to Occupation of twenty-five per cent (25%) of the Dwellings to lay out and provide the LEAP in accordance with the specification approved by the Council pursuant to paragraph 2 above
4. No Dwellings within fifty (50) metres of the LEAP shall be Occupied until reasonable endeavours have been used to obtain a Royal Society for the Prevention of Accidents certificate for the LEAP
5. No more that 50% of the Dwellings shall be Occupied until a Provisional Certificate has been issued for the LEAP in accordance with paragraph 7 below
6. On completion of the laying out and provision of the LEAP to serve written notice on the Council
7. After receiving the notice set out in Part III paragraph 6 above the Council shall satisfy themselves as to whether or not the LEAP has been completed in accordance with the specification approved under Part III paragraph 2 above or as may have been amended in writing following agreement with the Council and if then satisfied shall issue a Provisional Certificate to that effect within twenty (20) Working Days

- 8.** If the Council is not satisfied as provided in Part III paragraph 7 above then the Owner will be notified in writing within twenty (20) Working Days of receiving the written notice referred to in Part III paragraph 6 above which shall set out the such works of rectification required to remedy any defects or omissions which are not in accordance with the approved specification and the process described in Part III paragraphs 6 and 7 shall be repeated until the Council issues the Provisional Certificate
- 9.** The Owner shall maintain the LEAP for the Maintenance Period and if any damage shall appear arise or occur then the Owner shall at its own expense as soon as practicable after such damage shall appear arise or occur make good the same to the reasonable satisfaction of the Council
- 10.** Two (2) months prior to the expiry of the Maintenance Period the Owner will notify the Council in writing of the date the Maintenance Period in respect of the LEAP expires and if the Council desires the Council will make any inspection within twenty (20) Working Days of that notice and within fifteen (15) Working Days of the date of the inspection the Council will notify the Owner in writing of any defects or damage arising which is required to be remedied before the issue of the Final Certificate and the Council will if then satisfied that any damage or defects have been made good by the Owner to the reasonable satisfaction of the Council issue the Final Certificate to that effect within twenty (20) Working Days
- 11.** Following the issue of the Final Certificate in respect of the LEAP the Owner shall either Offer to Transfer such LEAP to the Council or the Council's nominee and shall pay the transferee the LEAP Commuted Sum on the date of the transfer or (subject to Part III paragraph 12 below) shall transfer such LEAP to a Management Company (whose principal objects include the maintenance of the LEAP) and in any case in which there is a transfer to a Management Company the provisions of Schedule 4 shall apply
- 12.** Unless and until any transfer of the LEAP to the Council or the Council's nominee pursuant to any offers made in accordance with Part III paragraph 11 above the Owner shall maintain the LEAP in accordance with the specification approved pursuant to Part III paragraph 2 above and shall allow the use of the LEAP by the general public from the date the Provisional Certificate is issued and maintain public indemnity insurance in the sum of at least five million pounds (£5000000) (in aggregate) in respect of the same
- 13.** If the Owner wishes to transfer the LEAP to a Management Company in accordance with Part III paragraph 11 above the transfer shall require the Management Company to maintain the LEAP in accordance with the specification approved pursuant to Part III paragraph 2 above and shall allow the use of the LEAP to be by the general public and

shall maintain public indemnity insurance in the sum of at least five million pounds (£5000000) (in aggregate) in respect of the same

14. The standard Conditions of Sale (current at the time of the transfer) shall apply to any transfers referred to in Part III paragraph 12 above insofar as the same are not inconsistent with the expressed terms of this Agreement
15. If the LEAP is to be transferred to the Council the Council's nominee or Management Company the Owner will assign to the relevant transferee any manufacturer guarantees or warranties for the LEAP

