

Dated

2026

- (1) **HORSHAM DISTRICT COUNCIL**
- (2) **WEST SUSSEX COUNTY COUNCIL**
- (3) **BERKELEY HOMES (SOUTHERN) LIMITED**

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 in respect of
Land West of Worthing Road (Phase 5), Southwater, West Sussex

Legal Ref: SW/0001424
Planning Application Ref: DC/19/2464
Date of Authority: 5 August 2025

Lauren Kelly
Head of Legal and Democratic Services
Horsham District Council
Albery House
Springfield Road
Horsham
West Sussex
RH12 2GB

This Agreement is made as a Deed and dated

2026

Between

- (1) **HORSHAM DISTRICT COUNCIL** of Albery House, Springfield Road, Horsham, West Sussex RH12 2GB ("**the Council**")
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex PO19 1RQ ("**the County Council**")
- (3) **BERKELEY HOMES (SOUTHERN) LIMITED** (Company Regn No. 01454061) of Berkeley House, 19 Portsmouth Road, Cobham, Surrey, KT11 1JG ("**the Owner**")

1. **Background & Recitals**

Whereas

- 1.1 The Owner is the registered proprietor with Title Absolute of land registered at HM Land Registry under title number WSX376044.
- 1.2 The County Council is the highway authority for the area within which the Site is situated for the purposes of this Section 106 Agreement.
- 1.3 The Council is the Local Planning Authority as defined in the Act for the area within which the Site is situated for the purposes of this Section 106 Agreement and for the purposes of Section 106 of the Act.
- 1.5 Berkeley Strategic Land Limited was granted by the Council on 25 June 2015 under planning reference DC/14/0590 outline planning permission for the residential development of up to 540 dwellings and 54 retirement living apartments associated vehicular, cycle and pedestrian access, drainage and access works ("**the Outline Permission**").
- 1.6 The Outline Permission was granted subject to a deed of agreement made under Section 106 of the Act and dated 25 June 2015 between (1) Henry Egerton Aubrey-Fletcher, (2) Peter Robert Michael Bond, (3) Thomas Egerton Aubrey-Fletcher (4) Berkeley Strategic Land Limited (5) Berkeley Homes PLC (6) the Council and (7) the County Council ("**the Original Outline Section 106 Agreement**").

- 1.7 The Owner was granted reserved matters approval by the Council on 12 February 2016 under planning reference DC/15/2064 for Phases 1 and 2 of the Outline Permission being the erection of 244 dwellings (including 54 retirement living apartments) with associated access, parking and landscape works pursuant to the Outline Permission (**"First Reserved Matters Approval"**).
- 1.8 By a transfer date 10 May 2016, Berkley Strategic Land Limited transferred all of that land registered under Title Number WSX376044 to the Owner.
- 1.9 Following the grant of the First Reserved Matters Approval the Owner submitted an application under reference s106/16/0009 and PAG 1208 for the Original Section 106 Agreement to be amended. The (1) Council (2) County Council (3) Owner (4) Berkeley Homes PLC and (5) Southwater Property Promotion Limited entered into a deed of variation on 16 January 2017 varying the Original Section 106 Agreement (**"the First Deed of Variation"**).
- 1.10 The Owner submitted a full planning application for the erection of a building (Phase 2 Block B) to provide 25 apartments with associated parking and landscape works under reference DC/16/0863 (**"the 2017 Permission"**) and the 2017 Permission was subject to a standalone section 106 agreement dated 16 January 2017.
- 1.11 On 8 March 2017 the Council granted permission under planning reference DC/16/1919 for reserved matters of the Outline Permission for the provision of a community building, 2 x football pitches, a cricket pitch, 2 x tennis courts, a multi-use games area, a skate park, a LEAP-NEAP with associated access parking and landscaping works. (**"the Second Reserved Matters Approval"**).
- 1.12 On 13 June 2017 the Council granted permission under planning reference DC/17/0842 for reserved matters of the Outline Permission for the erection of a single storey sports pavilion (**"the Third Reserved Matters Approval"**).
- 1.13 On 13 June 2017 the Council granted permission under planning reference DC/17/2319 for reserved matters of the Outline Permission Phase 3.1 for the erection of 68 dwellings (including 8 affordable dwellings) with associated garaging access, parking and landscaping works (**"the Fourth Reserved Matters Approval"**).
- 1.14 On 21 December 2018 the Council granted permission under planning reference DC/18/1246 for reserved matters of the Outline Permission for layout appearance landscaping scale and

access for the erection of 213 dwellings (including 61 affordable dwellings) with associated access parking and landscaping works pursuant to phases 3.2 and 4 of the Outline Permission (**"the Fifth Reserved Matters Approval"**).

- 1.15 On 24 January 2019 the Council granted permission under planning reference DC/18/1255 for reserved matters of the Outline Permission pertaining to layout appearance landscaping and access for the extension of existing allotments, allotment car parking outdoor child play area associated with village hall and extension of existing village hall car park with associated access and landscaping works (**"the Sixth Reserved Matters Approval"**).
- 1.16 Following the grant of the Sixth Reserved Matters Approval the Owner submitted an application under reference s106/19/0003 and the Owner, Southwater Property Promotion Limited, the Council and the County Council entered into the deed of variation on 9 October 2019 varying the Original Section 106 Agreement as amended by the First Deed of Variation (**"the Second Deed of Variation"**).
- 1.17 On 24 June 2024 Berkeley Homes PLC, the Owner, Southwater Property Promotion Limited, the Council and the County Council entered into a deed of variation to amend the Original Section 106 Agreement as amended by the First Deed of Variation and Second Deed of Variation (**"the Third Deed of Variation"**).
- 1.18 On 9 December 2019 the Owner submitted the Application for the Development of the Site. On 26 July 2024 the Owner amended the Application for the Development.
- 1.19 On 24 June 2024 by Berkeley Homes PLC, the Owner, Southwater Property Promotion Limited, the Council and the County Council entered into a Deed of Variation to amend the Original Outline Section 106 Agreement as varied by the First Deed of Variation and Second Deed of Variation
- 1.20 The Council at a meeting dated 5 August 2025 through the Council's Planning Committee resolved to approve the Application subject to the conditions of the Planning Permission and the prior completion of this section 106 Agreement (**"the Section 106 Agreement"**) which includes:
- (a) the provision of a LAP, LEAP and Open Amenity Space, including their management and maintenance, and
 - (b) the Bridleway Upgrade Works

