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- 2 DEC 2013 (10:47 AM)
LAND CHARGES

Ashfield District Council as a Local Land Charge

Would you please register the above Section 106 Agreement (Town & Country Planning Act 1990) between:
i) Nottinghamshire County Council
ii) Bellway Homes Ltd
and

TO: LOCAL LAND CHARGES
FROM: PLANNING AND BUILDING CONTROL SUPPORT TEAM
LEADER
SUBJECT: BROOMHILL FARM, LAND TO WEST OF NOTTINGHAM ROADHUCKNALL
DATE: 02/12/2013
REF: V/2013/0409

ASHFIELD DISTRICT COUNCIL
MEMORANDUM

5106/440

Land at Broomhill Farm, Nottingham Road, Hucknall

relating to

SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

BELLWAY HOMES LIMITED

-AND-

NOTTINGHAMSHIRE COUNTY COUNCIL

-AND-

ASHFIELD DISTRICT COUNCIL

2013

28 November

DATED

THIS DEED is made on the 28 day of November 2013

BETWEEN

(1) ASHFELD DISTRICT COUNCIL of Council Offices, Urban Road, Kirby in Ashfield, Nottinghamshire, NG17 8DA ("the Council"); and

(2) NOTTINGHAMSHIRE COUNTY COUNCIL of County Hall,, West Bridgford, Nottingham NG2 7QP ("the Council")

(3) BELLWAY HOMES LIMITED whose registered office is at Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle upon Tyne, NE13 6BE ("the Developer")

RECITALS

(A) The Council is the Local Planning Authority for the purposes of the Act for the area in which the Land is situated.

(B) The Council is the local education and highways authority for the area in which the Land is situated and is registered at the Land Registry with title absolute under title numbers P183123, NT403980 and NT390106 in respect of the of the Land free from encumbrances

(C) The Developer has an interest in the Land pursuant to a contract to purchase dated 8 July 2013 made between the Developer (1) and the County Council (2)

(D) The County Council as joint applicant with the Developer has submitted the Planning Application to the Council

(E) The Council is minded to grant the Planning Permission subject to the prior completion of this Deed

(F) The County Council has agreed to enter in to this Deed :-

(i) as landowner to bind the Land; and

(ii) as a local education and highway authority by whom the planning obligations applied to the Land and created hereby are enforceable

NOW THIS DEED WITNESSES as follows: -

In this Deed including the recitals hereto the expressions in the first column below shall bear the meanings respectively ascribed thereto in the second column below unless the context entails otherwise

1. DEFINITIONS

"the Act" the Town and Country Planning Act 1990 as amended

"Affordable Housing" has the meaning given in Annex 2 of the NPPF comprising 20% of the total number of Dwellings to be constructed as part of the Development 60% (17 in number) of which are to be provided as Social Rented Units and/or Affordable Rented Units and 40% (11 in number) of which are to be provided as Intermediate Housing Units and/or Low Cost Housing Units unless otherwise agreed in writing with the Council and "Affordable Housing Units" and "Affordable Housing Unit" shall be construed accordingly

"Affordable Housing Scheme" a scheme to be submitted to and approved by the Council detailing the number type tenure and location of the Affordable Housing Units to be provided on the Land

"Affordable Rented Units" Affordable Housing Units which are provided as NPPF

"Appropriate Organisation" means a management company or any other body approved in writing by the Council

"Balancing Ponds" the balancing ponds shown edged and coloured blue on the Plan

"Balancing Pond Scheme" means a scheme to be submitted to and approved by the Council detailing the location landscaping construction and method of securing the provision of management and maintenance of the Balancing Ponds

"Chargee" any mortgagee or chargee of the Registered Social Landlord or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

"Commencement of Development"

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions (including trial holes or similar), remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly

"Consumer Prices Index"

the consumer prices index published by the Office for National Statistics or any successor ministry or department

"County Council Retained Land"

the land shown hatched orange on the County Council Retained Land Plan

"County Council Retained Land Plan"

the plan attached to this Deed at the First Schedule marked "County Council Retained Land Plan"

"Development"

residential development of the Land for 141 units with associated roads and infrastructure as the same have been authorised by the Planning Permission

"Discounted Price"

80% of Open Market Value or such other percentage as may be agreed in writing with the Council from time to time

"Dwellings"

the dwellings to be constructed on the Land pursuant to the Planning Permission including the Open Market Dwellings and the Affordable Housing Units and "Dwelling" shall be construed accordingly

"Education Contribution"

the sum of seven hundred and forty thousand six hundred and thirty pounds (£740,630) (based on a calculation of need for thirty primary school places at £11,455 multiplier in the total sum of £343,650.00 and twenty three secondary places at a multiplier of £17,260 per place in the total sum of £396,980.00) to serve the Broomhill Farm development site and such sums shall when due for payment be adjusted for inflation in accordance with increases in the Pubsec Index from the date of this Agreement until the due dates for payment and which shall be due as to fifty per centum thereof on Commencement of the Development and with the remainder due on first Occupation of the seventh Dwelling

"Interest"

interest at 4% ~~2%~~ above the base lending rate of

45 x 10

Barclays Bank Plc from time to time

means the All Items Retail Prices Index published by the Office of National Statistics contained in the monthly Digest of Statistics (or contained in any other index as may from time to time be published in substitution thereof or in the case of the Education Contribution the BIS Tender Price Index of Public Sector Building or such other index as may from time to time be published in substitution thereof

"Index"

means such increase or decrease to sums payable to the Council under this Agreement on an annual basis or pro rata from the date of grant of the Planning Permission until such time that payment of any sums in this Agreement is made such index linking to be equivalent to any inflationary increase or decrease on such sums in proportion to the increase or decrease taking as the measure of inflation the index last published before the date of the Agreement or any publication substituted for it PROVIDED no contribution shall carry interest and also be index Linked

