

Dated **2026**

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL (1)

TRACEY JAMES GOODWIN (2)
AND JULIA RUTH GOODWIN

AND

J.S. BLOOR (SWINDON) LIMITED (3)

AND

THE ROYAL BANK OF SCOTLAND PLC (4)

AND

IAN GOODWIN AND JAMES ANDREW JOHNSON (5)

**PLANNING OBLIGATION BY AGREEMENT
PURSUANT TO SECTION 106**

**relating to
Land to the south of Lower Bullingham west of
the Rotherwas Industrial Estate north of the
Rotherwas Hereford HR2 6JW**

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THIS DEED WITNESSES AS FOLLOWS:**OPERATIVE PROVISIONS****1 INTERPRETATION**

1.1 For the purposes of the recitals and the covenants in the Agreement, in this Deed the following words and expressions have the following meanings:

Act the Town and Country Planning Act 1990 (as amended);

Affordable Housing housing provided to eligible households whose needs are not met by the Open Market. Eligibility is determined with regard to local incomes and local house prices. Affordable Housing should remain at an affordable price for future eligible households or the subsidy recycled for alternative Affordable Housing provision. The descriptions of all types of Affordable Housing in Herefordshire are contained in the Technical Data;

Affordable Housing Mix the tenure mix of Affordable Housing to be provided within the Development consisting of:

(a) 67.7% Social Rented Units; and

(b) 32.3% Intermediate Units;

as set out at Annex 3 to this Deed (indicatively for the provision of 189 Affordable Housing Units) or such other mix as may be agreed with the Council;

Affordable Housing Units (unless otherwise agreed in writing by the Council) 35% of the residential units and ancillary areas comprised within the Development and intended for occupation comprising any of Social Rented Units, Shared Ownership Units, and Discount Market Sale Units in accordance with the Affordable Housing Mix;

and "**Affordable Housing Unit**" means any one of the said dwellings;

Affordable Housing Scheme a written scheme approved by the Council as part of a Reserved Matters Application for the associated Reserved Matters Area or the written approval of the Council identifying the location, number of bedrooms, mix and tenure of each Affordable Housing Unit (to include Wheelchair Accessible Units) in the Reserved Matters Area (unless otherwise agreed in writing with the Council) and any updated scheme approved by the Council;

Biodiversity Gain Plan plans and documents approved by the Council for the delivery of Biodiversity Net Gain in respect of the Development pursuant the Planning Permission;

Biodiversity Gain Sites Register	the register published by DEFRA containing details about registered biodiversity gain sites including which planning permission it has been allocated to;
Biodiversity Metric	the statutory biodiversity accounting tool published by DEFRA or Natural England from time to time that can be used to measure the biodiversity value of habitat or habitat creation and enhancement for the purposes of Biodiversity Net Gain;
Biodiversity Net Gain	means that the Development leaves biodiversity in a better state than before it took place and an approach where the Owner shall work with local authorities, wildlife groups and other stakeholders to support their priorities for nature conservation to ensure a net increase in biodiversity shall be provided to mitigate the adverse effects arising from the Development whereby specific, quantifiable outcome of project activities that deliver demonstrable benefits for biodiversity compared to the baseline situation including but not limited to any arrangements to ensure protected species and existing habitats are conserved and enhanced and any landscaping arrangements maintenance arrangements and arrangements for permitting access and use to be provided in accordance with the provisions of Schedule 7 to this Deed;
BNG Unit	the quantum of biodiversity as measured by the Biodiversity Metric;
BNG Completion Date	the date confirmed in the Certificate of Completion as the date the Habitat Creation and Enhancement Works detailed in the Biodiversity Gain Plan were completed and from which date the Habitat Creation and Enhancement Works shall be maintained and monitored in accordance with the Biodiversity Gain Plan for a period of 30 (thirty) years;
Breach Notice	a notice served on the Owner by the Council pursuant to this Schedule and paragraph 1 of Part 2 of 0 of this Deed in relation to on-site BNG;
Bus Service Contribution	the sum of One Hundred Thousand Pounds (£100,000) which is to form part of the Standard SPD Transport Contribution;
Certificate of Completion	a written certificate of completion confirming that the Habitat Creation and Enhancement Works have been completed to the reasonable satisfaction of the Council on the Completion Date issued (or deemed to have been issued) by the Council;
Chargee	any legal person exercising a power of sale in respect of a mortgage or charge and shall include mortgagee or chargee (or any receiver (including 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 an administrator (each a Receiver)) exercising a power of sale in respect of the whole or any part of the Dwelling or any persons or bodies deriving title through such mortgagee or chargee or receiver;

Commencement Date

the carrying out in relation to the Development of any material operation (as defined within section 56(4) of the 1990 Act) on the Site pursuant to the Planning Permission but (for the purposes of this Agreement) excluding operations consisting of:

site clearance;

demolition work;

environmental site investigations;

archaeological investigations;

site survey works;

investigations for the purpose of assessing ground conditions,

preparatory and remedial work in respect of any decontamination or other adverse ground conditions;

erection of any temporary means of enclosure and the temporary display of site notices or advertisements;

the words "**Commence**", "**Commenced**" "**Commencement**" shall be construed accordingly;

Commencement Notice

a written notice to be in the form set out in Schedule 5 to be served by the Owner on the Council;

Conservation Covenant

means an agreement between a landowner and a Responsible Body pursuant to the Environment Act 2021 to secure the Biodiversity Net Gain;

Contributions

together the:

- a) Healthcare Contribution;
- b) Outdoor Sports Contribution;
- c) Education Contribution;
- d) Recycling and Waste Contribution;
- e) Libraries Contribution
- f) Hospital Contribution
- g) Off-Site Active Travel Contribution

	h) Standard Transport SPD Contribution
County	the county of Herefordshire;
Credit	the running balance of the Bus Service Contribution;
DEFRA	means the Department for Environment, Food & Rural Affairs;
Development	the development of the Site as authorised by the Planning Permission for an urban extension (known as the Southern Urban Expansion in the Herefordshire Local Plan Core Strategy) comprising up to 540 homes (Use Class C3); employment land (Use Class B and E), local centre and a country park together with supporting public open space, and all other associated works (e.g., drainage, landscaping and ground modelling).;
Development Standards	means a standard to fully comply with the following: <ul style="list-style-type: none"> (a) “Technical housing standards – nationally described space standards” published by the Department for Communities and Local Government in March 2015 (b) All national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time (c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited (d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings);
Discount Market Sale Units	housing sold to a Qualifying Purchaser in need of affordable housing at a discount of 30% below the Open Market Value;
Dwelling	any residential unit constructed on the Site pursuant to the Planning Permission;
Education Contribution	the total sum of £2,536,396 (Two Million Five Hundred and Thirty Six Thousand Three Hundred and Ninety Six Pounds) comprised of the, <p>Pre-School Contribution</p>

Primary Education Contribution

Post-16 Contribution

Youth Contribution; and

Special Education Needs and Additional Provision Contribution

all index-linked in accordance with clause 17 of this Deed;

Excess BNG Unit

means any BNG Unit created under the Biodiversity Gain Plan which are not required to satisfy the Biodiversity Net Gain;

Excess BNG Unit Agreement

means an agreement between the Owner and the Council which secures any Excess BNG Units onto the Biodiversity Gain Sites Register;

Force Majeure

means any event or circumstance beyond the reasonable control of the affected party which prevents or materially delays performance under this Agreement and which could not reasonably have been prevented or mitigated.

