



Decision under Delegated Power

Officer Requesting Decision (if necessary)

Kathryn Harrison – Principal Solicitor

Officer Making the Decision

Adrian Ward – Head of Strategic Support

Recommendation

To enter into a S106 Agreement relating to land at Seagrave Road, Sileby(P/15/0047/2). The agreement deals with the contributions towards healthcare, civic amenities, education, highways, libraries, open spaces, and travel packs payable to the Borough and County Council. The agreement also requires 30% affordable dwellings.

Reason

To satisfactorily mitigate the impact of the proposed development and enable the developer to carry out his development in the event that the Secretary of State is minded to grant planning permission.

Authority for Decision

Delegated Powers (Council Functions) to the Head of Strategic Support on 12 April 2011 paragraph no 7 page 8-13.

7. To enter into and vary an agreement under Section 106 of the Town and Country Planning Act 1990.

Decision and Date

05 March 2018

Signed:

Agreed / ~~not Agreed~~

Background

The developer has submitted a planning application for up to 195 dwellings at the above site which requires contributions towards healthcare, civic amenities, education, highways, libraries, open spaces, and travel packs as well as the provision for affordable housing and public open space in accordance with the Borough Council's supplementary planning document in order to mitigate the impact of the development in planning terms. The Council failed to determine the application within the statutory time period and an appeal against non-determination was lodged. This appeal was determined but the Secretary of State's decision subsequently quashed by the High Court. A new inquiry is being undertaken to consider the application which requires the agreement of a new s.106 should the Inspector decide that the application should be granted. In that context it is considered that the attached agreement satisfactorily mitigates the impact of the proposed development and it is appropriate to enter into it should the Inspector grant the application.

Financial Implications

None

Risk Management

None

Key Decision: No

Background Papers: Engrossed S106 Agreement

Does the report contain exempt information?

Dated _____ **2018**

(1) CHARNWOOD BOROUGH COUNCIL

- and -

(2) LEICESTERSHIRE COUNTY COUNCIL

- and -

(3) MARY BESSIE MILTON-HAYNES & JOANNA WHYBERY OLIVER

- and -

(4) HALLAM LAND MANAGEMENT LIMITED

AGREEMENT AND PLANNING OBLIGATION

Under Section 106 of the Town and Country Planning Act 1990

relating to

Land east of Seagrave Road Sileby Leicestershire LE12 7NJ

WALKER MORRIS LLP

Kings Court
12 King Street
LEEDS
LS1 2HL
Tel: 0113 2832500
Fax: 0113 2459412
Ref: CAS/HAL.487-72

- 1.8 The Owner has agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Borough Council and the County Council as the case may be against the Owner and its respective successors in title pursuant to Section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Deed to the extent specified herein.
- 1.9 The Promoter has entered into this Deed with the intent of consenting to the entering into of the Deed by the Owner and to give certain covenants set out herein.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Deed unless the context otherwise requires the following words expressions and phrases shall have the meanings hereby ascribed to them:

- "Act"** means the Town and Country Planning Act 1990 (as amended);
- "Affordable Housing"** means housing provided to eligible households whose needs are not met by the market in accordance with the definition set out in Annex 2 of the National Planning Policy Framework (or any future guidance that replaces or supplements it);
- "Affordable Housing Scheme"** means a scheme providing details of the location, size, type, tenure and mix of the Affordable Housing Units on a Phase or the Development as a whole (as the case may be) or as otherwise agreed in writing between the Owner and the Borough Council such scheme to include a marketing plan for the Affordable Housing Units;
- "Affordable Housing Units"** means the 30% of the Dwellings to be provided as Affordable Housing of which 80% shall be Social and/or Affordable Rented Units and 20% shall be Intermediate Housing Units and reference to **"Affordable Housing Unit"** shall be construed accordingly;
- "Affordable Rent"** means an affordable rent that is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable) as defined in Annex 2 of the National Planning Policy Framework (or any future guidance that replaces or supplements it);

- "Appeal"** means the appeal PINS Reference No. APP/X2410/W/16/3152082 lodged on behalf of the Owner against the Borough Council's failure to give notice of its decision in relation to the Application within the appropriate statutory period;
- "Application"** means the application for outline planning permission submitted to the Borough Council registered on 21 January 2015 and which has been allocated reference number P/15/0047/2 for the erection of up to 195 dwellings, together with public open space, landscaping, access and surface water attenuation on the Site;
- "Bus Pass"** means a free six month adult bus pass entitling the holder to travel free of charge for a period of six months for travel within Leicestershire at any time (provided that this pass is applied for prior to the expiry of the period ending three months immediately following the legal completion date of the first transfer of the relevant Dwelling to be provided to First Occupiers of Dwellings in accordance with the provisions of paragraph 4.2.1 of Schedule 2 and reference to "Bus Passes" shall be construed accordingly;
- "Chargee"** means any mortgagee or chargee of the Registered Provider (or any receiver (including an administrative receiver) or administrator appointed by such mortgagee or charge or any person appointed under security documentation to enable such mortgagee or charge to realise its security or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;
- "Choice Based Lettings Scheme"** means the scheme set down in the policy dated April 2014 published by Charnwood Borough Council and titled 'Choice Based Lettings (CBL) Allocations Policy' or any scheme which shall supersede that scheme after the date of this Deed for the purpose of nominating applications for affordable housing;

- “CIL Regulations”** means the Community Infrastructure Regulations 2010 (as amended);
- "Civic Amenities Contribution"** means the sum of £10,076.00 (ten thousand and seventy six pounds) Index Linked to be paid to the County Council by the Owner and used by the County Council towards funding capacity improvements at Mountsorrel Civic Amenity Site through project reference MOU001 to increase waste storage area including the reconfiguration and or amendment to existing site signage and boundary walls / fences the need for which directly arises from the Development;
- “Commencement of Development”** means the carrying out of a material operation for the commencement of the Development pursuant to the Planning Permission (or a Reserved Matters Approval as the case may be) as defined in section 56(4) of the Act Save That for the purposes of this Deed but not further or otherwise the term “material operation” shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation archaeological investigation works site and soil surveys site access works to enable access by contractors for the above purposes erection of contractors work compound erection of site office erection of fencing and reference to "**Commencement Date**" and "**Commence Development**" shall be construed accordingly;
- "Committed"** means monies shall be deemed to have been committed if the Borough Council or the County Council as the case may be has entered into any contract or given any undertaking (whether enforceable in law or otherwise) the performance or fulfillment of which will require the Borough Council or the County Council as the case may be to expend funds in the future and such monies are so expended no later than 12 months beyond the specified repayment date;
- “County Council Monitoring Costs** means the sum of £300.00 (three hundred pounds) Index Linked per Planning Obligation in Schedule 2 or 0.5% of the value of any contribution due under the Schedule 2 (whichever is the