"Index Linked"

Affordable Housing Units that are provided as intermediate housing as defined in Annex 2 of the NPPF

"Intermediate Housing Units"

the land shown edged red on the Plan in respect of which this Deed may be enforced

"Land"

housing to be offered for sale pursuant to the provision of paragraphs 7 to 10 inclusive of the Second Schedule and "Low Cost Housing Units" shall be construed accordingly

"Low Cost Housing"

National Planning Policy Framework (2012) or any amendment or supplemental guidance issued in respect thereof

"NPPF"

occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

"Occupation" "Occupy" and "Occupied"

the average of the figure considered by an independent Valuer to be the best price at which the sale of an unencumbered freehold interest in a Low Cost Housing Unit would have been completed unconditionally as if it were an Open Market Unit on the date of the valuation assuming:

"Open Market Value"

i. a willing seller and a willing buyer, and

- ii. that prior to the date of valuation the property was freely exposed to the market there had been a reasonable period within which to negotiate the sale (having regard to the nature of the property and the state of the market) and that values remained static throughout that period; and
- iii. that no account is taken of any bid by a prospective purchaser with a special interest; and iv. that both parties to the transaction had acted knowledgeably and prudently and without compulsion; and
- iv. that the property is in the existing state of repair

"Open Market Units"

any unit of housing that is provided as general market housing for sale on the open market and is not Affordable Housing

"Plan"

the plan attached to this Deed at the First Schedule marked "S106 Plan"

"Planning Obligations"

the County Council's covenants in Clause 6.1 and the Second Schedule of this Agreement

"Planning Application"

the application for planning permission for the Development to which the Council has ascribed reference number V/2013/0409

"Planning Permission"

the planning permission to be granted pursuant to the Planning Application a draft of which is annexed at the Fifth Schedule

"Play Area Contribution"

the sum of seventy five thousand pounds (£75,000) Index Linked towards the provision of Type 2 play equipment as defined in the Ashfield Play Strategy 2007 – 2012 on the Lime Tree Recreation Site

"POS Computed Sum"

the sum of forty seven thousand three hundred and ninety seven pounds and forty one pence (£47,397.41) Index Linked as a commuted sum towards the cost to the Council in maintaining the Public Open Space and the Balancing Ponds following the transfer of the same to the Council

"Protected Tenant"

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 shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit;

"PUBSEC Index"

means the Pubsec Tender Price Index as published and reviewed annually by the Department of Business Enterprise and Regulatory Reform

"Public Open Space"

those parts of the Development to be provided and permanently maintained as open space (unless otherwise agreed in writing by the Council) as indicated by the Plan

"Public Open Space Scheme"

a scheme approved by the Council in writing detailing the location and method for securing the provision, management landscaping and maintenance of the Public Open Space

"Registered Provider"

a registered provider as defined in section 80 of the Housing and Regeneration Act 2008

"Residential Travel Information Packs"

means the information packs to be provided to each Dwelling comprising the Development which shall include information on public transport, walkways and cycle ways in the area and details for accessing local travel websites

"Residential Travel Plan"

means a plan or plans with the aims and objectives set out for the residential areas for the Development to include the provision of a Residents Travel Information Pack for each Dwelling

"Social Rented Units"

Affordable Housing Units which are provided as social rented housing as defined in Annex of the NPPF

"Transport Contribution"

the sum of One hundred and thirty seven thousand nine hundred and twenty pounds (£137,920.00) for the provision of off-site public transport, cycling and walking measures on Nottingham Road and Watnall Road, Hucknall. Works shall include road based improvements such as crossings, footways, cycle routes, intelligent transport systems, public transport services and bus priority measures associated with non motorised users generated by the Development and Travel Plan initiatives

designed to encourage less use of the private car by improving and making safer facilities for pedestrians, cyclists and public transport users in the area, including the acquisition of land to facilitate such measures and such sum to be index linked to increases in the Consumer Prices Index from the date of this Agreement until the due date for payment and such Transport Contribution being levied at the current guidance figure of £32,000.00 per net developable hectare for residential developments in accordance with the County Councils Planning Contributions Strategy Document (March 2007) as amended 2010 and current to the date hereof

such person as is appointed in relation to the Development in accordance with the provisions of paragraph 4 of Part H of the Second Schedule

means the total sum of £7,700 (seven thousand seven hundred pounds) payable by the County Council as landowner in accordance with the provision of paragraph 8 of Part H of the Second Schedule

"Travel Plan Monitoring Fee"

"Travel Plan Co-ordinator"

2. CONSTRUCTION OF THIS DEED

- 2.1. Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4. Wherever there is a person or persons as a party to this Deed and where they undertake to perform or observe an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5. Any reference to an Act of Parliament shall include any modification, extension, re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and the County Council as local planning, education and highways authorities (as applicable) the successors to their respective statutory functions.

3. LEGAL BASIS

- 3.1. This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and all other powers thereto enabling in that behalf.
- 3.2. The covenants, restrictions obligations and requirements imposed upon the County Council as a landowner under this Deed create planning obligations pursuant to Section 106 of the Act and are binding upon the Land and enforceable by the Council as local planning authority against the County Council

4. CONDITIONALITY

- 4.1. This Deed is conditional upon the Commencement of Development save for the provisions of clauses 7.1, 7.2 and 7.3 which shall come into effect immediately upon completion of this Deed.

