

(1) MALCOLM RONALD WOOLLEY AND LESLEY JANE ERIKA WOOLLEY

(2) JOHN LOWER

(3) JOHN LOWER (DEVELOPMENTS) LIMITED

(4) BELLWAY HOMES LIMITED

(5) WEST SUSSEX COUNTY COUNCIL

(6) HORSHAM DISTRICT COUNCIL

AGREEMENT

Pursuant to section 106 of the Town and Country Planning Act 1990 in respect of

**Land west of Ashington Church of England School, Park Lane, Ashington,
Pulborough, West Sussex**

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

Legal ref: CB/12135
Planning ref: DC/23/0406

Between:

- (1) **MALCOLM RONALD WOOLLEY and LESLEY JANE ERIKA WOOLLEY** of Church Farm House, Church Lane, Ashington, Pulborough, West Sussex RH20 3JX (**"the First Owners"**);
- (2) **JOHN LOWER** of Church House, The Street, Washington, Pulborough RH20 4AS (**"the Second Owner"**);
- (3) **JOHN LOWER (DEVELOPMENTS) LIMITED** (Co. Regn No. 1089968) whose registered office is at 1 Liverpool Gardens, Worthing, West Sussex BN11 1TF (**"the Third Owner"**);
- (4) **BELLWAY HOMES LIMITED** (Company Regn No. 00670176) whose registered office is at Woosington House, Woosington, Newcastle upon Tyne NE13 8BF (**"the Developer"**);
- (5) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex PO19 1RQ (**"the County Council"**);
- (6) **HORSHAM DISTRICT COUNCIL** of Albery House, Springfield Road, Horsham, West Sussex RH12 2GB (**"the District Council"**)

together "the Parties"

1. BACKGROUND & RECITALS

Whereas

- 1.1 The District Council is the local planning authority as defined in the Act for the area within which the Application Site is situated for the purposes of this Agreement and for the purposes of section 106 of the Act and is entitled to enforce the planning obligations it contains.
- 1.2 The First Owners are the registered proprietors with freehold title absolute of the parts of the Application Site that are registered at HM Land Registry under title numbers WSX290084 and WSX304735 both being described as Church Farm House, Church Lane, Ashington, Pulborough (RH20 3JX).
- 1.3 The Second Owner is the registered proprietor with freehold title absolute of the part of the Application Site that is registered at HM Land Registry under title number WSX307974 described as Land at Church Farm, Malthouse Lane, Ashington.
- 1.4 The Third Owner is the registered proprietor with freehold title absolute of the part of the Application Site that is registered at HM Land Registry under title number WSX322589 described as Land lying to the south of Rectory Lane, Ashington, Pulborough.
- 1.5 The Developer has the benefit of a Restriction on title number WSX290084 recorded in paragraphs 5 and 6 of the Charges Register comprising a Unilateral Notice in respect of a contract for sale dated 4 October 2022 made between the First Owners and the Developer.
- 1.6 The Developer has the benefit of a Restriction on title number WSX304735 recorded in paragraphs 3 and 4 of the Charges Register comprising a Unilateral Notice in respect of a contract for sale dated 4 October 2022 made between the First Owners and the Developer.
- 1.7 The Developer has the benefit of a Restriction on title number WSX307974 recorded in paragraphs 3 and 4 of the Charges Register comprising a Unilateral Notice in respect of a contract for sale dated 4 October 2022 made between (1) Jonathan Andrew Lower; Michelle Jane Jones; Guy John Lower and John Lower and Jacqueline Barbara Lower, trading as the Lower Family Partnership and (2) the Developer.

- 1.8 The Developer has the benefit of a Restriction on title number WSX322589 recorded in paragraphs 2 and 3 of the Charges Register comprising a Unilateral Notice in respect of a contract for sale dated 4 October 2022 made between (1) Jonathan Andrew Lower; Michelle Jane Jones; Guy John Lower and John Lower and Jacqueline Barbara Lower, trading as the Lower Family Partnership and (2) the Developer.
- 1.9 The County Council is the Education Authority and Highway Authority for the land in which the Application Site is situated and is entitled to enforce those obligations contained in this Agreement given to the County Council.
- 1.10 The Second Owner is the registered proprietor with freehold title absolute of the School Land and the Safeguarded School Land (both as defined in Schedule 6) which is registered at HM Land Registry under title number WSX307974 described as Land at Church Farm, Malthouse Lane, Ashington, and which for the avoidance of doubt does not form part of the Application Site.
- 1.11 The District Council received and validated the Application on 3 March 2023. On 4 November 2025 Members of the District Council's Planning Committee granted the Planning Permission subject to completion of this Agreement.
- 1.12 The Parties have agreed to enter into this Agreement to secure the necessary planning obligations contained in this Agreement.
- 1.13 The Parties are satisfied that the provisions of this 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 Agreement are necessary to make the Development acceptable in planning terms, are directly related to the Development and fairly and reasonably relate in scale and kind to the Development.

NOW THIS AGREEMENT WITNESSES as follows:

2. INTERPRETATION

In this Agreement:

- 2.1 Words importing the one gender include reference to all the genders.
- 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 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those.
- 2.5 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.
- 2.6 Any reference to a clause, schedule, paragraph or plan is to a clause, schedule, paragraph or plan in, to or attached to this Agreement, unless expressly stated otherwise.
- 2.7 Any reference to a colour or letter is to a colour or letter on the plans attached to this Agreement.
- 2.8 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.
- 2.9 A reference to writing or written excludes fax and email.
- 2.10 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.11 References to any party to this 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 District Council, the successors to their functions as local planning authority, and in the case of the County Council, the successors to their functions as a highway authority and in the case of the County Council, the successors to their function as education authority and highway authority.

2.12 The headings are for reference only and shall not affect construction.

3. DEFINITIONS

It is hereby agreed between the Parties set out in this Agreement that the following expressions have the following meanings:

“Act”	the Town and Country Planning Act 1990 (as amended).
“Application”	the application ascribed reference number DC/23/0406 and described as: “Demolition of existing buildings and erection of 152 dwellings, all-weather sport pitch, sports pavilion and allotments; with associated access, landscaping, Open Amenity Space and infrastructure.
“Application Site”	all that land situated west of Ashington, Park Lane, Ashington, Pulborough, West Sussex shown for identification purposes edged red on the Application Site Plan and to which the Application relates.
“Application Site Plan”	the plan of the Application Site entitled “Land west of Ashington” and “Location Plan” drawing number 062009-BEL-SL-06 Rev A dated 24.02.23 at Schedule 1 of this Agreement.
“Ashington PC”	Ashington Parish Council c/o The Clerk and Responsible Financial Officer, contactable via: clerk@ashingtonpc.org.uk
“BCIS Index”	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 District Council may specify.
“Commencement of Development”	the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development but excluding (for the purposes of this Agreement and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof, enabling works, demolition, site clearance works, earthworks, archaeological investigations and digs, exploratory boreholes, operations permitted by the Town and Country Planning (General Permitted Development) Order 2015, the erection of hoardings and fencing, temporary diversion of services and signage (including the formation of temporary construction accesses) and “Commence Development” shall be construed accordingly.
“Commencement Date”	the date on which the Commencement of the Development occurs;
“Commencement Notice”	the written notice confirming the Commencement Date referred to in clause 7.1.1 and served in accordance with clause 7.3.
“County Council Contributions”	the FP2611 Contribution.
“County Monitoring Fees”	fees totalling £3,240 (three thousand two hundred and forty pounds) for monitoring obligations in the Agreement to be paid to the County Council in accordance with clause 8 of this Agreement.
“Development”	the development of the Application Site pursuant to the Planning Permission.
“District Council Contributions”	the Affordable Housing Contribution, the Allotment Maintenance Contribution and the LEAP Maintenance Contribution.

“Dwelling”	a residential dwelling constructed on the Application Site forming part of the Development.
“Head of Development and Building Control”	the Head of Development and Building Control at the District Council or any successor or such other officer as may be designated by the District Council for the purposes of discharging their duties and functions from time to time.
“Indexed”	the quantum by which a contribution payable under this Agreement shall increase to be calculated by reference to the proportionate increase in the BCIS Index by the application of the following formula: <u>For the District Council Contributions:</u> $A = B \times C/D$ (where C/D is equal to or greater than 1) Where A is the sum actually payable on the date of payment B is the original sum mentioned in this Deed C is the BCIS Index for the quarter preceding the date of payment or the due date (whichever is earlier) D is the BCIS Index for the quarter preceding the date of grant of the Planning Permission <u>For the County Council Contributions:</u> $A = B \times C/D$ (where C/D is equal to or greater than 1) Where A is the sum actually payable on the date of payment B is the original sum mentioned in this Deed C is the BCIS Index at the date of payment D is the BCIS Index at 1 April 2025 and Indexation shall be construed accordingly.
“Monitoring Fees”	fees totalling £1,600 (one thousand six hundred pounds) for monitoring obligations in the Agreement to be paid to the District Council in accordance with clause 8 of this Agreement.
“Occupation”	occupation for any purpose for which the Planning Permission has been granted by the District Council other than occupation for the purposes of construction or fitting out or occupation for security, marketing or display and “Occupy” , “Occupier” and “Occupied” shall be construed accordingly.
“Occupation Date”	the date on which the Development is first Occupied.
“Occupation Notice”	the written notice confirming the Occupation Date referred to in clause 7.1.2 to be served in accordance with clause 7.3 of this Agreement.
“Owners”	together the First Owners, the Second Owner and the Third Owner.
“Planning Permission”	the planning permission to be granted by the District Council pursuant to the Application.
“Practically Complete”	in respect of the Development or any specified part thereof: finished and capable of being used for its intended purpose, albeit that minor defects might be present or arise shortly thereafter that are capable of being rectified without causing major disruption to the intended user(s) or Occupier(s); AND in respect of the Affordable Housing: fit for Occupation with all utilities/ services connected and fully operational (including WiFi) and accessible by both vehicles and pedestrians, the terms “Practical Completion” and “Practically Completed” shall be construed accordingly.

“Section 73 Consent” any planning permission granted by the District Council (but for the avoidance of doubt not on appeal) pursuant to section 73 or 73B of the Act to vary and/ or remove any planning condition(s) subject to which the Planning Permission was granted and/ or subsequent planning permission was granted pursuant to section 73 or 73B of the Act.

“Working Day” means Monday to Friday inclusive but excluding any day that is a bank holiday, public holiday or statutory holiday in England.

4. ENABLING PROVISIONS

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

5. CONDITIONS PRECEDENT

5.1 This Agreement shall come into effect upon the date it is dated but the provisions in Schedules 2, 4, 5, 6, 7 and 8 shall only take effect upon the Commencement of Development unless explicitly stated otherwise.

6. COVENANTS

6.1 Subject to clause 5.1:

6.1.1 The Owners covenant with the District Council in relation to the Application Site to comply fully with and to perform the obligations contained herein and in Schedules 2, 4, 5 and paragraph 3 of Schedule 7 of this Agreement in accordance with the requirements and timescales set out;

6.1.2 The Second Owner covenants with the County Council in relation to the School Land and the Safeguarded School Land (both as defined in Schedule 6) to comply fully with and to perform the obligations contained in Schedule 6 of this Agreement in accordance with the requirements and timescales set out;

6.1.3 The Owners covenant with the County Council to comply fully with and to perform the obligations contained herein and in paragraphs 2 and 4 of Schedule 7 of this Agreement in accordance with the requirements and timescales set out;

6.1.4 The District Council and the County Council covenant with the Owners to fully comply with the obligations contained herein and in Schedule 8.

7. NOTICES

7.1 The Owners covenant with the District Council as follows:

7.1.1 to give the Commencement Notice to the District Council and County Council not less than 10 (ten) Working Days before the anticipated Commencement Date; and

7.1.2 to give the Occupation Notice to the District Council and County Council not less than 10 (ten) Working Days before the anticipated Occupation Date.

7.2 The Parties to this Agreement agree that if the Owners fail to give the notice required by clause 7.1.1 and/ or clause 7.1.2 above then the District Council shall be entitled at its absolute discretion to determine the Commencement Date and/ or the Occupation Date (as the case may be) and shall give notice to the Owners of the District Council's determination.

7.3 Any notice, certificate or other communication required or permitted to be given under this Agreement shall be given in writing to the relevant party at the relevant address referred to at the start of this Agreement or such other address as may be notified in

writing to the other party and must be served personally or by first class registered or first class recorded delivery post and, in the case of the District Council, the relevant party shall address any notice to the Head of Development and Building Control.

- 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 2 (two) Working 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 at the time it is received provided it is received between 09:00hrs and 17:00hrs on a Working Day but otherwise it shall be deemed to have been received on the next Working Day.

8. COSTS

- 8.1 The Developer shall pay on or before the date hereof the District Council's reasonable legal costs incurred in preparing and entering into this Agreement and the Monitoring Fees for monitoring the planning obligations contained herein.
- 8.2 The Developer shall pay on or before the date hereof the County Council's reasonable legal costs incurred in preparing and entering into this Agreement and the County Monitoring Fees for monitoring the planning obligations contained herein.