Habitat Creation and Enhancement Works

means the on-site habitat creation and enhancement works set out and defined in the HMMP (excluding any management, maintenance and monitoring activities specified in the HMMP);

Habitat Management and Monitoring Plan or HMMP

means a document and spatial plan that details how the Habitat Creation and Enhancement Works will be managed over at least 30 years to:

- create and enhance habitats for Biodiversity Net Gain; and
- manage maintain and monitor the Biodiversity Net Gain;

to be provided in accordance with the Planning Permission and this Schedule of this Deed;

Healthcare Contribution

the sum of Three Hundred and Fifty Five Thousand Two Hundred Pounds (£355,200) which is intended to provide new and additional premises or infrastructure, extension(s) to existing premises or improved digital infrastructure and telehealth facilities at South and West Herefordshire Primary Care Network, the Hereford City WBC and Hereford Medical Group Primary Care Network;

Highway Land

land comprised in a highway maintainable at the public expense and over which the public has a right to pass and repass, including footways, verges and structures over which the highway passes;

Home Point	the agency or body (or any successor agency or body) that on behalf of the Council holds the common housing register and operates a choice based lettings system (or any subsequent lettings system) through which Affordable Housing in the administrative area of the Council is advertised;
Hospital Contribution	the sum of Four Hundred and Sixteen Thousand Seven Hundred and Forty Eight Pounds and Forty Eight Pence (£416,748.48) which is intended to provide additional capacity, equipment, facilities and/or infrastructure at Hereford County Hospital;
Index Linked	the increase as calculated in accordance with clause 17 of this Deed;
Interest	interest at 4.5% above the base lending rate of National Westminster Bank PLC from time to time;
Intermediate Unit	a Shared Ownership Unit or a Discount Market Sale Unit, or other affordable routes to home ownership' categories of Affordable Housing in the definition of affordable housing in Annex 2 of the National Planning Policy Framework (December 2024);
Libraries Contribution	means a financial contribution to be calculated in respect of each Reserved Matters Area as follows: £146.00 (One Hundred and Forty Six Pounds) for each 2 bedroom Open Market Unit; and £198.00 (One Hundred and Ninety Eight Pounds) for each 3 bedroom Open Market Unit; and £241.00 (Two Hundred and Forty One Pounds) for each 4 or more bedroom Open Market Unit to provide a new library facility at Hereford Shire Hall required as a consequence of the Development all index-linked in accordance with clause 17 of this Deed
Local Connection	having a connection to one of the parishes specified because that person: is or in the past was normally resident there (having resided in one of the parishes in the County of Herefordshire for 6 out of the last 12 months or 3 out of the last five years); or is employed there (in the employ of another (or a formal offer of such employment) not being of a casual nature but shall not exclude part-time employment of 16 hours or more per week or self-employment); or has a family association there (where a person or a member of his household has parents, adult children, brothers or sisters, step-parents, grandparents, grandchildren, aunts or uncles or such other person

as defined in the Housing Act 1996 or such other successor legislation as amended currently residing in one of the parishes of the County of Herefordshire and who have been resident for a period of at least five years and that person indicates a wish to be near them); or

a proven need to give support to or receive support from family members (need to provide or receive personal and physical care to enable a person or a family member to live independently in the community and includes people who are in need of such support but are not normally resident but have long standing links with the local community); or

because of special circumstances (this shall not normally apply but special circumstances amount to circumstances which in the view of the Council may give rise to a Local Connection);

Management Company

a body with a registered office in England or Wales that is nominated or established by the Owner in accordance with the Management Company Plan for the acquisition and long term management and maintenance of the Open Space Facilities in accordance with the provisions of Schedule 3 such body to be adequately self-funded or will be funded through on-going arrangement or through local arrangements the details of which are to be provided to the Council for approval in writing (such approval not to be unreasonably withheld or delayed);

Management Company Plan

(unless otherwise agreed with the Council in writing) a written scheme demonstrating the way in which:

(i) the future management and maintenance requirements for the Open Space Facilities have been identified and how an ongoing maintenance regime (including but not limited to task timing and frequency of the operations for all the features of the Open Space Facilities) specifically fulfils the Management Company objective;

(ii) the Management Company is or will be set up and maintained in order to fulfil its ongoing obligations and functions in relation to the Open Space Facilities as set out in Schedule 3 including:

its objects (to be reflected in the memorandum and articles of association);

governance of the Management Company including how it is or will be incorporated;

how key appointments will be made and renewed (the Owner may be appointed as Managing Director during the development period);

how shares in the Management Company will be issued and to whom and when;

how professional appointments will be made and funded including the company secretary;

how and when meetings will be convened;

how monies will be paid into it by way of service charges pursuant to the terms of this Deed and details of how sufficient funds will be maintained for any emergency or replacement works to the Open Space Facilities and

how assets of the Management Company will be safeguarded for use only for the purpose of the long term management and maintenance of the Open Space Facilities and for no other purpose;

Marketing Plan

a written scheme detailing the strategy for the disposal of Discount Market Sale Units such scheme to be approved in writing by the Council (such approval not to be unreasonably withheld or delayed);

"Monitoring Report"

means the monitoring reports to be issued to the Council as specified in the Habitat Management and Monitoring Plan;

Occupation

occupation for any purpose for which Planning Permission has been granted but not including occupation by personnel engaged in the construction, fitting out or occupation for marketing or display purposes and for security purposes and "**Occupied**" "**Occupy**" and "**Occupier**" shall be construed accordingly;

Off Site Active Travel Contribution

the sum of Two Million Six Hundred and Fifty Five Thousand Seven Hundred and Fifty Eight Pounds and Five Pence (£2,655,758.05) comprising transport infrastructure projects arising from the councils Local Transport Plan and the Local Cycling, Walking and Wheeling Infrastructure Plan or such subsequent successor council transport plan;

Open Market

the open market for the sale or letting of housing by a person or body other than:

a local housing authority;

a Registered Provider; or

any other person or body offering housing accommodation to the public at less than the prevailing market sale/rent price;

Open Market Units

those Dwellings in the Development that are not Affordable Housing Units and which are intended for

	sale or letting on the Open Market and " Open Market Unit " shall mean any one of such units;
Open Market Value and Open Market Valuation	the price at which a sale of the freehold interest or long leasehold interest (which here means a leasehold interest of not less than 99 years at a premium and a peppercorn rent) in a relevant Discount Market Sale Unit would fetch if sold on the Open Market by a willing vendor and disregarding the restrictions and obligations contained in this Deed and approved by the Council;
Open Space Facilities	<p>the area within the Development the extent of which is shown indicatively as Public Open Space and the Country Park on Plan 2 to include:</p> <p>4.01 hectares (37,570 sqm) of on-site green infrastructure comprising:</p> <p>3.7 hectares (37,260 sqm) of accessible green space; and</p> <p>0.31 hectares (310 sqm) of children's and teenager's play.</p>
Open Space Facilities Plan	(unless otherwise agreed with the Council in writing) a written scheme demonstrating the way in which the future management and maintenance requirements for the Open Space Facilities have been identified and how an ongoing maintenance regime (including but not limited to task timing and frequency of the operations for all the features of the Open Space Facilities) specially fulfils the Management Company objectives;
Operator	an operator of a commercial/employment unit constructed on the Site pursuant to the Planning Permission;
Outdoor Sports Contribution	the sum of One Thousand Two Hundred and Ninety Seven Pounds (£1,297) Index Linked per Open Market Unit in each Reserved Matters Area towards the Outdoor Sports Facilities;
Outdoor Sports Facilities	facilities in accordance with the Herefordshire Playing Pitch and Outdoor Sports Strategy and Action Plan February 2023 as amended from time to time
Owner	together the First Owner and the Second Owner and " Owners " shall be construed accordingly;
Parish	the parish of Lower Bullingham;
Phase Wide Open Space Scheme	means a plan and/or scheme showing or describing how the Open Space Facilities required to be provided as part of the relevant Reserved Matters Area are to be provided and which shall set out a timetable for the delivery of the Open Space Facilities, which shall be linked to the delivery of Dwellings within that Reserved