5. DEVELOPERS CONSENT

- 5.1 The Developer consents to its interest in the Land being bound hereby and covenants with the Council that upon acquiring freehold ownership of the Land from the County Council it will be subject to the obligations in this Deed as a person deriving title thereto

6. THE COUNCIL AND COUNTY COUNCIL COVENANTS

- 6.1. The County Council covenants as landowner with the Council as set out in the Second Schedule.
- 6.2. The Council covenants with the County Council as landowner as set out in Part A of the Third Schedule
- 6.3. The Council covenants with the County Council as local education and highways authority as set out in Part B of the Third Schedule
- 6.4. The Council covenants with the County Council as landowner and with the Developer as set out in Part C of the Third Schedule
- 6.5. The County Council as local education and highways authority covenants with the Council and the Developer as set out in the Fourth Schedule

7. MISCELLANEOUS

- 7.1. The Developer shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation and execution of this Deed not to exceed £495.00
- 7.2. The Developer shall pay to the County Council on completion of this Deed the reasonable legal costs of the County Council as local highway and education authority incurred in the negotiations and execution of this Deed in the sum of £1,250.

- 7.3. Unless expressly stated no provisions of this Deed confer any rights in favour of any person under the Contracts (Rights of Third Parties) Act 1999.
- 7.4. This Deed shall be registered as a local land charge by the Council.
- 7.5. Where the agreement, approval, consent or expression of satisfaction is required by the parties hereto under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction required to be given on behalf of the Council shall be in writing by the Head of Planning and Regulatory Services and on behalf of the County Council as local highway and education authority given by its appropriate Departmental Director
- 7.6. Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.7. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.8. This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Developer and the County Council as landowner) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 7.9. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or the part in respect of which such breach occurs or whilst it shall have no interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.10. In the event that the County Council as landowner transfers its interest in the Land such that it only remains in possession of the County Council Retained Land the provisions of this Deed shall not be enforceable against the County Council as landowner (but without prejudice to liability for any subsisting breach arising prior to parting with such interest)
- 7.11. This Deed shall not be enforceable against:
- 7.11.1. owner-occupiers or tenants of the Open Market Units nor against those deriving title from them nor any mortgagee or chargee of any such persons or against persons deriving title from any such mortgagee or chargee
- 7.11.2. any statutory undertaker or telecommunications provider or binding upon any plant equipment or apparatus of any such person
- 7.12. Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed nor shall any sum be payable hereunder in respect of any such development authorised by such further planning permission.

8. COUNCIL'S DISCRETION

8.1. Without prejudice to the obligations of the Council in this Deed nothing herein contained shall prejudice or affect the Council's and the County Council's rights, powers, duties and obligations in the exercise of their functions as a local authorities and all such rights, powers, duties and obligations under all public or private statute, by-laws, orders, regulations and otherwise may be as fully and effectually exercised in relation to the proposed Development of the Land and any other subject matter of this Deed as if this Deed had not been executed by the Council or the County Council as applicable

9. WAIVER

9.1. No waiver (whether expressed or implied) by the Council, the County Council or the Developer 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, the County Council or the Developer from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

10. CHANGE IN OWNERSHIP

10.1. The County Council as landowner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the County Council's obligations under this Deed (other than the disposal of a Dwelling to an owner-occupier or tenant against whom they are not enforceable) have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not together with the area of the Land or unit of occupation purchased by reference to a plan

10.2. Any notice, consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid recorded delivery post

10.3. The address for service of any such notice, consent or approval as aforesaid shall be, in the case of service upon

10.3.1. the Council addressed to the The Civic Centre Urban Road Kirby in Ashfield Notts NG17 8DA quoting reference R/Legal at the address aforesaid

10.3.2. the County Council to its Head of Legal Services, County Hall West Bridgford Nottingham NG2 7QP

10.3.3. In the case of the Developer the address given above

or such other address for service as shall have been previously notified by the parties

10.4. A notice, consent or approval required or authorised to be given under this Deed shall be deemed to be served as follows:

10.4.1. if personally served at the time of delivery and if posted at the time when it would be received in the ordinary course of business

10.4.2 to prove such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice, consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded delivery envelope.

11. DISPUTE RESOLUTION

11.1. In the event of any dispute or difference arising between the parties to this Deed touching or concerning any matter or thing arising out of this Deed (other than a dispute or difference touching or concerning the meaning or construction of this Deed) such dispute or difference shall be referred to some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert and shall receive representations and counter-representations from the parties in dispute and his decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and falling such determination shall be borne by the parties to the dispute or difference in equal shares.

12. INTEREST

If any payment due under this Deed is paid late, interest will be payable from the date payment is due to the date of payment.