- 1.20 This Section 106 Agreement made by deed is intended to create planning obligations for the purposes of Section 106 of the Act and where applicable highways obligations pursuant to Section 38 of the Highways Act 1980.
- 1.21 The Owner is willing to enter into and be bound by the obligations and be subject to the restrictions in this Section 106 Agreement on the terms set out herein.
- 1.22 The parties are satisfied that the provisions of this Section 106 Agreement comply with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and, accordingly, that the planning obligations contained in this Section 106 Agreement are necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development.
- 1.23 The Owner, Berkeley Homes PLC, the Council and County Council have agreed to enter into a further Deed of Variation to vary the obligations in the Varied Outline Section 106 Agreement (**"Fourth Deed of Variation"**). The purpose of the Fourth Deed of Variation is to give effect to the Section 73 Permission (which varies the number of dwellings that may be erected on Phase 3.2 and Phase 4 Land in order that the cumulative total number of dwellings across the Phases (and taking into account of the 94 dwellings permitted under this Planning Permission if it is Commenced) is capped at 594 in accordance with the Outline Planning Permission) and to make changes to the Varied Outline Section 106 Agreement so that it is consistent with the proposed Phase 5 Development. The Fourth Deed of Variation shall be completed simultaneously to this Section 106 Agreement.

NOW THIS DEED WITNESSES as follows:-

2. **INTERPRETATION**

In this Section 106 Agreement:

- 2.1 Words importing the masculine include the feminine and vice versa.
- 2.2 Words importing the singular include the plural and vice versa.
- 2.3 Words importing persons include companies and corporations and vice versa.

- 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.
- 2.5 Any reference to a clause or schedule or plan is to a clause schedule or plan in to or attached to this Section 106 Agreement, unless expressly stated otherwise.
- 2.6 Any reference to a colour or letter is to a colour or letter on the plan attached to this Section 106 Agreement, unless expressly stated otherwise.
- 2.7 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.
- 2.8 References to any party to this Section 106 Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their functions as local planning authority and local housing authority.
- 2.9 The headings are for reference only and shall not affect construction.

3. DEFINITIONS

- 3.1 It is hereby agreed between the parties set out in this Section 106 Agreement that the following expressions shall have the following meanings:

“Act” means the Town and Country Planning Act 1990 as amended;

“Application” means the application for full planning permission for the Development and given planning reference number DC/19/2464;

“BCIS Index” means the All-In Tender Price Index published by the Building Cost Information Service Index of the Royal Institution of Chartered Surveyors or (if such index is at the relevant time no longer published)

such other comparable index or basis for indexation as the Council may specify;

“Bridleway”

means the Footpath (or relevant part thereof) following the provision of the Bridleway Upgrade Works;

“Bridleway Upgrade Works”

means improvement and upgrade works to the Footpath between points “A” and “C” on Plan 2 to a bridleway in accordance with condition 13 of the Planning Permission (unless otherwise agreed by the County Council in writing);

“Certificate of Practical Completion”

means a certificate of practical completion issued by the Council confirming that all works to which the certificate relates are practically complete in accordance with the relevant specification as required;

“Commencement of Development”

means the carrying out of a material operation as defined in Section 56(4) of the Act in respect of the Development and “**Commence Development**” shall be construed accordingly;

“Commencement of the Section 73 Permission”

means the carrying out of a material operation as defined in Section 56(4) of the Act in respect of the Section 73 Permission but excluding (for the purposes of this Section 106 Agreement and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof site survey works, enabling works, demolition works, site clearance works, earthworks, archaeological investigations and digs, exploratory boreholes, operations permitted by the Town and Country Planning (General Permitted Development) (England) Order

	2015, the erection of hoardings and fencing, temporary diversion of services and signage (including the formation of temporary construction accesses) and “Commence the Section 73 Permission” and Commenced the Section 73 Permission shall be construed accordingly; means the written notice confirming the Commencement Date referred to in Clause 7.1.1 and served in accordance with Clause 7.3;
“Commencement Notice”	
“Commencement Date”	<u>means</u> the date on which Commencement of the Development occurs;
“Completed”	(1) In relation to the transfer of the Site or parts of the Site by the Owner(s) the completion of the registration of the name of the successor in title as the registered proprietor of the Site or relevant part(s) of the Site at the land registry (2) in relation to the Bridleway Upgrade Works, LEAP, LAP and Open Amenity Space: practically complete save for minor snagging items such that it is reasonably fit for occupation or use, and the words "Completion" and "Complete" shall be construed accordingly;
“Council Contributions”	means the LEAP Maintenance Contribution;
“Council’s Nominee”	means a reputable body whose principle purpose is for the maintenance and management of open spaces, and play areas and who is nominated by the Council to accept a transfer which, for the avoidance of doubt, may include the Management Company;

“County Council Monitoring Fee”	means the total sum of three thousand two hundred and forty pounds (£3,240) payable to the County Council for monitoring the delivery and performance of a Qualifying Trigger contained in this Deed over the lifetime of the Development;
“Development”	means the development of the Site for 94 Dwellings with associated access, parking and landscaping pursuant to the Planning Permission;
“Dwelling”	means a residential dwelling forming part of the Development and “Dwellings” shall be construed accordingly;
“Estate Roads”	means any roads within the Development which are not adopted or not to be adopted by the County Council;
“Footpath”	means public footpath 1652 which is to be upgraded to Bridleway between points “A” and “B” and “B” and “C” as shown on Plan 2;
“Head of Development and Building Control	means the Head of Development and Building Control for the time being of the Council and shall include his duly authorised agents and representatives and any successor;
“Illustrative Phasing Plan”	means the plan identified as Plan 15 in Schedule 1 of the Outline Section 106 Agreement;
“Index Linked”	means as set out in clause 8;
“Interest”	means interest at the rate of 4% above the Bank of England base rate applicable at the Specified Date which shall be calculated on a day to day basis from the day following the Specified Date;