	Matters Area and which may be amended from time to time with the approval of the Council;
Plan 1	the plan annexed at Annex 1 indicatively showing the Site with drawing reference number BL-M-12G, Revision N (as may be updated, amended or replaced from time to time);
Plan 2	the Green Infrastructure Parameter Plan annexed at Annex 2;
Planning Application	the application for planning permission under the Planning Reference and validated by the Council on 24 th October 2024, for planning permission for the outline permission for the Development;
Planning Obligations Manager	the Council employee who manages, implements and monitors Section 106 agreements;
Planning Permission	the planning permission under the Planning Reference subject to conditions which may be granted in respect of the Planning Application;
Planning Reference	planning reference P242558/O;
Post-16 Contribution	the sum of £48,438 (Forty Eight Thousand Four Hundred and Thirty Eight Pounds) towards the South Hereford Post 16 Provision required as a consequence of the Development;
Practical Completion	the stage reached when the construction of the Affordable Housing Unit is sufficiently complete that, where necessary a certificate of practical completion can be issued and it can be Occupied;
Pre-School Contribution	the sum of £207,020 (Two Hundred and Seven Thousand and Twenty Pounds) towards settings providing early education and childcare for children aged 0 to 5 serving the South Hereford City area;
Primary Education Contribution	the sum of £1,546,506 (One Million Five Hundred and Forty Six Thousand Five Hundred and Six Pounds) towards the Primary Education Facilities
Primary Education Facilities	means education facilities at South Hereford Early Years, St Martin's Primary School, Our Lady's RC Primary School, new primary school for South Hereford South Hereford Youth
Qualifying Purchaser	a person who has demonstrated both at the time of application and at the time contracts are exchanged to purchase a Discount Market Sale Unit to the Council's satisfaction that he is: at least 18 years old;

a member of a household having an annual income of less than £40,000 as a sole income and £80,000 as joint (or such other figure as the Council may agree);

purchasing the Dwelling for occupation as sole main residence;

unable to afford to buy a home suitable for their housing needs on the Open Market;

able to demonstrate a good credit history (i.e. no bad debts or County Court Judgments) and able to afford the regular payments and costs involved in buying a Discount Market Sale Unit; and

able to secure a mortgage and have sufficient deposit to purchase or otherwise be able to demonstrate ability to purchase;

Reasonable Endeavours

that the party under the obligation shall not be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject hereto such party shall be bound to attempt to fulfil the relevant obligation 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 be reasonable;

Recycling and Waste Contribution

a sum of eighty pounds (£80.00) (Index Linked) per Dwelling in respect of each Reserved Matters Area;

Recycling Facilities

one waste collection bin and one recycling collection bin to be provided for each Dwelling;

Registered Provider

a registered provider of Affordable Housing under Part 2 of the Housing and Regeneration Act 2008 being a preferred development partner listed (or intended for listing) in the Council's 'provision of affordable housing technical data' which supports the supplementary planning document Planning Obligations April 2008 (or any subsequent or updated document), or any such other Registered Provider as may previously be agreed with the Council in writing such agreement not to be unreasonably withheld;

Reserved Matters Application

an application for approval of one or more matters reserved for approval by the Planning Permission;

Reserved Matters Approval

approval of a Reserved Matters Application;

Reserved Matters Area

means the part of the Site covered by a Reserved Matters Application or Reserved Matters Approval as appropriate;

Residential Development

the part of the Development comprising of the development of Dwellings pursuant to the Planning Permission and "Dwelling" means any one of them;

Residential Reserved Matters Area	means the part of the Site covered by a Reserved Matters Application or Reserved Matters Approval as appropriate containing Open Market Units;
Responsible Body	means the organisation or designated responsible bodies able to enter into conservation covenant agreements that are registered with DEFRA from time to time (or such other organisation that the Council may agree in writing as being suitable to enter into a conservation covenant.
RICS Community Infrastructure Levy (CIL) Index	the RICS Community Infrastructure Levy (CIL) Index published by the Royal Institution of Chartered Surveyors and calculated on the basis of the arithmetic mean of the BCIS Tender Price Index (TPI) prior to the fourth quarter each year as calculated by the BCIS in the October of that year;
Secondary Parish	the parish of Hereford City
Shared Ownership	ownership under the terms of a lease by which a lessee may (acquire a share or shares of the equity in an Affordable Housing Unit from the Registered Provider who retains the remainder and may charge a rent and "Shared Ownership Unit" means any Affordable Housing Unit designated for Shared Ownership;
Site	the land at Watery Lane Farm and Manor Farm, Lower Bullingham, Hereford edged red on Plan 1 against which this Deed may be enforced and registered at HM Land Registry under title numbers HE26562 and HE8096;
Social Rented Housing	housing owned by local authorities or Registered Providers for which guideline target rents are determined through the national rent regime and may also be owned by other persons and provided under equivalent rental arrangements to the above as agreed with the Council or with Homes England (or successor agency or body) and " Social Rented Unit " means any Affordable Housing Unit designated for Social Rented Housing;
South Hereford Post 16 Provision	provision of education and training for young people aged 16 to 19 (or up to 25 with Special Educational Needs) serving the South Hereford City area;
Special Education Needs and Additional Provision Contribution	the sum of £262,057 (Two Hundred and Sixty Two Thousand and Fifty Seven Pounds) to provide Special Educational Needs and Alternative Provision] required as a consequence of the Development
Standard Transport SPD Contribution	means a financial contribution to be calculated in respect of each Reserved Matters Area as follows: One Thousand Seven Hundred and Twenty Pounds (£1,720) for each 2 bedroom Open Market Unit; and

Two Thousand Five Hundred and Eighty Pounds (£2,580) for each 3 bedroom Open Market Unit;

Three Thousand Four Hundred and Forty Pounds (£3,440) for each 4 bedroom Open Market Unit; and

Four Thousand Three Hundred Pounds (£4,300) for each 5 bedroom Open Market Unit;

within the relevant Reserved Matters Area to provide the requisite active travel measures required to mitigate the consequences of the Development all index-linked in accordance with clause 17 of this Deed

Supplementary Planning Document

means the Supplementary Planning Document dated 1 April 2008 which is the Council's guidance for planning obligations in Herefordshire, for all those involved in the submission and determination of planning applications;

Technical Data

the data updated annually by the Council entitled 'Provision of Affordable Housing Technical Data to Support the Affordable Housing Supplementary Planning Document June 2021 (or any technical data published by the Council in support of any replacement planning policy document);

VAT

value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax;

Wheelchair Accessible Unit

means the Affordable Housing Units provided and built to comply with Wheelchair Standards (Category 2 and Category 3);

Wheelchair Standards Category 2

means the standard set out in the optional requirement to dwellings M4(2) Category 2: Accessible and adaptable dwelling of Part M (access to and use of buildings) Building Regulations 2010 (as amended) (or subsequent revision or replacement standard current at the time the Owners submission of the relevant building regulations application provided it requires the same or comparative level of provision);

Wheelchair Standards Category 3

means the standard set out in the optional requirement to dwellings M4(3) Category 3: Wheelchair User Dwellings of Part M (access to and use of buildings) Building Regulations 2010 (as amended) (or subsequent revision or replacement standard current at the time the Owners submission of the relevant building regulations application provided it requires the same or comparative level of provision);

Working Day(s)

Mondays to Fridays (excluding days that in England are public holidays) inclusive.

Youth Contribution

the sum of £472,376 (Four Hundred and Seventy Two Thousand Three Hundred and Seventy Six Pounds) to provide [South Hereford Youth Provision] required as a consequence of the Development

1.2 In this Deed:

- (a) the clause headings in this Deed are for convenience only and do not affect its interpretation;
- (b) unless otherwise indicated references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule:
 - (i) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by subsequent legislation; that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and
 - (ii) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision whether before or after the date of this Deed;
- (c) the headings in this Deed are inserted for convenience only and shall not affect the construction or interpretation of this Deed;
- (d) where the agreement, approval, consent or an expression of satisfaction is required by the Owner under the terms of this Deed from the Council; that agreement, approval, consent or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed;
- (e) references to the Site include any part of it;
- (f) references to any party in this Deed include the successors in title of that party and assigns and any person deriving title through or under that party. In addition, references to the Council include any successor to its functions as local planning authority exercising planning powers under the Act;
- (g) "including" means "including, without limitation";
- (h) any covenant by the Owners not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- (i) where two or more people form a party to this Deed the obligations of that party will be joint and several and may be enforced against them all jointly or against each of them individually;
- (j) if any provision of this Deed is held by a Court of competent jurisdiction to be illegal unlawful invalid or unenforceable then to the extent possible the offending provision(s) will be severed from the Deed and the legality lawfulness validity and enforceability of the remainder of the Deed shall be unaffected and continue in full force and effect;
- (k) words importing the singular shall include the plural and vice versa;
- (l) words importing the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner;