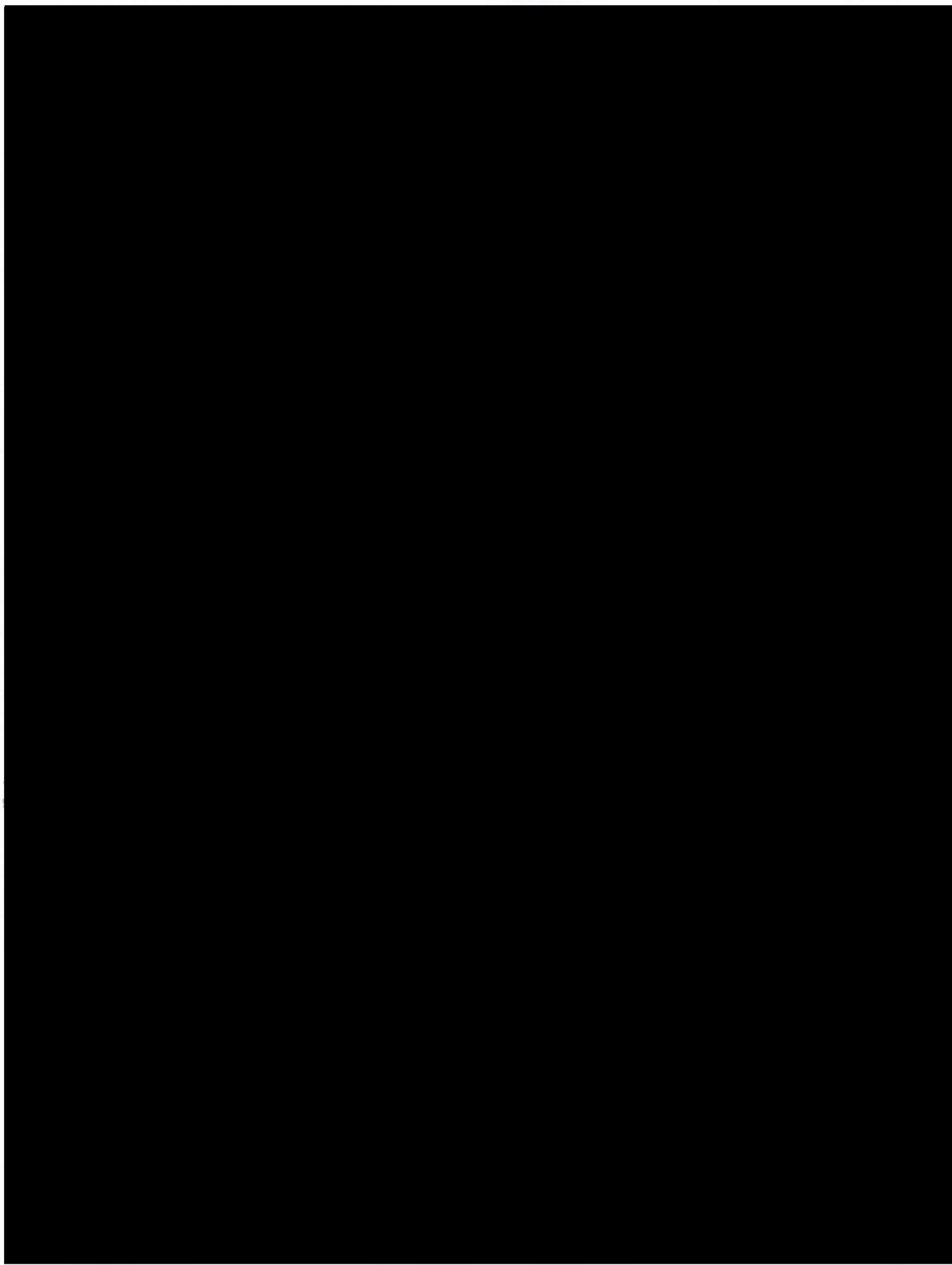
13. JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England and Wales.

14. DELIVERY

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

IN WITNESS WHEREOF the parties hereto have executed this Deed on the day and year first before written.



THE FIRST SCHEDULE
OF THE LANDS ACT, 1954
AS AMENDED BY THE
LANDS (AMENDMENT) ACT, 1962
AND THE LANDS (AMENDMENT) ACT, 1968

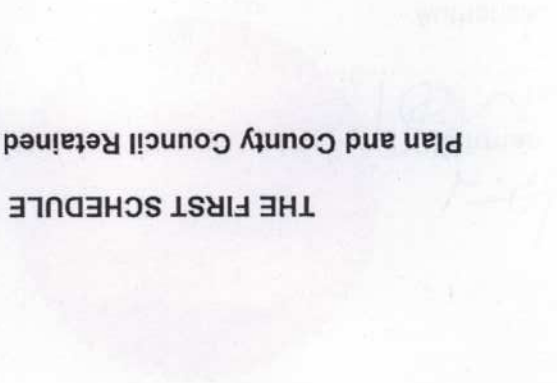


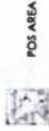
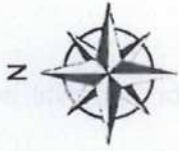
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OF THE LANDS ACT, 1954
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LANDS (AMENDMENT) ACT, 1962
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Plan and County Council Retained Land Plan
THE FIRST SCHEDULE