9. CHARGEES/ MORTGAGEE'S CONSENT/ LIABILITY AND DEVELOPER'S LIABILITY

- 9.1 Any future chargee or mortgagee of the Application Site 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 the relevant part thereof, in which case it will be bound by the obligations in this Agreement as if it were a person deriving title from the Owners.
- 9.2 The Developer shall not be liable for any of the obligations in this Agreement unless and until it becomes a successor in title to the Owners.

10. GENERAL

The Parties undertake that:

- 10.1 this Agreement constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 10.2 this Agreement constitutes a deed.
- 10.3 this Agreement is enforceable by the District Council in accordance with section 106 of the Act.
- 10.4 nothing in this Agreement confers or is intended to confer a benefit on a third party under the Contracts (Rights of Third Parties) Act 1999.
- 10.5 It is hereby agreed by the Owners and the Developer that failure by the District Council at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owners and/ or the Developer of any of the conditions, covenants, agreements or obligations of this Agreement or any failure or delay by the District Council to exercise any act, right or remedy shall not be construed as a creating an estoppel in connection with any such condition, covenant, agreement or obligation and shall not affect the validity of this Agreement or any part thereof or the right of the District Council to enforce any provision and any variation of this Agreement shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendment or amendments.
- 10.6 The Owners and the Developer hereby undertake that:

- 10.6.1 this Agreement supersedes and replaces all previous negotiations whether oral or written;
- 10.6.2 the Owners and the Developer have not relied on any express or implied statement warranty representation or undertaking given by or on behalf of the District Council; and
- 10.6.3 nothing herein contained excludes the liability of any party in relation to fraud.
- 10.7 The Owners and the Developer acknowledge that this Agreement will be registered as a local land charge.
- 10.8 The Owners and the Developer hereby give consent for the Application Site Plan to be reproduced by the District Council.
- 10.9 If any provision in this 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.
- 10.10 This Agreement shall be governed by and interpreted in accordance with laws of England and the Parties submit to the exclusive jurisdiction of the courts of England.
- 10.11 The obligations in this Agreement (with the exception of clause 8 – Costs) shall cease to have effect (insofar only as any has not already been complied with) if, before the Commencement of Development, the Planning Permission:
 - 10.11.1 expires; or
 - 10.11.2 is varied or revoked other than at the request of the Owners and/ or the Developer; or
 - 10.11.3 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.
- 10.12 The Owners (or any person deriving title to the Application Site from the Owners) shall not be liable for any breach of the restrictions and obligations set out in this Agreement where such breach arises after the Owners have parted with their interest in the Application Site or part of the Application Site to which such breach relates save in respect of liability for any antecedent breach of this Agreement.
- 10.13 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 applies to the covenants in this agreement.
- 10.14 References to the Application Site include any part of it.
- 10.15 Any covenant by the Owners and/ or the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 10.16 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with any planning permission (other than the Planning Permission or any Section 73 Consent) granted after the date of the Planning Permission.
- 10.17 Subject to the proviso to this clause if any Section 73 Consent is granted after the date of this Agreement:
 - 10.17.1 the obligations in this Agreement shall relate to and bind such Section 73 Consent; and
 - 10.17.2 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.
 - 10.17.3 nothing in this clause shall fetter the discretion of the District 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.

PROVIDED THAT:

- 10.17.4 to the extent that any of the obligations in this 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
- 10.17.5 the District Council reserves the right to insist on the completion of a separate planning obligation by deed in connection with any Section 73 Consent if the District Council (acting reasonably) considers it desirable to do so.
- 10.18 Except for paragraphs 2.4 and 2.5 of Schedule 2 (which are subject to the provisions of paragraph 5 of Schedule 2) the planning obligations contained in this Agreement shall not be binding on any freehold or leasehold owners or occupiers of individual dwellings constructed pursuant to the Planning Permission (or their respective mortgagees or successors in title) or an Affordable Housing Provider (as defined in Schedule 2).or land held by any of the statutory utilities for their operational purposes.
- 10.19 The planning obligations contained in this Agreement shall not be binding on any land held by any of the statutory utilities for their operational purposes

11. DISPUTE RESOLUTION

- 11.1 Should a dispute or difference arise between the Parties concerning anything herein then the provisions of this clause 11 shall apply.
- 11.2 Subject to clause 11.3, all differences and disputes which may arise between the Parties concerning this Agreement shall be referred to the determination (as an expert and not as an arbitrator) of an independent leading counsel agreed upon by the Parties 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.
- 11.3 Any expert appointed pursuant to clause 11.2 shall:
 - 11.3.1 on his appointment serve written notice thereof on the parties in dispute;
 - 11.3.2 consider any written representations by or on behalf of those parties which are received by him within 20 (twenty) Working Days of such service and immediately forward a copy of the written representation of one party to the other party;
 - 11.3.3 allow the parties to the dispute an opportunity of commenting in writing on the other party's representations within 20 (twenty) Working Days of receipt by the other party thereof;
 - 11.3.4 have an unfettered discretion to determine the reference to him;
 - 11.3.5 serve notice of his determination as soon as he has made it;
 - 11.3.6 give full and clear reasons for his decision; and
 - 11.3.7 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 on his part) PROVIDED THAT if any such expert shall die, become insolvent or of unsound mind or if any of the parties in dispute shall serve on him written notice in their 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.
- 11.4 The provisions of this clause shall not affect the ability of the District Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, and any other means of enforcing this Agreement and consequential and interim orders and relief.

12. OWNERSHIP

- 12.1 The Owners warrant that no person other than the Owners and the Developer has any legal or equitable interest in the Application Site other than as set out in this Agreement.
- 12.2 The Owners hereby undertake to give the District Council immediate written notice of any change in the ownership of any of their respective interests in the Application Site (other than in respect of a transfer to a statutory undertaking or any change in relation to an individual Dwelling), 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 Application Site purchased by reference to a plan.

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

SIGNED as a DEED by
MALCOLM RONALD WOOLLEY

..... Signature

In the presence of:

W Signature
I Print name
T Address 1
N Address 2
E Address 3
S Post code
S Occupation

SIGNED as a DEED by
LESLEY JANE ERIKA WOOLLEY

..... Signature

In the presence of:

W Signature
I Print name
T Address 1
N Address 2
E Address 3

S Post code
S Occupation

SIGNED as a **DEED** by
JOHN LOWER

..... Signature

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
JOHN LOWER (DEVELOPMENTS) LIMITED
acting by two directors or one director and the company secretary

..... Signed (Director)

..... Signed (Director/ Company Secretary)

EXECUTED as a DEED by BELLWAY HOMES LIMITED

acting by its attorney **NIGEL CLASBY/ DUNCAN FISHER**

Under a power of attorney dated

..... Signed
BELLWAY HOMES LIMITED BY ITS ABOVE NAMED ATTORNEY

..... Signed (Director/ Company Secretary)

In the presence of:

W Signature
I Print name
T Address 1
N Address 2
E Address 3
S Post code
S Occupation

**SEALED WITH THE COMMON SEAL of
WEST SUSSEX COUNTY COUNCIL**
in the presence of:

Authorised Officer

**SEALED WITH THE COMMON SEAL of
HORSHAM DISTRICT COUNCIL**
in the presence of:

Authorised Officer

SCHEDULE 1

Plans

1. Application Site Plan entitled “Land west of Ashington Location Plan” drawing number 062009-BEL-SL-06 Rev A dated 24.02.23
2. OAS Plan entitled “Management Areas Plan” with drawing no. 062009-BEL-SL-01-MAP dated 28.11.25.
3. School Land Plan entitled “Land to East of Site Areas Plan” drawing number 062009-BEL-SL-AEOS dated 19.12.2024.
4. PROW Plan 1
5. PROW Plan 2

DRAFT

SCHEDULE 2

Affordable Housing

1. DEFINITIONS

It is hereby agreed between the Parties set out in this Agreement that the following expressions have the following meanings:

“Affordable Housing”	affordable housing comprising Rented Units and/ or Shared Ownership Units (or such other forms of intermediate tenure as defined in the National Planning Policy Framework as at the date of this Agreement) provided to meet the needs of eligible households which are not met by the market, including availability at sufficiently low cost determined with regard to local incomes and local house prices and provision for the home to remain at an affordable price for future eligible households or if these restrictions are lifted for the subsidy to be recycled for alternative affordable housing provision.
“Affordable Housing Contribution”	a financial contribution in the sum of £18,751 (eighteen thousand seven hundred and fifty one pounds) Indexed, in lieu of provision of 0.2 Affordable Housing Units to be paid to the District Council in accordance with this Schedule 2.
“Affordable Housing Land”	those parts of the Application Site on which the Affordable Housing Units shall be constructed together with the associated curtilage of each such building and amenity space where relevant and provided in accordance with the obligations set out in this Agreement.
“Affordable Housing Scheme”	a scheme for the provision of the Affordable Housing Units to be provided by the Owners which shall (as a minimum) provide: a) the type and size of Dwellings to be provided as Affordable Housing Units; b) a plan showing the location of the Affordable Housing Land and the Affordable Housing Units, appropriately distributed throughout the Development so that, where practical, it is not segregated from the Open Market Units, to ensure inclusive and mixed communities AND identifying which (if any) of the Affordable Housing Units shall be fully wheelchair accessible, their type, size and location within the Development AND such other matters as the District Council may require (acting reasonably); AND c) such other matters as the District Council may require (acting reasonably).
“Affordable Housing Provider”	either one or a combination of: a) a registered provider of social housing within the meaning of the Housing and Regeneration Act 2008 (including its successors and assigns from time to time) from the District Council’s approved list (as may be amended from time to time) or otherwise approved by the District Council in writing OR b) an unregistered provider of affordable housing approved by the District Council, or such other body or organisation approved by the District Council whose main object is the provision of Affordable Housing;

“Affordable
Housing Tenure
Mix”

a tenure mix comprising:
37 (thirty-seven) Affordable Rented Units, all of which are to be built to M4(2) Standard unless otherwise stated, to be provided as:

1 bedroom apartments	11 (eleven) of which 2 (two) are to be built to M4(3) Standard.
2 bedroom apartments	9 (nine)
2 bedroom houses	6 (six)
3 bedroom houses	9 (nine)
4 bedroom houses	2 (two)

and
16 (sixteen) Shared Ownership Units, all of which are to be built to M4(2) Standard unless otherwise stated, to be provided as:

2 bedroom houses	7 (seven)
3 bedroom houses	8 (eight)
1 bedroom houses	1 (one)

or such other mix of Affordable Housing Units as shall be approved in writing by the District Council (such approval not to be unreasonably withheld or delayed).

“Affordable
Housing Units”

circa 35% of the total 152 Dwellings to be provided as part of the Development, equating to **53 (fifty-three)** Affordable Housing Units of which:

a) **37 (thirty-seven)** Dwellings shall be provided as Affordable Rented Units

AND

b) **16 (sixteen)** Dwellings shall be provided as Shared Ownership Units and which are to be transferred to an Affordable Housing Provider as housing for persons in Housing Need in accordance with the provisions of this Agreement unless an alternative tenure mix is agreed with the District Council and “**Affordable Housing Unit**” shall mean reference to any one of them.

“Affordable Rent”

on initial let only, chargeable rent that is subject to the HE’s Rent Standard (April 2020) as expanded on by the Rent Standard and Guidance (1 April 2013 – 31 March 2024) and any such document and/or associated guidance may be amended updated or replaced from time to time and is required to be offered to eligible householders in Housing Need at an open market rental level which does not exceed 80% of gross local market rent (inclusive of service charges) for an equivalent property of that size and location calculated using the Royal Institute of Chartered Surveyors approved valuation methods and which may be increased by Index CPI plus 1% annually or otherwise in accordance with the Rent Guidance published by the Regulator of Social Housing

“Affordable Rented
Units”

rented housing let by the Affordable Housing Provider to eligible households at Affordable Rent and “**Affordable Rented Unit**” shall be construed as meaning any one of them.

“Alternative
Affordable
Housing Scheme”

a scheme for the provision of affordable housing (as defined in the National Planning Policy Framework as at the date of this Agreement) which for the avoidance of doubt may provide for 70% Affordable Rented Housing Units and 30% as Discount Market Sales housing.