#### **NATURAL PLAY SPACE/MUGA**

16. Prior to Commencement of Development the Owner shall submit for approval by the Council details of the Natural Play Areas/MUGA including the proposals for their use management and maintenance
17. The MUGA shall accord with the appropriate BS Standard and Fields in Trust standard at the time of the submission for approval
18. Not to Commence Development until the Council's approval has been obtained in accordance with Part III paragraph 16 above [INSERT provisions as required as per LEAP above]
19. If either the Council does not confirm in writing that an Offer to Transfer the Outdoor Sports Area to the Sports Foundation is approved or the Owners subsequent to receipt of such written approval from the Council having offered the Outdoor Sports Area to the Sports Foundation the Sports Foundation confirms in writing that they do not wish to take a transfer of the Outdoor Sports Area or do not enter into a contract for the transfer of the Outdoor Sports Area within the Offer Period then the Owners shall within 10 Working Days of such written confirmation from the Sports Foundation or the expiry of the Offer Period (as applicable) Offer to Transfer the Outdoor Sports Area to the Council or its nominee and pay to the Council or its nominee the Playing Pitches Contribution on the date of the transfer
20. If the Owners having offered the Outdoor Sports Area to the Council or a nominee of the Council pursuant to paragraph 31 the Council or its nominee confirm in writing that they do not wish to take a transfer of the Outdoor Sports Area or do not enter into a contract for the transfer of the Outdoor Sports Area within the Offer Period then the Owners shall



2. To pay to the Council the Community Project Contribution for the Community Project Purposes on Commencement of Development
3. Prior to the first Occupation of a Dwelling to pay to the Council the Recycling Contribution for Recycling Purposes
4. Prior to the first Occupation of a Dwelling to pay to the Council the Signage Contribution for Signage Purposes
5. Prior to first Occupation of a Dwelling to pay the Council the NHS England Contribution
6. Prior to first Occupation of a Dwelling to pay the Council the Policing Contribution
7. Prior to first Occupation the [ ] Dwelling to pay the Council the Playing Pitches Contribution and the Sports Facilities Contribution
8. The Monitoring Fee upon the Completion of this Agreement/First Reserved Matters Application/Commencement of Development
9. Not to cause or permit or allow the Commencement of Development until the Gypsy and Traveller Contribution (together with any interest thereon for late payment if any) has been paid to the Council.
10. Not to cause or permit or allow the Commencement of Development until the Community Project Contribution (together with any interest thereon for late payment if any) has been paid to the Council.
11. Not to cause or permit or allow the Occupation of any Dwellings until the Recycling Contribution (together with any interest thereon for late payment if any) the Signage Contribution (together with any interest thereon for late payment if any) the NHS England Contribution (together with interest thereon for late payment if any) and the Policing Contribution (together with any interest for late payment if any) Monitoring Fee (together with any interest for late payment if any) have been paid to the Council.
12. Not to cause or permit or allow the Occupation of more than [ ] Dwellings until the Playing Pitches Contribution (together with any interest thereon for late payment if any) and the Sports Facilities Contribution (together with any interest thereon for late payment if any) have been paid to the Council

13. The Owner shall notify the Council within 20 Working Days of each of the following Occupations of the occurrence of such Occupation:
  - 13.1. the first Occupation of a Dwelling
  - 13.2. the first Occupation of the [ ] Dwelling
14. To notify the Council of the anticipated date of Commencement of Development and Commencement of Development of any Phases at least 5 Working Days before each of the anticipated dates and to notify the Council of the actual dates of Commencement of Development and Commencement of Development of any Phases within 5 Working Days of such dates

## **18. SCHEDULE 3**

### **18.1. The Council's Covenants with the Owners:**

1. Upon receipt of the payment of any of the Contributions to the Council to place the Contributions in an interest bearing account or in separate accounts as the Council shall in its absolute discretion decide from which any relevant expended payment may be readily identified from periodic statements until such time as such Contributions (or parts thereof) are applied for their respective purposes identified by this Agreement
2. Upon written request by the Owners at reasonable intervals (but not more frequently than once every three months) to provide the Owners with a breakdown of the expenditure from the Contributions as have been paid to the Council
3. To apply any of the Contributions which have been paid to the Council for their respective specified purposes and not to any other purposes
4. Following receipt of a written request from the payer of any Contribution made to the Council under this Agreement the Council will repay to such payer the balances (if any) of any such monies paid to the Council which at the date of receipt of such request have not been expended together with any interest which has accrued to the Council on them (after deduction of tax where requisite and any other sum required to be deducted by law) PROVIDED THAT:
  - 4.1 no such request shall be made prior to the expiration of ten (10) years from the date of the payment to the Council of the Contribution in question