“LAP”	means the local area of play within the Development as shown on Plan 2;
“LEAP”	means the local equipped areas of play within the Development as shown on Plan 2;
“LEAP Maintenance Contribution”	means the sum of forty four thousand three hundred and thirty six pounds (£44,336) to be paid to the Council towards the future maintenance of the LEAP only if it is transferred to the Parish Council, Council or Nominee in accordance with Schedule 4
“Management Company”	means a limited company or company limited by guarantee (or companies) established by the Owner in accordance with Schedule 5 to be responsible for the maintenance and management of the Managed Land and Other Managed Land (if applicable) in accordance with the provisions of this Section 106 Agreement and the Management Plan (and for the avoidance of doubt this includes any/all subsequent body/bodies that take on this responsibility) and which for the avoidance of doubt may be the same Management Company established pursuant to the Outline Section 106 Agreement for the Outline Permission Site;
“Management Company Structure Scheme”	means a scheme that addresses the following in relation to the Management Company: (a) details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee with at least two named persons as Directors and one Company

Secretary that are eligible to be appointed and (if required) removed and replaced by the members of the Management Company

- (b) confirmation that the Management Company will hold at least one (1) meeting per year
- (c) to procure through the Management Company documentation that the purpose of the Management Company shall include but not be limited to the maintenance of the Managed Land and Other Managed Land;

and which for the avoidance of doubt may be the same Management Company Structure Scheme and Management Company established pursuant to the Outline Section 106 Agreement for the Outline Permission Site;

“Managed Land”

means the LAPs, LEAP and Open Amenity Space which are provided for in the Development and which are managed by the Management Company in accordance with Schedules 4 and 5 to this Section 106 Agreement and the Management Plan (but excluding any areas which have been or are to be adopted by the relevant highway or drainage authorities pursuant to an adoption agreement or any land transferred to the Council or Parish Council or Nominee (other than the Management Company));

“Management Plan”

means a detailed written scheme prepared by the Owner for the on-going maintenance of the Managed Land which shall include the following:

- (a) a plan showing the boundaries of the Managed Land (such plan may be amended from time to time as the boundaries of the Managed Land change);
- (b) demonstrate full integration of landscape, biodiversity and arboriculture considerations;
- (c) confirmation of the approximate location and details of any apparatus to be vested in or adopted by statutory undertakers or the drainage or highway authorities;
- (d) frequency of maintenance of the Managed Land;
- (e) measures to replace any trees shrubs or turf which may die or become diseased within the Managed Land following implementation of the Management Plan;
- (f) standard of maintenance and repair to be achieved and maintained;
- (g) how the costs of the maintenance of the Managed Land shall be funded and this shall include a mechanism for recovery of maintenance costs of the Managed Land;
- (h) details of the proposed Management Company;
- (i) the person who shall be the point of contact for anyone wishing to raise issues regarding the management or maintenance of the Managed Land;

- (j) the mechanisms which shall be put in place to ensure that the details of the point of contact are publicised to residents of the Dwellings and members of the public entering the Managed Land and in the event of any change in the point of contact to notify the Council in writing within 7 days of the date of such change,

and which for the avoidance of doubt may be included in the 'Management Scheme' as defined in the Outline Section 106 Agreement for the Outline Permission Site;

“Monitoring Fee”

means the fee which the Council charges by virtue of its powers under S111 of the Local Government Act 1972 and S1 of the Localism Act 2011 and which shall be no more than eight hundred pounds (£800);

“Occupation”

means occupation for any purpose for which the Planning Permission has been granted by the Council other than occupation for the purposes of construction or fitting out or occupation for security, marketing or display and **“Occupy”** and **“Occupied”** and **“First Occupation”** shall be construed accordingly;

“Occupation Date”

means the date on which the first Dwelling is Occupied;

“Occupation Notice”

means the written notice confirming the Occupation Date referred to in Clause 7.1.2 and served in accordance with Clause 7.3;

“Open Amenity Space”

means only existing and proposed areas of green space, retained trees and public shared space (other than the LAP and LEAP) as shown on Plan 2 to be

provided or maintained as part of the Development for use by the general public;

“Open Amenity Space, LAP and LEAP Inspection Fee”

means the fee payable to the Council in accordance with Schedule 4 paragraph 4 of SIX HUNDRED POUNDS (£600) which is based on the current daily rate for the inspection of the works undertaken by the Owner to create the Open Amenity Space and the LAP and LEAP;

“Open Amenity Space Specification”

means the Open Amenity Space specification to be submitted and approved pursuant to condition 14 of the Planning Permission;

“Other Managed Land”

means land including Estate Roads including lighting, chattels and other street furniture which is provided for the Development which for the avoidance of doubt may include the Residential parts of the Development and which has been confirmed as such pursuant to Part 2 of Schedule 4 and will be managed by the Management Company in accordance with Schedules 4 and 5 to this Section 106 Agreement and the Management Plans (but excluding any areas which have been or are to be adopted by the relevant highway or drainage authorities pursuant to an adoption agreement);

“Outline Permission Site”

means the entire site for which planning permission was granted in accordance with the Outline Permission as detailed by plan 1 in Schedule 1 of the Outline Section 106 Agreement and comprising Phase 1, 2, 3, 4 and 5 as detailed in the Illustrative Phasing Plan;

“Outline Permission”	means outline planning permission granted by the Council on 25 June 2015 under planning reference DC/14/0590 for the residential development of up to 540 dwellings and 54 retirement living apartments associated vehicular, cycle and pedestrian access, drainage and access works on the Outline Permission Site;
“Outline Section 106 Agreement”	means the Original Outline Section 106 Agreement as amended by the First Deed of Variation, the Second Deed of Variation and the Third Deed of Variation;
“Parish Council”	means Southwater Parish Council;
“Phase”	means a phase of the Outline Permission as detailed in the Illustrative Phasing Plan, Plan 15, Schedule 1 of the Original Section 106 Agreement and the term “Phases” is to be construed accordingly to mean one or more phases as the context may require;
“Phase 3.2 and Phase 4 Permissions”	means the reserved matters planning consents granted pursuant to application DC/18/1246, DC/21/1764, DC/23/0443 and DC/24/0772 permitting a total of 214 no. residential dwellings including 61 affordable dwellings (and which for the avoidance of doubt does not include any variations to these approvals pursuant to section 73 of the Act);
“Phase 4 Land”	means the land shown edged red on Plan 3;
“Planning Permission”	means the planning permission to be granted by the Council pursuant to the Application;