“Deed of Nomination Rights”	the District Council’s nomination agreement in the form (or substantially in the form) attached at Schedule 3 to be entered into between the District Council and the Affordable Housing Provider to provide the District Council with nomination rights in respect of the Affordable Rented Units for the life of the Development.
“Discounted Market Sales”	Housing that is sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices.
“Disposal”	a disposal of the Affordable Housing Units to an Affordable Housing Provider whether by transfer of the freehold or the grant of a long lease for a term of at least 990 years and “Dispose” shall be construed accordingly.
“Fully Serviced”	where provision of Dwellings is made with access from the highway surfaced to adoptable standard and all utility connections, including electricity, gas, mains water, sewerage and high-speed broadband are installed and fully functional.
“Head of Housing and Communities”	the District Council’s Head of Housing and Communities or such other officer as may be lawfully designated by the District Council for the purposes of discharging his duties and functions.
“Homes England” or “HE”	the executive non-departmental public body known as Homes England (or any successor body to its functions within the meaning of Part I of the Housing and Regeneration Act 2008 that funds new affordable homes and regulates registered providers of social housing in England);
“Housing Register and Nominations Policy”	the District Council’s published scheme of allocations presently contained in its “Housing Register and Nominations Policy (April 2023)” or any amendment, update, variation, or subsequent replacement thereof.
“Housing Need”	a) in relation to the Rented Units the requirement by a person for social housing allocation in accordance with the Housing Register and Nominations Policy; and b) in relation to the Shared Ownership Units the requirement for a person’s income to be insufficient to enable them rent or buy housing available locally on the open market determined with regard to local incomes and local house prices.
“Index CPI”	the Consumer Prices Index or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the District Council may specify.
“Index RPI”	the Retail Prices Index (All Items) or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the District Council may specify.
“M4(2) Standard”	Category 2: “Accessible and adaptable dwellings”, set out in the Building Regulations 2010 “Access to and use of buildings Approved Document M Volume 1: Dwellings” (2015 edition incorporating 2016 amendments) as may be subsequently revised, reiterated or replaced from time to time.
“M4(3) Standard”	Category 3: “Wheelchair user dwellings” the standard set out in the Building Regulations 2010 “Access to and use of buildings Approved Document M” (2015 edition incorporating 2016 amendments) as may be subsequently revised, reiterated or replaced from time to time.
“New Homes Build Warranty”	a 10-year insurance policy, to be taken out by the Owners at their own expense, from any provider which offers a similar scope of cover

	to that of NHBC Buildmark or any similar NHBC product which replaces Buildmark from time to time.
“Open Market Units”	all those Dwellings to be constructed on the Application Site which are not Affordable Housing Units.
“Rented Units”	Dwellings to be made available by an Affordable Housing Provider as low cost rented accommodation (as defined by s.69 Housing and Regeneration Act 2008), which includes (but is not limited to) Affordable Rented Units and Social Rented Units.
“Regulator of Social Housing”	the body which regulates Affordable Housing Providers and shall include any replacement or successor organisation which is appointed or designated to carry out its functions.
“Right to Acquire”	the right of right to acquire (so far as legally permissible) pursuant to section 180 of the Housing and Regeneration Act 2008 and governed by the Housing Act 1985 and modified by the Housing (Right to Acquire) Regulations 1997 or any equivalent statutory provision for the time being in force in respect of a particular Affordable Rented Unit.
“Shared Ownership Lease”	a lease which accords with HE’s model form of lease issued from time to time.
“Shared Ownership Unit”	the Affordable Housing Units to made available by an Affordable Housing Provider whereby a person granted a Shared Ownership Lease can purchase an initial equity share in a Shared Ownership Unit of not less than 10% and not more than 75% (or other portion as is permissible by law or guidance) and pay rent on the unsold equity with flexibility for such a person to purchase further equity shares in the Shared Ownership Unit up to 100% or such other equity sharing or retention terms from time to time approved by the District Council.
“Social Rent”	rent set in accordance with the Regulator for Social Housing’s Tenancy Standard (April 2012) as may be amended updated or replaced from time to time at a rent not higher than the national rent regime amount.
“Social Rented Units”	Affordable Housing Units that will be let to persons in housing need at a Social Rent and “Social Rented Unit” shall be construed as meaning any one of them.

The Owners hereby covenant with the District Council as follows:

2. GENERAL PROVISIONS

- 2.1 Prior to Commencement of Development to pay the Affordable Housing Contribution to the District Council and not to Commence the Development unless and until the Affordable Housing Contribution has been paid in full to the District Council.
- 2.2 Prior to Commencement of Development to submit to the District Council for its approval the Affordable Housing Scheme and not to Commence Development unless and until the District Council has approved the Affordable Housing Scheme in writing.
- 2.3 Subject to paragraph 5.1 of this Schedule (and the sub-paragraphs thereof), to construct, Practically Complete and deliver the Affordable Housing Units on the Affordable Housing Land in accordance with the Affordable Housing Scheme and the other provisions of this Schedule subject to any amendments agreed in writing by the District Council from time to time.
- 2.4 Not to Occupy or use the Affordable Housing Units for any other purpose other than as Affordable Housing in accordance with the Affordable Housing Scheme and the

Affordable Housing Tenure Mix and the other provisions of this Schedule (unless otherwise agreed with the Council).

2.5 The Owners further covenant that:

2.5.1 the Rented Units shall not be Occupied other than by persons who are in Housing Need on Affordable Rent or Social Rent terms or any other form of low cost rented accommodation (as defined by s.69 of the Housing and Regeneration Act 2008), by way of an assured tenancy complying with the guidance given by HE;

2.5.2 the Shared Ownership Units shall not be Occupied other than by persons who are in Housing Need.

3. PRACTICAL COMPLETION AND TRANSFER OF AFFORDABLE HOUSING UNITS

3.1 Prior to Occupation of more than **25 (twenty-five)** (being circa 25%) of the Open Market Units, to make reasonable endeavours to enter into a binding contract for:

3.1.1 the Disposal of the Affordable Housing Land to an Affordable Housing Provider with such contract requiring the construction of the Affordable Housing Units in accordance with the Planning Permission and the Affordable Housing Scheme; **OR**

3.1.2 the transfer to an Affordable Housing Provider of the Affordable Housing Units, Fully Serviced and in clean condition and the Affordable Housing Land.

3.2 In the event of a transfer taking place pursuant to paragraph 3.1.2, prior to Occupation of more than **50 (fifty)** (being circa 50%) of the Open Market Units to:

3.2.1 construct and Practically Complete all the Affordable Housing Units in accordance with the Planning Permission and the Affordable Housing Scheme (as may be amended in accordance with this Agreement).

3.2.2 transfer either the freehold title, or a lease for at least 990 (nine hundred and ninety) years on a full repairing and insuring basis, for the Affordable Housing Units to the Affordable Housing Provider, free from all encumbrances (other than those on the title of the Affordable Housing Land at the date of this Deed) and financial charges.

3.2.3 provide the New Homes Build Warranty for each of the Affordable Housing Units to the Affordable Housing Provider.

3.3 Not to Occupy or allow Occupation of more than **25 (twenty-five)** (being circa 25%) of the Open Market Units unless and until the provisions of paragraph 3.1 of this Schedule (including its sub-paragraphs) have been complied with.

3.4 In the event of a transfer taking place pursuant to paragraph 3.1.2, not to Occupy or allow Occupation of more than **50 (fifty)** (being circa 50%) of the Open Market Units unless and until the provisions of paragraph 3.2 of this Schedule (including its sub-paragraphs) have been complied with.

3.5 Within any transfer and/ or lease of any/ all of the Affordable Rented Units to the Affordable Housing Provider, to require or procure the execution by the Affordable Housing Provider and delivery to the District Council of a Deed of Nomination Rights in respect of the Rented Units, substantially (but subject to such amendments as may be agreed between the Affordable Housing Provider and the District Council) in the form set out in Schedule 3 with the District Council's costs to be paid by the Affordable Housing Provider.

3.6 To provide evidence of the transfer of the freehold interest or grant of the leasehold interest of the Affordable Housing Units referred to in Paragraph 3.2.2 of this Schedule to the Head of Housing and Communities within 5 (five) Working Days of completion of the transfer or grant.

3.7 In the event that no agreement for the transfer the Affordable Housing Land and/ or Affordable Housing Units (as required by paragraph 3.1) has been reached at the

expiration period of 6 (six) months from the date of first approach to an Affordable Housing Provider pursuant to paragraph 3.1 above, to:

- 3.7.1 serve notice on the District Council confirming that no agreement has been entered into;
- 3.7.2 submit evidence to the Head of Development and Building Control demonstrating the steps taken and explaining why such an agreement could not be entered into with any Affordable Housing Provider.
- 3.8 To allow a further period of 3 (three) months from the date of service of the notice referred to in paragraph 3.7.1 of this Schedule EITHER to find an Affordable Housing Provider(s) (as required by paragraph 3.1) with the assistance of the District Council AND/ OR to agree an alternative tenure mix by amendment of the Affordable Housing Scheme.
- 3.9 If at the end at the end of the period of 3 (three) months referred to in paragraph 3.8, any of the Affordable Housing Units are not the subject of a binding contract with an Affordable Housing Provider(s) ("**Uncontracted Units**"), then the Owner may:
 - 3.9.1 submit to the District Council for approval an Alternative Affordable Housing Scheme in respect of the Uncontracted Units; and
 - 3.9.2 comply with any such Alternative Affordable Housing Scheme approved by the District Council.
- 3.10 Following compliance with the approved alternative Affordable Housing Scheme in respect of the Uncontracted Units, the requirements set out in paragraphs 3.1 and 3.2 shall be deemed to have been met in relation to the Uncontracted Units for the purposes of the occupation restrictions in paragraphs 3.3 and 3.4.
- 3.11 That a minimum 10% and a maximum 75% share in each Shared Ownership Unit may be sold to eligible applicants initially and that the rent (excluding service charge) to be charged on the remaining percentage share in the Shared Ownership Units shall not be more than 3% of the capital value of the unsold equity in that particular Shared Ownership Unit (which may be increased by Index RPI plus 0.5% annually).
- 3.12 Unless otherwise agreed by the District Council or directed by HE any proceeds derived from the sale of a Shared Ownership Unit or the proceeds from a Right to Acquire transaction of a Rented Unit shall be used by the Affordable Housing Provider to re-invest in Affordable Housing with priority given to the provision of new dwellings for Affordable Rent or Social Rent.

4. MISCELLANEOUS PROVISIONS

- 4.1 Prior to Occupation of an Affordable Housing Unit:
 - 4.1.1 all public highways (if any) and public sewerage and drainage serving the Affordable Housing Unit shall be in place and shall meet all statutory requirements for such public sewerage and drainage including any build over consents or agreements that might be required;
 - 4.1.2 all private roads, footways and footpaths (if any) serving the relevant Affordable Housing Unit shall be in place and constructed to an adoptable standard;
 - 4.1.3 all private sewage and drainage pipes, channels and gutters, all mains water and gas pipes and electricity cables (as applicable) serving the relevant Affordable Housing Unit shall be constructed, laid, connected, operational and serviceable.

5. EXCLUSIONS

- 5.1 The obligations contained in this Schedule shall not be binding on:
 - 5.1.1 a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person

appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a “**Receiver**”)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED ALWAYS THAT

5.1.1.1 such mortgagee or chargee or Receiver shall have first given written notice the Head of Housing and Communities of its wishes to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Affordable Housing Provider for consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest costs and expenses;

PROVIDED THAT AND FOR THE AVOIDANCE OF DOUBT

5.1.1.2 if such disposal has not been completed within such 3-month period then the mortgagee, chargee or Receiver shall be entitled to dispose of the relevant Affordable Housing Units free from the obligations contained in this Schedule which provisions shall determine absolutely

5.1.2 a tenant of an Affordable Rented Unit who has exercised a Right to Acquire;

5.1.3 a Shared Ownership leaseholder who has acquired 100% of the shares in the Shared Ownership Unit; and

5.1.4 any successor in title of any person detailed in Sub-Paragraphs 5.1.2 and 5.1.3 (above) or their mortgagee or chargee.