- 1.3 Without prejudice to the terms of any other provision contained in this Deed the Owner shall pay all costs, charges and expenses (including without prejudice to legal costs and Surveyor's fees) reasonably incurred by the Council for the purpose of or incidental to the enforcement of any right or power of the Council or any obligation of the Owner arising under this Deed;
- 1.4 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 as amended, by any person not a party to it and the terms of this Deed may be varied by a deed agreed between the parties without the consent of any third party being required;
- 1.5 No party will be liable for any breach of the terms of this Deed occurring after the date on which they part with their entire interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any breaches of this Deed occurring before parting with such interests. Neither the reservations of any rights nor the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause 1.5;
- 1.6 This Deed shall not be enforceable against a statutory undertaker, service company, or any other entity to whom any part of the Site may be transferred, let or otherwise disposed of for the provision of service media, electricity sub-stations, pumping stations, gas governor stations or similar matters, after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker service company, or other such entity;
- 1.7 No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default; and
- 1.8 Entry into this Deed does not constitute a transaction for a chargeable consideration for which Stamp Duty Land Tax is required.

2 EFFECT OF THIS DEED

- 2.1 This Deed is made pursuant to Section 106 of the Act and to the extent that they fall within the terms of Section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council.
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 2 of the Local Government Act 2000, section 1 Localism Act 2011 and all other enabling powers, with the intent to bind the Owners and successors in title.
- 2.3 The covenants, restrictions and requirements of the Owners contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are entered into by the Owners with the intention that they bind the interests held by them in the Site and their respective successors and assigns.
- 2.4 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.5 This Deed will be registered as a local land charge by the Council.
- 2.6 If the Council agrees following an application under section 73 of the Act or Section 73B (when it comes into force) to vary or release any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal

terms to the new planning permission unless the Council in determining the application for the new planning permission indicate that consequential amendments are required to this Deed to reflect the impact of the section 73 or 73B application when a separate deed under Section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.

3 LENDER'S AND CHARGEES CONSENT

- 3.1 The Lender and Chargee consents to the completion of this Deed and declares that their interest in the Site shall be bound by the terms of this Deed as if it had been executed and registered as a land charge before the creation of their interest in the Site.
- 3.2 The Lender and Chargee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Lender and/or Chargee is in possession of all or any part of the Site.

4 MISCELLANEOUS

- 4.1 Nothing in this Deed prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Deed, whether or not pursuant to an appeal.
- 4.2 Nothing in this Deed shall be construed as a grant of planning permission.
- 4.3 Unless expressly agreed otherwise in this Deed, the covenants in this Deed shall be enforceable without any limit of time against the Owner and any successors in title to the Site and assigns of the Owner in an interest or estate to the Site or any part or parts of the Site as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.

5 CONDITIONALITY

- 5.1 This obligations in this Deed are conditional upon:

- (a) the grant of the Planning Permission; and
- (b) the Commencement of Development,

save for the provisions of clauses 1-4, 8-14, 15 and 17-19] which shall come into effect immediately upon completion of this Deed

6 OBLIGATIONS OF THE OWNERS

The Owners covenant with the Council as set out in Schedule 1, Schedule 2 and Schedule 3 of this Deed.

7 OBLIGATIONS OF THE COUNCIL

The Council covenants with the Owner as set out in Schedule 4 of this Deed.

8 GENERAL EXCLUSIONS

- 8.1 The covenants and obligations in this Agreement shall not be enforceable against:

- (a) any statutory undertaker whose interest in the Site derives from having equipment necessary to carry out their undertaking on the Site or on adjoining land;

- (b) any future mortgagee of the Site (or any part thereof) other than in relation to any breach that the mortgagee itself has caused whilst mortgagee in possession and such mortgagee shall not be liable for any pre-existing breach but FOR THE AVOIDANCE OF DOUBT any successor in title to the mortgagee will be responsible as successor in title to the Owner for (i) any obligation(s) still to be performed and (ii) any obligation(s) which has not been satisfied in full because there has been a breach which has not been remedied or only partially remedied;
- (c) subject to Schedule 2 and 3 of this Deed, any owner-occupiers or tenants or their mortgagees of the Dwellings constructed pursuant to the Planning Permission and purchased and occupied as private dwellings nor against those deriving title from them; and
- (d) any owner-occupiers or tenants or their mortgagees of completed commercial units constructed pursuant to the Planning Permission and purchased and occupied as commercial units nor against those deriving title from them.

9 TERMINATION OF THIS DEED

- 9.1 This Deed will cease to have effect (insofar only as it has not already been complied with) if:
- (a) the Planning Permission is quashed, revoked or otherwise withdrawn prior to the Commencement Date so as to render this Deed or any part of it irrelevant, impractical or unviable or;
 - (b) the Planning Permission expires prior to the Commencement Date.
- 9.2 The Council shall upon receipt of a written request by the Owners and without unreasonable delay at any time after this Deed has come to an end under clause 9.1 or the obligations contained in the Schedules hereto have been discharged issue written confirmation thereof and note all related entries in the Register of Local Land Charges provided that the Owner has adequately set out the basis for making such a request.
- 9.3 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:
- (a) until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development (where relevant) PROVIDED THAT the Owner shall not undertake any further works to implement the Planning Permission following the issue of such proceedings;
 - (b) if following the conclusion of such proceedings or challenge the Planning Permission is quashed and is not superseded by a subsequent planning permission it is accepted by the Owner and the Council that this Deed will cease to have any further effect; and
 - (c) if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this Deed will apply in full.
- 9.4 Wherever in this Deed reference is made to a date on which legal proceedings or challenge in relation to the Planning Permission are concluded or resolved (or cognate expressions are used), the following provisions will apply:
- (a) proceedings by way of judicial review are concluded

- (i) when permission to apply for judicial review has been refused and no further application can be made;
 - (ii) when the court has given judgment in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused; or
 - (iii) or when any appeal(s) is or are finally determined.
- (b) proceedings under Section 288 of the 1990 Act are concluded:
- (i) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
 - (ii) when any appeal(s) is or are finally determined.

10 NOTICES

- 10.1 A notice under this Deed is valid only if it is given by hand or sent by recorded delivery and it is served at the address shown in this Deed for the receiving party or at any address specified in a notice given by that party to the other parties.
- 10.2 A notice sent to the Council in relation to any matters arising from this Deed shall be addressed to the Planning Obligations Manager Development Management Team, Herefordshire Council, Plough Lane, Hereford, HR4 0LE quoting the Planning Reference.
- 10.3 A notice if delivered by hand, it to be treated as served on signature of a delivery receipt or at the time the notice or document is left at the address provided that, if delivery occurs:
- (a) before 09:00 hours on a Working Day, the notice will be deemed to have been received at 09:00 hours on that day; and
 - (b) if delivery occurs after 17:00 hours on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 09:00 hours on the next Working Day; or
 - (c) sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post or on the third working day after posting if sent by second class post;

11 CHANGE IN OWNERSHIP

- 11.1 At the time of execution of this Deed, the Owners and the Council warrants that no person other than the Owners, the Lender and the Chargee has any legal or equitable interest in the Site.
- 11.2 The Owners agree to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company address or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan provided that this clause 11 shall not apply in respect of the disposal of any individual Dwelling or Dwellings.

12 ENFORCEMENT

- 12.1 This Deed is to be governed by and interpreted in accordance with the law of England;

- 12.2 The Courts of England are to have jurisdiction in relation to any disputes between the parties out of or related to this Deed. This clause operates for the benefit of the Council who retains the right to sue the Owner and enforce any judgment against the Owner in the courts of any competent jurisdiction.

13 DISPUTE

Any dispute or disputes between any of the parties to this Deed arising out of the provisions of this Deed (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Deed) shall be referred to a single arbitrator to be agreed between the parties or in default of agreement on the application of any party by the President of the Royal Institute of Chartered Surveyors in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment for the time-being in force.