"Plan 1"	means the Site plan reference S835/Ph5/LP attached to this Section 106 Agreement;
"Plan 2"	means plan reference S835/SL/001 Rev E showing the LAP, LEAP and Open Amenity Space (as may be amended with the written approval of the Council)
"Plan 3"	means plan reference S832-S106-100 Rev A identifying Phase 4 Land;
"Play Area"	means the LEAP and LAP;
"Play Area Specification"	means the specification for the Play Area which is to be submitted to the Council for approval in accordance with condition 14 of the Planning Permission;
"Qualifying Trigger"	means any trigger contained within this Deed that attracts the County Council Monitoring Fee because its implementation and/or adherence requires monitoring by the County Council;
"Section 73 Application"	means planning application reference DC/24/1158 for Minor Material Amendments (Section 73) to vary condition 2 of the permission granted pursuant to planning application reference DC/24/0772 (non-material amendment to previously approved application DC/18/1246) for 199 no. residential dwellings including 61 affordable dwelling and vary the plans approved under condition 1 of application reference DC/18/1246;
"Section 73 Consent"	means a planning permission granted pursuant to Section 73 of the Act (or any equivalent authority to vary a permission) which varies and /or removes any condition subject to which the Planning Permission and/or such planning permission pursuant to

Section 73 of the Act was granted and for the avoidance of doubt includes any subsequent variations to those section 73 consents (or equivalent authority) amended consents;

“Section 73 Permission”

means the planning permission granted pursuant to the Section 73 Application (including any permissions granted to vary the Section 73 Permission pursuant to an application under section 73 or section 96A of the Act (or any equivalent authority to vary a planning permission) and for the avoidance of doubt includes any subsequent variations to those section 73 and / or section 96a (or equivalent authority) amended permissions);

“Site”

means the land shown for identification purposes only edged red on Plan 1;

“Southwater Parish”

means the administrative area of Southwater Parish Council;

“Specified Date”

means the date upon which an obligation arising under this Section 106 Agreement is due to be performed;

“Travel Plan”

means the travel plan to be approved pursuant to condition 24 the Planning Permission;

“Travel Plan Monitoring Fee”

means the sum of THREE THOUSAND NINE HUNDRED AND FIFTY POUNDS (£3,950) payable to the County Council for monitoring the delivery of the Travel Plan over the lifetime of the Development;

“Working Day”

means a day other than a Saturday or Sunday or public holiday in England or the period between 24 December and 1 January inclusive.

4. ENABLING PROVISIONS

- 4.1 This Section 106 Agreement is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, and Section 1 of the Localism Act 2011 and all other enabling powers.

5. CONDITIONS PRECEDENT

- 5.1 This Section 106 Agreement shall come into effect upon:

5.1.1 the granting of Planning Permission; and

5.1.2 the Commencement of Development

save for clauses 5, 12.10 and 17 which shall come into effect immediately on completion of this Section 106 Agreement.

6. COVENANTS

- 6.1 The Owner covenants with the Council and the County Council so as to bind their interests in the Site to fully comply with and to perform the obligations contained herein and in the Schedules of this Section 106 Agreement in accordance with the requirements and timescales contained therein.
- 6.2 The Owner covenants with the Council and the County Council that the Development and use of the Site shall be in strict accordance with this Section 106 Agreement.
- 6.3 The Council covenants with the Owner and the County Council to fully comply and to perform the obligations contained herein and in Schedule 7 to this Section 106 Agreement in accordance with the requirements and timescales contained therein.
- 6.4 The County Council covenants with the Owner and the Council to fully comply and to perform the obligations contained herein and in Schedule 6 to this Section 106 Agreement in accordance with the requirements and timescales contained therein.

7. NOTICES

7.1 The Owner covenants with the Council as follows:

7.1.1 to give the Commencement Notice to the Council and the County Council not less than 14 days before the anticipated Commencement Date;

7.1.2 to give the Occupation Notice to the Council not less than 14 days before the anticipated Occupation Date.

7.2 The parties to this Section 106 Agreement agree that if the Owner fails to give the notice required by Clause 7.1.1 and Clause 7.1.2 above then the Council shall be entitled in to determine the Commencement Date or the Occupation Date and shall give notice to the Owner of the Council's determination.

7.3 Any notice certificate or other communication required or permitted to be given hereunder shall be given in writing to the relevant party at the relevant address referred to above or such other address as may be notified in writing to the other party and must be served personally or by registered or recorded delivery post and in the case of the Council the Owner shall address any notice to the Head of Legal and Democratic Services of the Council.

7.4 Any notice certificate or other communication sent by post shall be deemed (in the absence of evidence of receipt) to have been delivered two days after despatch and in proving the fact of despatch it shall be sufficient to show that the envelope was properly addressed and posted.

7.5 Any notice certificate or other communication delivered personally shall be deemed to have been delivered on the day of its despatch if despatched during or prior to normal business hours but otherwise on the next business day thereafter.

8. INDEX LINKING

8.1 The Owner undertakes to the County Council that any sum payable by the Owner under this Section 106 Agreement to the County Council save for the sum payable under clause 10.1.2 shall be increased by the application of the following formula:

$A = B \times \underline{C \text{ is equal to or greater than } 1}$

where: A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Section 106 Agreement

C is the BCIS Index at the date payment falls due

D is the BCIS Index at the date of 1st April 2025

- 8.2 The Owner undertakes to the Council that any sum payable by the Owner under this Section 106 Agreement to the Council save for the sum payable under clause 10.1.1 shall be increased by the application of the following formula:

$A = B \times \frac{C}{D}$ C is equal to or greater than 1

D

where: A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Section 106 Agreement

C is the BCIS Index for the quarter preceding the Specified Date

D is the BCIS Index for the quarter preceding the date of this Section 106 Agreement.

9. **INTEREST**

- 9.1 The Owner covenants to the Council to pay the Interest on sums due to the Council under this Section 106 Agreement but not paid on the Specified Date from the Specified Date until actual payment.

10. **COSTS**

- 10.1 The Owner undertakes to pay on or before the date hereof:

10.1.1 to the Council the Council's reasonable legal costs incurred in preparing and entering into this Section 106 Agreement up to a maximum ~~£7,5156,400~~ no VAT; and

10.1.2 to the County Council the County Council's reasonable legal costs incurred in preparing and entering into this Section 106 Agreement up to a maximum £1,500 no VAT.

11. Monitoring Fee

11.1 The Owner undertakes with the Council to pay to the Council on completion of this Section 106 Agreement the Monitoring Fee.