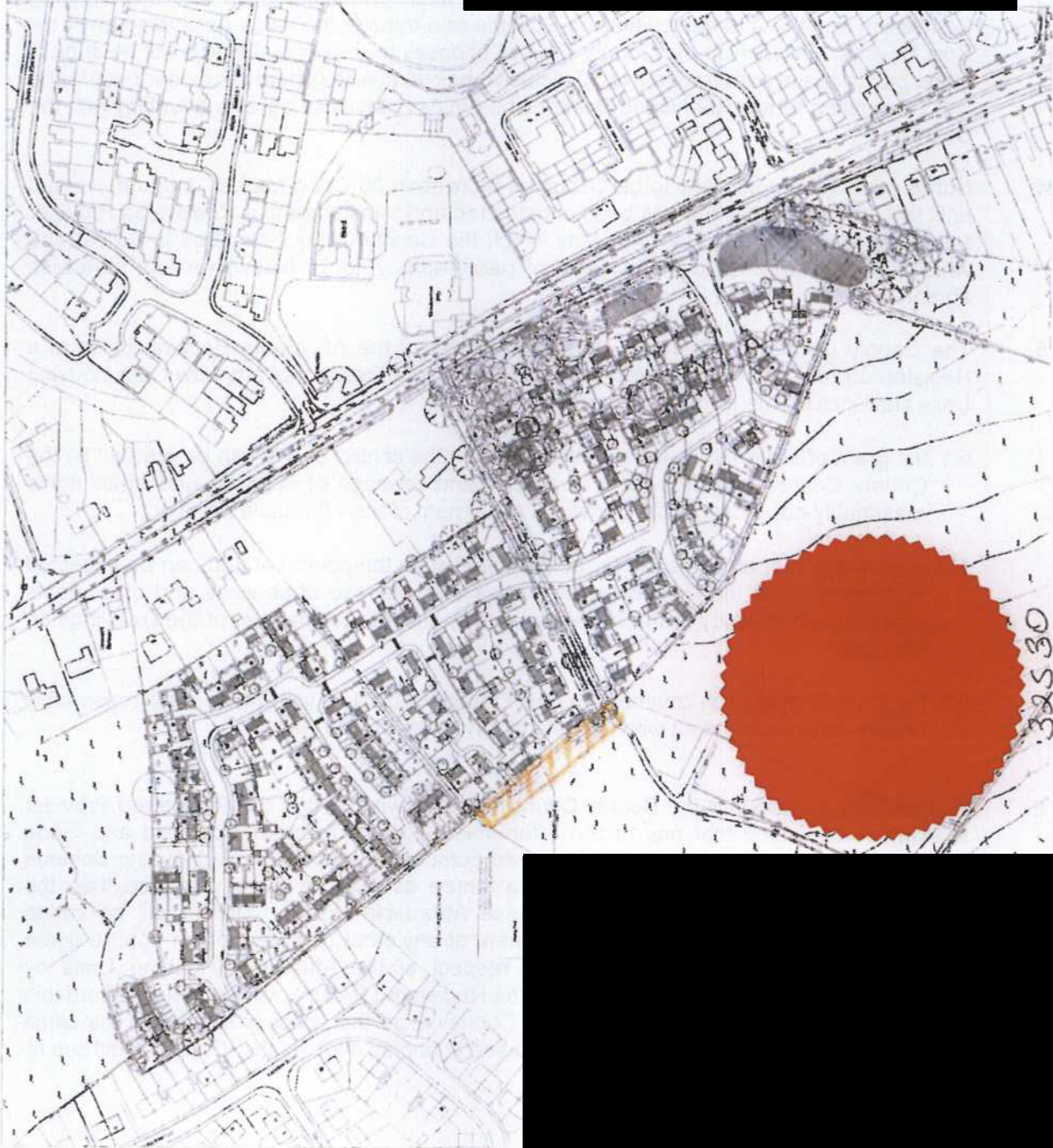
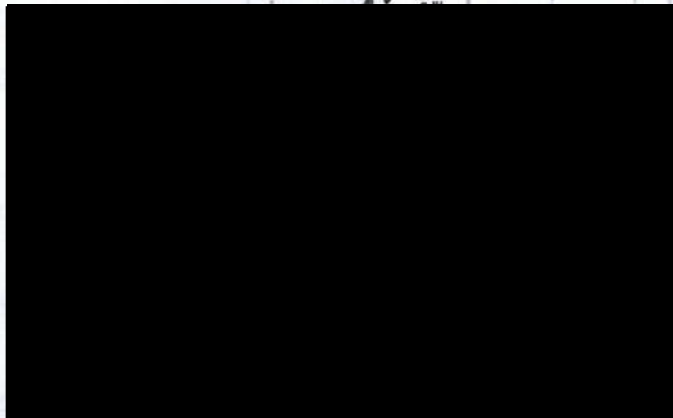


POS AREA

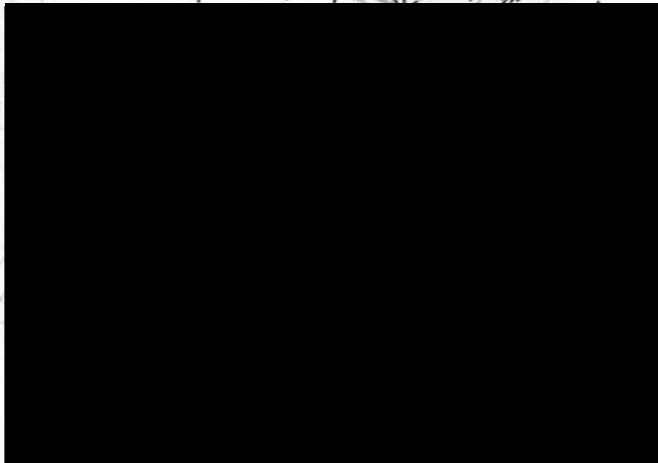


BALANCING LAGOON AREA

SEAL REGISTER
NO. 39693



32530



PC0288-S106-001

Scale
1" = 10'

THE SECOND SCHEDULE

Covenants by the County Council as landowner in favour of the Council

PART A – AFFORDABLE HOUSING

1. Prior to the Commencement of Development to submit to the Council for approval an Affordable Housing Scheme
2. Not to Commence Development unless and until the Affordable Housing Scheme has been approved in writing by the Council
3. To construct and complete all of the Affordable Housing in accordance with the Planning Permission and the Affordable Housing Scheme and transfer the same (excluding any Low Cost Housing Units which the County Council chooses to deliver and which will be subject to the provisions of paragraphs 7 to 10 inclusive below) to a Registered Provider prior to the first Occupation of the 100th Open Market Unit (unless otherwise agreed in writing with the Council)
4. Not to permit suffer or allow to be Occupied more than 99 Open Market Units unless and until the Affordable Housing has been constructed and transferred to a Registered Provider (excluding any Low Cost Housing Units which the County Council chooses to deliver and which will be subject to the provisions of paragraphs 7 to 10 below) (unless otherwise agreed in writing with the Council)
5. The County Council shall ensure that any transfer of the Affordable Housing Units to a Registered Provider or to an individual owner occupier in respect of any Low Cost Housing Units shall include the following provisions:
 - 5.1 the grant of all rights (so far as they are within the control of and can be granted by the County Council as landowner) of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Housing;
 - 5.2 a reservation of all rights (so far as they are within the control of and can be excepted and reserved by the Developer) of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the remainder of the Dwellings on the Land;
 - 5.3 the imposition of such covenants as the County Council as landowner shall reasonably require as are consistent with the sale of any Open Market Units
6. If at any time the Council the County Council as landowner and/or the Registered Provider shall agree in writing that any of the Affordable Housing Units shall be held and made available on terms other than those approved pursuant to the Affordable Housing Scheme including without limitation such alternative tenure as may be thereby agreed then the affordable housing terms applicable to those Affordable Housing Units shall be varied thereby without need for consent or agreement of any other person and this right to agree to vary the affordable housing terms in respect of the Affordable Housing Units by agreement with the County Council and/or the Registered Provider owning those Affordable Housing Units shall be exercisable by the Council more than once in respect of the same Affordable Housing Units if the Council shall see fit and as often as the Council shall see fit