- 4.2 any part of any Contribution which the Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the Council prior to that date
5. For the avoidance of doubt the Council will be entitled to treat any accrued interest on any Contribution paid to the Council as if it were part of the Contribution
6. At the written request of the Owners the Council shall provide written confirmation of the discharge of the obligations (or any individual obligation) contained in this Agreement PROVIDED THAT the Council is satisfied that such obligations have been performed

## **19. SCHEDULE 4**

### **18.2. Offer to Transfer**

Any Offer to Transfer shall be made on the following terms:

7. The offer shall remain open and available for acceptance for the Offer Period
8. Prior to the expiry of the Offer Period not to transfer the relevant land or buildings to any other person body or organisation without the Council's (or the intended transferee's) prior written consent (not to be unreasonably withheld or delayed)
9. Following acceptance of the offer not to unreasonably delay completion of the transfer
10. The consideration payable by the transferee shall be one pound (£1)
11. The transfer shall include terms which restrict the use of the land only for its intended use and any and all purposes reasonably ancillary to it
12. The transfer shall include reasonable reservation rights (or easements) of access and services or utilities over the land for the benefit of any other part of the Site where such rights are reserved for the purpose of laying managing maintaining replacing renewing cleaning and repairing accesses services or utilities
13. The transfer shall include for the benefit of the land the grant of any and all reasonable rights of access services and utilities as appropriate over any adjoining land or any other part of the Site which rights are reasonably required for the intended use of the land or its management and maintenance.



**THE COMMON SEAL OF THE COUNCIL  
FOR THE BOROUGH OF TEWKESBURY**

was hereto affixed in the presence of:

.....

Authorised Signatory

**OR**

**THE COMMON SEAL of  
CHELTENHAM BOROUGH COUNCIL**

affixed hereunto is authenticated by  
undermentioned person authorised  
by the Council to act for that purpose:

.....  
Authorised Signatory

Executed as a Deed by )  
THE COMMON SEAL of CHELTENHAM )  
BOROUGH COUNCIL being affixed hereto and )  
authenticated by the undermentioned person )  
authorised by the Council to act for that purpose: )

Authorised Signatory

**OR**

THE COMMON SEAL of THE )  
COUNCIL OF THE CITY OF )  
GLOUCESTER affixed hereto )  
is authenticated by the undersigned )  
a person authorised by the said )  
Council to act for that purpose )

**Authorised Signatory**

Signed as a Deed by )  
)  
acting by its Director(s) )  
and Company Secretary duly )  
authorised to sign on its behalf )

Director

Director/Company Secretary

OR

Executed as a deed by )  
)  
acting by a Director in the )  
presence of: )

Name of Witness .....

Signature of Witness .....

Address .....

.....

.....

LLP partnership

Signed as a Deed by )

(name of limited liability partnership) )

acting through two of its members )

Signed:.....

Name of member:.....

Signed:.....

Name of member:.....

Executed as a deed by )

(name of limited liability partnership) )

acting by a member in the )

presence of: )

Name of Witness .....

Signature of Witness .....

Address .....

.....

.....

Individual signing

SIGNED as a deed in the presence of the )

Witness named below and DELIVERED )

by the said (name of person) )

Name of Witness .....

Signature of Witness .....

Address .....

.....

.....

Parishes

Execution by Parish Councils: S14(3) Local Govt Act 1972

Notwithstanding anything in any rule of law a parish council need not have a common seal but where a parish council have no seal any act of theirs which is required to be signified by an instrument under seal may be signified by an instrument signed and sealed by two members of the council.