SCHEDULE 3
Specimen Deed of Nomination Rights

[AFFORDABLE HOUSING PROVIDER]

and

HORSHAM DISTRICT COUNCIL

DEED OF NOMINATION RIGHTS

for

[] Affordable Housing – Rented Units

at

[] West Sussex

Authority: Signed and Dated S106 []

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

Ref:

THIS DEED OF NOMINATION RIGHTS is made the day of 202X

BETWEEN:

- (1) [] (“the Affordable Housing Provider”); and
- (2) **HORSHAM DISTRICT COUNCIL** of Albery House, Springfield Road, Horsham West
Sussex RH12 2BG (“the Council”)

1. **DEFINITIONS**

In this Deed the following expressions shall have the following meanings:

“ Affordable Housing ”	subsidised housing provided to eligible households whose needs are not met by the market and which should meet the needs of eligible households, including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices and shall include provision for the home to remain at an affordable price for future eligible households or if these restrictions are lifted for the subsidy to be recycled for alternative affordable housing provision. and for the purposes of this deed comprises the Rented Units;
“ Affordable Housing Land ”	the land upon which the Rented Units are constructed [address of property] shown edged red on the plan at Schedule 1 of this Deed;
“ Affordable Housing Provider ”	either one or a combination of: a) a registered provider of social housing within the meaning of the Housing and Regeneration Act 2008 (including its successors and assigns from time to time) as nominated by the Council from the Council’s approved list (as may be amended from time to time) OR another registered provider of social housing as may be proposed by the Head of Housing and Communities and approved by the Council; OR b) an unregistered provider of social housing approved by the Council, or such other body or organisation approved by the Council whose main object is the provision of Affordable Housing;
“ Exempted Void ”	a Void occurring when the Council transfers a tenant to more suitable accommodation to meet the tenant’s needs;
“ Homes England ”	the executive non-departmental public body called Homes England, sponsored by the Department for Levelling Up, Housing and Communities or any bodies undertaking the existing functions of Homes England within the meaning of Part 1 of the Housing and Regeneration Act 2008 (or redefined by any amendment replacement or re-enactment of such Act;
“ Housing Register and Nominations Policy ”	the Council’s Housing Register and Nominations Policy dated April 2023 (and which may be updated from time to time): https://www.horsham.gov.uk/_data/assets/pdf_file/0009/128727/Housing-Register-Nominations-Policy-S-23.pdf or other document which may replace it;
“ Initial Let ”	the first tenancy or lease of a newly constructed and previously unoccupied Rented Unit and “ Initial Let ” shall mean any one of them;
“ Local Connection ”	in relation to an individual, that such individual: a) immediately before taking up occupation of a Rented Unit had his only or principal home in the parish of Ashington for a continuous period of not less than two years; or b) a member of his household has a parent, child, adult child, brother or sister whose only or principal home is and has been for a continuous

	period of not less than 2 (two) years in the parish of Ashington and he wishes to be near that relative; or c) is and has been permanently employed in the parish of Ashington for a continuous period of not less than 2 (two) years provided that where no person or insufficient persons can be identified as having a connection with the parish of Ashington as outlined above then the District of Horsham shall be substituted for the parish of Ashington;
“Nominee”	a person who may be nominated by the Council to the Rented Units and who is in need of Affordable Housing, who is not easily able to compete in the local housing market and who meets the following criteria: a) is an individual or are individuals; b) is considered in their reasonable opinion by the Council or the Affordable Housing Provider in accordance with its rules or its allocations and lettings policies to be in need of the accommodation provided by the Affordable Housing Unit; c) is not able easily to compete in the open market for equivalent housing accommodation in the administrative area of the Council; d) before taking up occupation of the Affordable Housing Unit has not owned a freehold or a lease for a term exceeding 3 years within the previous 12 months (save that the condition shall not apply where the Council or the Affordable Housing Provider is satisfied that the circumstances of that person are such as to put him in need of housing) and intends to occupy and subsequently occupies the Affordable Housing Unit as his/her only or principal home; e) is an individual who meets the criteria of the Council’s Housing Register and Nominations Policy; f) has a Local Connection. and “Nominee” and “Nominees” shall be construed accordingly;
“Rented Units”	the housing units constructed or to be constructed on the Affordable Housing Land to be made available by an Affordable Housing Provider as low cost rented accommodation (as defined by s.69 Housing and Regeneration Act 2008) subject to a Tenancy Agreement.
“S106 Agreement”	the agreement relating to the Application Site and dated [...] and made between (1) [] and (2) Horsham District Council and any subsequent supplemental agreements varying it thereafter;
“Social Rent”	rent in accordance in accordance with the Regulator for Social Housing’s Tenancy Standard (April 2012) as may be amended updated or replaced from time to time at a rent not higher than the national rent regime amount.
“Social Rented Units”	Affordable Housing Units that will be let to persons in housing need at a Social Rent and “Social Rented Unit” shall mean any one of them.
“Tenancy Agreement”	an assured tenancy agreement in a form prepared by the Affordable Housing Provider and containing terms which accord with the form of tenancy agreement being used by the Affordable Housing Provider from time to time for its general lettings or such other form of tenancy as the Affordable Housing Provider specifies (acting reasonably;
“Vacancy Notice”	a written notice, the form of which is to be agreed between the Affordable Housing Provider and the Council within 5 (five) weeks of this Deed, to be given by the Affordable Housing Provider to the Council in respect of any Affordable Housing Unit on the Affordable Housing Land to notify the Council that the construction and fitting out of that Affordable Housing Unit is complete;

“Void”	an Affordable Housing Unit which is vacant because the tenant has vacated it;
“Void Notice”	a written notice, the form of which is to be agreed between the Affordable Housing Provider and the Council within 8 (eight) weeks of the date of this Deed, to be given by the Affordable Housing Provider to the Council to notify it that a Void is now available for re-letting;
“Void Notification”	the notification to the Council by the Affordable Housing Provider that an Affordable Housing Unit is to become a Void with such notification to include the anticipated period that the Affordable Housing Unit will remain as a Void;
“Working Day”	any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

2. INTERPRETATION

- 2.1. Clause headings shall not affect the interpretation of this Deed.
- 2.2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.3. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.4. Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.
- 2.5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.6. A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 2.7. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.8. Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.9. A reference to writing or written excludes faxes and e-mail.
- 2.10. A reference to this Deed or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated from time to time.
- 2.11. References to clauses are to the clauses of this Deed.
- 2.12. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.13. When calculating percentages for the purposes of this Deed percentage in excess of 0.5 shall be rounded up and percentages equal to or less than 0.5 shall be rounded down.

3. ENABLING PROVISIONS

- 3.1. This Agreement is made pursuant to s.111 of the Local Government Act 1972, s.33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers.

4. NOMINATION PROCEDURE FOR RENTED UNITS

- 4.1. The parties agree that the following nomination procedures shall apply to the nomination of persons in respect of the Rented Units:

Initial Lets

- 4.2. The Affordable Housing Provider shall give the Council not less than 8 (eight) weeks' written notice of the date when an Initial Let will be ready for occupation.
- 4.3. The Affordable Housing Provider shall serve a Vacancy Notice on the Council in respect of an Initial Let not less than 2 (two) weeks prior to it becoming available for occupation.

Nomination procedures

- 4.4. The Council shall within 10 (ten) Working Days of receipt of a Vacancy Notice, Void Notice or written notice served in accordance with clauses 4.7.1, 4.7.2 or 4.7.3, serve on the Affordable Housing Provider details of a Nominee, which shall:
 - 4.4.1. specify the type of Rented Unit which the Nominee requires and sufficient details of the Nominee's requirements and circumstances to justify their nomination to the particular Rented Unit or type of Rented Unit; and
 - 4.4.2. include any other details that the Affordable Housing Provider may reasonably require from time to time.
- 4.5. Within 10 (ten) Working Days of the receipt of the details of a Nominee, the Affordable Housing Provider shall use its reasonable endeavours to arrange a viewing of the Affordable Housing Unit and make an offer of a Tenancy Agreement to the Nominee ("an Offer").

Failure to let

- 4.6. If the Nominee fails to enter into a Tenancy Agreement within 10 (ten) Working Days of receipt of the Affordable Housing Provider's Offer, that Nominee shall be deemed to have rejected the Affordable Housing Provider's Offer.

Notices

- 4.7. The Affordable Housing Provider shall give notice in writing to the Council within 5 (five) Working Days of the occurrence of a Nominee:
 - 4.7.1. failing to view an Affordable Housing Unit within 10 (ten) Working Days of an Offer being made;
 - 4.7.2. failing to accept an Offer within 10 (ten) Working Days of it being made;
 - 4.7.3. being rejected by Affordable Housing Provider in accordance with clause 4.13 and in such cases, the notice shall explain the reasons for the rejection;
 - 4.7.4. accepting an Offer from the Affordable Housing Provider.
- 4.8. On receipt of a written notice served in accordance with clause 4.7.1, 4.7.2 or 4.7.3, the Council shall serve details of a further Nominee on the Affordable Housing Provider and the parties shall repeat the procedures set out in clauses 4.4 – 4.7 except that:
 - 4.8.1. the 10 (ten) Working Day period referred to in clauses 4.4 – 4.7 shall be reduced to 5 (five) Working Days.
 - 4.8.2. the procedures set out in clauses 4.4 – 4.7 shall only be repeated twice.
- 4.9. In the event that:
 - 4.9.1. a third Nominee fails to enter into a Tenancy Agreement within 10 (ten) Working Days of receipt of an Offer; or
 - 4.9.2. the Council fails to serve details of a Nominee within 10 (ten) Working Days of receipt of a Vacancy Notice or written notice served in accordance with clauses 4.7.1, 4.7.2 or 4.7.3. then, unless clause 4.10 applies

the Affordable Housing Provider shall have the right to make the Initial Let in respect of the Rented Unit to person of its own choosing (subject to the provisions within the S106 Agreement and clause 4.13).
- 4.10. If the Council fails to serve details of a Nominee on the Affordable Housing Provider in accordance with clause 4.4 because it does not have suitable Nominee, it shall

inform the Affordable Housing Provider within 10 (ten) Working Days and serve details of a suitable Nominee as soon as reasonably practicable thereafter and in any event within 20 (twenty) Working Days of the date of receipt of the notice.

Voids and reletting

- 4.11. If a Rented Unit becomes a Void after the Initial Let or the Affordable Housing Provider has reasonable cause to believe it will become a Void:
- 4.11.1. the Affordable Housing Provider shall serve a Void Notification in respect of that Rented Unit within 5 (five) Working Days of it becoming a Void;
 - 4.11.2. the Affordable Housing Provider shall serve a Void Notice on the Council in respect of that Rented Unit as soon as it is available for re-letting;
 - 4.11.3. the parties shall follow the nomination procedures set out in clauses 4.4 to 4.7. and clauses 4.8 and 4.9 shall apply

unless the Void is an Exempted Void, in which case clause 4.12 shall apply.

Exempted Voids

- 4.12. Where the Void is an Exempted Void:
- 4.12.1. if fewer than 75% of the total number of Rented Units have been let, the parties shall follow the procedures set out in clauses 4.4 – 4.7. and clauses 4.8 and 4.9 shall apply;
 - 4.12.2. if 75% of the Voids (which for the avoidance of doubt means 75% of the total number of Affordable Housing Units) have been let, the Affordable Housing Provider shall not be required to follow the procedures set down in clauses 4.4 – 4.7 and the Affordable Housing Provider shall then be entitled to let the remaining 25% of the Voids (which for the avoidance of doubt means 25% of the total number of Affordable Housing Units) to persons of its own choosing (subject to the provisions within the S106 Agreement).

Rejecting Nominees

- 4.13. The Affordable Housing Provider shall have the right to interview and make enquiries about each Nominee and to reject any Nominee if in the opinion of the Affordable Housing Provider the grant of a Tenancy Agreement to such Nominee would be in contravention of the Affordable Housing Provider's registered rules or its letting criteria and if an Affordable Housing Provider rejects a Nominee in accordance with this clause, the Affordable Housing Provider must serve written notice on the Council in accordance with clause 4.7.3.
- 4.14. Where the Affordable Housing Provider intends to reject a Nominee in accordance with clause 4.13 and it serves notice of this on the Council in accordance with clause 4.7.3, the Council shall:
- 4.14.1. within 5 (five) Working Days of receipt of the said notice be entitled to send the Affordable Housing Provider written representations setting out the reason(s) why the Nominee does meet the Affordable Housing Provider's registered rules or its lettings criteria; and
 - 4.14.2. within 5 (five) Working Days of receipt of the Council's written representations, the Affordable Housing Provider shall consider the written representations and will notify the Council in writing that the Nominee has been accepted or that they have not, giving the reasons for their decision.
- 4.15. The Council and the Affordable Housing Provider agree that the nomination rights contained in this Deed may be varied from time to time but only by agreement in writing by the parties.

5. NOTICES

- 5.1. Any notice served in accordance with this Deed must be in writing and:
- 5.1.1. delivered by hand; or

- 5.1.2. sent by pre-paid first class post or next working day delivery service.
- 5.2. Any notice to be given under this Deed must be sent to the relevant party at the address indicated above or such other address notified by one party to the other and addressed, in the case of the Council to Head of Housing and Communities and, in the case of the Affordable Housing Provider [xxx].
- 5.3. Any notice given in accordance with clause 5 will be deemed to have been received:
 - 5.3.1. if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00am on a Working Day, the notice will be deemed to have been received at 9.00am on that day, and if delivery occurs after 5.00pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
 - 5.3.2. if sent by pre-paid first-class post or next working day delivery service, at 9.00am on the second Working Day after posting.

- 5.4. Any notice given in accordance with this clause 5 will be deemed to have been received:

6. TRANSFERS TO OTHER AFFORDABLE HOUSING PROVIDERS

- 6.1. The Affordable Housing Provider shall ensure that any Affordable Housing Provider to which the Affordable Housing Land and Affordable Housing erected thereon are transferred otherwise than by direction of the Homes England under its statutory powers shall enter into a similar agreement with the Council.

7. DISPUTES

- 7.1. Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Housing.

8. COSTS

- 8.1. The Affordable Housing Provider agrees with the Council to pay the reasonable and proper legal costs which the Council incurs in preparing and entering into this Deed.

9. AGREEMENTS AND DECLARATIONS

The parties agree:

- 9.1. nothing in this Deed fetters or restricts the exercise by the Council of any of its powers;
- 9.2. the obligations contained in this Deed are covenants for the purpose of s.33 of the Local Government (Miscellaneous Provisions) Act 1982.

10. DISCREPANCIES AND PRIORITY

- 10.1. Where there is any discrepancy between this Deed and the s106 Agreement the S106 Agreement shall take priority.