Low Cost Housing Units

7. To construct the Low Cost Housing Units (if any) in accordance with the Planning Permission prior to the first Occupation of the 100th Open Market Unit

8. Not to permit, suffer or allow to be Occupied more than 99 Open Market Units unless and until the Low Cost Housing Units (if any) have been constructed ready for Occupation and, if applicable, transferred to a Registered Provider.

9. The transfer of any Low Cost Housing Unit to an individual purchaser shall contain:

9.1 a covenant binding on the transferee and all subsequent transferees from the date of the first transfer by the County Council of the Low Cost Housing Unit that no subsequent transfer shall take place other than at the Discounted Price; and

9.2 a restriction preventing the transfer of any Low Cost Housing Unit for more than 80% of the Open Market Value

10. In the event that no Registered Provider agrees to accept the transfer of the whole or any part of the Affordable Housing within 6 months of the date on which the 100th Dwelling becomes available for first Occupation despite the County Council using reasonable endeavours to negotiate the terms of the sale of the whole or any part of the Affordable Housing (excluding the Low Cost Housing Units) to a Registered Provider and demonstrates this to the Council, the County Council and the Council agree that an appropriate financial contribution, can be negotiated and paid in lieu of the whole or any part of the Affordable Housing that cannot be transferred to a Registered Provider (such financial contribution to be agreed between the parties acting reasonably having regard to the Council's adopted policy relating to the calculation and payment of off site financial contributions in respect of affordable housing current at the time of negotiation) and upon the payment of that financial contribution the restriction on the occupation of the 100th Dwelling will cease and the County Council as landowner shall be permitted to sell the whole or any part of the Affordable Housing that cannot be transferred to a Registered Provider on the open market free from the restrictions in this Second Schedule. The financial contribution to be paid within 21 days of the amount being agreed

11. The provisions of this Second Schedule shall not apply to:

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

11.2 any Chargee; or

11.3 any purchaser from a mortgagee or chargee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor

PART B – PLAY AREA CONTRIBUTION

1. To pay to the Council 50% of the Play Area Contribution prior to the Commencement of the Development and thereafter to pay the remaining 50% of the Play Area Contribution prior to the first Occupation of the 70th Dwelling

2. Not to Commence Development unless and until 50% of the Play Area Contribution has been paid to the Council

3. Not to Occupy or permit the Occupation of more than 69 Dwellings unless and until the remaining 50% of the Play Area Contribution has been paid to the Council

PART C –PUBLIC OPEN SPACE

1. Prior to the Commencement of Development to submit to the Council for approval in writing the Public Open Space Scheme
2. Not to Commence the Development until the Public Open Space Scheme has been approved in writing by the Council
3. To complete the construction and laying out of the Public Open Space in accordance with the Public Open Space Scheme and to the reasonable satisfaction of the Council prior to the first Occupation of the 70th Dwelling
4. To maintain the Public Open Space for a minimum period of 12 months after the completion of the laying out and construction of the Public Open Space and if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period of maintenance, or if any equipment or fencing is damaged or removed, to reinstate or replace as necessary until the Public Open Space is transferred to the Council
5. At the end of the 12 month maintenance period the Council shall procure that the Councils Surveyor (or independent equivalent appointed by the Council) shall with all reasonable diligence make his inspection and either;
 - i) give his written certificate that the specification and conditions have been complied with and that the Public Open Space is ready to be transferred to the Council; or
 - ii) make a written report setting out any aspects in which the specifications and conditions have not yet being complied with and the steps which the owner must make to rectify such omissions and
 - iii) forthwith serve his certificate pursuant to paragraph 5(i) or his report pursuant to 5(ii) as the case may be on the County Council and the Council
6. If the Councils surveyor (or otherwise appointee) shall have given his certificate pursuant to paragraph 5(i) then the County Council as landowner shall proceed to transfer the Public Open Space to the Council. But if the Councils surveyor or other appointee shall have given a report pursuant to paragraph 5(ii) then the County Council shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the Public Open Space whereupon the Council shall as soon as practical therefore after arrange for such further inspection to be made by the Councils surveyor or appointee and so on as often as is necessary until the Councils surveyor or appointee shall give his certificate pursuant to paragraph 5(i).
7. For the avoidance of doubt the Councils surveyor or appointee shall act as expert and not an arbitrator and his opinion shall be binding on the parties.
8. The County Council shall pay as a debt to the Council the reasonable costs of the Councils surveyor or appointee incurred in making any inspection of the Public Open Space pursuant to paragraph 5 above (as often as may be necessary in the case of re-inspection) such costs to be capped at £375 (with no VAT payable) per inspection and report and to be paid not later than 14 days after the presentation to the County Council by the Council of a copy of the Councils surveyors or appointee's invoice PROVIDED THAT if the inspection of the

Public Open Space is carried out at the same time as the inspection of the Balancing Ponds pursuant to paragraph 8 of Part D below then only one inspection fee shall be charged.