11.2 The Owner undertakes with the County Council to pay on completion of this Section 106 Agreement the County Council Monitoring Fee.

12. GENERAL

The parties undertake that:

12.1 to the extent that they fall within the terms of s106 of the Act the obligations contained in Clause 6 and the Schedules hereof are planning obligations for the purposes of s106 of the Act.

12.2 this Section 106 Agreement constitutes a deed.

12.3 this Section 106 Agreement is enforceable by the Council or County Council as appropriate.

12.4 nothing in this Section 106 Agreement confers or is intended to confer a benefit on a third party under the Contracts (Rights of Third Parties) Act 1999.

12.5 It is hereby agreed by the Owner that failure by the Council at any time to enforce the provisions of this Section 106 Agreement or to require performance strictly or otherwise by the Owner of any of the conditions covenants agreements or obligations of this Section 106 Agreement or any failure or delay by the Council to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of this Section 106 Agreement or any part thereof or the right of the Council to enforce any provision and any variation of this Section 106 Agreement shall not vitiate the remainder of the Section 106 Agreement which shall remain in full force and effect subject to such amendment or amendments.

12.6 The Owner hereby undertakes that

12.6.1 this Section 106 Agreement supersedes and replaces all previous negotiations whether oral or written; and

- 12.6.2 the Owner has not relied on any express or implied statement warranty representation or undertaking given by or on behalf of the other; and
- 12.6.3 nothing herein contained excludes the liability of the Owner in relation to fraud.
- 12.7 The Owner hereby consents to the registration of this Section 106 Agreement as a Local Land Charge against the Site.
- 12.8 If any provision in this Section 106 Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.
- 12.9 Reference to any statute or statutory provisions includes a reference to:-
- 12.9.1 that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and
- 12.9.2 all statutory instruments or orders made pursuant to it whether before or after the date of this Section 106 Agreement.
- 12.10 This Section 106 Agreement shall be governed by and interpreted in accordance with Laws of England and the Owner submits to the exclusive jurisdiction of the Courts of England.
- 12.11 The obligations in this Section 106 Agreement (with the exception of Clause 10) shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission:
- 12.11.1 expires;
- 12.11.2 is varied or revoked other than at the request of the Owner; or
- 12.11.3 is quashed following a successful legal challenge
- But will remain in full force and effect so far as any subsisting Section 73 Consent is concerned
- 12.12 The obligations in this Section 106 Agreement (with the exception of Clause 10) shall cease to have effect (insofar only as it has not already been complied with) in so far only as the relevant Section 73 Consent is concerned if the relevant Section 73 Consent:
- 12.12.1 expires;
- 12.12.2 is varied or revoked other than at the request of the Owner; or

12.12.3 is quashed following a successful legal challenge,

but will remain in full force and effect so far as the Planning Permission and any other subsisting Section 73 Consent is concerned.

12.13 The obligations in clause 15.1.2 – 15.1.4 of this Section 106 Agreement shall cease to have effect if the Section 73 Permission is quashed following successful legal challenge or expires or is varied or revoked other than at the request of the owner of the Phase 4 Land.

12.14 the Owner (or any person deriving title to the Site from them) shall not be liable for any breach of the restrictions and obligations set out in this Section 106 Agreement where such breach arises after the relevant Owner has parted with its entire interest in the Site or such part of the Site to which such breach relates save in respect of liability for antecedent breach of this Section 106 Agreement.

12.15 The obligations in this Section 106 Agreement shall not be enforceable:

12.15.1 against individual lessees or purchasers and their successors in title occupying or entitled to occupy Dwellings within the Development or their mortgagees or chargees; or

12.15.2 against any statutory undertaker whose apparatus may be situated within the Site.

12.16 Any future chargee or mortgagee shall not be liable for any breach of the obligations in this Agreement unless committed or continuing at a time when it is in possession of all or any part of the Site in which case it will be bound by the obligations in this Agreement as if it were a person deriving title from the Owner.

12.17 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 applies to the covenants in this Section 106 Agreement.

12.18 References to the Site include any part of it.

12.19 The word "including" means "including without limitation".

12.20 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

12.21 Nothing in this Section 106 Agreement shall prohibit or limit the right to develop any part of the

Site in accordance with any planning permission (other than the Planning Permission or any modification variation or amendment thereof) granted after the date of the Planning Permission.

- 12.22 Subject to the proviso to this Clause if any Section 73 Consent is granted after the date of this Section 106 Agreement:

12.22.1 the obligations in this Section 106 Agreement shall relate to and bind such Section 73 Consent; and

12.2.2.2 the definitions of Application, Development and Planning Permission (other than for the purposes 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:

12.2.2.3 nothing in this clause shall fetter the discretion of the 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;

12.2.2.4 to the extent that any of the obligations in this Section 106 Agreement 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

12.2.2.5 the Council reserves the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it desirable to do so.

13. **DISPUTE RESOLUTION**

- 13.1 Save for matters of construction (which shall be matters for the Court) should a dispute or difference arise between the Owner and the Council or County Council concerning anything herein then the provisions of this Clause 13 shall apply.

- 13.2 All differences and disputes which may arise between the parties hereto concerning this Section 106 Agreement shall:

- 13.2.1 where the difference or dispute relates to the construction or interpretation of this Section 106 Agreement be referred to the determination (as an expert and not as an arbitrator) of an independent leading planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;
- 13.2.2 where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise.
- 13.3 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses 13.2.1 or 13.2.2 hereto is applicable.
- 13.4 Except as aforesaid any expert appointed pursuant to Clauses 13.2.1 or 13.2.2 or any other person shall:
- 13.4.1 on his appointment serve written notice thereof on the parties in dispute;
- 13.4.2 consider any written representations by or on behalf of those parties which are received by him within twenty Working Days of such service in accordance with clause 13.4.1 and immediately forward a copy of the written representation of one party to the other party;
- 13.4.3 allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty Working Days of receipt by the other party thereof;

13.4.4 have an unfettered discretion to determine the reference to him;

13.4.5 serve notice of his determination as soon as he has made it;

13.4.6 give full and clear reasons for his decision;

13.4.7 be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error or fraud),

PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on him written notice in their reasonable opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert.

13.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, and specific performance, payment of any sum, damages, and any other means of enforcing this Section 106 Agreement and consequential and interim orders and relief.