11. EXCLUSION CLAUSE

- 11.1. The provisions of this Deed shall not be binding nor enforceable against any of the following:
 - 11.1.1. Any person who shall exercise a statutory right to buy (including the preserved right to buy) or right to acquire any Rented Unit and their successor in title or chargee;

- 11.1.2. Any 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 of an Affordable Housing Provider provided that such party so appointed shall have first complied with the procedure in clause [xx] Schedule [xx] of the S106 Agreement; and
- 11.1.3. Any and all successors in title from the persons specified in clauses 11.1 – 11.2 above.

Execution clause for the
Affordable Housing Provider

The common seal of
HORSHAM DISTRICT COUNCIL
was affixed in the presence of:

Authorised signatory

SCHEDULE 3 – Specimen Deed of Nomination Rights (ctd)

Schedule 1
Plan

DRAFT

SCHEDULE 3 – Specimen Deed of Nomination Rights (ctd)

Schedule 2

Rented Unit Details

[Details to depend on the scheme but will typically include address/plot number, type of property (flat/house), no. bedrooms, no. persons property will accommodate, type of tenure (usually affordable rent), location (ground, first floor etc), any other relevant details such as accessibility details, wet rooms etc]

DRAFT

SCHEDULE 3 – Specimen Deed of Nomination Rights (ctd)

Schedule 3
Schedule of Tenure – The Rented Units

Plot	Tenure	Beds	Address	Type	Floor Level

SCHEDULE 3 – Specimen Deed of Nomination Rights (ctd)

Schedule 4

Specimen Tenancy Agreement

[To be provided by the Affordable Provider]

DRAFT

SCHEDULE 4

Community Facilities

1. INTERPRETATION AND DEFINITIONS

- 1.1. Unless the context otherwise requires where in this Agreement the following defined terms and expressions are used they shall have the following respective meanings:

“Allotments”	the 12 (twelve) new allotments to be provided as part of the Development on the Allotment Land and made available to the residents of Ashington Parish for rental, in accordance with the Allotment Scheme.
“Allotment Land”	the land to be laid out and provided as 12 (twelve) allotments together with associated Allotment Parking and Allotment Shed as part of the Development, at the location shaded green indicated on the OAS Plan.
“Allotment Maintenance Contribution”	the sum of £68,437 (sixty eight thousand four hundred and thirty seven pounds) Indexed for the long-term maintenance of the Allotments (including any fixture or fitting thereon), the Allotment Shed and the Allotment Parking, to be paid by the Owners to Ashington PC (or other District Council nominee) in the event that it is the Allotment Land Transferee in accordance with this Schedule.
“Allotment Parking”	the 18 (eighteen) new parking spaces to be provided within the Development on the Allotment Land and made available for the use of such persons renting (an) Allotment(s) from time to time, such use to be limited to parking in association with horticultural uses or by those with a legitimate connection with the use of the Allotment(s) as (an) allotment(s).
“Allotment Shed”	a building to be provided on the Allotment Land as part of the Development for the use of those residents of Ashington Parish renting any of the Allotments from time to time, such use to be limited to horticultural uses or those with a legitimate connection with the use of the Allotments as allotments.
“Allotment Specifications”	the specifications for the provision, laying out, landscaping, and equipping (as the case may be) of: a) the Allotments, including but not limited to the provision of: topsoil, a perimeter fence, gates and access points, paths, a rainwater harvesting system and/ or a mains supply and water taps; b) the Allotment Parking, including but not limited to: surfacing, the lining of spaces and appropriate signage; and c) the Allotment Shed, including but not limited to siting, dimensions, construction method and materials, security features and internal storage/ racking on the Allotment Land, including a proposed timescale for the works, access and delivery arrangements, which shall conform to the relevant standards set out in Part 8 of the OSSRR and which is to be submitted to and approved by the District Council in accordance with this Schedule.
“Allotment Scheme”	a detailed written scheme setting out how the Allotments shall be managed, including but not limited to: a) advertised for rental;

	b) allocated to potential allotment holders; c) managed, including but not limited to: i) a constitution/ governance document nominating key officers and their responsibilities, decision making arrangements, banking arrangements etc; ii) the terms and conditions of rental; iii) access and security arrangements; times of opening and closing (if any), keyholders etc. iv) insurance arrangements; v) health and safety requirements.
“Certificate of Practical Completion”	a certificate provided by the Owners (or their contractors or architects) to the District Council certifying that the Development, or any part of thereof as the context shall require, is Practically Complete or has reached Shell and Core level of finish (as required in accordance with this Schedule).
“Estate Charge”	the perpetual, yearly, variable estate management charge to be set by the Management Company and imposed on the Occupiers of the Open Market Units, to cover the ongoing costs of managing and maintaining any part of the Managed Land (including any buildings, fixtures and fittings thereon) that is transferred to the Management Company, in accordance with the requirements of this Schedule.
“LEAP”	the land to be provided as a local equipped area for play, together with the play equipment installed thereon, as part of the Development, at the location shaded yellow on the OAS Plan.
“LEAP Maintenance Contribution”	the sum of £37,413 (thirty seven thousand four hundred and thirteen pounds) to be paid by the Owners to Ashington PC (or other nominee of the District Council) in the event that it is the LEAP Transferee for the long-term maintenance of the LEAP (including any fixture or fitting thereon), in accordance with this Schedule.
“LEAP Management Scheme”	a detailed written scheme for the ongoing management and maintenance of the LEAP, including but not limited to: a) standard of maintenance and repair to be maintained; b) frequency of maintenance; c) budgetary details demonstrating how the costs of maintenance are to be met AND how equipment is to be depreciated over time to allow for eventual replacement of worn, damaged or obsolete items; d) the person who shall be the point of contact for anyone wishing to raise issues regarding the management or maintenance of the LEAP; e) the mechanism which shall be put in place to ensure that the details of the point of contact are publicized to residents of Dwellings and to members of the public entering the Managed Land, and in the event of any change in the point of contact to notify the District Council in writing within 7 days of the date of such change.
“LEAP Specifications”	the specifications for the LEAP or any parts thereof, setting out how it is to be laid out and maintained in accordance with this Agreement and which may include information relating to any of

	the following as appropriate: a) plans, details, specifications and a timetable for provision of the LEAP; b) details of the lay out, landscaping and planting; c) details for topsoil and seeding; d) details of the surface treatment (grass/hard/linked surface paths/impact safety absorbing surfaces); e) details of any earthworks, excavations, construction, drainage; f) details of any fencing or materials; g) type and size of play equipment; h) details and type of any seating; i) litter bins; j) signage (type and location); and k) approval of boundaries of any areas or parcel(s) of land to be transferred to Ashington PC/ Management Company which shall conform to the relevant standards set out in Part 8 of the OSSRR and which is to be submitted to and approved by the District Council in accordance with this Schedule.
“Managed Land”	the Open Amenity Space, the SuDS, the LEAP, the Sports Facilities (as defined in Schedule 4) and the Allotment Land, to be laid out, planted and equipped (as the case may be) and provided as part of the Development at the locations shown on the OAS Plan (where relevant) BUT excluding any areas which have been or are to be adopted by the relevant highway or drainage authorities pursuant to an adoption agreement.
“Management Company”	a limited company or company limited by guarantee (or companies) to be established by the Owners to carry out the long term management and maintenance of any part of the Managed Land that is not transferred to Ashington PC (or the District Council's nominee) under the terms of this Agreement (excluding any parts which have been or are to be adopted by the relevant highways or drainage authorities pursuant to an adoption agreement) in accordance with the provisions of this Agreement and the Management Company Structure Scheme and: a) whose objectives shall include: i) setting and collecting the Estate Charge; ii) ensuring accountability to Occupiers of the Open Market Units; b) whose constitution will be submitted to and approved by the District Council as part of the Management Company Structure Scheme and will facilitate: i) the Owners retaining control of the Management Company until such time it relinquishes that control to the shareholders; and ii) which includes any/all subsequent body/bodies that take on this responsibility.
“Management Company Structure”	a scheme that addresses the following in relation to the

Scheme”	Management Company: a) details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee; b) proposed banking arrangements of the Management Company; c) details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of any Managed Land managed by the Management Company and against damage by those comprehensive risks as are reasonable to insure against in the circumstances then prevailing; d) details of the mechanism together with suitable documentation to enable the transfer of ownership and responsibility for the Managed Land from the Management Company if the circumstances require, on terms to be agreed (including details of how and when such transfer and step-in mechanism shall be triggered, settlement of outstanding management costs prior to transfer and liability for legal costs/expenses associated with the transfer).
“Open Amenity Space”/ “OAS”	the land to be laid out, planted and provided as areas of informal green space comprising retained trees, proposed landscape buffer and multifunctional public space as part of the Development in the general location shown shaded purple on the OAS Plan.
“OAS Management Scheme”	a detailed written scheme for the ongoing management and maintenance of the OAS which shall include: a) frequency of the maintenance; b) measures to replace any trees shrubs or turf which may die or become diseased following implementation of the OAS Management Scheme; c) standard of maintenance and repair to be achieved or maintained; d) how the costs of the maintenance are to be budgeted; e) the person who shall be the point of contact for anyone wishing to raise issues regarding the management or maintenance of the OAS; f) the mechanism which shall be put in place to ensure that the details of the point of contact are publicized to residents of Dwellings and to members of the public entering the Managed Land, and in the event of any change in the point of contact to notify the District Council in writing within 7 days of the date of such change.
“OAS Plan”	the plan of the land to be provided as part of the Development as OAS on which designated areas for specific uses are denoted by coloured shading, entitled “Management Areas Plan” with drawing no. 062009-BEL-SL-01-MAP dated 28.11.25 at Schedule 1 of this Agreement or such other plan agreed between the Parties.
“OAS Specifications”	detailed specifications for the OAS or any parts thereof to be laid out and maintained in accordance with this Agreement to include: a) a plan showing the boundaries of the OAS (such plan may be amended from time to time as the boundaries of the OAS change);

	b) 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 (if known); c) earthworks, excavations, construction, drainage, including SuDS; d) surface treatment (grass/ hard/ linked surface paths/ impact safety absorbing surfaces); e) fencing, seating, litter bins and signage (type and location); f) topsoil and seeding g) layout, landscaping and planting, demonstrating the full integration of landscape, biodiversity and arboriculture considerations; h) a timetable for provision of the OAS which shall conform to the relevant standards set out in Part 8 of the OSSRR and which is to be submitted to and approved by the District Council in accordance with this Schedule.
"OSSRR"	the document entitled, <i>"Horsham District Council Open Space, Sports and Recreation Review"</i> dated June 2021 (Knight, Kavanagh & Page Ltd).
"SuDS"	works comprising a Sustainable Drainage System for the Development.

2. MANAGEMENT COMPANY

The Owners hereby covenant with the District Council as follows:

- 2.1. The Owners shall not Occupy or permit the Occupation of any Dwelling until they have:
 - 2.1.1. made provision to include in the transfer of the freehold or leasehold sale of each Dwelling a covenant by the purchaser to pay the Estate Charge to be determined by the Management Company;
 - 2.1.2. established the Management Company in accordance with the provisions set out in paragraph 2.2.4 of this Schedule;
- 2.2. The Owners covenant:
 - 2.2.1. not to sell or otherwise deal with any Dwelling without imposing a covenant on the purchaser of such Dwelling to pay the Estate Charge as determined by the Management Company towards the costs incurred in maintaining and insuring the Managed Land or parts thereof and any equipment thereon which are not transferred to Ashington PC (or other nominee of the District Council in accordance with this Schedule);
 - 2.2.2. immediately on the sale of the first Dwelling to provide the District Council with copies of the Articles and Memorandum of Association of the Management Company and a copy of the transfer relating to the Dwelling including the covenants referred to in paragraph 2.2.1 above;
 - 2.2.3. where any Managed Land is to be managed and maintained by the Management Company in accordance with the terms of this Schedule, to comply with the provisions contained in paragraphs 2.2.4 and 2.2.5 of this Schedule;
 - 2.2.4. prior to the first Occupation of any Dwelling on the Development to submit for approval to the District Council and gain approval from the District Council to the Management Company Structure Scheme;

- 2.2.5. on approval of the Management Company Structure Scheme to 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.