9. The County Council shall transfer the Public Open Space with title absolute to the Council within 6 months of the notice from the Council's surveyors or appointee that the Public Open Space has been completed to the Council's satisfaction

10. To pay the POS Computed Sum to the Council upon the transfer of the Open Space to the Council

11. In the event that the Council fails to complete the transfer of the Public Open Space within the period of six months referred to in paragraph 9 above, then the County Council will be free to transfer the Public Open Space to an Appropriate Organisation who will maintain the Public Open Space in accordance with the Public Open Space Scheme

12. In the event that the Public Open Space is transferred to an Appropriate Organisation then the obligation to pay the POS Computed Sum pursuant to paragraph 10 above shall become null and void

PART D – BALANCING PONDS

1. Prior to Commencement of Development to submit to the Council for approval in writing the Balancing Pond Scheme

2. Not to Commence the Development until the Balancing Pond Scheme has been approved by the Council

3. To complete the construction and laying out of the Balancing Ponds to the reasonable satisfaction of the Council prior to the first Occupation of the 70th Dwelling

4. To maintain the Balancing Ponds for a minimum period of 12 months after the completion of the laying out and construction of the Balancing Ponds and if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period of maintenance, or if any equipment or fencing is damaged or removed, to reinstate or replace as necessary until the Balancing Ponds are transferred to the Council

5. At the end of the 12 month maintenance period, the County Council shall request to the Council in writing that the Council shall procure that the Councils Surveyor (or independent equivalent appointed by the Council) to inspect the Balancing Ponds and he shall with all reasonable diligence make his inspection and either;

i) give his written certificate that the specification and conditions have been complied with and that the Balancing Ponds are ready to be transferred to the Council; or

ii) make a written report setting out any respects in which the specifications and conditions have not yet being complied with and the steps which the County Council must make to rectify such omissions and

iii) forthwith serve his certificate pursuant to paragraph 5(i) or his report pursuant to 5(ii) as the case may be on the owner and the Council

6. If the Councils surveyor (or otherwise appointee) shall have given his certificate pursuant to paragraph 5(i) then the County Council shall proceed to transfer the Balancing Ponds to the Council. But if the Councils surveyor or other appointee shall have given a report pursuant to paragraph 5(ii) then the County Council shall comply with the requirements of the report and

1. The County Council covenants that during the construction phase of the development that it will use reasonable endeavours to employ 3 apprentices on a temporary, full time (40 hours per week) or part time (20 hours per week) basis

PART G – LOCAL EMPLOYMENT

1. To pay to the Council 50% of the Education Contribution upon Commencement of the Development and thereafter the remaining 50% of the Education Contribution on first Occupation of the 70th Dwelling to built on the Land
2. Not to Commence the Development unless and until 50% of the Education Contribution has been paid to the Council
3. Not to Occupy or permit the first Occupation of more than 69 Dwellings unless and until the Education Contribution has been paid to the Council

PART F – EDUCATION CONTRIBUTION

1. To pay to the Council 100% of the Transport Contribution on first Occupation of the 100th Dwelling to be built on the Land
2. Not to Occupy or permit the Occupation of more than 99 Dwellings unless and until 100% of the Transport Contribution has been paid to the Council

PART E – TRANSPORT CONTRIBUTION

7. For the avoidance of doubt the Councils surveyor or appointee shall act as expert and not an arbitrator and his opinion shall be binding on the parties.
8. The County Council shall pay as a debt to the Council the reasonable costs of the Councils surveyor or appointee incurred in making any inspection of the Balancing Ponds pursuant to paragraph 5 above (as often as may be necessary in the case of re-inspection) such costs to be capped at £375 (with no VAT payable) per inspection and report and to be paid not later than 14 days after the presentation to the County Council by the Council of a copy of the Councils surveyors or appointee's invoice PROVIDED THAT if the inspection of the Balancing Ponds is carried out at the same time as the inspection of the Public Open Space pursuant to paragraph 8 of Part C above then only one inspection fee shall be charged.
9. The County Council shall transfer the Balancing Ponds with title absolute to the Council within six months of the notice from the Council's surveyor or appointee that the Balancing Ponds have been completed to the Councils satisfaction

PART H – TRAVEL PLAN

RESIDENTIAL TRAVEL PLAN

1. Not to permit the first Occupation of any Dwelling until the Residential Travel Plan has been submitted to Council and has been approved

2. Implement the Residential Travel Plan in its approved form including the provision to the first occupant(s) of each Dwelling of a Residents Travel Information Pack on the completion of the transfer of that Dwelling subject to such variations as may be agreed from time to time between the Owners and the Council

3. The Residential Travel Plan will set out:

3.1 the measures to be adopted to encourage non-car travel;

3.2 the programme for implementing such measures;

3.3 the process for review and monitoring;

3.4 the steps that will be taken if targets are not met; and

3.5 such other matters that are agreed between the County Council as landowner and the Council

TRAVEL PLAN CO-ORDINATOR

4. No later than 6 (six) months prior to the first Occupation of the Development a Travel Plan Co-ordinator shall be appointed who shall be employed in relation to the Development throughout the life of the Residential Travel Plan on a part time basis for such hours which may vary from week to week and for such period as is necessary to perform the roles and functions set out in the Residential Travel Plan

5. Comply with the process for review and monitoring set out in the Residential Travel Plan and the Travel Plan Co-ordinator shall submit reports to update the TRICS database in accordance with the Standard Assessment Methodology (SAM) or similar to be approved and submit to the Council in accordance with the monitoring periods identified within the Residential Travel Plan. The monitoring reports submitted to the Council shall summarise the data collected over the monitoring period and propose revised initiatives and measures where travel plan targets are not being met including implementation dates to be approved in writing by the Council

6. In the event that the target for modal shift for the Development is not met by the end of the Residential Travel Plan monitoring period, the County Council as landowner, the Travel Plan Co-ordinator and the Council shall meet to identify the failure to reach such target

7. Following the arrangements referred to in paragraph 6 above the County Council as landowner and/or the Travel Plan Co-ordinator shall propose to the Council reasonable corrective measures necessary (in accordance with the approved Residential Travel Plan) to remedy such failure together with a programme for the implementation of such measures for the condition approval of the Council and thereafter the County Council as landowner shall comply with such approval and which shall include the provision of parking restrictions and associated signage and lining at the discretion of the Council acting reasonably

8. Pay the Travel Plan Monitoring Fee in four equal instalments to the Council, the first instalment being prior to first Occupation of any Dwelling and then annually prior to the anniversary of the payment of the first instalment for a period of 3 (three) years.