14 COUNCIL'S COSTS

- 14.1 The Second Owner covenants and agrees with the Council that prior to completion of this Deed the Second Owner shall pay to the Council its reasonable and proper legal costs in connection with the preparation of this Deed, together with all disbursements, incurred in connection with the negotiation, preparation, completion and registration of this Deed; and
- 14.2 The Second Owner covenants and agrees with the Council that prior to Commencement to pay to the Council the Council's reasonable Planning Obligations Manager monitoring costs in the sum of 2% of the total Contribution.

15 LATE PAYMENT

Without prejudice to the Council's rights to enforce any breaches of this Deed (including by way of injunction) if any sum due to the Council from the Owners under this Deed is not paid on or before the date upon which it is due then Interest shall be payable from the due date of payment until the actual date of payment.

16 COMMUNITY INFRASTRUCTURE LEVY

The terms of this Deed comply in all respects with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 in that the obligations contained herein are necessary to make the Development acceptable in planning terms, directly relate to the Development and fairly and reasonably relate in scale and kind to the Development.

17 INDEXATION OF CONTRIBUTIONS

The Owner covenants and agree with the Council that the Contributions payable in accordance with the obligations contained in paragraph 2 of Schedule 1 to this Deed shall be uplifted by reference to:

- 17.1 any increase in the RICS Community Infrastructure Levy (CIL) Index occurring between the date of its publication prior to the date of this Deed and the date that such sum is actually paid to the Council; or
- 17.2 an equivalent index that the Council may at their discretion select in the event that the RICS Community Infrastructure Levy (CIL) Index shall cease to be published before such sums are paid.

18 VAT

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

18.2 The Owner hereby acknowledges and agrees that if at any time VAT is required to be paid in respect of the Site and the Contributions then to the extent that VAT had not been previously charged in respect of that payment the Council shall have the right to issue a VAT invoice to the Owner and the VAT shall be paid accordingly.

19 RIGHT OF ACCESS

Without prejudice to the Council's statutory right of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising under the Deed has been performed or observed.

20 RESERVATIONS

For the avoidance of doubt, nothing in this Deed shall prevent the Council from exercising any of its statutory powers or functions in relation to the development of the Site.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1
CONTRIBUTIONS

The Owner hereby covenants as follows:

1 NOTICE OF COMMENCEMENT

- 1.1 not less than five Working Days prior to Commencement Date to serve the Commencement Notice on the Council;
- 1.2 not to permit or cause or allow the Commencement of Development until the Commencement Notice has been served upon the Council.

2 HEALTHCARE CONTRIBUTION

- 2.1 To pay to the Council the Healthcare Contribution in the following instalments
 - (a) 50% prior to the Commencement of the Development.
 - (b) the balance prior to first Occupation of the Development.
- 2.2 Not to:
 - (a) Commence the Development unless and until it has paid 50% of the Healthcare Contribution;
 - (b) Occupy the first Dwelling unless and until it has paid the entirety of the Healthcare Contribution

3 HOSPITAL CONTRIBUTION

- 3.1 To pay to the Council the Hospital Contribution in the following instalments
 - (a) 50% prior to the Commencement of the Development.
 - (b) the balance prior to first Occupation of the Development.
- 3.2 Not to:
 - (a) Commence the Development unless and until it has paid 50% of the Hospital Contribution.
 - (b) Occupy the first Dwelling unless and until it has paid the entirety of the Hospital Contribution.

4 OUTDOOR SPORTS CONTRIBUTION

- 4.1 To pay to the Council the Outdoor Sports Contribution for each Reserved Matters Area in the following instalments:
 - (a) 50% prior to the Commencement of development of the Reserved Matters Area;

- (b) the balance prior to the Occupation of the Open Market Units in that Reserved Matters Area.

4.2 Not to:

- (a) Commence the development of the Reserved Matters Area unless and until it has paid 50% of the Outdoor Sports Contribution in relation to that Phase;
- (b) Occupy more than 50% of the Open Market Units in a Phase unless and until it has paid the entirety of the Outdoor Sports Contribution in relation to that Phase.

5 EDUCATION CONTRIBUTION

5.1 pay the Education Contribution for each Residential Reserved Matters Area to the Council in the following instalments:

- (a) The sum of £422,732.66 (Four Hundred and Twenty Two Thousand Seven Hundred and Thirty Two Pounds and Sixty Six Pence) prior to the Commencement of development of the first Residential Reserved Matters Area; and
- (b) the sum of £422,732.66 (Four Hundred and Twenty Two Thousand Seven Hundred and Thirty Two Pounds and Sixty Six Pence) prior to the Occupation of more than 50% of the Open Market Units within the first Residential Reserved Matters Area.
- (c) The sum of £422,732.66 (Four Hundred and Twenty Two Thousand Seven Hundred and Thirty Two Pounds and Sixty Six Pence) prior to the Commencement of development of the second Residential Reserved Matters Area; and
- (d) the sum of £422,732.66 (Four Hundred and Twenty Two Thousand Seven Hundred and Thirty Two Pounds and Sixty Six Pence) prior to the Occupation of more than 50% of the Open Market Units within the second Residential Reserved Matters Area .
- (e) The sum of £422,732.66 (Four Hundred and Twenty Two Thousand Seven Hundred and Thirty Two Pounds and Sixty Six Pence) prior to the Commencement of development of the final Residential Reserved Matters Area; and
- (f) the sum of £422,732.66 (Four Hundred and Twenty Two Thousand Seven Hundred and Thirty Two Pounds and Sixty Six Pence) prior to the Occupation of more than 50% of the Open Market Units within the final Residential Reserved Matters Area.

5.1 Not to:

- (a) Commence the development of the first Residential Reserved Matters Area unless and until it has paid £422,732.66 (Four Hundred and Twenty Two Thousand Seven Hundred and Thirty Two Pounds and Sixty Six Pence) of the Education Contribution in accordance with clause 5.1(a).
- (b) Occupy more than 50% of the Open Market Units in the first Residential Reserved Matters Area unless and until it has paid £422,732.66 (Four Hundred and Twenty Two Thousand Seven Hundred and Thirty Two Pounds and Sixty Six Pence) of the Education Contribution in accordance with clause 5.1(b).
- (c) Commence the development of the second Residential Reserved Matters Area unless and until it has paid £422,732.66 (Four Hundred and Twenty Two Thousand Seven Hundred and Thirty Two Pounds and Sixty Six Pence) of the Education Contribution in accordance with clause 5.1(c).

- (d) Occupy more than 50% of the Open Market Units in the second Residential Reserved Matters Area unless and until it has paid £422,732.66 (Four Hundred and Twenty Two Thousand Seven Hundred and Thirty Two Pounds and Sixty Six Pence) of the Education Contribution in accordance with clause 5.1(d).
- (e) Commence the development of the final Residential Reserved Matters Area unless and until it has paid £422,732.66 (Four Hundred and Twenty Two Thousand Seven Hundred and Thirty Two Pounds and Sixty Six Pence) of the Education Contribution in accordance with clause 5.1(e);
- (f) Occupy more than 50% of the Open Market Units in a Residential Reserved Matters Area unless and until it has paid £422,732.66 (Four Hundred and Twenty Two Thousand Seven Hundred and Thirty Two Pounds and Sixty Six Pence) of the Education Contribution in accordance with clause 5.1(f).

6 OFF SITE ACTIVE TRAVEL CONTRIBUTION

- 6.1 To pay the sum of Four Hundred and Fifty Nine Thousand, Three Hundred and Forty One Pounds and Sixty Three Pence (£459,341.63) prior to Occupation of the 51st Dwelling.
- 6.2 To pay the sum of Eight Hundred and Ninety Three Thousand Five Hundred and Ninety Three Pounds and Ninety Six Pence (£893,593.96) prior to Occupation of the 101st Dwelling.
- 6.3 To pay the sum of One million, Three Hundred and Two Thousand, Eight Hundred and Twenty Two pounds and Forty Six Pence (£1,302,822.46) prior to the Occupation of the 271st Dwelling.