3. THE OPEN AMENITY SPACE (INCORPORATING SuDS)

The Owners hereby covenant with the District Council as follows:

- 3.1. Prior to the Occupation Date, to submit details of:
- 3.1.1. the OAS Specifications;
 - 3.1.2. the OAS Management Scheme; and
 - 3.1.3. the Management Company Structure Scheme
- to the Head of Development and Building Control for approval and not to Occupy the Development until the District Council has approved the aforesaid details in writing, such approval not to be unreasonably delayed or withheld.
- 3.2. Prior to Occupation of the 100th Dwelling (unless otherwise agreed in writing with the District Council) and at their own expense to Practically Complete the Open Amenity Space in accordance with the approved OAS Specifications such that it is open and accessible to members of the public free of charge, unless otherwise agreed in writing with the District Council.
- 3.3. On Practical Completion of the OAS in accordance with the approved OAS Specifications to send a Certificate of Practical Completion in respect of the OAS to the Head of Development and Building Control.
- 3.4. Following Practical Completion of the OAS, to transfer the OAS to the Management Company on the contractual terms set out in paragraph 3.8 of this Schedule.
- 3.5. Not to Occupy or to cause or permit the Occupation of more than 100 of the Dwellings until the Owners have paid to the District Council a fee of £600 (six hundred pounds) which is based on the current daily rate for the inspection of the works undertaken to create the OAS.
- 3.6. To make good any defects in the works undertaken to create the OAS prior to its transfer in accordance with paragraph 3.8 of this Schedule if, on receipt of notice of Practical Completion of the OAS and inspection of the OAS, in the reasonable opinion of the Head of Development and Building Control, there are defects in such works.
- 3.7. To continue to maintain and insure the OAS at their own expense, keeping it at all times clean, with all trees and vegetation cultivated, fed, watered and in good heart replacing any damaged or dying grass turf, trees, shrubs and other plants, until the OAS is transferred in accordance with paragraph 3.8 of this Schedule.
- 3.8. To transfer any parcel(s) of land comprising the OAS on the following terms unless otherwise agreed between the parties:
- 3.8.1. title shall be deduced in accordance with the Land Registration Act 2002;
 - 3.8.2. the parcel(s) of land comprising the OAS will be transferred free of any financial charges together with the rights and easements but subject only to the exceptions reservations right easements registered against the title prior to the date of this Agreement and subject also to any easements granted to statutory undertakers and purchasers of Dwellings after the date of this Agreement and other matters contained and referred to in the register of title to the Application Site;
 - 3.8.3. vacant possession of the parcel(s) of land comprising the OAS shall be given on the date of the transfer in accordance with the provisions of this Agreement;

AND for the avoidance of the doubt:

- 3.8.4. the transfer of the OAS shall be subject to a covenant to ensure that the OAS shall be made available for the use of the general public free of charge subject to the exclusions set out in paragraph 6 of this Schedule and shall only be used for the purposes of public Open Amenity Space as defined in this Agreement 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 OAS or is required to be carried out by a statutory undertaker;
- 3.8.5. when the OAS is transferred to the Management Company the Owners 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 Owners restricting the use of the land in accordance with the restrictions set out in this Agreement.
- 3.9. Following transfer of the OAS to the Management Company, the OAS shall be maintained at all times to the reasonable satisfaction of the District Council, kept in a clean and safe condition with all grass regularly mown and trees, hedges and shrubs kept in good health with any necessary trimming, lopping, or replanting carried out in accordance with the OAS Management Scheme approved under paragraph 3.1 of this Schedule together with any amendments or any details subsequently approved in writing by the District Council.

4. THE LEAP

The Owners hereby covenant with the District Council as follows:

- 4.1. Prior to Occupation of the 30th Dwelling, to submit details of:
- 4.1.1. the LEAP Specifications;
- 4.1.2. the LEAP Management Scheme
- to the Head of Development and Building Control for approval and not to Occupy the 30th Dwelling until the District Council has approved the aforesaid details in writing, such approval not to be unreasonably delayed or withheld.
- 4.2. Prior to Occupation of the 100th Dwelling and at their own expense, to Practically Complete the LEAP in accordance with the approved LEAP Specifications such that it is and open and accessible to members of the public free of charge, unless otherwise agreed in writing with the District Council.
- 4.3. On Practical Completion of the LEAP in accordance with the approved LEAP Specifications, to:
- 4.3.1. send a Certificate of Practical Completion and a post installation report prepared by the Royal Society for the Prevention of Accidents in respect of the LEAP to the Head of Development and Building Control within 5 Working Days;
- 4.3.2. contact the District Council for written confirmation of the person to whom the LEAP shall first be offered (other than the Management Company) whom shall be referred to hereafter as **"the LEAP Transferee"**.
- 4.3.3. make good any defects in the works undertaken to create the LEAP prior to its transfer in accordance with paragraph 4.4 of this Schedule if, on receipt of notice of Practical Completion of the LEAP and inspection of the LEAP, in the reasonable opinion of the Head of Development and Building Control, there are defects in such works.
- 4.3.4. continue to maintain and insure the LEAP at their own expense until the LEAP is transferred in accordance with paragraph 4.4 of this Schedule.
- 4.3.5. offer in writing to transfer the LEAP to the LEAP Transferee for a consideration of £1 on the contractual terms set out in paragraph 4.4 of this Schedule and if the LEAP Transferee shall refuse the said offer or fail to respond within 40 Working Days, to offer the LEAP to the Management

Company (who shall not be entitled to refuse the offer) and to notify the Head of Development and Building Control in writing that each such offer has been made.

- 4.3.6. use reasonable endeavours to enter into a binding contract for the transfer of the LEAP to the LEAP Transferee or the Management Company (as the case may be) for a consideration of £1 requiring its management and maintenance thereafter in accordance with the terms of the approved LEAP Management Scheme for the lifetime of the Development AND to provide the District Council with a copy of the binding contract within 10 (ten) Working Days of the date of the said contract.
- 4.4. To transfer any parcel(s) of land comprising the LEAP on the following terms unless otherwise agreed between the parties:
 - 4.4.1. title shall be deduced in accordance with the Land Registration Act 2002;
 - 4.4.2. the parcel(s) of land comprising the LEAP shall be transferred free of any financial charges, rights and/ or easements unless registered against the title prior to the date of this Agreement and subject also to any easements granted to any statutory undertaker after the date of this Agreement and other matters contained and referred to in the register of title to the Application Site;
 - 4.4.3. vacant possession of the parcel(s) of land comprising the LEAP shall be given on the date of the transfer in accordance with the provisions of this Agreement;
 - 4.4.4. the transfer of the LEAP shall be subject to a covenant to ensure that the LEAP shall be made available for the use of the general public and shall only be used for the purposes of a LEAP as defined in this Agreement and shall 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 LEAP or is required to be carried out by a statutory undertaker.
 - 4.4.5. the Owners shall be entitled to include in the transfer of the title a requirement that the LEAP Transferee or the Management Company (as the case may be) shall enter into a direct covenant with the Owners restricting the use of the land in accordance with the restrictions set out in this Agreement.
 - 4.4.6. completion shall take place on the date falling 60 Working Days after the date the written offer of transfer is made pursuant to paragraph 4.3.5 of this Schedule unless otherwise agreed in a contract for the transfer/ conveyance made between the Owners and the Leap Transferee or the Management Company (as the case may be).
- 4.5. In the event that the Leap Transferee accepts the offer made pursuant to paragraph 4.3.5 but within a period of 3 months from the date of written acceptance of the offer (or such other timescale set out within the contract) subsequently refuses to enter into a binding contract for the transfer or does not make reasonable endeavours to proceed with the transfer, the Owners may, with the agreement of the District Council, transfer the LEAP to the Management Company.
- 4.6. In the event that the LEAP is transferred to the LEAP Transferee, the Owners shall pay the LEAP Maintenance Contribution to the LEAP Transferee on the date of completion of the transfer of the LEAP pursuant to paragraph 4.4.5 of this Schedule.
- 4.7. Thereafter, the LEAP shall be maintained at all times to the reasonable satisfaction of the District Council, kept in a clean and safe condition with all equipment subject to regular inspection and necessary maintenance and repair, carried out in accordance with the LEAP Management Scheme approved under paragraph 4.1 of this Schedule together with any amendments or any details subsequently approved in writing by the District Council.

5. THE ALLOTMENT LAND

The Owners hereby covenant with the District Council as follows:

- 5.1. Prior to Occupation of the 30th Dwelling, to submit details of:
 - 5.1.1. the Allotment Specifications; and
 - 5.1.2. the Allotment Schemeto the Head of Development and Building Control for approval and not to Occupy or cause or permit Occupation of the 30th Dwelling until the District Council has approved the Allotment Specifications and the Allotment Scheme in writing such approval not to be unreasonably delayed or withheld.
- 5.2. Prior to Occupation of the 100th Dwelling and at their own expense to Practically Complete the Allotments, the Allotment Parking and the Allotment Shed in accordance with the approved Allotment Specifications unless otherwise agreed in writing with the District Council.
- 5.3. On Practical Completion of the Allotments, the Allotment Parking and the Allotment Shed in accordance with the Allotment Specifications, to:
 - 5.3.1. send a Certificate of Practical Completion in respect of the Allotments, the Allotment Parking and the Allotment Shed to the Head of Development and Building Control;
 - 5.3.2. contact the District Council for written confirmation of the person to whom the Allotment Land shall be offered (other than the Management Company) in accordance with paragraph 5.4 and whom shall be referred to hereafter as **“the Allotment Land Transferee”**.
 - 5.3.3. continue to maintain and insure the Allotment Shed at their own expense until the Allotment Land is transferred in accordance with paragraph 5.4 of this Schedule.
 - 5.3.4. offer in writing to transfer the Allotment Land to the Allotment Land Transferee for a consideration of £1 on the contractual terms set out in paragraph 5.4 of this Schedule and if the Allotment Land Transferee shall refuse the said offer or fail to respond within 40 Working Days, to offer the Allotment Land to the Management Company (who shall not be entitled to refuse the offer) and to notify the Head of Development and Building Control in writing that such an offer has been made.
 - 5.3.5. use reasonable endeavours to enter into a binding contract for the transfer of the Allotment Land to the Allotment Land Transferee or the Management Company (as the case may be) for a consideration of £1, requiring its management and maintenance thereafter in accordance with the terms of the approved Allotment Scheme for the lifetime of the Development AND to provide the District Council with a copy of the binding contract within 10 (ten) Working Days of the date of the said contract.
- 5.4. To transfer any parcel(s) of land comprising the Allotment Land on the following terms unless otherwise agreed between the parties:
 - 5.4.1. title shall be deduced in accordance with the Land Registration Act 2002;
 - 5.4.2. the Allotment Land shall be transferred free of any financial charges, rights and/ or easements unless registered against the title prior to the date of this Agreement and subject also to any easements granted to any statutory undertaker after the date of this Agreement and other matters contained and referred to in the register of title to the Application Site;
 - 5.4.3. vacant possession of the parcel(s) of land comprising the Allotment Land (and for the avoidance of doubt save for the provision of the Allotment Shed) shall be given on the date of the transfer in accordance with the provisions of this Agreement;
 - 5.4.4. the transfer of the Allotment Land shall be subject to a covenant to ensure that the Allotments shall made available for rental by residents of Ashington

Parish and that the Allotments, the Allotment Parking and the Allotment Shed shall only be used for the purposes of Allotments, the Allotment Parking and the Allotment Shed (as defined in this Agreement and as the case may be), and shall 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 or maintaining the Allotments, the Allotment Parking and/ or the Allotment Shed, or is required to be carried out by a statutory undertaker;

- 5.4.5. the Owners shall be entitled to include in the transfer of the title a requirement that the Allotment Land Transferee or the Management Company (as the case may be) shall enter into a direct covenant with the Owners restricting the use of the land in accordance with the restrictions set out in this Agreement;
- 5.4.6. completion shall take place on the date falling 60 Working Days after the date the written offer of transfer is made pursuant to paragraph 5.3.4 of this Schedule unless otherwise agreed in a contract for the transfer/ conveyance made between the Owners and the Allotment Land Transferee or the Management Company (as the case may be).
- 5.5. In the event that the Allotment Transferee accepts the offer made pursuant to paragraph 5.3.4 but within a period of 3 months from the date of written acceptance of the offer (or such other timescale set out within the contract) subsequently refuses to enter into a binding contract for the transfer or does not make reasonable endeavours to proceed with the transfer, the Owners may, with the agreement of the District Council, transfer the Allotment Land to the Management Company.
- 5.6. In the event that the Allotment Land is transferred to the Allotment Land Transferee, the Owners shall pay the Allotment Maintenance Contribution to the Allotment Land Transferee on the date of completion of the transfer of the Allotment Land pursuant to paragraph 5.4.5 of this Schedule.

6. THE MANAGED LAND

- 6.1. Notwithstanding the above provisions, the Managed Land may be subject to temporary closure (or temporarily restricted access) in the following circumstances:
 - 6.1.1. in emergencies;
 - 6.1.2. for one day per year so as to assert rights of proprietorship preventing public or private rights being created by means of prescription or other legal processes provided that the Owners shall not close all of the Managed Land that at such time has been Practically Completed on the same day;
 - 6.1.3. for the purposes of maintenance, repair, cleaning, renewal or resurfacing;
 - 6.1.4. for the purpose of carrying out works of construction (including development or redevelopment or for the placing or replacing of underground services) permitted by or required for the Development or construction on adjacent land in so far as it relates to the lawful build out of the Development;
 - 6.1.5. for reasons of public safety;
 - 6.1.6. for any event (whether or not free to attend) (subject to prior agreement by the District Council in writing); or
 - 6.1.7. for any other reasonable and proper purpose and for such reasonable period as may be agreed in writing by the District Council.