14 CHANGE IN OWNERSHIP

14.1 The Owner undertakes to the Council to give the Council written notice of any change in ownership of any of its interests in the Site (save for the change of ownership of any individual Dwellings) occurring before all the obligations under this Section 106 Agreement have been discharged within 3 Working Days of such change of ownership 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.

15 PHASE 4 LAND

15.1 In consideration of the Council granting the Planning Permission in respect of the Site and entering into this Section 106 Agreement, the Owner covenants as follows):

15.1.1. not to Commence Development in accordance with the Planning Permission unless they have first Commenced the Section 73 Permission on the Phase 4 Land;

15.1.2. save for any development existing at the date of grant of the Section 73 Permission (and for the avoidance of doubt the development existing at the date hereof is within phases 1, 3.1 and 3.2 and is confirmed in the breakdown at Schedule 9 below), not to continue development pursuant to the Phase 3.2 and Phase 4 Permissions on the Phase 4 Land from the date of grant of the Section 73 Permission;

15.1.3 the Owner covenants that they will not claim or seek compensation or legal redress in respect of the application of clause 15.1.2;

15.1.4 not to build more than 199 dwellings (of which 61 must be affordable units) on the Phase 3.2 and Phase 4 Land.

15.2 In the event that Commencement of Development occurs prior to the Section 73 Permission being quashed following a successful legal challenge the Owner covenants not to build more than 199 dwelling units on the Phase 3.2 and Phase 4 Land pursuant to the Phase 3.2 and Phase 4 Permissions.

16. Acknowledgment

16.1 The Parties hereby agree and acknowledge the following:

16.1.1 that no reserved matters application can be made under the Outline Permission for the Site due to the passage of time and therefore the Application has been submitted

16.1.2 the Development is chargeable development in accordance with the Community Infrastructure Levy Regulations 2010 (as amended);

16.1.3 the obligations to pay the Secondary Education Contribution, Primary Education Contribution, Library Contribution, Indoor Sports Contribution, Outdoor Sports Contribution, and Fire Services Infrastructure Contributions in set out the Outline Section 106 Agreement (as amended by the Fourth Deed of Variation) have been paid in full but will result in an overpayment due to the development of the Site being undertaken pursuant to the Planning Permission

16.1.4 the Council and County Council hereby confirm that they will not enforce any of the Outline Section 106 Agreement (as amended by the Fourth Deed of Variation) obligations to pay the contributions set out at clause 16.1.3 above in so far as they relate to the development

of the Site pursuant to the Outline Permission and have agreed in the Fourth Deed of Variation to refund the contributions that have been overpaid as a result of the Site being developed pursuant to the Planning Permission.

16.1.5 the Outline Section 106 Agreement (as varied by the Fourth Deed of Variation) is otherwise affirmed and acknowledged by the Parties to be in full force and effect and applies to the Site

16.1.6 In the event of conflict between the obligations and conditions secured under this Section 106 Agreement and the Planning Permission and the Outline Section 106 Agreement (as amended by the Fourth Deed of Variation), then the Section 106 Agreement and Planning Permission shall take precedence in respect of the Site

17. Delivery

The provisions of this Section 106 Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof this Deed has been duly executed and delivered the day and year first hereinbefore mentioned

SEALED WITH THE COMMON SEAL OF

HORSHAM DISTRICT COUNCIL

in the presence of

Authorised Officer

EXECUTED AS A DEED by

BERKELEY HOMES (SOUTHERN) LIMITED

acting by two directors or one director and the company secretary

.....Signed (Director)

.....Signed (Director/Secretary)

In the presence of:

W Signature

I Print name

T Address 1

N Address 2

E Address 3

S Post code

S Occupation

EXECUTED AS A DEED by

SEALED WITH THE COMMON SEAL OF

WEST SUSSEX COUNTY COUNCIL

in the presence of

Authorised Signatory

Schedule 1

Plans

Plan 1 means site plan reference S835/Ph5/LP

Plan 2 means plan reference S835/SL/001 Rev E

Plan 3 means plan reference S832-S106-100 Rev A identifying the Phase 4 Land

Schedule 2
Bridleway Upgrade Works

The Owner hereby covenants with the County Council:

1. Prior to commencing the Bridleway Upgrade Works (or such longer period as may be agreed by the County Council) the Owner shall enter into an agreement under Section 25 of the Highways Act 1980 with the County Council to dedicate the Footpath to a Bridleway between points "A" and "B".
2. Prior to first Occupation (or such longer period as may be agreed by the County Council) to enter into an agreement under Section 278 of the Highways Act 1980 with the County Council to undertake the Bridleway Upgrade Works.
3. To undertake the Bridleway Upgrade Works prior to Occupation of the 63rd (sixty third) Dwelling unless otherwise agreed in writing by the County Council.
4. Not to Occupy, cause or allow to be Occupied any more than 62 (sixty two) Dwellings until the Bridleway Upgrade Works have been provided unless otherwise agreed in writing by the County Council.

Schedule 3

Payment Notice

Payment of monies due under a Section 106 Agreement

Please answer all the questions

1. Payment made by/on behalf of

2. Land at:

.....

Planning Reference

.....

3. Agreement dated

4. Obligation in Agreement

(a) Clause No.

(b) Contribution towards:

(c) Amount of contribution due: £

(d) Date upon which contribution is due

(e) Amount of contribution enclosed

Schedule 4

LAP, LEAP and Open Amenity Space

The Owner covenants to the Council

Part 1 LAP, LEAP & Open Amenity Space

- 1.1 Not to Occupy or cause or allow the Occupation of more than 47 (forty seven) Dwellings within the Development until the Owner has provided the LAP in accordance with the Play Area Specification ready for use AND submitted to the Head of Development and Building Control at the Council written notification of completion of the LAP AND obtained written confirmation by the Head of Development and Building Control at the Council that the LAP has been Completed (such confirmation not to be unreasonably withheld or delayed)
- 1.2 Not to Occupy or cause or allow the Occupation of more than 73 (seventy three) Dwellings within the Development until the Owner has provided the LEAP in accordance with the Play Area Specification ready for use AND submitted to the Head of Development and Building Control at the Council written notification of completion of the LEAP and a post-installation report prepared by the Royal Society for the Prevention of Accidents (ROSPA) in respect of the LEAP AND obtained written confirmation by the Head of Development and Building Control at the Council that the LEAP has been Completed (such confirmation not to be unreasonably withheld or delayed)
- 1.3 Not to Occupy or cause or allow the Occupation of more than 73 (seventy three) Dwellings within the Development until the Owner has provided the Open Amenity Space in accordance with the Open Amenity Space Specification ready for use AND submitted to the Head of Development and Building Control at the Council written notification of completion of the Open Amenity Space AND obtained written confirmation by the Head of Development and Building Control at the Council that the Open Amenity Space has been Completed (such confirmation not to be unreasonably withheld or delayed)
- 1.4 Within ten Working Days of receipt of the Council's written confirmation of Completion of the LAP and Open Amenity Space or the LEAP (as applicable) the Owner will:
 - 1.4.1 Offer in writing to transfer the LAP and Open Amenity Space to the Management Company for £1 upon the contractual terms set out in paragraph 6 of this Schedule and notify the Head of Development and Building Control of the Council in writing that such an offer has been made;