Contribution	greater sum) payable towards the County Council's costs of monitoring compliance with the Planning Obligations in Schedule 2;
"Deed of Nomination"	means a deed between the Borough Council and Registered Provider that outlines the nomination policy to be used in nominating people to the Affordable Housing Units;
"Development"	means the development described in the Application;
"Dwellings"	means the residential units to be constructed on the Site as part of the Development pursuant to the Planning Permission and reference to " Dwelling " shall be construed accordingly;
"Education Contribution"	means the sum of £566,233.67 (five hundred and sixty six thousand two hundred and thirty three pounds and sixty seven pence) Index Linked to be paid to the County Council by the Owner and used by the County Council in accordance with the Education Contribution Purposes in order to address impacts which directly arises from the Development;
"Education Contribution Purposes"	means accommodating the capacity issues created by the Development by providing additional facilities at Highgate Primary School or such other primary schools as will provide additional capacity to accommodate pupil growth from the Development;
"First Occupation"	means the first Occupation of a Dwelling excluding all subsequent occupation and reference to " First Occupied " and " First Occupier(s) " shall be construed accordingly;
"Highways Contribution"	means the sum of £3,500.00 (three thousand five hundred pounds) Index Linked to be paid to the County Council by the Owner and used by the County Council towards improvements to the bus stop nearest to the Site on Heathcote Drive to include raised and dropped kerbs to allow level access the need for which directly arises from the Development;

- “HomeBuy Agent”** means the organisation appointed by Homes England to manage the eligibility for and allocation of the Intermediate Dwellings;
- “Homes England”** means Homes England or any bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act);
- “Index Linked”** means:
1. in relation to the financial contributions payable to the County Council (except any highway contribution payable) the RICS and Building Cost Inflation Service (BCIS) All in Tender Price Index or (during any period where no such index exists) the index which replaces the same or is the nearest equivalent to it; and
 2. in relation to any financial contribution payable to the County Council in respect of any highway works the Resource Cost Index of Road Construction (ROCOS) published by the Department for Business, Enterprise & Regulatory Reform (BERR) as part of the Quarterly Building and Cost Indices for Public Sector Construction Works or such other index as may from time to time be published in substitution thereof; and
 3. in relation to the financial contributions payable to the Borough Council the Retail Price Index (RPI) or (during any period where no such index exists) the index which replaces it;
- “Intermediate Housing Units”** means 20% of the Affordable Housing Units to be constructed in accordance with the Planning Permission and Reserved Matters Approval(s) and provided in accordance with an approved Affordable Housing Scheme and disposed of by way of a Shared Ownership Lease granted by the Registered Provider to Qualifying Persons (being also the occupier of such

Intermediate Housing Unit) pursuant to which such lessee obtains a share of the equity in the Intermediate Housing Unit ranging between 25% and 75% from the Registered Provider who retains any remainder and in respect of which rent is payable on the remaining equity and “**Intermediate Housing Unit**” and “**Intermediate Housing**” shall be construed accordingly;

"Library Contribution" means the sum of £5,890.00 (five thousand eight hundred and ninety pounds) Index Linked to be paid to the County Council by the Owner and used by the County Council as a contribution towards project SIL003 in relation to the re-configuration of the internal public space of Sibley Library to mitigate the impacts of the increased demand which would arise from the Development;

"Management Arrangements" means a scheme to be submitted to and approved by the Borough Council for the long term future management and maintenance of the land and facilities to which that scheme relates including all ongoing maintenance operations, specifically identifying the management objective, task and the timing, phasing programme, proposed permanent funding mechanism, long-term design objectives, management techniques, access, maintenance schedules, delivery and frequency of the operation;

"Management Company" means a limited company registered at Companies House which may already be in existence or which may be formed by the Owner for the purpose of carrying out future maintenance of the On-Site Public Open Space and:

1. which is incorporated in England, Wales or Scotland
2. which has its registered office in England; and
3. whose primary objects permit it to maintain and renew the On-Site Public Open Space;

"National Health Service" means the sum of £121,423.68 (one hundred and twenty one

England Contribution" thousand four hundred and twenty three pounds and sixty eight pence) Index Linked to be paid to the Borough Council by the Owner and used by the Borough Council as follows:

1. £58,429.44 (fifty eight thousand four hundred and twenty nine pounds and forty four pence) towards providing additional accommodation at Highgate Surgery, 5 Storer Close, Sileby, Loughborough LE12 7UD; and
2. £62,994.24 (sixty two thousand nine hundred and ninety four pounds and twenty four pence) towards providing additional accommodation at The Banks Surgery, 9 The Banks, Loughborough LE12 7RD;

the need for which directly arises from the Development;

"NHS England" means an executive non-departmental public body of the Department of Health that oversees the budget, planning, delivery and day-to-day operation of the commissioning side of the NHS or any bodies undertaking the existing functions of NHS England from time to time;

"Occupation" means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in the construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and reference to **"Occupy"** shall be construed accordingly;

"On-Site Public Open Space" means those parts of the Site to be laid out as open space in accordance with the conditions annexed to the Planning Permission and / or Reserved Matters Approval(s);

"Open Market Dwellings" means those Dwellings that are not Affordable Housing Units and **"Open Market Dwelling"** shall be construed accordingly;

"Open Market Value" means a figure agreed in writing between the Owner and the Borough Council based on the average of three independent

valuations each circulated having regard to the estimated amount for which the relevant Dwelling or Dwellings could reasonably be expected to sell in the open market as Open Market Dwelling(s) on the date of valuation between a willing buyer and a willing seller;

"Open Space Works" means the works to be carried out for the laying out of the On-Site Public Open Space in accordance with the conditions annexed to the Planning Permission and / or Reserved Matters Approval(s);

"Original Agreement" means an agreement dated 9 February 2017 and made under Section 106 of the Act between Charnwood Borough Council (1) Leicestershire County Council (2) Mary Bessie Milton-Haynes and Joanna Whybery Oliver (3) and Hallam Land Management Limited (4);

"Phase" means a phase of the Development and which shall either:

1. be of the same extent as each Reserved Matters Approval granted by the Borough Council; or
2. be detailed in any phasing plan approved by the Borough Council in relation to a condition to the Planning Permission; or
3. be such other phasing that may be agreed in writing between the Owner and the Borough Council

and reference to **"Phases"** shall be construed accordingly;

"Plan" means the plan marked "Plan" annexed hereto;

"Planning Obligations" means the obligations, conditions and stipulations set out in the Schedule 1 and Schedule 2 and reference to **"Planning Obligation"** shall be construed accordingly;

"Planning Permission" means a planning permission which may be granted pursuant to the Application and the Appeal by or on behalf of the Secretary

of State;

“Prepared or Serviced Site”

means in relation to the Site or any part thereof such as may be specified in the relevant provision of this Deed:

- (a) levelled, all works to protect, remove or record existing archaeological remains have been carried out in accordance with any agreed scheme, all rubbish has been removed, remediated to an appropriate standard, any necessary regulatory consents have been obtained and any necessary protected species mitigation measures implemented to enable the intended works to be carried out and no interests, physical constraints or encumbrances exist which shall materially affect the proposed use of the relevant land; and
- (b) having connections for mains water, sewerage, gas, electricity and telecommunications appropriate to the proposed use of the relevant land and adequate for the purposes of the prospective users of such land and either at the boundary of the Site of the relevant facility or reasonably proximate to it to enable connections to be made thereto and with sufficient vehicular and pedestrian access to the land from a public highway;