SCHEDULE 5
Sports Facilities

The Owners hereby covenant with the District Council as follows:

1. DEFINITIONS

It is hereby agreed between the Parties set out in this Agreement that the following expressions have the following meanings:

“3G Pitch”	a third generation artificial turf football pitch of Senior Football Dimensions, to be provided in conformity with the Sport England Design Guidance Note <i>“Artificial Surfaces for Outdoor Sport”</i> (2013) as part of the Development at the location shaded blue indicated on the OAS Plan.
“3G Pitch Specifications”	specifications of the 3G Pitch including but not limited to: dimensions (including principal play area and run-off), preparatory groundworks and engineering, sub surface and surface materials.
“Equipment Store”	a building to be provided within the Development to be used in association with the Sports Pavilion (but separate from the Sports Pavilion) in the location identified on the OAS Plan as “Pavilion Storage”.
“Equipment Store Specifications”	specifications for the construction of a building to provide 39m ² of storage space for sports equipment.
“Senior Football Dimensions”	dimensions of a football pitch suitable for adult play as set out in the Sport England Guidance <i>“Comparative Sizes of Sports Pitches and Courts (OUTDOOR)”</i> September 2015 update Revision006b.
“Shell and Core”	constructed to the stage at which: any structural frame, the exterior walls, roof, windows and doors are in place, such that the building is wind and watertight; all utilities (including internet) are connected and operational, the lobby and any staircase(s)/ lifts are present (if provided).
“the Sports Facilities”	together the Sports Pavilion, the Equipment Store, the Sports Pavillion Parking, and the 3G Pitch and “Sports Facility” shall mean any one of them
“Sports Facilities Management Scheme”	a detailed written scheme for the management of the Sports Facilities including but not limited to a) a constitution/ governance document nominating key officers and staffing and their responsibilities, decision making arrangements, banking arrangements etc.; b) access and security arrangements; opening and closing times, security, keyholders etc.; c) maintenance and repair of the Sports Pavilion, Sports Pavilion Parking and 3G Pitch; d) terms and conditions of use and hiring of the Sports Pavilion and the 3G Pitch; e) the Sports Pavilion Parking arrangements f) the Sports Pavilion licensing arrangements; g) insurance and public liability cover.
“the Sports Pavilion”	a building comprising a sports pavilion and integrated equipment store, including but not limited to: changing/ locker areas, showers/ WCs, a kitchen, communal and leisure areas and office space, to be

	provided to Shell and Core level of completion only as part of the Development at the location shaded orange on the OAS Plan.
“the Sports Pavilion Parking”	the 40 (forty) new parking spaces (to include 2 disabled bays) to be provided within the Development adjacent to the Sports Pavilion in the location marked on the OAS Plan.
“the Sports Pavilion Parking Specifications”	specifications for the parking associated with the Sports Pavilion and the 3G Pitch which shall include (but which shall not be limited to): a) surface materials; b) configuration of parking bays (including disabled bays) c) appropriate bay marking, lighting and signage.

“Sports Pavilion Specifications”	specifications for the construction of a building to be provided as part of the Development to Shell and Core finish for use as a sports pavilion, which shall include (but not be limited to): a) access (including for wheelchair users), doors, ramps, handrails etc; b) construction specifications in line with Building Regulations; c) location and construction of associated bin and cycle stores d) the external paved area; e) details of utilities to be connected and locations of mains entry points, meters etc; and f) plumbing supplying changing rooms and other WCs.
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1. SPORTS FACILITIES

The Owners hereby covenant with the District Council as follows:

1.1. Prior to Occupation of the 30th Dwelling to submit details of:

- 1.1.1. the Sports Pavilion Specifications, the Sports Pavilion Parking Specifications, the Equipment Store Specifications and the Sports Facilities Management Scheme which shall have been drafted in consultation with Ashington PC (or other nominee of the District Council) (**“the Sports Facilities Transferee”**);
- 1.1.2. the 3G Pitch Specifications which shall have been drafted in consultation with Sport England

to the Head of Development and Building Control for approval and not to Occupy the 30th Dwelling until the District Council has approved the aforesaid details in writing, such approval not to be unreasonably delayed or withheld.

1.2. Prior to Occupation of the 125th Dwelling and at their own expense to Practically Complete:

- 1.2.1. the Sports Pavilion to Shell and Core level of finish in accordance with the approved Sports Pavilion Specifications;
- 1.2.2. the Equipment Store in accordance with the Equipment Store Specifications;
- 1.2.3. The Sports Pavilion Parking in accordance with the approved Sports Pavilion Parking Specifications;
- 1.2.4. the 3G Pitch in accordance with the approved 3G Pitch Specifications

unless otherwise agreed with the District Council.

1.3. On Practical Completion or upon reaching Shell and Core level of finish (as the case may be) of the Sports Facilities to:

- 1.3.1. send a Certificate of Practical Completion to the Head of Development and Building Control in respect of each Sports Facility.

- 1.3.2. make good any defects in the works undertaken to create the Sports Facilities prior to their transfer in accordance with paragraph 1.4 of this Schedule, if in the reasonable opinion of the Head of Development and Building Control there are defects in such works.
 - 1.3.3. continue to maintain and insure the Sports Facilities at their own expense until the Sports Facilities are transferred in accordance with paragraph 1.4 of this Schedule.
 - 1.3.4. offer in writing to transfer the Sports Facilities to the Sports Facilities Transferee for a consideration of £1 on the contractual terms set out in paragraph 1.4 of this Schedule, requiring the fit out of the Sports Pavilion and the Equipment Store, and management and maintenance of the Sports Facilities thereafter in accordance with the terms of the approved Sports Facilities Management Scheme for the lifetime of the Development and if it should refuse the said offer or fail to respond within 40 Working Days, then the Management Company (who shall not be entitled to refuse the offer) and in which case the Management Company shall be entitled to negotiate amendment of the Shell and Core Specifications, the Sports Pavilion Parking Specifications, the Sports Facilities Management Scheme and the 3G Pitch Specifications with the District Council
 - 1.3.5. to use reasonable endeavours to enter into a binding contract for the transfer of the Sports Facilities to the Sports Facilities Transferee or the Management Company (as the case may be) for a consideration of £1, requiring its management and maintenance thereafter in accordance with the terms of the approved Shell & Core Specifications, Equipment Store Specifications, Sports Pavilion Parking Specifications and 3G Pitch Specifications for the lifetime of the Development AND to provide the District Council with a copy of the binding contract within 10 (ten) Working Days of the date of the said contract.
- 1.4. The transfer of any parcel(s) of land comprising the Sports Facilities shall be on the following terms unless otherwise agreed between the Parties:
- 1.4.1. title shall be deduced in accordance with the Land Registration Act 2002;
 - 1.4.2. the parcel(s) of land comprising the Sports Facilities shall be transferred free of any financial charges, rights and/ or easements unless registered against the title prior to the date of this Agreement and subject also to any easements granted to statutory undertaker after the date of this Agreement and other matters contained and referred to in the register of title to the Application Site;
 - 1.4.3. vacant possession of the parcel(s) of land comprising the Sports Facilities shall be given on the date of the transfer in accordance with the provisions of this Agreement;
 - 1.4.4. the transfer of the Sports Facilities shall be subject to a covenant to ensure that the Sports Pavilion, the Sports Pavilion Parking and the 3G Pitch shall be made available for the use of the general public and shall only be used for the purposes defined in this Agreement (as the case may be) and that no development requiring planning permission shall be carried out thereon unless it is for the purpose of providing a Sports Facilities (as defined) or for the maintenance of the Sports Facilities or is required to be carried out by a statutory undertaker;
 - 1.4.5. the Owners shall be entitled to include in the transfer of the title a requirement that the Sports Facilities Transferee or the Management Company (as the case may be) shall enter into a direct covenant with the Owners restricting the use of the land in accordance with the restrictions set out in this Agreement.
 - 1.4.6. completion shall take place on the date falling 60 Working Days after the date the written offer of transfer is made pursuant to paragraph 1.3.4 of this Schedule unless otherwise agreed in a contract for the transfer/ conveyance

made between the Owners and the Sports Facilities Transferee or the Management Company (as the case may be).

- 1.5. In the event that the Sports Facilities Transferee accepts the offer made pursuant to paragraph 1.3.4 but within a period of 3 months from the date of written acceptance subsequently refuses to enter into a binding contract for the transfer or does not make reasonable endeavours to proceed with the transfer, the Owners may, with the agreement of the District Council, transfer the Sports Facilities to the Management Company.
- 1.6. Thereafter the Sports Facilities shall be maintained at all times to the reasonable satisfaction of the District Council, ensuring that they are kept in a clean and safe condition with all fixtures, fittings and equipment subject to regular inspection and necessary maintenance and repair, carried out in accordance with the Sports Facilities Management Scheme approved under paragraph 1.1 of this Schedule together with any amendments or any details subsequently approved in writing by the District Council.

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SCHEDULE 6
School Land and Safeguarded School Land

1. INTERPRETATION AND DEFINITIONS

- 1.1. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings:

“Contamination”	means the presence or accumulation of any Hazardous Substances at, in, on, above or under the Safeguarded School Land first arising after the date hereof and for the avoidance of doubt excluding the migration or escape of any Hazardous Substance to or from the Safeguarded School Land which first arose prior to the date hereof and continues to migrate or escape after the date hereof;
“Environment”	means all or any of the following media, namely air (including the air within buildings and the air within other natural or man-made structures above or below ground), land and water (including surface water and groundwater) and any ecological systems or living organisms (including humans) supported by those media;
“Hazardous Substances”	means any natural or artificial substance (whether solid, liquid, vapour or gas) which alone or in combination with any other substance is capable of causing harm to the Environment or the health of any living organisms supported by the Environment;
“the School Land”	the land needed for the potential extension of Ashington Church of England Primary School that is outside the Application Site and which is shaded lilac on the Safeguarded School Land Plan and registered at HM Land Registry under title number WSX307974
“the School Land Notice”	a notice served by the County Council on the Second Owner requesting transfer of the School Land
“the Safeguarded School Land”	the land needed for the potential extension of Ashington Church of England Primary School that is outside the Application Site and which is shaded green on the Safeguarded School Land Plan and registered at HM Land Registry under title number WSX307974
“the Safeguarded School Land Notice”	a notice served by the County Council on the Second Owner requesting transfer of the Safeguarded School Land
“the Safeguarded School Land Plan”	the plan entitled “Land to East of Site Areas Plan” drawing number 062009-BEL-SL-AEOS dated 19.12.2024. at Schedule 1 of this Agreement or such other plan agreed between the Parties.

The Second Owner hereby covenants with the District Council and County Council as follows:

- 1.1. To notify the County Council in writing of the Commencement of Development on the Application Site.

The School Land

- 1.2. To maintain the School Land as a cleared secured fenced site free from Contamination for a period of 3 (three) years from Commencement of Development on the Application Site.
- 1.3. The Owner and the County Council agree that the County Council may only serve the School Land Notice during the period starting on Commencement of Development on the Application Site to the date three (3) years after the date of the Commencement of Development on the Application Site.
- 1.4. On receipt of the School Land Notice in writing from the County Council, to offer to

transfer any parcel(s) of land comprising the School Land for £1 on the following terms unless otherwise agreed between the parties:

- 1.4.1. A good marketable title to the School Land shall be deduced in accordance with the Land Registration Act 2002 to the reasonable satisfaction of the County Council;
- 1.4.2. The School Land shall not be transferred other than as land free from option, Land Registry Restriction, restrictive covenants, mortgage or other financial charge;
- 1.4.3. the School Land shall not be transferred other than free from any easement, unless registered against the title prior to the date of this Agreement and subject also to any easements granted to any statutory undertaker after the date of this Agreement, restrictive covenant or other matters which would prevent or unreasonably restrict its beneficial use for education and community use as at the date of this Agreement as a school;
- 1.4.4. Unless otherwise agreed between the Second Owner and the County Council the School Land shall not be transferred other than as a clear site with vacant possession and clear of rubbish and building materials and in accordance with the Standard List of Conditions attached at Appendix 1 to this Schedule;
- 1.4.5. Within a reasonable period of time following completion of a transfer of the School Land the Second Owner shall hand over to the County Council all necessary consents withdrawal of restriction forms and certificates to ensure that the County Council shall be able to register the transfer of the School Land at the Land Registry so that no Land Registry restrictions or option obligations shall be entered on the title register to the County Council's title to the School Land;
- 1.5. If at any time prior to the date three (3) years from notification of Commencement of Development on the Application Site and prior to transfer of the School Land the County Council shall notify the Second Owner in writing that it no longer requires the School Land then upon such notification being given or otherwise if the School Land Notice is not served by the County Council within the time limit specified in paragraph 1.3:
 - 1.5.1. the School Land shall be deemed to no longer be subject to the obligations in this Agreement, which shall cease to bind the School Land;
 - 1.5.2. the Second Owner shall have unrestricted use and enjoyment of the School Land.
- 1.7 The Second Owner covenants to the County Council that from the date of this Agreement until three (3) years after Commencement of Development on the Application Site they will not use the School Land or allow the School Land to be used as a car park, as a site compound, as a storage site for any plant equipment or machinery or for the storage of any soil, spoil, building material or other substance and without prejudice to the foregoing provisions the Second Owner will transfer the School Land free of any Contamination arising or resulting after the date hereof.
- 1.8 For the avoidance of doubt, if the County Council does not make a written request to the Second Owner for a transfer of the School Land by the date that is three (3) years from the Commencement of Development, the Second Owner shall be released from the obligations in paragraphs 1.2 to 1.7 of this Schedule which shall determine absolutely.