- 1.4.2 Offer in writing to transfer the LEAP to the Parish Council, Council or the Council's Nominee (which for the avoidance of doubt may be the Management Company) for £1 upon the contractual terms set out in paragraph 6 of this Schedule and notify the Head of Development and Building Control of the Council in writing that such an offer has been made;
- 1.5 In the event that the Parish Council, Council or Council's Nominee does not accept the offer pursuant to paragraph 1.4.2 of this Schedule within one month (or such other period as may be agreed between the parties) the obligations at paragraph 1.4.2 and 1.6.2 of this Schedule shall immediately cease and determine.
- 1.6 Within 3 months of the acceptance of an offer pursuant to paragraph 1.4.1 or 1.4.2 (as applicable) of this Schedule by the Management Company and / or the Parish Council, Council or the Council's Nominee (as applicable), the Owner shall use reasonable endeavours to:
- 1.6.1 Enter into a binding contract for the transfer of the LAP and Open Amenity Space for the sum of £1 with the Management Company, which for the avoidance of doubt the Management Company will be required as a successor in title to the Owner to maintain in accordance with the Management Plan and Play Area Specification PROVIDED ALWAYS that notice of the entering into a contract shall be given to the Council within seven days of entering a contract and a copy of the binding contract shall be sent with such notice to the Council.
- 1.6.2 Enter into a binding contract for the transfer of the LEAP for the sum of £1 to the Parish Council, or the Council or the Council's Nominee (which for the avoidance of doubt may be the Management Company) (as applicable pursuant to paragraph 1.4), which the transferee will be required as a successor in title to maintain PROVIDED ALWAYS that notice of the entering into a contract shall be given to the Council within seven days of entering a contract a copy of the binding contract shall be sent with such notice to the Council.
- 1.7 In the event that the Parish Council, Council or Council's Nominee is unwilling to enter into a binding contract for the transfer of the LEAP to the Parish Council, Council or Council's Nominee (as applicable) pursuant to paragraph 1.6.2 of this Schedule within 3 months of the acceptance of an offer pursuant to paragraph 1.4.2 of this Schedule the obligations in paragraph 1.4.2, paragraph 1.6.2 and paragraph 6 of this Schedule shall immediately cease and determine.

2. The Owner shall use its reasonable endeavours to provide the LEAP, LAP and Open Amenity Space within the timescales referred to in Paragraph 1.1, 1.2 and 1.3 above and upon completion of the works shall notify the Head of Development and Building Control in accordance with paragraph 1.1, paragraph 1.2 and paragraph 1.3 of this Schedule (as appropriate). If following receipt of confirmation of completion of the LAP, LEAP or Open Amenity Space pursuant to paragraphs 1.1, 1.2 and 1.3 of this Schedule, in the reasonable opinion of the Head of Development and Building Control there are defects in the LEAP, LAP or Open Amenity Space the Owner covenants to make good any defects in the LEAP, LAP and Open Amenity Space prior to the transfer of the LAP or LEAP or Open Amenity Space in accordance with paragraph 1.6 of this Schedule and the Council's written confirmation referred to in paragraph 1.1, paragraph 1.2 and paragraph 1.3 will only be provided in the event that, in the reasonable opinion of the Head of Development and Building Control the Owner has complied with its obligation to make good any defects in the LEAP, LAP and Open Amenity Space (as applicable) notified to them pursuant to this paragraph.
3. The Owner shall at their expense continue to maintain and insure the Open Amenity Space, LAP and LEAP (as applicable) in accordance with the Management Plan, Open Space Specification and Play Space Specification, including any equipment such as play equipment keeping all trees and vegetation at all times clean cultivated fed and watered and shall replace any damaged or dying grass turf trees shrubs and other plants in accordance with details approved pursuant to condition 14 of the Planning Permission, for the period until the Open Amenity Space, LAP and LEAP (as applicable) are transferred in accordance with paragraph 1.6
4. Prior to or upon transfer of the LEAP to the Parish Council, Council or Council's Nominee (which for the avoidance of doubt may include the Management Company) pursuant to the terms of paragraph 1.4.2 and 6 of this Schedule, to pay to the transferee the LEAP Maintenance Contribution.
5. Not to Occupy or cause or allow the Occupation of more than 50% of the Dwellings within the Development until the Owner has paid to the Council the Open Amenity Space, LAP and LEAP Inspection Fee.
6. Not to transfer any parcel of land comprising or comprised of the Open Amenity Space, LAP and LEAP, except upon the following terms and conditions unless otherwise agreed between the parties to the transfer:
 - (i) title shall be deduced in accordance with the Land Registration Act 2002;

- (ii) the parcels of land comprising or comprised Open Amenity Space, LAP and LEAP will be transferred free of any financial charges together with the rights and easements but subject only to the exceptions reservations rights easements and other matters contained and referred to in the epitome of title to the Site;
- (iii) vacant possession of the parcel of land comprising the Open Amenity Space, LAP and LEAP shall be given on the date of the transfer in accordance with the provisions of this Section 106 Agreement;
- (iv) completion shall take place on the date falling 3 months (three months) after the date of acceptance of the written offer of transfer pursuant to paragraph 1.4.1 or paragraph 1.4.2 (as appropriate) of this Schedule unless otherwise agreed in a contract for the transfer/conveyance made between the Owner(s) and the Management Company or Parish Council or Council or Nominee (as appropriate);
- (v) the transfer of the Open Amenity Space and LAP to the Management Company and the transfer of the LEAP to the Parish Council, Council or Council's Nominee (if applicable) shall be subject to a covenant to comply with the following:
 - (a) That the Open Amenity Space, LAP and LEAP shall be made available for the use of the general public and shall, unless otherwise agreed with the Council in writing, only be used for the purposes of public open space and local areas of play and locally equipped areas of play as defined as LAP and LEAP respectively in this Section 106 Agreement and shall unless otherwise agreed with the Council in writing, not be used for any trade or business and that no development requiring planning permission shall be carried out thereon unless it is for the purpose of providing children's play facilities or for the maintenance of the LAP, LEAP or Open Amenity Space or is required to be carried out by a statutory undertaker; and
 - (b) The Owner and the Council agree that when the LAP and Open Amenity Space are transferred to the Management Company the Owner shall be entitled to include in the transfer of the title a requirement that the Management Company shall enter into a direct covenant with the Owner to restrict the use of the land in accordance with the restrictions set out in this Section 106 Agreement.