"Protected Tenant"

means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (c) has been granted a Intermediate Housing Lease by the Registered Provider in exercise of that person's statutory right in respect of a particular Affordable

Housing Unit and the tenant has subsequently purchased from that Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit

and any successor in title to any of (a) (b) or (c) above;

“Provided”

means in relation to the relevant Affordable Housing Unit:

- (a) when it has been completed on a Prepared or Serviced Site to the reasonable satisfaction of the Borough Council as evidenced in writing pursuant to when it has received the relevant Reserved Matters Approval; and
- (b) when it has been Transferred to a Registered Provider; and
- (c) when notification of the Transfer has been given to the Borough Council;

"Public Open Space Contribution"

means the sum of £1,051.68 (one thousand and fifty one pounds and sixty eight pence) per Dwelling Index Linked be paid to the Borough Council by the Owner and used towards addressing the shortfall in youth / adult recreation, allotments, children's and young people's provision of play equipment, skate park improvements and youth shelter at Memorial Park and funding towards a replacement scout/youth hall and which serves the needs arising from the development;

“Qualifying Person”

means a person or persons who are nominated or selected by the Registered Provider in accordance with the Choice Based Lettings Scheme to Occupy an Affordable Housing Unit or if no such scheme is in place a person or persons nominated or selected by agreement or Deed of Nomination between the Borough Council and Registered Provider and reference to "Qualifying Persons" shall be construed accordingly;

“Reasonable Endeavours”

means that the Owner will be bound to attempt to fulfil the relevant obligation or commitment by the expenditure of such

effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may reasonably be expected of a private company to achieve the objective of the obligation element as set out in this Deed acting reasonably properly and commercially in the context of its fiduciary responsibilities to its shareholders;

- "Registered Provider"** means a registered provider of Affordable Housing or the Borough Council as listed on the register held by Homes England pursuant to Chapter 3 of Part 2 of the Housing and Regeneration Act 2008 who is approved by the Borough Council or any company or other body approved by Homes England for receipt of social housing grant as may be proposed by the Owner and approved by the Borough Council;
- "Reserved Matters Application"** means any reserved matters application made pursuant to the Planning Permission for some or all of the Development;
- "Reserved Matters Approval(s)"** means an approval by the Borough Council of a Reserved Matters Application;
- "Secretary of State"** means the Secretary of State within the Department for Communities and Local Government or any substitute or any Inspector appointed by him;
- "Shared Ownership Lease"** means a shared ownership lease in the model form approved by Homes England;
- "Site"** means the land at east of Seagrave Road Sileby Leicestershire LE12 7NJ being the subject of the Application and shown for the purposes of identification edged red on the Plan;
- "Social Rent"** means a social rent set by a Registered Provider or the Borough Council that is subject to guideline Homes England target rents as determined through the national rent regime;
- "Social and/or Affordable Rented Units"** means 80% of the Affordable Housing Units which are to be let as a broadly equal mix of units for Affordable Rent and Social Rent to be constructed in accordance with the Planning

Permission and Reserved Matters Approval(s) and provided in accordance with an approved Affordable Housing Scheme and "**Social and Affordable Rented Unit(s)**" shall be construed accordingly;

"Statutory Undertaker" means any company corporation board or authority at the date of this Deed authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking;

"Transfer" means completion of a transfer of the:

1. freehold of the Affordable Housing Units to the Registered Provider or
2. the parts of the Site upon which the Affordable Housing Units are to be constructed in accordance with a build contract made between the Owner and the Registered Provider and unconditionally released for completion by the Owner; or
3. management functions of an Affordable Housing Unit to a Registered Provider

and "**Transferred**" shall be construed accordingly;

"Travel Pack " means a pack provided to new residents on First Occupation of any Dwelling giving details of sustainable travel choices available in the surrounding area to include bus timetables, cycle and walking routes within the locality of the Site and including two applications for Bus Passes and reference to "**Travel Packs**" shall be construed accordingly;

"Travel Pack Contribution" means the sum of £52.85 (fifty two pounds and eighty five pence) Index Linked per Dwelling to be paid to the County Council by the Owner and used by the County Council for the provision of each Travel Pack the need for which directly arises from the Development;

"Travel Plan" means a travel plan to be agreed and implemented in accordance with a condition(s) annexed to the Planning Permission;

"Travel Plan Monitoring Sum" means the sum of £6,000.00 (six thousand pounds) Index Linked to be paid to the County Council by the Owner and used by the County Council towards monitoring the Travel Plan using iTrace the need for which directly arises from the Development;

"Working Day" means a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business and reference to **"Working Days"** shall be construed accordingly.

- 2.2 Clause headings shall not affect the interpretation of this Deed.
- 2.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Borough Council and the County Council the successors to their respective statutory functions.
- 2.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; provided that, as between the parties, no such amendment, extension or re-enactment shall apply to this deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 2.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.10 A reference to writing or written does not include fax, but will include email.

- 2.11 A reference to "this Deed" or to any other agreement or document referred to in this Deed is a reference to this Deed or such other document or deed as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 2.12 References to clauses, plans, schedules and appendices are to the clauses, plans, schedules and appendices of this Deed.
- 2.13 An obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 2.14 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

3 STATUTORY PROVISIONS

- 3.1 This Deed is made in pursuance of the powers set out in Section 106 of the Act and all other powers enabling and is a planning obligation for the purposes of Section 106 of the Act and the Borough Council is the local planning authority by which the provisions of this Deed shall be enforceable and in so far as any of the covenants contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers.

4 CONDITIONALITY

- 4.1 With the exception of clauses 5.1.1, 8, 9, 10, 11, 13 to 22 (inclusive) and paragraphs 1.1 and 1.3 of Schedule 1 and paragraph 4.1.1 and 7.1 of Schedule 2 (which take effect immediately), together with any other provisions required in order to interpret, give effect to, or enforce those provisions this Deed is conditional on:
- 4.1.1 the grant and issue of the Planning Permission by the Secretary of State; and
- 4.1.2 the Commencement of Development.
- 4.2 In the event that the Secretary of State expressly states in his decision letter that any individual obligation in this Deed is:

- 4.2.1 not compliant with the CIL Regulations; or
- 4.2.2 is covered by the Borough Council's CIL Regulation 123 list in place at the date of this Deed

then that obligation or those obligations will cease to have effect and will not be enforceable against the Owner by the Borough Council or County Council.

5 COVENANTS TO THE COUNCILS

- 5.1 Subject to clause 4 the Owner covenants with the Borough Council and the County Council to:
 - 5.1.1 observe and perform the covenants, restrictions and obligations contained in this Deed;
 - 5.1.2 give at least seven Working Days written notice to the Borough Council and the County Council of the intended Commencement Date.