The Safeguarded School Land

- 1.6. To maintain the Safeguarded School Land as a cleared secured fenced site free from Contamination for a period of fifteen (15) years from Commencement of Development on the Application Site.
- 1.7. The Owner and the County Council agree that the County Council may only serve the Safeguarded School Land Notice during the period starting on Commencement of

Development on the Application Site to the date fifteen (15) years after the date of the Commencement of Development on the Application Site.

- 1.8. On receipt of the Safeguarded School Land Notice in writing from the County Council, to offer to transfer any parcel(s) of land comprising the Safeguarded School Land for a sum to be agreed on open market value between the Second Owner and the County Council on the following terms unless otherwise agreed between the parties:
 - 1.8.1. A good marketable title to the Safeguarded School Land shall be deduced in accordance with the Land Registration Act 2002 to the reasonable satisfaction of the County Council;
 - 1.8.2. The Safeguarded School Land shall not be transferred other than as land free from option, Land Registry Restriction, restrictive covenants, mortgage or other financial charge;
 - 1.8.3. the Safeguarded School Land shall not be transferred other than free from any easement, unless registered against the title prior to the date of this Agreement and subject also to any easements granted to any statutory undertaker after the date of this Agreement, restrictive covenant or other matters which would prevent or unreasonably restrict its beneficial use for education and community use as at the date of this Agreement as a school;
 - 1.8.4. Unless otherwise agreed between the Second Owner and the County Council the Safeguarded School Land shall not be transferred other than as a clear site with vacant possession and clear of rubbish and building materials and in accordance with the Standard List of Conditions attached at Appendix 1 to this Schedule;
 - 1.8.5. Within a reasonable period of time following completion of a transfer of the Safeguarded School Land the Second Owner shall hand over to the County Council all necessary consents withdrawal of restriction forms and certificates to ensure that the County Council shall be able to register the transfer of the Safeguarded School Land at the Land Registry so that no Land Registry restrictions or option obligations shall be entered on the title register to the County Council's title to the Safeguarded School Land;
- 1.9. If at any time prior to the date fifteen (15) years from notification of Commencement of Development on the Application Site and prior to transfer of the Safeguarded School Land the County Council shall notify the Second Owner in writing that it no longer requires the Safeguarded School Land then upon such notification being given or otherwise if the Safeguarded School Land Notice is not served by the County Council within the time limit specified in paragraph 1.7:
 - 1.9.1. the Safeguarded School Land shall be deemed to no longer be subject to the obligations in this Agreement, which shall cease to bind the Safeguarded School Land;
 - 1.9.2. the Second Owner shall have unrestricted use and enjoyment of the Safeguarded School Land.
- 1.10. The Second Owner covenants to the County Council that from the date of this Agreement until fifteen years after Commencement of Development on the Application Site they will not use the Safeguarded School Land or allow the Safeguarded School Land to be used as a car park, as a site compound, as a storage site for any plant equipment or machinery or for the storage of any soil, spoil, building material or other substance and without prejudice to the foregoing provisions the Second Owner will transfer the Safeguarded School Land free of any Contamination arising or resulting after the date hereof.
- 1.11. For the avoidance of doubt, if the County Council does not make a written request to the Second Owner for a transfer of the Safeguarded School Land by the date that is fifteen years from the Commencement of Development, the Second Owner shall be released from the obligations in paragraphs 1.6 to 1.9 of this Schedule which shall determine absolutely.

APPENDIX 1 TO SCHEDULE 6

Condition of the Property on transfer

The Property shall be transferred in the following condition

Vacant possession

the boundaries marked out with durable markings,

free of rubbish and building materials

free of Land Registry Restrictions, financial charges, financial encumbrances, Land Registry Unilateral Notices and Land Registry Agreed Notices

The Property shall be transferred free from any easement, quasi-easement, restrictive covenant or other matter which would prevent or unreasonably restrict its beneficial use for education and community use

Section 62 of the Law of Property Act 1925 shall be excluded from the Transfer

as a site free of pollution, Contamination and other Public Health risk factors

as a site free of soil and water table contamination

free of overhead cables, underground pipes, cables, underground utilities and any easements relating to the same

as a site not crossed by any public rights of way, or access or wayleaves

free from foundations, fuel tanks and other buried structures

free from Radon Gas or potential sources thereof

free from filled spaces including mineral workings and land fill

free from invasive plants species such as Japanese Knotweed

as a site where air quality standards are met

free from void spaces including wells, sumps and pits

free from ground gasses and vapours

free of items or structures of archaeological interest

SCHEDULE 7

Public Rights of Way and Travel Plan Obligations

1. DEFINITIONS

It is hereby agreed between the Parties set out in this Agreement that the following expressions have the following meanings:

“All Requisite Consents”	all requisite consents orders agreements authorisations licences and permissions required to implement a scheme set out in this Schedule.
Definitive Map	the map forming part of the legal record of all public rights of way maintained by the County Council in its function as Highway Authority.
“Footpath 2607”	the public footpath known as Footpath 2607 on the Definitive Map.
“FP2607 Link Works”	works required to construct a new link from the Development to Footpath 2607 to be carried out between the points marked A and B and coloured yellow on PROW Plan 2.
“FP2607 Link Works Scheme”	a scheme specifying details of the dimensions, construction and materials to be used and a timetable for delivery for the FP2607 Link Works.
“FP2607 Link Works Cost Cap”	the sum of £50,000 (fifty thousand pounds) Indexed to be paid towards the FP2607 Link Works.
“Footpath 2611”	the public footpath known as Footpath 2611 on the Definitive Map.
“FP2611 Contribution”	the sum of £80,000 (eighty thousand pounds) Indexed to be paid towards the FP2611 Upgrade Works.
“FP2611 Upgrade Works”	works required to upgrade Footpath 2611 to render it fit for use as a shared footpath and cycleway to be carried out between the points A and B and coloured blue on PROW Plan 1
“the FP2611 Upgrade Works Scheme”	a scheme specifying details of the dimensions, construction and materials to be used and a timetable for delivery for the FP2611 Upgrade Works.
“PROW Plan 1”	the plan appended at Schedule 1 identified as PROW Plan 1.
“PROW Plan 2”	the plan appended at Schedule 1 identified as PROW Plan 2.
“Section 278 Agreement”	an agreement(s) entered into pursuant to section 278 of the Highways Act 1980.
“Travel Plan”	the travel plan to be submitted and approved pursuant to the Planning Permission which for the avoidance of doubt shall be based on the Travel Plan Statement by Motion dated 28 February 2023.
“the Travel Plan Co-ordinator”	the person appointed by the Owners responsible for securing the implementation of the Travel Plan.
“Travel Plan Monitoring Fee”	the sum of £3,950 (three thousand nine hundred and fifty pounds) Indexed payable to the County Council for the auditing and monitoring of the Travel Plan.

The Owners hereby covenant with the County Council as set out in paragraphs 2 and 3 and with the District Council as set out in paragraph 4:

2. TRAVEL PLAN OBLIGATIONS

- 2.1 Prior to Commencement of Development, to pay the Travel Plan Monitoring Fee in full to the County Council and not to cause or permit Commencement of Development to occur until the Travel Plan Monitoring Fee has been received by the County Council.
- 2.2 Prior to the Occupation of the Development to appoint a Travel Plan Co-Ordinator and not to Occupy the Development unless a Travel Plan Co-ordinator has been appointed. The Owners shall notify the County Council in writing of the name, address, email address and telephone number of the person appointed.
- 2.3 Prior to Occupation of the 1st Dwelling to implement the approved Travel Plan or any amended Travel Plan (as may be agreed with the County Council in writing), and thereafter to comply with the Travel Plan in full until such time as it is agreed between the Owner and the County Council (in writing) that there is no need for a Travel Plan.

3. PROW IMPROVEMENTS – FP2611 UPGRADE

- 3.1 Prior to Occupation of the 1st Dwelling, to submit a scheme for the FP2611 Upgrade Works to the County Council for approval and not to Occupy the 1st Dwelling until the FP2611 Upgrade Works have been agreed in writing by the County Council.
- 3.2 Prior to Occupation of the 30th Dwelling in the Development to use all reasonable endeavours to obtain:
 - 3.2.1 All Requisite Consents including without limitation entering into a Section 278 Agreement with the County Council to carry out the FP2611 Upgrade Works in accordance with the approved scheme; and
 - 3.2.2 the appropriate consents from the landowner(s) for the carrying out of the FP2611 Upgrade Works in accordance with the approved scheme.
- 3.3 If, after using all reasonable endeavours for a period of six (6) months, it has not been possible to obtain All Requisite Consents to carry out the FP2611 Upgrade Works prior to Occupation of the 30th Dwelling pursuant to paragraph 3.2, to notify the County Council in writing with evidence demonstrating why it has not been possible to obtain All Requisite Consents.
- 3.4 In the event that the County Council receive a notice pursuant to paragraph 3.3 (above) and:
 - 3.4.1 do not accept the evidence provided []
 - 3.4.2 accept the evidence provided pursuant to paragraph 3.3 (above) OR fail to respond within [] Working Days, to pay to the County Council the FP2611 Contribution in lieu of the FP2611 Upgrade Works and not to cause or permit the Occupation of the 31st Dwelling in the Development until the FP2611 Contribution has been received by the County Council.

4. PROW IMPROVEMENTS – FP2607 LINK

- 4.1 Prior to Occupation of the 1st Dwelling, to submit the FP2607 Link Works Scheme to the District Council for approval and not to Occupy the 1st Dwelling until the FP2607 Link Works Scheme has been approved in writing by the District Council.
- 4.2 Prior to Occupation of the 30th Dwelling in the Development to use all reasonable endeavours to obtain:
 - 4.2.1 All Requisite Consents to carry out the FP2607 Link Works in accordance with the approved FP2607 Link Works Scheme; and
 - 4.2.2 the appropriate consents from the landowner(s) for the carrying out of the FP2607 Link Works in accordance with the approved scheme

PROVIDED THAT the cost of complying with paragraphs 4.1 and 4.2, together with the cost of carrying out the FP2607 Link Works shall not exceed the FP2607 Link Works Cost Cap.

- 4.3 Prior to Occupation of the 100th Dwelling, to carry out the FP2607 Link Works in accordance with the approved FP2607 Link Works Scheme PROVIDED THAT All Requisite Consents and the appropriate consents from the landowner have first been obtained in accordance with paragraph 4.2 (above), and if not, then paragraph 4.4 shall apply.
- 4.4 If, after using all reasonable endeavours, it has not been possible to fulfil the requirements of paragraph 4.2 (above), to notify the District Council in writing with evidence demonstrating why this has not been possible to obtain All Requisite Consents.
- 4.5 In the event that the District Council receive a notice pursuant to paragraph 4.4 (above) and:
 - 4.5.1 do not accept the evidence provided it shall, acting reasonably, set out a series of steps required to obtain All Requisite Consents and the appropriate consents from the landowner and a timetable for such steps;
OR
 - 4.5.2 accept the evidence provided pursuant to paragraph 4.4 (above) OR fail to respond within 20 Working Days the requirements of paragraph 4.3 shall be deemed discharged.

SCHEDULE 8

District Council and County Council covenants

The District Council covenants as follows:

1. Where the agreement, approval, consent, notice, certificate, direction, authority, action or expression of satisfaction is required by the Owners under the terms of this Deed such agreement, approval, consent, notice, certificate, direction, authority, action or expression of satisfaction shall not be unreasonably withheld or delayed.
2. To expend any District Council Contributions received solely for the purposes specified in this Agreement and for which they have been paid by the Owners.
3. To repay the District Council Contributions (or any part of them) that is not either expended or allocated to a contract for the purpose it was paid within 10 years of receipt, to the Owners (or its nominee) within 40 Working Days of receipt by the District Council of a written request from the Owners.

The County Council covenants as follows:

4. The County Council covenants that upon receipt of the County Council Contributions it will hold them in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it as specified in this Deed.
5. The County Council covenants upon written request on or after ten years of the date of receipt of the County Council Contributions to issue to the party that paid the said contribution an account certified by the Director Finance and Support Service for the time being of the County Council detailing how the County Council Contributions have been expended by the County Council
6. If or to the extent that the County Council Contributions shall not have been spent by the County Council by the end of the period referred to in paragraph 5 above the County Council shall on receipt of a written request being made refund to the party that paid (or its nominee) the County Council Contributions any unexpended part of the County Council Contributions together with compound interest on the unexpended part from the date of receipt by the County Council to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis PROVIDED THAT such written request shall only be made within one (1) year commencing from the date of expiry of the aforementioned ten (10) year period and in the event of no written request being made within such period any unexpended sum together with accrued interest shall be released free of any liability and obligations to the County Council PROVIDED THAT the County Council shall apply any unexpended sum only to a suitable provision serving the Development and in full compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010.