9. In the event that the freehold interest in the whole or any part of the Land is transferred by the County Council as landowner to another party then the requirements to liaise with, obtain approval from, report to and meet with the Council and the requirements to appoint a Travel Plan Co-ordinator in this Part H shall be deemed instead to be requirements to liaise with, obtain approval from, report to and meet with the County Council as local highways and transport authority

THIRD SCHEDULE

PART A - Covenants by the Council in favour of the County Council as landowner

1. The Council covenants with the County Council:
 - 1.1 to issue the Planning Permission forthwith upon completion of this Deed

- 1.2 to allocate commit or expend payments received by it pursuant to this Deed exclusively for the purposes respectively stated herein and if any of the amounts referred to in this Deed have not been allocated committed or expended by the Council as the case may be within 5 years from the date of payment or 30 years in respect of the POS Committed Sum of such sums by the payer, the Council shall repay to the payer such unallocated uncommitted or unexpended balance with interest at the Interest Rate by the Council from date of receipt of the final instalment to date of repayment .

- 1.3 within 21 days of any reasonable written request received from the County Council as landowner therefore to provide a written statement of the amount or amounts of any sum respectively received by the Council pursuant to this Deed which have been allocated committed or expended for the purposes respectively stated herein at the date of such written statement together with such reasonable written evidence as the County Council as landowner may specify to corroborate such written statement

- 1.4 to accept the transfer of the Public Open Space and the Balancing Ponds within six months of the notice from the Council's surveyor or appointee that the Public Open Space and/or the Balancing Ponds (as appropriate) have been completed to the Councils satisfaction PROVIDED THAT the Council shall not be under an obligation to accept the transfer of the Balancing Ponds unless and until it has been provided with a copy of an agreement completed pursuant to section 104 of the Water Industry Act 1991 entered into by Severn Trent Water

- 1.5 that following the transfer of the Public Open Space and the Balancing Ponds from the County Council as landowner to the Council the Council will thereafter maintain the Open Space and Balancing Ponds ; and
- 1.6 it will not unreasonably withhold or delay any confirmation, approval or consent or expression of satisfaction requested pursuant to this Deed.

PART B – Covenants by the Council in favour of the County Council as local highway and education authority

1. The Council covenants with the County Council:
 - 1.1 to pay to the County Council as local highways authority the Transport Contribution within 21 days of receipt
 - 1.2 to pay to the County Council as local education authority the Education Contribution within 21 days of receipt
 - 1.3 to pay to the County Council as local highways and transport authority the Travel Plan Monitoring Fee within 21 days of receipt

PART C – Covenants by the Council in favour of the County Council as landowner and the Developer

1. The Council covenants with the County Council and the Developer not to erect the Type 2 play equipment on the Lime Tree recreation site within 30 metres of the boundary of the Land

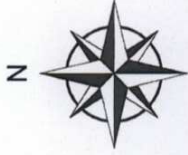
FOURTH SCHEDULE

Obligations of the County Council

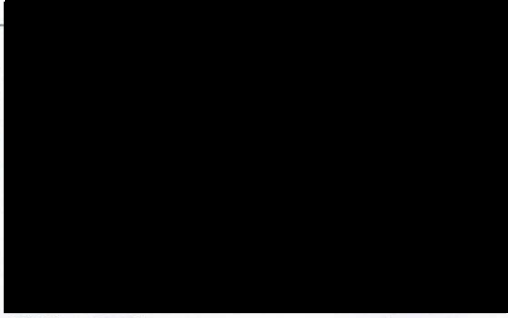
1. The County Council as local education and highways authority covenants with the Council and the Developer:

1.1 to allocate commit or expend payments received by it as local highways or education authority pursuant to this Deed exclusively for the purposes respectively stated herein and if any of the amounts referred to in this Deed have not been so allocated committed or expended by the County Council as the local highway or education authority (as applicable) as the case may be within 5 years from the date of payment of the final instalment of such sums by the payer, the County Council as local highway or education authority (as applicable) shall repay to the payer such unallocated uncommitted or unexpended balance with interest at the interest rate from date of receipt to date of repayment;

1.2 within 21 days of any reasonable written request to provide a written statement of the amount or amounts of any sum respectively received by the County Council as local highway or education authority pursuant to this Deed which have been allocated committed or expended for the purposes respectively stated herein at the date of such written statement together with such reasonable written evidence as may be required to corroborate such written statement



Authorised Signatory



Rev	Description	Date
<p>Bellway Homes (UK) Ltd, 3 Romulus Court, Meridian East, Meridian Business Park, Leicester, LE19 1YG Tel: 0116 282 0400 Fax: 0116 282 0407</p>		
<p>LAND AT BROOMHILL FARM HUCKNALL, NOTTINGHAMSHIRE</p>		
<p>Planning File S106 PLAN</p>		
Date	Scale	Drawn By
OCT 13	1:1250 @ A2	PMG
File No	PC0288-S106-001	