6 COVENANTS BY THE COUNCILS

- 6.1 The Borough Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 3 and where applicable in Schedule 1.
- 6.2 The County Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 4 and where applicable in the Schedule 2.

7 RELEASE

- 7.1 No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed:
 - 7.1.1 after parting with all of its interest in the Site or the part in respect of which such breach occurs (or whilst he shall have no interest in the part of the Site in respect of which such breach occurs) except in respect of any breach subsisting prior to parting with such interest;
 - 7.1.2 if he or it shall be an occupier or owner or tenant of an individual Dwelling only (save for the restrictions relating to occupation contained in paragraphs 1.6 to 1.11 (inclusive) of Schedule 1 relating to individual Affordable Housing Units);

7.1.3 if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking only.

7.1.4 For the avoidance of doubt it is hereby agreed that notwithstanding any provision to the contrary in this Deed the liability of the Owner shall be limited to the extent of the assets for the time being of the Skertchly Trust and none of the individual trustees shall be liable in any personal capacity for any breach of the covenants or planning obligations in this Deed unless they either individually or collectively Commence Development on the Site.

7.1.5 For the purposes of sub-clause 7.1.1 a person parts with all interest in the Site or part thereof (or has no interest in such part thereof) notwithstanding the existence reservation of any rights or the imposition of any covenants or restrictions over it enforceable by or otherwise benefiting them.

8 DETERMINATION OF DEED

8.1 The obligations in this Deed (with the exception of clauses 9.1 and 10) shall cease to have effect if before the Commencement of Development, the Planning Permission:

8.1.1 expires;

8.1.2 is varied modified or revoked other than at the request of the Owner; or

8.1.3 is quashed following a successful legal challenge.

9 LOCAL LAND CHARGE

9.1 This Deed is a local land charge and shall be registered as such by the Borough Council.

10 COUNCILS' COSTS

10.1 The Promoter shall pay to the Borough Council £850.00 on or before the date of this Deed being the Borough Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed.

10.2 The Promoter shall pay to the County Council £950.00 upon execution of this Deed being the County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed.

11 OWNERSHIP

11.1 Until the covenants, restrictions and obligations in this Deed have been complied with, the Owner will give to the Borough Council and the County Council within seven Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Site:

11.1.1 the name and address of the person to whom the disposition was made; and

11.1.2 the nature and extent of the interest disposed of;

PROVIDED THAT this obligation shall not apply to the disposal (including but not limited to disposal by lease) by the Owner of any individual dwellings constructed on the Site.

12 REASONABLENESS

12.1 Any approval, consent, direction, authority, agreement or action to be given by any Parties to this Deed shall not be unreasonably withheld or delayed and the parties shall otherwise act in good faith in the fulfilment of the obligations under this Deed.

13 CANCELLATION OF ENTRIES

13.1 Following the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Borough Council's reasonable and proper costs) the Borough Council will issue a written confirmation of such performance or discharge.

13.2 Following the performance and full satisfaction of all the terms of this Deed or if this Deed is determined pursuant to clause 8 (and subject to the payment of the Borough Council's reasonable and proper costs and charges) the Borough Council will following the written request of the Owner cancel all entries made in the local land charges register in respect of this Deed.

14 DISPUTES

14.1 If any dispute arises out of this Deed, the dispute shall be referred to an arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

15 NO FETTER OF DISCRETION

15.1 Nothing (contained or implied) in this Deed shall fetter or restrict the Borough Council's and / or the County Council statutory rights, powers, discretions and responsibilities.

16 WAIVER

16.1 No waiver (whether express or implied) by the Borough Council and / or the County Council of any breach or default by the Owner in performing or observing any of the covenants, restrictions or obligations of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Borough Council and / or the County Council from enforcing any of the relevant terms or conditions contained in this Deed or acting on any subsequent breach or default of this Deed.

17 FUTURE PERMISSIONS

17.1 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

18 AGREEMENTS AND DECLARATIONS

18.1 The parties agree that:

18.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and

18.1.2 nothing in this Deed grants planning permission or any other approval, consent or permission required from the Borough Council in the exercise of any other statutory function; and

18.1.3 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the Act this Deed shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.

18.1.4 In the event that an application is made pursuant to Section 73 of the Act for an amendment to the Planning Permission and planning permission is granted in respect of the application (and the Borough Council is satisfied that no revised planning obligations are required as a result of such amendment) references to Planning Permission in this Deed shall be to the new planning permission granted pursuant to Section 73 of the Act and this Deed shall apply to and remain in full force in respect

of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the Act.

18.1.5 This Deed supersedes and replaces the Original Agreement which shall cease to have effect.

19 NOTICES

19.1 Any Notice or other information required or authorised by this Deed to be given by any party may be given by hand or sent by first class pre paid post and if sent by post shall be deemed to be served two days after being sent unless returned to the sender as undelivered mail by the Post Office.

20 THIRD PARTY RIGHTS

20.1 No person other than a party to this Deed shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

21 SEVERANCE

21.1 If any court or competent authority finds that any provision of this Deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Deed shall not be affected.

21.2 If any invalid, unenforceable or illegal provision of this Deed would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and the parties shall cooperate and act reasonably so as to give effect to any necessary modifications so as to achieve the intention of the original Deed.

22 GOVERNING LAW

22.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

SCHEDULE 1

(Owner's Covenants with the Borough Council)

The Owner covenants with the Borough Council as follows:

1. **Affordable Housing**

- 1.1 Not to Commence Development until it has submitted to the Borough Council and received approval in writing of an Affordable Housing Scheme **PROVIDED THAT** if agreement cannot be reached between the Borough Council and the Owner within 40 Working Days of the date of its submission to the Borough Council (or such other period of time that may be agreed) then the provisions of clause 14 of this Agreement relating to dispute resolution can be invoked by any party in relation to only those matters that are in dispute.
- 1.2 To procure that the Affordable Housing Units are constructed in accordance with the Planning Permission Reserved Matters Approval approved plans and the approved Affordable Housing Scheme or in accordance with any amended plans submitted to and approved by the Borough Council.
- 1.3 To notify the Borough Council in writing seven days prior to the Commencement of Development.
- 1.4 Unless otherwise agreed in writing by the Borough Council not to Occupy more than:
 - 1.4.1 33% of the Open Market Dwellings within the Development or on a Phase as the case may be until 25% of the Affordable Housing Units to be provided within the Development or on that Phase (as relevant) have been Provided; or
 - 1.4.2 66% of the Open Market Dwellings within the Development or on a Phase as the case may be until 66% of the Affordable Housing Units to be provided within the Development or on that Phase (as relevant) have been Provided; or
 - 1.4.3 90% of the Open Market Dwellings within the Development or on a Phase as the case may be until 100% of the Affordable Housing Units to be provided within the Development or on that Phase as relevant have been Provided.
- 1.5 To notify the Borough Council in writing within 15 Working Days of each Transfer of an Affordable Housing Unit to a Registered Provider including the date of such Transfer, together with providing details of the Registered Provider to whom the Affordable Housing Units have been transferred (whether of the legal estate or management functions).