- (c) The Owner and the Council agree that if the LEAP is transferred to the Parish Council, Council or Nominee, the Owner shall be entitled to include in the transfer of the title a requirement that the Parish Council shall enter into a direct covenant with the Owner to restrict the use of the land in accordance with the restrictions set out in this Section 106 Agreement; and
 - (d) The Owner will pay the reasonable legal costs of the Parish Council or the Council or its Nominee (as applicable) in accepting the transfer of the LEAP upon completion of the transfer.
- 7. That the Open Amenity Space, LAP and LEAP shall be maintained at all times to the reasonable satisfaction of the Council in a clean and safe condition in accordance with Plan 2 and the Management Plan approved in writing by the Council unless otherwise agreed in writing by the Council.

Part 2 Other Managed Land

- 1. Prior to Occupation of the first Dwelling the Owner shall notify the Council in writing of the details of Other Managed Land (including indicative plans) it intends will be transferred to a Management Company in accordance with Schedule 5 to this Section 106 Agreement.

SCHEDULE 5

Management Company

The Owner covenants with the Council as follows:

1. Subject to paragraph 5 of this Schedule not to occupy or permit the Occupation of any Dwelling until they have set up and registered the Management Company in accordance with the Management Company Structure Scheme and the provisions set out in this Schedule.
2. Not to transfer an individual Dwelling unless the Owner has made provision to include in the transfer of the freehold or leasehold sale of the relevant Dwelling a covenant by the purchaser to pay an annual charge as determined by the Management Company for the cost of maintenance of such parts of the Managed Land and Other Managed Land (if applicable) which have been or are to be transferred to the Management Company
3. On or prior to the transfer of the first individual Dwelling to provide the Council with copies of the Articles and Memorandum of Association of the Management Company and a copy of the transfer relating to the relevant Dwelling including the covenants referred to in Paragraph 1.2 of this Schedule
4. Where any Managed Land is to be managed and maintained by the Management Company in accordance with the terms of this Deed the Owner will comply with the provisions contained in paragraphs 4.1 and 4.2 of this Schedule
 - 4.1 Prior to the first Occupation of any Dwelling to submit for approval to the Council and gain approval from the Council to the Management Company Structure Scheme
 - 4.2 On approval of the Management Company Structure Scheme the Owner will establish the Management Company in accordance with the approved Management Company Structure Scheme and such Management Company shall be established prior to the date of issue of the first Certificate of Practical Completion in respect of any Managed Land.
5. It is hereby agreed between the Council and the Owner that the Owner may meet the obligations of this Schedule 5 by appointing the Management Company established pursuant to the Outline Section 106 Agreement in relation to the Outline Permission for the Outline Permission Site in respect of the Managed Land and Other Managed Land (if applicable) and that being the case the obligations in this Schedule 5 shall be duly met and discharged.

Schedule 6

The County Council's Obligations

The County Council covenants with the Owner:

1. Where in this Section 106 Agreement the approval (in writing or otherwise) of the County Council is required to be sought by the Owner, the County Council shall consider such request and provide such approval in writing within a reasonable period of time and such approval should not be unreasonably withheld.
2. Following the delivery by the Owner of the Bridleway Upgrade Works to the approved specification the County Council will use reasonable endeavours to progress the necessary amendment to the definitive map and statement required to ensure the Footpath is upgraded to bridleway status.
3. That it has sufficient rights within points "B" and "C" of the Footpath as shown on Plan 2 to enable the Owner to carry out the Bridleway Upgrade Works pursuant to an agreement under section 278 of the Highways Act 1980.

Schedule 7

Obligations by the Council

The Council hereby covenants and agrees with the Owner and where appropriate with the County Council:

1. Where in this Section 106 Agreement the approval (in writing or otherwise) of the Council is required to be sought by the Owner, the Council shall consider such request and provide such approval in writing within a reasonable period of time and such approval should not be unreasonably withheld.
2. Upon receipt by the Council of the Council Contributions to hold them as separately identifiable balance within the Council's interest bearing accounts.
3. To use the Council Contributions received by the Council in accordance with the terms of this Section 106 Agreement for the purposes set out in this Section 106 Agreement and not for any other purpose without the prior written consent of the party that paid the relevant Council Contribution.
4. That upon receiving a request in writing addressed to the Head of Legal and Democratic Services from the paying party to notify the paying party of how any of the Council Contributions paid under the terms of this Section 106 Agreement have been used provided that no such request shall be made until all of the Council Contributions have been made under this Section 106 Agreement.
5. To repay the Council Contributions received by the Council or any part thereof to the party who has paid the relevant Council Contribution in the event that the relevant Council Contribution or any part thereof has not been spent by the Council within 10 years from the date of payment of each individual contribution.
6. In the event the Council is in receipt of the LEAP Maintenance Contribution and if the LEAP is being maintained by the Parish Council or the Council's Nominee under the terms of this Section 106 Agreement to ensure that the LEAP Maintenance Contribution is made available to the Parish Council or the Council's Nominee (as the case may be) and to procure and ensure that such sum or any part thereof is spent for the purposes intended under this Section 106 Agreement.

Schedule 8

Travel Plan

The Owner hereby covenants with the County Council that:

- 1.1 upon Commencement of Development the Owner shall pay to the County Council the Travel Plan Monitoring Fee
- 1.2 It is hereby acknowledged for the avoidance of doubt and without prejudice to the above that the County Council is authorised to apply the Travel Plan Monitoring Fee

Schedule 9