7 BUS SERVICE CONTRIBUTION AND STANDARD TRANSPORT SPD CONTRIBUTION

- 7.1 The Owner shall pay the Bus Service Contribution to the Council prior to the first Occupation of first Open Market Unit the Development.
- 7.2 Each Standard Transport SPD Contribution shall be reduced, on a pound-for-pound basis, by application of the balance of the Credit, which shall have a starting value equal to the Bus Service Contribution, until the Credit has been fully exhausted. The Credit shall be applied automatically and sequentially against Standard Transport SPD Contributions as and when they would otherwise fall due, until the aggregate amount so credited equals the Bus Service Contribution. For the avoidance of doubt, once the aggregate amount of Standard Transport SPD Contributions that would otherwise have fallen due equals the value of the Credit, any further Standard Transport SPD Contributions shall be payable in full.
- 7.3 Subject to paragraph 6.2, to pay to the Council the Standard Transport SPD Contribution for each Reserved Matters Area in the following instalments:
 - (a) 50% prior to the Commencement of development of that Reserved Matters Area;
 - (b) the balance prior to the Occupation of 50% of the Open Market Units in that Reserved Matters Area.

8 LIBRARIES CONTRIBUTION

- 8.1 To pay to the Council the Libraries Contribution for each Reserved Matters Area prior to the Occupation of 50% of the Open Markets Units in that Reserved Matters Area;

9 RECYCLING AND WASTE CONTRIBUTION

- 9.1 To pay to the Council the Recycling and Waste Contribution for each Reserved Matters Area prior to the Occupation of 50% of the Open Markets Units in that Reserved Matters Area;

SCHEDULE 2

AFFORDABLE HOUSING

PART 1

1 AFFORDABLE HOUSING

The Owner of the relevant Reserved Matters Area covenants and agrees with the Council:

- 1.1 Not to Occupy any Affordable Housing Unit within a Reserved Matters Area until and unless a programme for the delivery of the Affordable Housing Units ("**Affordable Housing Scheme**") within the Reserved Matters Area has been submitted to and has been approved in writing by the Council (such approval not to be unreasonably withheld) and such Affordable Housing Scheme shall also identify any relevant Wheelchair Accessible Unit(s).
- 1.2 Following the Commencement of Development of the relevant Reserved Matters Area to construct or procure the construction of the Affordable Housing Units at no cost to the Council to the Development Standards and in accordance with the Planning Permission and to ensure the Occupation in accordance with the Affordable Housing Scheme approved pursuant to paragraph 1.1 of this Part 1 of this Schedule 2.
- 1.3 Save as otherwise agreed with the Council to provide the Affordable Housing in accordance with the Affordable Housing Mix PROVIDED ALWAYS THAT:
 - (a) the Intermediate Housing Units will be provided as Shared Ownership Units or Discounted Market Sales Units at the Owner's option and
 - (b) in the event that there is a change to the maximum number of Dwellings consented under the Planning Permission as a result of constructions pursuant to Reserved Matter Approvals or other amendments, the Affordable Housing Mix set out in Annex 3 of this Deed shall be adjusted proportionally in order to comply with the Affordable Housing Mix percentage thresholds.
- 1.4 Not to Occupy or cause or permit the Occupation of any more than 75% of the Open Market Units within a Reserved Matters Area until and unless the Social Rented Units and Shared Ownership Units for that Reserved Matters Area:
 - (a) have been constructed in accordance with paragraph 1.2 above and are ready and available for Occupation;
 - (b) are accessible by vehicles and pedestrians; and
 - (c) subject to paragraph 1.6 to 1.8 in the case of the Social Rented Units and Shared Ownership Units (where relevant) have been transferred (by freehold transfer with title absolute and full title guarantee) to a Registered Provider.
- 1.5 Subject paragraph 1.9 not to let, manage or allow the Social Rented Units to be let managed or co-owned other than strictly in accordance with guidance issued by Homes England (or any successor agency) from time to time with the intention that the Social Rented Units shall at all times be used for the purposes of providing Affordable Housing (save otherwise expressly provided in this Deed) to persons who are eligible in accordance with the allocation policies of the Registered Provider and satisfy the following requirements:
 - (a) The Social Rented Units are registered and advertised through Home Point at the time the Affordable Housing Unit becomes available for Occupation; and

- (b) In the case of the Social Rented Units allocated in accordance with the Herefordshire Allocation Policy and in the case of Shared Ownership Units the allocation policies of the Registered Provider; and
 - (c) for Occupation as a sole residence to a person or persons one of whom meet the following qualifying criteria:
 - (i) a Local Connection with the Parish; or
 - (ii) a Local Connection to the Secondary Parish if after twenty Working Days if there being no person with a Local Connection within the Parish; and
 - (iii) in the event of there being no person with a Local Connection to the Parish or Secondary Parish any other person ordinarily resident within the administrative area of the Council who is eligible under the Herefordshire Allocation Policy and or the allocation policies of the Registered Provider if the Registered Provider can demonstrate to the Council that after a further 20 Working Days of any of the Affordable Housing Units becoming available the Registered Provider having made all reasonable efforts through the use of Home Point as applicable but have found no suitable candidate under paragraph 1.5(c)(i) above; and
- 1.6 The transfer of the relevant Social Rented Units or Shared Ownership Units within a Reserved Matters Area to the Registered Provider shall include the following provisions:
- (a) the grant to the acquiring Registered Provider of all rights of way access and passage of services and all other rights reasonably necessary for the beneficial enjoyment of the Social Rented Units and Shared Ownership Units; and
 - (b) a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development.
- 1.7 In the event that a Registered Provider (within three (3) months' of written invitation) is unable to make an acceptable offer to purchase the Social Rented Units or Shared Ownership Units or no longer wants to purchase the Social Rented Units or Shared Ownership Units the Owner of the relevant Reserved Matters Area shall:
- (a) notify the Council three (3) months prior to Practical Completion of the Social Rented Units or Shared Ownership Units (where relevant) ;
 - (b) set out the reasons (together with any supporting evidence) in writing why a transfer to the Registered Provider has not been entered into pursuant to paragraph 1.3 of this part of this Schedule
 - (c) submit any other information reasonably requested by the Council to satisfy why the Owner has not been able to enter into a transfer with the Registered Provider pursuant to paragraph 1.4 of this part of this Schedule 2; and
 - (d) offer the Affordable Housing Units to the Council to be purchased by the Council as Social Rented Units or Shared Ownership Units
- 1.8 In the event the Council make an acceptable offer to the Owner (within three (3) months' of written invitation) for the Social Rented Units or Shared Ownership Units then the Owner shall not Occupy or permit Occupation of more than fifty percent (50%) of the Open Market Units within the relevant Reserved Matters Area until the Owner has provided the Council with a freehold transfer document unconditionally released for completion for the transfer of the relevant Social Rented Units or Shared Ownership Units.

- 1.9 In the event the Council does not make an offer which is acceptable to the Owner (within three (3) months' of written invitation) to purchase all or part of the relevant Social Rented Units or Shared Ownership Units or the Council indicates that it does not want to purchase the relevant Social Rented Units or Shared Ownership Units the Council shall serve on the Owner written confirmation that the Owner shall be permitted to sell those Social Rented Units or Shared Ownership Units within the relevant Reserved Matters Area as Discount Market Housing Units
- 1.10 The restrictions and obligations contained within this Schedule 2 shall not be binding on nor enforceable against a Chargee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee provided that:
- (a) such Chargee shall first give written notice to the Housing Development Officer (Strategic Housing Herefordshire Council, Plough Lane, Hereford HR4 0LE) quoting the Planning Reference of its intention to dispose of the Affordable Housing Units (or relevant part) and shall have used Reasonable Endeavours over a period of three months from the date of the written notice to secure a disposal of the Affordable Housing Units (or relevant part) to a Registered Provider or to the Council or as otherwise agreed in writing by the Council for a consideration not exceeding the greater of:
 - (i) the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - (ii) the Open Market Value of the Affordable Housing Units (or relevant part).
 - (b) if such disposal has not been secured within the three month period subject to having first obtained the written agreement of the Council (not to be unreasonably withheld) that all relevant requirements contained within this Schedule 2 of this Deed have been complied with the Chargee shall be entitled to dispose of the Affordable Housing Units (or relevant part) free from the provisions of this Schedule 2 of this Deed which provisions shall determine absolutely.
- 1.11 Paragraphs 1.4, 1.5 and 1.9 of this Schedule 2 does not apply to Shared Ownership Units or Discount Market Sale Units.