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- 1.6 The Owner shall actively pursue and use Reasonable Endeavours to secure a Transfer of the Affordable Housing Units. In doing so, the Owner shall liaise with and invite offers from any Registered Provider nominated by the Borough Council.
- 1.7 None of the Affordable Housing Units shall be occupied for any purpose other than as Affordable Rented Units or Intermediate Housing Units by Qualifying Persons.
- 1.8 It shall be a term of any Transfer of the Affordable Housing Units to any Registered Provider that the Registered Provider shall ensure that all Social and Affordable Rented Units are occupied in accordance with the Borough Council's Choice Based Lettings Scheme and all Intermediate Housing Units are occupied in accordance with the Home Buy Agent's Criteria unless otherwise agreed with the Borough Council.
- 1.9 Any service charge and any subsequent revision per Affordable Housing Unit shall be set at a fair and reasonable proportion of the costs relating to the services provided to that Affordable Housing Unit.
- 1.10 No Affordable Housing Unit shall be occupied unless the Borough Council has been granted the ability (to be binding on future occupiers and against the title) to nominate occupiers for 100% of all first lettings and 75% of all subsequent lettings of the Social and Affordable Rented Units.
- 1.11 In relation to any transfer of the Affordable Housing Units the Owner shall:
- (a) Procure that the first transfer of each Affordable Housing Unit shall be free from financial encumbrances save as referred to in the further provisions of this paragraph 1.11;
 - (b) Procure that the transfer of each Affordable Housing Units shall be of a freehold estate, and as far as possible, with full title guarantee;
 - (c) Procure that the transfer of each of the Affordable Housing Units shall contain:
 - (i) An exception and reservations of such easements and rights and privileges to the transferor or its successor in title and assigns as may be reasonably be required for the satisfactory development or redevelopment of the Site;
 - (ii) A grant of such rights of access, easements, other rights and privileges to the transferee or its successor in title and assigns as may reasonably be required for the satisfactory use and development or redevelopment of the

Affordable Housing Units and for the beneficial enjoyment of the Affordable Housing Units;

- (iii) Provide access and foul and surface water sewers, and water, gas, electricity and telecommunications service systems for each Affordable Housing Unit linking in each case to the estate roads and service systems to be constructed and laid as part of the remainder of the Development and connected ultimately to highways and sewers maintainable at the public expense;
- (iv) A covenant which is binding on the property by the transferee with the transferor and the Borough Council not to use the Affordable Housing Units for any other purpose other than for use as an Affordable Housing Unit in accordance with the terms of this Deed (such covenant to be subject always to the exclusions in paragraph 1.12 of this Schedule) and on the disposal of the Affordable Housing Unit (subject to the provisions of paragraph 1.12 of this Schedule where applicable) to obtain an identical covenant from the disposee.

1.12 It is agreed that the obligations in this Schedule shall not be binding on:

1.12.1 any Protected Tenant or any mortgagee chargee or receiver of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees chargees or receivers; or

1.12.2 any Chargee exercising a power of sale or successor in title thereto

PROVIDED THAT IN the case of sub-paragraph 1.12.2 of this Schedule the following requirements must have been satisfied:

- (i) for a period of 3 months or such lesser period as may be agreed in writing by the Borough Council to facilitate the delivery of the Affordable Housing Units such Chargee has used Reasonable Endeavours to secure the continued availability of the Affordable Housing Units in question including through the involvement of Registered Providers (including pursuant to the provisions of the Housing Act 1996) but if after the expiry of the aforesaid period of 3 months or such lesser period as may be agreed in writing with the Borough Council to facilitate the delivery of Affordable Housing Units is has been unsuccessful the Chargee may apply to the Borough Council for itself and its successors in title to be released from the terms of

this Deed and shall provide to the Borough Council such evidence as they may reasonably require to satisfy the Borough Council that all reasonable attempts to secure the continued provision of the Affordable Housing Units as Affordable Housing Units have been carried out such evidence to include details of any communications with Homes England and guidance received, a list of which other Registered Providers have been approached, details of any terms or conditions which have been applied and the consideration requested; and

- (ii) without prejudice to the generality of the above, such chargee shall in writing give the Borough Council and the Registered Provider (as appropriate) at least 8 weeks, or such lesser period as may be agreed in writing by the Borough Council to facilitate the delivery of the Affordable Housing Units, prior notice of its intention to exercise any powers of sale in respect of any Affordable Housing Units and to provide the Borough Council or the Registered Provider the opportunity to complete a transfer of the Affordable Housing Units in question in order to ensure that they continue to be used for the purposes of Affordable Housing;

AND FURTHER PROVIDED THAT in the case of sub-paragraph 1.12.1 of this Schedule the Owner and any relevant Registered Provider (as applicable) shall, unless the legislation otherwise requires, use or procure the use of the net proceeds of sale as defined in section 24(3) of the Housing Act 1996 (and any amendment, re-enactment or successor provision) received from a Protected Tenant to fund the provision of further Affordable Housing and use Reasonable Endeavours to make such provision in the District of the Borough Council.

2. **National Health Service England Contribution**

2.1 To notify the Borough Council prior to the Occupation of more than:

2.1.1 one of the Dwellings and not to Occupy more than one of the Dwellings unless or until £40,474.56 (forty thousand four hundred and seventy four pounds and fifty six pence) of the National Health Service England Contribution Index Linked has been paid to the Borough Council;

2.1.2 50% of the Dwellings and not to Occupy more than 50% of the Dwellings unless or until a further £40,474.56 (forty thousand four hundred and seventy four pounds and fifty six pence) of the National Health Service England Contribution Index Linked has been paid to the Borough Council;

2.1.3 75% of the Dwellings and not to Occupy more than 75% of the Dwellings unless or until the balance of £40,474.56 (forty thousand four hundred and seventy four pounds and fifty six pence) of the National Health Service England Contribution Index Linked has been paid to the Borough Council.

3. **On-Site Public Open Space**

3.1 The Owner shall carry out the Open Space Works and make available for public use in accordance with the relevant conditions attached to the Planning Permission and Reserved Matters Approvals and any trigger points for completion of such works. Unless agreed otherwise pursuant to relevant conditions, the Open Space Works shall be completed and made available for public use prior to Occupation of 60% of Dwellings within the relevant Phase.

3.2 Following the completion of the Open Space Works or an individual element of the Open Space Works (as the case may be) to notify the Borough Council by serving a notice in writing upon the Borough Council ("**Owner's Notice**") who shall within 15 Working Days or as soon as reasonably practicable arrange for the inspection of the Open Space Works or the particular element of On-Site Public Open Space that has been completed and if the Open Space Works shall have been carried out to the reasonable satisfaction of the Borough Council the Borough Council shall issue a certificate of completion ("**Certificate of Completion**") of the Open Space Works or the particular element of On-Site Public Open Space that has been completed such certificate to bear the date of the inspection ("**Completion Date**") **PROVIDED THAT** it is agreed that in the event that the Borough Council does not inspect the Open Space Works or the particular element of On-Site Public Open Space that has been completed within 25 Working Days of the date it receives the Owner's Notice then the date ending 30 Working Days after the date it receives the Owner's Notice shall be deemed to be the relevant Completion Date.

3.3 If the Open Space Works relating or the particular element of On-Site Public Open Space that has been completed have not been carried out to the satisfaction of the Borough Council then following notification in writing by the Borough Council of any defect the Owner shall promptly rectify the defect specified and within 30 Working Days (or such other period of time agreed in writing by the Council) invite further inspection by the Borough Council in accordance with the procedures set out in paragraph 3.2 of this Schedule such procedures to be repeated as necessary until the Borough Council issues a Certificate of Completion of the Open Space Works or the particular element of On-Site Public Open Space that has been completed.

- 3.4 Following completion of the Open Space Works the Owner shall submit to the Borough Council and receive approval of Management Arrangements and the Owner shall thereafter procure the management and maintain the Open Space Works and On Site Open Space in accordance with the approved Management Arrangements.
- 3.5 Prior to transfer of the On-Site Public Open Space the Owner shall provide the Borough Council with ongoing review and monitoring arrangements to demonstrate adequate short and long term funding provision of the Management Company in accordance with the approved Management Arrangements.
- 3.6 No more than 50% of Dwellings (or such other number of Dwellings agreed in writing by the Borough Council) within the relevant Phase and Development as a whole shall be occupied until long term arrangements for the future management and maintenance of the On-Site Public Open Space ("**Management Plan**") have been approved by the Borough Council and put in place.
- 3.7 The Owner shall be responsible for maintaining all On-site Public Open until such time as the same have been transferred to a Management Company in accordance with the Management Plan approved in accordance with paragraph 3.6 of this Schedule and prior to such transfer the Owner shall have maintained (including remedying any defects) in accordance with the approved Management Arrangements and Management Plan.
- 3.8 Following service of a Certificate of Completion in accordance with paragraphs 3.2 or 3.3 of this Schedule to transfer in accordance with the Management Arrangements the freehold of the On-Site Public Open Space, or the particular element of On-Site Public Open Space that has been completed, to a Management Company (having first supplied to the Borough Council a certified copy of the Memorandum and Articles of Association of the Management Company) and received approval from the Borough Council prior to the Occupation of 80% of the Dwellings within the relevant Phase and Development as a whole on terms agreed between the Owner and the Management Company in consultation with the Borough Council and all further management and maintenance shall thereafter be carried out by the Management Company in accordance with the principles set out in paragraph 3.8.1 of this Schedule and approved Management Arrangements **PROVIDED THAT** it is agreed that it shall be a term of the transfer to the Management Company that the Management Company will:
- 3.8.1 Maintain and manage in perpetuity the On-Site Public Open Space in accordance with the principles of good horticultural and estate management and approved

Management Arrangements. To ensure that any equipped play areas that may be provided within the On-Site Public Open Space are inspected on a quarterly basis by a competent person and a record of inspections are recorded. That an independent annual inspection is completed by a Register of Play Inspectors International (RPII) qualified inspector and any findings are addressed promptly to protect the safety of users; and

- 3.8.2 permit the use of the On-Site Public Open Space for public access and recreation and for no other purpose

AND FURTHER PROVIDED THAT it is agreed that the Owner will comply with the provisions set out in paragraphs 3.8.1 and 3.8.2 of this Schedule and maintain the On-Site Public Open Space until such time as the On-Site Public Open Space, or the particular element of On-Site Public Open Space, has been transferred to a Management Company in accordance with the approved Management Arrangements..

- 3.9 The Owner shall not permit the sale of any Dwelling without having first formed the Management Company and provided evidence of such formation to the Borough Council (including a certified copy of the Memorandum and Articles of Association of the company).
- 3.10 The Owner shall not wind up the Management Company nor alter the constitution of the Management Company without the prior written consent of the Borough Council unless otherwise first agreed in writing by the Borough Council.
- 3.11 The Owner shall ensure and procure that the sale contract of each Dwelling contains a provision that requires the buyer of such Dwelling to become a member of the Management Company as soon as reasonably practicable following the formation of the Management Company.
- 3.12 The Owner shall procure that the buyer of each Dwelling has entered into covenants substantially in the following form direct with the Management Company under which the buyer shall:
- 3.12.1 covenant to pay to the Management Company a pro rata proportion (according to the number of Dwellings) of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining the On-Site Public Open Space; and

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- 3.12.2 covenant that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 3.12.1 and 3.12.2 of this Schedule.
- 3.13 The Owner hereby declares that pursuant to Section 31(6) Highways Act 1980 that the On-Site Public Open Space has not been dedicated to the public nor is any use by the public of any part of the On-Site Public Open Space to be taken in any way as an intention by the Owner to dedicate the same as highway.
- 3.14 The Owner will procure in either case that public access is allowed to the On-Site Public Open Space but subject to the following provisions:
- 3.14.1 access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management **PROVIDED THAT** such requirements and regulations shall not be imposed without the Borough Council's prior written approval;
- 3.14.2 the Owner may erect notices on the On-Site Public Open Space and access to them will be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being, prior notice of which shall be provided in writing to the Borough Council prior to the erection of those notices; and
- 3.14.3 access may be denied by the Owner for and during the maintenance, repair, cleansing or renewal of the On-Site Public Open Space or for and during the construction of any building or land abutting it subject to the Borough Council's prior approval.
4. **Public Open Space Contribution**
- 4.1 Following the receipt of a Reserved Matters Approval:
- 4.1.1 to notify the Borough Council prior to the Occupation of more than 25% of the Dwellings to be constructed in accordance with that Reserved Matters Approval and not to Occupy more than 25% of the Dwellings to be constructed in accordance with that Reserved Matters Approval until 25% of the Public Open Space Contribution Index Linked relative to the number of Dwellings to be constructed in accordance with that Reserved Matters Approval has been paid to the Borough Council;

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- 4.1.2 to notify the Borough Council prior to the Occupation of more than 50% of the Dwellings to be constructed in accordance with that Reserved Matters Approval and not to Occupy more than 50% of the Dwellings to be constructed in accordance with that Reserved Matters Approval until 50% of the Public Open Space Contribution Index Linked relative to the number of Dwellings to be constructed in accordance with that Reserved Matters Approval has been paid to the Borough Council;

- 4.1.3 to notify the Borough Council prior to the Occupation of more than 75% of the Dwellings to be constructed in accordance with that Reserved Matters Approval and not to Occupy more than 75% of the Dwellings to be constructed in accordance with that Reserved Matters Approval until 100% of the Public Open Space Contribution Index Linked relative to the number of Dwellings to be constructed in accordance with that Reserved Matters Approval has been paid to the Borough Council.

SCHEDULE 2

(Owner's Covenants with the County Council)

The Owner covenants with the County Council as follows:

1. **Civic Amenities Contribution**

1.1 Not to Occupy any of the Dwellings unless or until the Civic Amenities Contribution Index Linked has been paid to the County Council.