PART 2

1 DISCOUNT MARKET SALE UNITS

- 1.1 The Owner covenants with the Council that no Open Market Units erected or to be erected on the a Reserved Matters Area will be Occupied except in accordance with the restriction in paragraph 1.2 of Part of this Schedule 2 and that any Discount Market Sale Units erected or to be erected in the relevant Reserved Matters Area will not be Occupied except in accordance with the restrictions and obligations in paragraphs 1.2 to 1.9 inclusive in Part 2 of this Schedule 2.
- 1.2 Not to Occupy or cause or permit the Occupation of more than 75% of the Open Market Units on any part or parts of the Reserved Matters Area until and unless the Discount Market Sale Units (if any) identified in the Affordable Housing Scheme relevant to the Reserved Matters Area have been constructed in accordance with the Planning Permission and are ready and available for Occupation and are accessible by vehicles and pedestrians.
- 1.3 The initial sale price for all Discount Market Sale Units has been agreed by the Council such price to be at a discount of 30% from Open Market Value of the relevant Discount Market Sale Unit ("**Initial Discount Price**").
- 1.4 The sale price for all subsequent disposals of Discount Market Sale Units will be determined by the average of two formal Open Market Valuations by two independent estate agents to which the 30% discount from the Open Market Value of the relevant Discount Market Sale Unit ("**Discount Price**") must be applied
- 1.5 The Discount Market Sale Units shall not be Occupied:
- (a) by anyone except to persons who meets the qualifying criteria in paragraph 1.6 below; and
 - (b) on the first sale following completion of construction of the Discount Market Sale Units at the Initial Discount Price; and
 - (c) On every subsequent sale at the Discount Price
- 1.6 The Discount Market Sale Units must (unless otherwise agreed by the Council) be allocated in accordance with the Council's terms and conditions for Occupation as a sole residence to a Qualifying Purchaser one of whom is a person ordinarily resident within the administrative area of the Council.
- 1.7 In the case of all initial sales:
- (a) prior to notice of an intended sale to submit for approval by the Council (such approval not being unreasonably withheld) a Marketing Plan for advertising the sale of the Discount Market Sale Units; and
 - (b) on receipt of a written approval of the Council for the Marketing Plan serve a notice of sale upon the Council each time a Discount Market Sale Unit is released for sale but in any event not less than two months before the expected date that the relevant Discount Market Sale Unit for sale is ready and available for Occupation;
 - (c) upon submission of a notice of an intended sale of the specified Discount Market Sale Unit to carry out the advertising of the Discount Market Sale Unit for sale in accordance with the Marketing Plan;

- (d) to liaise with the Council (or its nominee) for a period of three months from the date of the Council's written confirmation of receipt of such notice in order to identify a potential purchaser meeting the sole residency and Qualifying Purchaser requirements in paragraph 1.6 of Part 2 of this Schedule 2;
- (e) not to exchange contracts for the sale of the relevant Discount Market Sale Unit unless written approval has been obtained from the Council that the prospective purchaser meets all criteria set out in paragraph 1.6 of Part 2 of this Schedule 2;

provided that:

- (f) if on any initial sale the Council is reasonably satisfied that after a period of three months of active marketing and advertising a Discount Market Sale Unit cannot be sold in accordance with Part 2 of this Schedule 2 or that a potential purchaser has been identified and a period of six months has expired without the parties entering into a binding contract for such disposal the Discount Market Sale Unit may (with the Council's prior written approval) be sold free from the requirements in paragraph 1.6 of Part 2 of this Schedule 2; provided that
 - (i) the Discount Market Sale Unit is sold at the Discount Price to the purchaser as his only or principal home; and
 - (ii) the Discount Price and the requirements in paragraph 1.6 of Part 2 of this Schedule 2 shall apply in full on any subsequent disposition so that such person shall remain bound by the terms of this Deed;
- (g) on completion of the initial sale of every Discount Market Sale Unit to secure a restriction on the registered title in the terms required by the Land Registry such that no disposition of any Discount Market Sale Unit will be registered unless the purchaser's solicitors certify that the terms of paragraphs 1.5 and 1.6 of Part 2 of this Schedule 2 have been complied with and provide the Council with a copy of the restriction and the solicitors' certificate of compliance on each and every such disposition of the Discount Market Sale Unit.

1.8 In the case of all subsequent sales:

- (a) to serve on the Council a notice of an intended sale of the specified Discount Market Sale Unit for sale together with two valuation appraisals by two local estate agents and the name address and contact details for the vendor and selling agent;
- (b) not to commence any marketing unless the Council has confirmed in writing acceptance of;
 - (i) the notice of intended sale; and
 - (ii) the Discount Price;
- (c) to ensure its selling agent liaises with the Council (or its nominee) for a period of three months from the date of the Council's confirmation of receipt of such notice in order to identify a potential purchaser meeting the sole residency and Qualifying Purchaser requirements in paragraph 1.6 of Part 2 of this Schedule 2;
- (d) not to exchange contracts for the sale of the relevant Discount Market Sale Housing Unit unless written prior written approval has been obtained from the Council that the prospective purchaser meets the criteria set out in paragraph 1.6 of this Schedule 2; provided that

- (e) if on any subsequent sale the Council is reasonably satisfied that after a period of three months of active marketing and advertising that a Discount Market Sale Unit cannot be sold in accordance with this Schedule 2 or that a potential purchaser has been identified and a period of six months has expired without the parties entering into a binding contract for such disposal the Discount Market Sale Unit may (with the Council's prior written approval) be sold free from the requirements in paragraph 1.6 of Part 2 of this Schedule 2; provided that
 - (i) the Discount Market Sale Unit is sold at the Discount Price to the purchaser as his only or principal home; and
 - (ii) the Discount Price and the requirements in paragraph Part 2 of this Schedule 2 shall apply in full on any subsequent disposition so that such person shall remain bound by the terms of this Deed.

1.9 Not to permit or otherwise allow any Discount Market Sale Unit for sale to be let other than with the written consent of the Council.

SCHEDULE 3**OPEN SPACE FACILITIES**

- 1 The Owners covenant and agree with the Council:
- 1.1 Concurrently with the submission of any Reserved Matters Application, the Owner of that Reserved Matters Area subject to the Reserved Matters Application shall submit to the Council the Phase Wide Open Space Scheme for that Reserved Matters Area.
- 1.2 Upon the Owner issuing the Phase Wide Open Space Scheme referred to in paragraph 1.1 above to the Council, the Council shall within 28 days either
- (a) approve the Phase Wide Open Space Scheme (in which case it shall become the "Approved Phase Wide Open Space Scheme"); or
- (b) refuse to approve the Phase Wide Open Space Scheme, and provide reasons for such refusal

PROVIDED ALWAYS THAT such approval cannot be unreasonably withheld and the Phase Wide Open Space Scheme cannot be refused for any reason which contradicts any approval of the Reserved Matters Application

- 1.3 In the event that the Council refuses to approve the Phase Wide Open Space Scheme pursuant to paragraph 1.2.2 and provides reasons therefore, the Owner shall either refer the matter to arbitration pursuant to clause 13 of this Deed, or update the proposed Phase Wide Open Space Scheme and re-submit it to the Council, in which case paragraph 1.2 and this paragraph 1.3 shall apply mutatis mutandis until the Phase Wide Open Space Scheme becomes the Approved Phase Wide Open Space Scheme.
- 1.4 The Owner shall not Commence the Development of a Reserved Matters Area unless and until the Phase Wide Open Space Scheme in respect of that Reserved Matters Area becomes the Approved Phase Wide Open Space Scheme.
- 1.5 The Owner covenants to comply with the Approved Phase Wide Open Space Scheme.