2. **Highways Contribution**

2.1 Not to Occupy any of the Dwellings unless or until the Highways Contribution Index Linked has been paid to the County Council.

3. **Library Contribution**

3.1 Not to Occupy any of the Dwellings unless or until the Library Contribution Index Linked has been paid to the County Council.

4. **Public Transport**

4.1 Travel Packs

4.1.1 Not to Commence Development in relation to a Reserved Matters Approval unless and until the Travel Pack Contribution Index Linked relating to the Dwellings to be constructed in accordance with that Reserved Matters Approval has been paid in full to the County Council.

4.1.2 Upon the First Occupation of each and every Dwelling to provide to the First Occupiers of the Dwelling a Travel Pack prepared and supplied by the County Council which shall include details of the free bus pass scheme and application forms to enable the First Occupiers to apply to the Owner for up to two free six month Bus Passes for travel to and from the Development at any time prior to the expiry of the period ending three months immediately following the legal completion date of the first transfer of the relevant Dwelling.

4.2 Bus Pass

4.2.1 In the event that the First Occupier(s) of a Dwelling requests a Bus Pass or Bus Passes and returns the completed application form to the Owner within three months

of the date the Travel Pack was supplied by the Owner in accordance with paragraph 4.1.2 of this Schedule then the Owner will supply or procure the supply (at its own expense) of the Bus Pass or Bus Passes to the First Occupier(s) of that Dwelling within 20 Working Days of the date of receipt of the completed application form **PROVIDED THAT:**

- (a) the Owner shall not be obliged to offer to provide more than two Bus Passes per Dwelling; and
- (b) in the event a First Occupier(s) does not return a completed application form to the Owner within three months of the date the Travel Pack was supplied by the Owner to a First Occupier(s) the Owner's liability under this paragraph 4.2 shall cease and determine; and
- (c) In the event of any change of occupier(s) of any of the Dwellings during the three month period commencing with the First Occupation the new owners will be provided with (subject to the proviso set out in this paragraph) two free Bus Passes for all subsequent occupiers of the aforesaid Dwelling for the remainder of the three month period commencing from the First Occupation of the aforesaid Dwelling **PROVIDED THAT** no more than two Bus Passes shall be issued to the adult occupiers of the Dwellings at any one time.

4.2.2 To supply to the County Council at 6 monthly intervals details of the Bus Passes supplied to the occupiers within the proceedings 6 months period until all the Dwellings have been First Occupied.

5. Travel Plan Monitoring Sum

5.1 Not to Occupy any of the Dwellings unless or until the Travel Plan Monitoring Sum Index Linked has been paid to the County Council.

6. Education Contribution

6.1 Not to Occupy any of the Dwellings unless or until £141,558.92 (one hundred and forty one thousand five hundred and fifty eight pounds and ninety two pence) of the Education Contribution Index Linked has been paid to the County Council.

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- 6.2 Not to Occupy more than 50 of the Dwellings unless or until a further £141,558.25 (one hundred and forty one thousand five hundred and fifty eight pounds and twenty five pence) of the Education Contribution Index Linked has been paid to the County Council.
- 6.3 Not to Occupy more than 100 of the Dwellings unless or until a further £141,558.25 (one hundred and forty one thousand five hundred and fifty eight pounds and twenty five pence) of the Education Contribution Index Linked has been paid to the County Council.
- 6.4 Not to Occupy more than 150 of the Dwellings unless or until the balance of £141,558.25 (one hundred and forty one thousand five hundred and fifty eight pounds and twenty five pence) of the Education Contribution Index Linked has been paid to the County Council.
7. **Monitoring Costs**
- 7.1 Not to allow or permit any Commencement of Development unless or until the County Council Monitoring Costs Contribution Index Linked has been paid to the County Council.

SCHEDULE 3
(Borough Council's Covenants)

The Borough Council covenants with the Owner as follows:

1. General Provisions

- 1.1 The Borough Council hereby covenants with the Owner to use all financial contributions received from the Owner under the terms of this Deed for the purposes specified in this Deed.
- 1.2 Subject to the provisions of paragraph 2 of this Schedule, the Borough Council covenants with the Owner that it will pay to the party which made payment following receipt of a written request from the party concerned such amount of any financial contribution made to the Borough Council under this Deed which has not been expended in accordance with the provisions of this Deed together with any interest accrued thereon within 5 years of the date of payment of the financial contribution in question or, in the case of financial contributions paid in stages or instalments, within 5 years of the date of payment of the final instalment of the financial contribution in question **PROVIDED THAT:**
- (a) in the case of any National Health Service England Contribution, where these have been paid by the Borough Council to NHS England pursuant to paragraph 2.4 of this Schedule then the Borough Council shall only be obliged to re-pay such monies to the Owner in the event that it receives such monies back from the relevant NHS England in accordance with paragraphs 2.4.3 or 2.6 of this Schedule (as applicable); and
 - (b) money shall otherwise be deemed to be expended if the Borough Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose.
- 1.3 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Borough Council's reasonable and proper costs) the Borough Council will issue a written confirmation of such performance or discharge.
- 1.4 Following the performance and full satisfaction of all the terms of this Deed or if this Deed is determined pursuant to clause 8 (and subject to the payment of the Borough Council's reasonable and proper costs and charges) the Borough Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this Deed.

2. National Health Service England Contribution

- 2.1 To hold each instalment of the National Health Service Contribution paid to it in an interest bearing bank account.
- 2.2 To issue a receipt on request for the National Health Service England Contribution.
- 2.3 To notify NHS England of receipt of each instalment of the National Health Service Contribution;
- 2.4 To pay to NHS England the National Health Service England Contribution upon receipt of written confirmation from NHS England confirming that it will:
- 2.4.1 Apply such contributions or part thereof solely for the purposes for which payment has been made pursuant to this Deed.
- 2.4.2 Provide full details of the expenditure of the National Health Service England Contribution on demand to the Borough Council or to the Owner or both;
- 2.4.3 Return any unspent part of the National Health Service England Contribution to the Borough Council after the expiry of 7 years from the date of receipt of the relevant part of the contribution from the Borough Council (and where a particular contribution is payable in instalments the relevant date shall be the expiry of 5 years from the date of receipt of the final instalment of the contribution); and
- 2.4.4 Apply the National Health Service Contribution received in such a manner as shall not result in a breach of the Community Infrastructure Levy Regulations 2010 (and for the avoidance of doubt such monies shall not be used to fund or provide any project for which 5 or more contributions shall have previously been secured within the administrative area of the Borough Council since 6 April 2010 unless the Community Infrastructure Levy Regulations 2010 are amended after the date of this Deed so as to remove such pooling restrictions).
- 2.5 In the event that written confirmation in the form required by paragraph 2.4 of this Schedule is not received following the expiry of 1 year from the date that the Borough Council notifies NHS England pursuant to paragraph 2.3 of this Schedule of receipt of the relevant instalment of the contribution by the Borough Council then the Borough Council's obligation to pay the relevant instalment to NHS England shall cease absolutely and the Borough Council shall refund to the Owner the unexpended instalment of the contribution within 25 Working Days of receipt of a written request from the Owner to do so.