2 Management and Maintenance of the Open Space

- 2.1 Not to Commence Development in a Reserved Matters Area until the Council has approved in writing (such approval not to be unreasonably withheld or delayed) the arrangements as identified in the Management Company Plan for the long term management and maintenance of the Open Space Facilities in that Reserved Matters Area; and the details of/for the recovery by that Management Company of service charge contributions from the owners of the Open Market Units and the Registered Provider (where appropriate) towards the upkeep and permanent maintenance of the Open Space Facilities.
- 2.2 Thereafter to implement the arrangements in accordance with the Management Company Plan which will include the Owner entering into a contract with the Management Company to transfer the Open Space Facilities to the Management Company in accordance with the provisions of this Schedule.
- 2.3 Not to sell or otherwise dispose of any Open Market Unit without requiring (through appropriate covenants) for the purchaser of that Open Market Unit and his successors in title to become members of the Management Company and to enter into a covenant with the Management Company to pay a service charge towards the costs of the Management Company discharging its functions towards the management of the Open Space Facilities together with provisions for recovery of those contributions in accordance with the arrangements approved pursuant to this part Schedule.

2.4 Until the transfer of the Open Space Facilities to a Management Company:

- (a) not to use the Open Space Facilities for any purpose other than as a public amenity area and any use in connection with a sustainable urban drainage system serving the Development; and
- (b) at all times remain fully responsible for the repair, maintenance, safety and general upkeep of the Open Space Facilities consistent with its use as a public amenity and as a sustainable urban drainage system serving the Development.

SCHEDULE 4
BIODIVERSITY NET GAIN

The Owner covenants with the Council as set out below:

- 1 Before Commencement of Development to submit to the Council the Biodiversity Gain Plan and (and if required) HMMP for approval in writing.
- 2 The Biodiversity Gain Plan and the HMMP shall include details of the Biodiversity Net Gain to be provided on the Site by way of the Habitat Creation and Enhancement Works together with how they will be managed maintained and monitored for 30 years from the BNG Completion Date in respect of the Habitat Creation and Enhancement Works (if required by the Council acting reasonably);
- 3 Prior to first Occupation of the first Dwelling to submit evidence of the registration and allocation of the BNG Units on the Biodiversity Gain Sites Register to the Development (as appropriate), to the Council, unless otherwise agreed in writing by the Council.
- 4 The Owner shall comply with and satisfy the requirements to the approved Biodiversity Gain Plan and HMMP.
- 5 To notify the Council in writing following completion of the Habitat Creation and Enhancement Works.
- 6 To permit the Council access to inspect the Habitat Creation and Enhancement Works following completion in order that the Council can determine whether the Habitat Creation and Enhancement Works have been completed in accordance with the HMMP and/or whether any remedial works are required to rectify defects and once satisfied to issue the Certificate of Completion.
- 7 To respond to the Council within 20 Working Days of service of a Breach Notice to accept or dispute the Breach Notice.
- 8 Where the Breach Notice is disputed or the remedial steps cannot be complied with in the time provided in the Breach Notice:
 - 8.1 to return a reasoned explanation to the Council supported by evidence (where appropriate); and/or
 - 8.2 to request additional time to comply with the requirements of the Breach Notice for approval by the Council.
- 9 Where a Breach Notice is accepted (or has been determined to be valid pursuant to clause 11 of this Deed) to comply with the requirements of the Breach Notice within the timescale provided or such extension of time agreed with the Council in writing pursuant to paragraph 8 or such time as has been determined by the expert in accordance with clause 11.
- 10 Where the Breach Notice has not been complied with within the timescale provided in the Breach Notice or agreed pursuant to paragraph 8 or the time as has been determined by the expert in accordance with clause 11 to allow the Council, its agents and contractors with or without workmen and equipment to enter the Site and other land in the Owner's control needed to access the Site at all reasonable times following receipt of 5 Working Days' notice to carry out works reasonably necessary to comply with the requirement of the Breach Notice or determination in accordance with clause 11, as applicable, following reasonable notice given.

- 11 Where the provisions of paragraph 10 apply to pay to the Council a sum equivalent to its reasonably and properly incurred costs in respect of carrying out the relevant works under paragraph 10 within 20 Working Days of a notice requesting payment (such notice to include a breakdown of such costs).
- 12 To permit the Council, its agents, and contractors with or without workmen and equipment to access the land on which the on-site BNG Units are located for the purpose of monitoring compliance with the obligations in this Deed and to pass and repass across any land in the Owner's control which is necessary to gain access for these purposes.
- 13 To submit the Monitoring Report to the Council within 20 (twenty) Working Days of the first, second, third, fourth and fifth anniversary of the issue of the Certificate of Completion and every 5 years thereafter each unless other intervals are agreed in writing with the Council.
- 14 The provisions of this Schedule shall terminate thirty (30) years after the BNG Completion Date

Excess BNG Units

The Council covenants and agrees with the Owner

- 15 to enter into an Excess BNG Unit Agreement to govern the allocation of the Excess BNG Units on the Biodiversity Gain Sites Register in the event that the Biodiversity Gain Plan identifies Excess BNG Units.

SCHEDULE 5
THE COUNCIL'S COVENANTS
PART 1
THE CONTRIBUTIONS

The Council covenants and agrees:

- 1 upon receipt of the Contributions the Council will place the same in an interest bearing account;
- 2 the Council shall apply the Contributions only towards the facilities and purposes referred to in this Deed;
- 3 the Council agree that if any part of the Contributions have not been expended or remain uncommitted following a period of ten years from the date of payment then such part of the Contributions as may remain unspent or uncommitted together with interest accrued as aforesaid on the balance shall be returned to the payer of the Contributions;
- 4 if so requested in writing to provide the payer of the Contributions with such evidence as shall be reasonably requested to confirm the expenditure of the Contributions.

SCHEDULE 6

COMMENCEMENT NOTICE

TO: Planning Obligations Manager
Hereford Council
Plough Lane
Hereford
HR4 0LE

("Council")

FROM:

("Owner")

DEVELOPMENT: (description of development and site name):
RELEVANT PLANNING PERMISSION (reference number):
RELEVANT SECTION 106 AGREEMENT (date and parties):
("Section 106 Agreement")

I/We Owner * hereby put the Council on notice that we intend to commence development on

[[]] 20[]. This notice is the Commencement Notice served pursuant to the Section 106 Agreement.

DATED this day of 202[]

Signed by the Owner or an authorised signatory of the Owner

SITE PLAN

ANNEX 2

GREEN INFRASTRUCTURE PARAMETER PLAN

ANNEX 3

AFFORDABLE HOUSING MIX

Social Rent	No.	%	SQFT	SQM	Build Standards
1 bed 2 person Flat	12	29%	538	50	M4 Cat 1
1 bed 2 person Maisonette GF	12		538	50	M4 Cat 2
1 bed 2 person Maisonette FF	12		647	60	M4 Cat 1
1 bed 2 person Bungalow	1		538	50	M4 Cat 2
2 bed 3 person Bungalow	1	35%	657	61	M4 Cat 2
2 bed 4 person Bungalow	2		999	93	M4 Cat 3
2 bed 4 person House	42		850	79	M4 Cat 1
3 bed 5 person House	36	28%	1001	93	M4 Cat 1
4 bed 6 person House	8	6%	1141	106	M4 Cat 1
5 bed 8 person House	2	2%	1458	135	M4 Cat 1
Total	128	100%			

Shared Ownership or Discount Market Sale	No.	%	SQFT	SQM	Build Standards
2 bed 4 person House	30	49%	850	79	M4 Cat 1
3 bed 5 person House	31	51%	1001	93	M4 Cat 1
Total	61	100%			

Total	189				
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IN WITNESS of which the parties have executed this Agreement as a Deed on the date first written above

EXECUTED AS A DEED when the)
COMMON SEAL of the)
COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL)
was hereunto affixed **BY ORDER**)

Authorised Signatory

**EXECUTED AS A DEED BY
BLOOR HOMES LIMITED**

In the presence of:-

Director

Director/Secretary