- 2.6 Upon reasonable written request by the Owner to provide details of when the National Health Service England Contribution was committed to the National Health Service for expenditure. To promptly repay any monies (together with accrued interest) received by the Borough Council back from NHS England not either expended or Committed for expenditure to the person who paid such monies (or their nominee) at the expiration of 7 years of the date of payment of the last instalment of the National Health Service England Contribution following a written demand by the Owner or the person who paid such monies or their nominee.

3 Public Open Space Contribution

- 3.1 To issue a receipt on request for the Public Open Space Contribution.
- 3.2 To apply the Public Open Space Contribution towards children's and young peoples provision of play equipment, skate park improvements and youth shelter at Memorial Park, and funding towards a replacement scout/youth hall the need for which directly arises from the Development and not to apply the Public Open Space Contribution for any other purposes.
- 3.3 Upon reasonable written request by the Owner to provide details of how Public Open Space Contribution has been expended or Committed for expenditure.
- 3.4 To repay any monies (together with accrued interest) not either expended or Committed for expenditure to the person who paid such monies (or their nominee) at the expiration of 5 years of the date of payment of the last instalment of the Public Open Space Contribution within 25 Working Days of a written demand by the Owner or the person who paid such monies or their nominee.

SCHEDULE 4

(County Council's Covenants)

The County Council covenants with the Owner as follows:

1. Civic Amenities Contribution

- 1.1 To issue a receipt on request upon payment of the Civic Amenities Contribution.
- 1.2 To apply the Civic Amenities Contribution towards funding capacity improvements at Mountsorrel Civic Amenity Site through project reference MOU001 to increase capacity by maximising efficient use of space including amendments to site signage and walls/fencing the need for which directly arises from the Development and not to apply the Civic Amenities Contribution for any other purposes.
- 1.3 Upon reasonable written request by the Owner to provide details of how the Civic Amenities Contribution has been expended.
- 1.4 To repay any monies (together with accrued interest) not either expended or Committed for expenditure to the person who paid such monies (or their nominee) at the expiration of 5 years of the date of payment of the Civic Amenities Contribution within 25 Working Days of a written demand by the Owner or the person who paid such monies or their nominee.

2. Highways Contribution

- 2.1 To issue a receipt on request for each instalment of the Highways Contribution.
- 2.2 To apply the Highways Contribution towards improvements to the bus stop nearest to the Site on Heathcote Drive to include raised and dropped kerbs to allow level access the need for which directly arises from the Development and not to apply the Highways Contribution for any other purposes.
- 2.3 Upon reasonable written request by the Owner to provide details of how the Highways Contribution has been expended.
- 2.4 To repay any monies (together with accrued interest) not either expended or Committed for expenditure to the person who paid such monies (or their nominee) at the expiration of 5 years of the date of payment of the Highways Contribution within 25 Working Days of a written demand by the Owner or the person who paid such monies or their nominee.

3. Library Contribution

- 3.1 To issue a receipt on request upon payment of the Library Contribution.
- 3.2 To apply the Library Contribution at Sibley Library through project reference SIL003 the need for which directly arises from the Development and not to apply the Library Contribution for any other purposes.
- 3.3 Upon reasonable written request by the Owner to provide details of how the Library Contribution has been expended.
- 3.4 To repay any monies (together with accrued interest) not either expended or Committed for expenditure to the person who paid such monies (or their nominee) at the expiration of 5 years of the date of payment of the Library Contribution within 25 Working Days of a written demand by the Owner or the person who paid such monies or their nominee.

4. Public Transport

4.1 Travel Packs

- 4.1.1 To issue a receipt on request for the Travel Pack Contribution.
- 4.1.2 To apply the Travel Pack Contribution towards designing and preparing a Travel Pack for each Dwelling the need for which directly arises from the Development and not to apply the Travel Pack Contribution for any other purposes.
- 4.1.3 Upon reasonable written request by the Owner to provide details of how the Travel Pack Contribution has been expended or Committed for expenditure.
- 4.1.4 To deliver the Travel Packs to the Owner in reasonably sufficient time to enable the Owner to procure the distribution of a Travel Pack to each Dwelling upon First Occupation.
- 4.1.5 To repay any monies (together with accrued interest) not either expended or Committed for expenditure to the person who paid such monies (or their nominee) at the expiration of 5 years of the date of payment of the Travel Pack Contribution within 25 Working Days of a written demand by the Owner or the person who paid such monies or their nominee.

5. Travel Plan Monitoring Sum

- 5.1 To issue a receipt on request for the Travel Plan Monitoring Sum.
 - 5.2 To apply the Travel Plan Monitoring Sum towards monitoring the Travel Plan using iTrace the need for which directly arises from the Development and not to apply the Travel Plan Monitoring Sum for any other purposes.
 - 5.3 Upon reasonable written request by the Owner to provide details of how Travel Plan Monitoring Sum has been expended or Committed for expenditure.
 - 5.4 To repay any monies (together with accrued interest) not either expended or Committed for expenditure to the person who paid such monies (or their nominee) at the expiration of 5 years of the date of payment of the Travel Plan Monitoring Sum within 25 Working Days of a written demand by the Owner or the person who paid such monies or their nominee.
- 6. Education Contribution**
- 6.1 To issue a receipt on request for each instalment of the Education Contribution.
 - 6.2 To apply each Education Contribution instalment towards the Education Contribution Purposes and not to apply the Education Contribution for any other purposes.
 - 6.3 Upon reasonable written request by the Owner to provide details of how the Education Contribution has been expended or Committed for expenditure.
 - 6.4 To repay any monies (together with accrued interest) not either expended or Committed for expenditure to the person who paid such monies (or their nominee) at the expiration of 5 years of the date of payment of the last instalment of the Education Contribution within 25 Working Days of a written demand by the Owner or the person who paid such monies or their nominee.

IN WITNESS whereof the parties hereto have duly executed this Deed as a deed on the day and year first before written

EXECUTED as a DEED by CHARNWOOD)
BOROUGH COUNCIL by affixing)
Its Common Seal in the presence of:-)

Authorised Officer
Document No.

Signed as a deed by affixing the seal of)
LEICESTERSHIRE COUNTY)
COUNCIL)
in the presence of:)

Authorised Signatory

EXECUTED AS A DEED BY
MARY BESSIE MILTON-HAYNES
as trustee of the Skertchly Trust
in the presence of:

Signature

Name of witness

Address

Occupation

Section 106 Agreement

**EXECUTED AS A DEED BY
JOANNA WHYBERY OLIVER
as trustee of the Skertchly Trust**
in the presence of:

Signature

Name of witness

Address

Occupation

Executed as a deed by affixing the
Common Seal of
HALLAM LAND MANAGEMENT LIMITED
In the presence of:

Director:

Secretary: