

Engrossment

Dated <sup>5th</sup> 5<sup>th</sup> February 2015

BDW Trading Limited  
and  
Nottinghamshire County Council  
and  
Ashfield District Council

Section 106 Agreement relating to land at Papplewick Lane, Hucknall

**Browne Jacobson LLP**

Mowbray House  
Castle Meadow Road  
Nottingham  
NG2 1BJ

THIS AGREEMENT is made on

5<sup>th</sup> February

2015

**BETWEEN:**

- (1) **BDW TRADING LIMITED** (Company Registered Number: 03018173) whose registered office is at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville Leicestershire, LE67 1UF (“the Owner”)
- (2) **NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall, West Bridgford, Nottinghamshire (“the County”)
- (3) **ASHFIELD DISTRICT COUNCIL** of Council Offices, Urban Road, Kirkby in Ashfield, Nottinghamshire NG17 8DA (“the Council”)

**1. Definitions**

IN THIS AGREEMENT the following words and phrases shall have the following meaning:

- 1.1 “the Act” means Town and Country Planning Act 1990 (as amended) and terms not otherwise defined in this Agreement have the meaning ascribed to them in the Act unless a contrary intention appears
- 1.2 “the Barratt Permission” means the planning consent dated 21<sup>st</sup> March 2011 in respect of the Barratt proposed development with the Council’s Planning Reference No. V/2010/0351
- 1.3 “the Barratt Previous Agreement” means an agreement made pursuant to Section 106 of the Act between BDW Trading Limited(1) Bellway Homes Limited (2) the County (3) and the Council (4) dated 21 March 2011 which relates to the Barratt Permission
- 1.4 “the Barratt/David Wilson Homes Previous Agreement” means an agreement made pursuant to Section 106 of the Act between BDW Trading Limited (1) Bellway Homes Limited (2) the County (3) and the Council (4) dated 12 April 2013 which governs the David Wilson Homes V/2013/0070 permission the Barratt V/2013/0071 permission and the Barratt V/2013/0072 s73 permission
- 1.5 “the Blue Land” means the land shaded blue on Plan A but excluding the plots of any individual dwelling house which has been conveyed to a purchaser for value prior to the date of this Agreement
- 1.6 “the Brown Land” means the land shaded brown on Plan A but excluding the plots of any individual dwelling house which has been conveyed to a purchaser for value prior to the date of this Agreement

- 1.7 “the DWH V/2014/0350 Planning Application” means the application for full planning permission submitted by David Wilson Homes East Midlands on 11<sup>th</sup> July 2014 and registered by the Council as Planning Application V/2014/0350 for the erection of 167 dwellings and associated garages at Papplewick Lane, Hucknall
- 1.8 “the DWH V/2014/0350 Planning Application Site” means the land shown for the purposes of identification only edged red on Plan B within this Agreement
- 1.9 “the DWH V/2014/0350 Planning Obligation Land” means the land shown for the purposes of identification only coloured blue on Plan B within this Agreement
- 1.10 “the DWH V/2014/0350 Planning Permission” means the grant of planning permission pursuant to the V/2014/0350 Application in the form of the draft annexed to this Agreement
- 1.11 “the Entire Site” means the land which is shown for the purposes of identification only edged red on the Plan C attached to the Principal Agreement
- 1.12 “the Existing Obligations” means the planning obligations contained in the Principal Agreement as varied by this Agreement and as amended by the further planning obligations contained in clause 6 of the Barratt Previous Agreement and in clause 6 of the Barratt/David Wilson Homes Previous Agreement
- 1.13 “the Green Land” means the land shaded green on Plan A but excluding the plots of any individual dwelling house which has been conveyed to a purchaser for value prior to the date of this Agreement
- 1.14 “the Light Brown Land” means the land shaded light brown on Plan A but excluding the plots of any individual dwelling house which has been conveyed to a purchaser for value prior to the date of this Agreement
- 1.15 “the New Obligations” means the further planning obligations contained or referred to in clause 6 of this Agreement
- 1.16 “the Orange Land” means the land shaded orange on Plan A but excluding the plots of any individual dwelling house which has been conveyed to a purchaser for value prior to the date of this Agreement
- 1.17 “the Original Consent” means the conditional outline planning permission which was granted by the Council under reference 2004/0356 on 21<sup>st</sup> December 2005 in respect of the Entire Site and to which the Principal Agreement as amended by the Barratt Previous Agreement and the Barratt/David Wilson Homes Previous Agreement and this Agreement relate

- 1.18 “the Pink Land” means the land shaded pink on Plan A but excluding the plots of any individual dwelling house which has been conveyed to a purchaser for value prior to the date of this Agreement
- 1.19 “Plan A” means the plan attached to this Agreement and marked accordingly
- 1.20 “Plan B” means the plan attached to this Agreement and marked accordingly
- 1.21 “Plan C” means the plan attached to this Agreement and marked accordingly
- 1.22 “the Principal Agreement” means an agreement made pursuant to Section 106 of the Act between the County (1), the Cooperative Group (CWS) Limited (2) and the Council (3) dated 21<sup>st</sup> December 2005
- 1.23 “the Purple Land” means the land shaded purple on Plan A but excluding the plots of any individual dwelling house which has been conveyed to a purchaser for value prior to the date of this Agreement
- 1.24 “the Red Land” means the land shaded red on Plan A but excluding the plots of any individual dwelling house which has been conveyed to a purchaser for value prior to the date of this Agreement
- 1.25 “the Barratt V/2013/0072 s73 permission” means the permission granted by the Council on 12 April 2013
- 1.26 “the Yellow Land” means the land shaded yellow on Plan A but excluding the plots of any individual dwelling house which has been conveyed to a purchaser for value prior to the date of this Agreement
- 1.27 Any term not otherwise defined in this Agreement has the meaning ascribed to it in the Principal Agreement as varied by this Agreement or (where not defined in either this Agreement or the Principal Agreement) in the Barratt Previous Agreement and Barratt/David Wilson Homes Previous Agreement unless the context requires otherwise

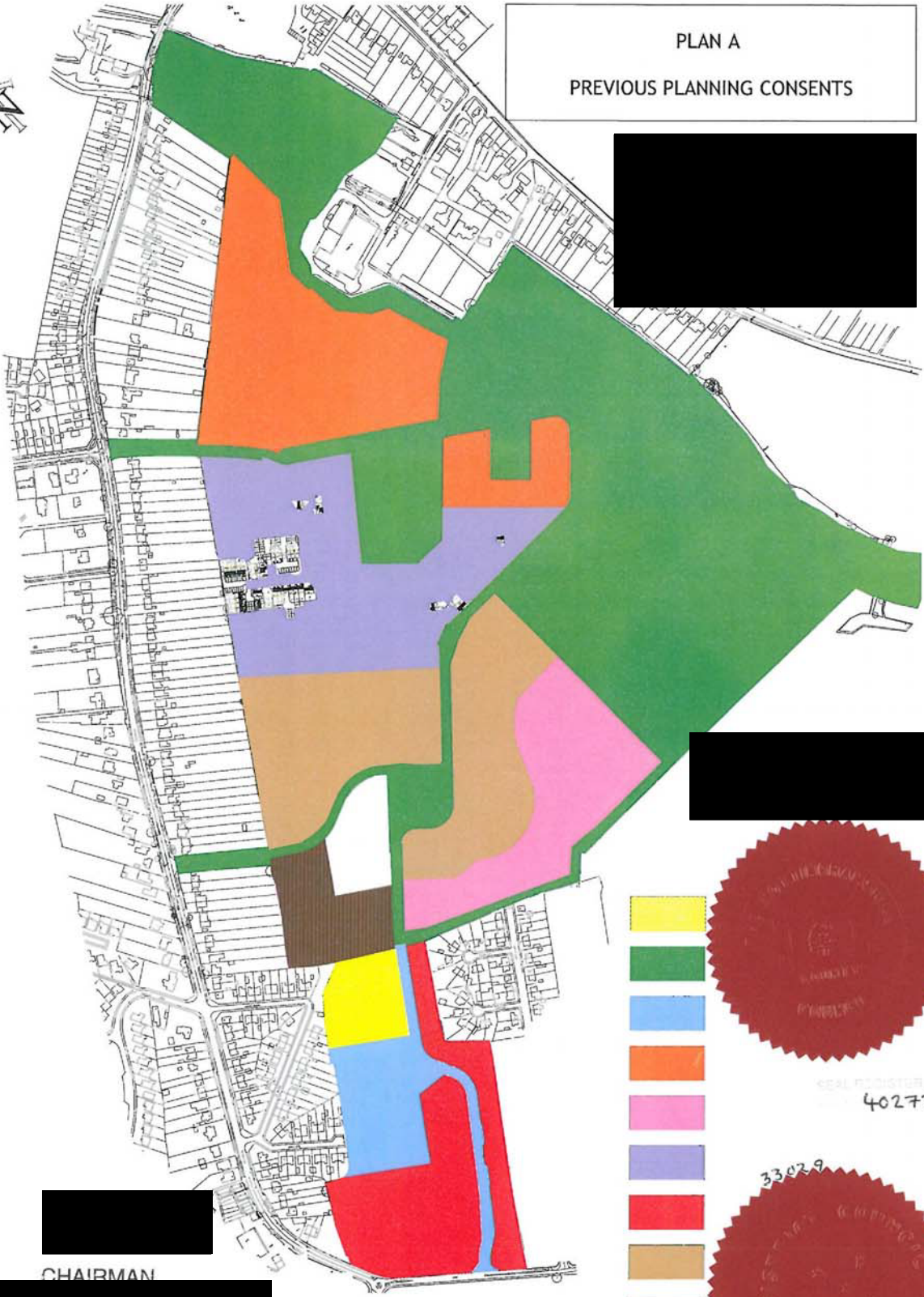
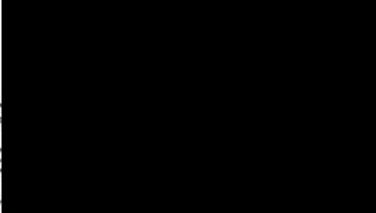
## 2 Recitals

WHEREAS:-

- 2.1 The Council is the Local Planning Authority for the purposes of the Act for the area in which the DWH V/2014/0350 Planning Application Site is situated
- 2.2 The Owner is the freehold owner of the DWH V/2014/0350 Obligation Land registered with Title Absolute under Title Numbers NT419544 and NT419545



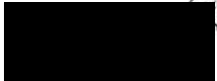
PLAN A  
PREVIOUS PLANNING CONSENTS



- Yellow
- Green
- Blue
- Orange
- Pink
- Purple
- Red
- Brown
- Dark Brown



SEAL REGISTER  
40272



CHAIRMAN







**PLAN C**  
The "Entire Site" as agreed within the Section 106 Agreement entered into relating to consent 2004/0356 dated 21st December 2005

- Planning Application Area Boundary
- Nottinghamshire County Council Ownership
- Co-operative Group Ownership
- Co-operative Group (Possessory Title)



3333

Authorised Sealing Officer

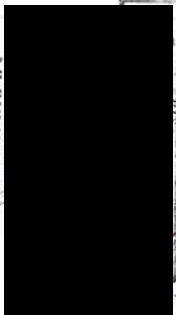
Rev B: 01-12-05: Land ownership added to plan as instructed by Halliwells.

CLIENT  
**THE CO-OPERATIVE GROUP PROPERTY DIVISION AND NOTTINGHAMSHIRE COUNTY COUNCIL (CORPORATE PROPERTY)**

PROJECT  
**LAND SOUTH OF PAPPLEWICK LANE, HUCKNALL**



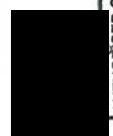
CHAIRMAN



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CHAIRMAN



AUTHORISED OFFICER



Based upon the Ordnance Survey map with the permission of The Controller of Her Majesty's Stationery Office. Copyright © 1997 Ordnance Survey. 1 High Street, Wexham, Maidenhead, UK. (A/JL 10002995)

- 2.4 Subsequent Applications (as defined in the Principal Agreement) have been approved pursuant to the Original Consent by the Council under reference numbers;
- 2.4.1 2007/0518 on 16<sup>th</sup> August 2007 in respect of part of Entire Site
  - 2.4.2 2008/0166 on 26<sup>th</sup> June 2008 in respect of part of the Light Brown Land
  - 2.4.3 2008/0272 on 26<sup>th</sup> June 2008 in respect of part of the Orange Land
  - 2.4.4 2008/0557 on 11<sup>th</sup> November in respect of part of the Purple Land
  - 2.4.5 2009/0051 on 31<sup>st</sup> March 2009 in respect of part of the Purple Land
  - 2.4.6 2009/0153 on 18<sup>th</sup> June 2009 in respect of the substitution of house types on part of the Orange Land
  - 2.4.7 2009/0154 on 22<sup>nd</sup> June 2009 in respect of the substitution of house types on part of the Orange Land, and
  - 2.4.8 2009/0178 on 3<sup>rd</sup> July 2009 in respect of the substitution of house types on part of the Orange Land
- 2.5 Planning consents which are to be treated as if they were Subsequent Applications pursuant to the Original Consent have been approved by the Council under reference numbers;
- 2.5.1 V/2006/0109 on 23<sup>rd</sup> March 2006 in respect of Entire Site
  - 2.5.2 V/2006/0146 on 6<sup>th</sup> April 2006 in respect of Entire Site
  - 2.5.3 V/2006/0373 on 8<sup>th</sup> June 2006 in respect of part of the Green Land,
  - 2.5.4 V/2007/0519 on 29<sup>th</sup> August 2007 in respect of the Red Land
  - 2.5.5 V/2010/0225 on 5<sup>th</sup> January 2011 in respect of part of the Purple Land
  - 2.5.6 V/2010/0351 on 21<sup>st</sup> March 2011 in respect of part of the Red Land
  - 2.5.7 V/2011/0011 on 15<sup>th</sup> August 2011 in respect of the substitution of house types on part of the Red Land
  - 2.5.8 V/2011/0418 on 5<sup>th</sup> December 2011 in respect of the substitution of house types on part of the Red Land



- 2.5.9 V/2012/0125 on 3<sup>rd</sup> October 2012 in respect of the substitution of house types on part of the Purple Land.
- 2.10.10 V/2013/0070 on 12<sup>th</sup> April 2013 in respect of the substitution of house types on part of the Light Brown Land.
- 2.5.11 V/2013/0071 on 12<sup>th</sup> April 2013 in respect of part of the Red Land
- 2.5.11 V/2013/0072 on 12<sup>th</sup> April 2013 in respect of the variation of details of approval pursuant to planning consent V/2010/0351 in respect of part of the Red Land
- 2.6 The Council acting through the delegated powers of its Service Director of Economy has resolved to grant the DWH V/2014/0350 Planning Permission in accordance with the DWH V/2014/0350 Application and subject to the terms of this Agreement without which the DWH V/2014/0350 Planning Permission would not be granted
- 2.7 The purpose of the Deed is to:-
  - 2.7.1 ensure that any development built pursuant to the DWH V/2014/0350 Planning Permission is governed by the Existing Obligations and the Owner has agreed to enter into this Agreement for the purpose of securing the same and procuring the issue of the DWH V/2014/0350 Planning Permission
  - 2.7.2 vary the obligations relating to the amount of affordable housing to be provided within the DWH V/2014/0350 Obligation Land contained in the Principal Agreement such variations being contained in clause 7 of this Agreement
- 3. **Enabling Powers**
  - 3.1 The parties hereto enter into this Agreement under and pursuant to Sections 106 and 106A of the Act
- 4. **Planning Obligations**
  - 4.1 The New Obligations herein are planning obligations for the purposes of Section 106 of the Act to the intent that the New Obligations shall be binding and enforceable without time limit against the Owner and any persons deriving title from any of them in the manner specified in Section 106 of the Act
  - 4.2 The Council is the Authority entitled to enforce the New Obligations

**5. Conditionality**

- 5.1 The New Obligations and the variation to the Principal Agreement as set out in clauses 6 and 7 respectively to this Agreement in respect of the DWH V/2014/0350 Obligation Land are conditional upon the issue and implementation of the DWH V/2014/0350 Planning Permission

**6. The New Obligations**

- 6.1 The Owner hereby covenants with the Council pursuant to the Section 106 of the Act that the DWH V/2014/0350 Obligation Land shall be subject to the Existing Obligations and that for the purposes of the Principal Agreement as varied by this Agreement the DWH V/2014/0350 Application shall be deemed to be a Subsequent Application as defined in the Principal Agreement as varied by this Agreement.

**Variation to the Principal Agreement**

- 7.1 The parties agreed that the Principal Agreement shall be amended on the date hereof as follows:

- 7.1.1 The following definitions shall be added as new definitions to clause 1 of the Principal Agreement;

“Registered Provider” means a registered provider of social housing within the meaning of the Housing and Regeneration Act 2008 and registered with the Homes and Communities Agency pursuant to Section 112 of that Act as agreed in writing between the Owner and the Council

“Social Rented” - means rented housing provided by a Registered Provider for which guideline target rents are determined through a national rent regime. It may also include social rented housing owned or managed by other persons and providers under equivalent rental arrangements to the above subject to agreement with the Council

“Shared Ownership” - means those Affordable Housing Units whereby a leasehold interest is sold by a Registered Provider at a sum equal to a percentage of the open market value (the percentage to be agreed with the Council) but subject to a rent payable in respect of the unpurchased percentage whether or not the lessee has the right to pay a further premium in respect of a further percentage of the market value to increase their degree of ownership to 100%

- 7.1.2 The following paragraph shall be substituted for Paragraph 1 of the Third Schedule of the Principal Agreement at page 26 for the purposes of the DWH V/2014/0350 Planning Permission:

“Subject to the provisions of this Schedule the Owner shall provide 16 Affordable Housing Units made up of 14 Social Rented and 2 Shared Ownership dwellings within the DWH V/2014/0350 Obligation Land. The Owner may not dispose of such units save in accordance with the terms of this Schedule, unless otherwise agreed by the Council”

- 7.1.3 For the purposes of the DWH V/2014/0350 Planning Permission all references to “Registered Social Landlord” in the Third Schedule to the Principal Agreement shall be construed as being references to “Registered Provider” as defined in this Agreement

## **8. Agreements and Declarations**

It is agreed and declared as follows:

- 8.1 Any reference to a party to this Agreement shall where the context so admits (in the case of the Owner) include their successors in title and assigns and (in the case of the Council and the County) include its successors in function
- 8.2 Words importing one gender shall be construed as importing any gender, and words importing the singular shall be construed as importing the plural and vice versa
- 8.3 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually
- 8.4 Any reference to a numbered clause, schedule or plan is to one in or attached to this Agreement or the Principal Agreement as varied by this Agreement or the Barratt Previous Agreement or the Barratt/David Wilson Homes Previous Agreement as the context requires and any reference to a numbered paragraph occurring within a schedule is to one within that same schedule unless the contrary intention appears
- 8.6 No person shall be liable for breach of covenant contained in this Deed after he shall have parted with all interest in the Entire Site but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 8.7 For the avoidance of doubt any steps taken pursuant to the Principal Agreement as varied by this Agreement or the Barratt Previous Agreement in respect of the

Barratt Application Site or the Barratt/David Wilson Homes Previous Agreement which have satisfied or satisfied in part any of the obligations contained in the Principal Agreement as varied by this Agreement shall be deemed to have been taken also for the purposes of satisfying the obligations in this Agreement

- 8.8 For the avoidance of doubt clauses 7.6, 7.7 and 7.10 of the Principal Agreement shall apply to transfers of any land within the Entire Site which is affected by any provision of this Agreement mutatis mutandis
- 8.9 If the DWH V/2014/0350 Planning Permission having been granted shall expire before the DWH V/2014/0350 Development is commenced, or shall at any time be quashed or revoked, this Agreement shall forthwith determine and cease to have effect insofar as it imposes the New Obligations on the DWH V/2014/0350 Obligation Land but shall not operate to discharge the Existing Obligations which shall nevertheless continue to bind the Entire Site
- 8.10 Nothing in this Agreement shall prohibit or limit the right to develop any part of the DWH V/2014/0350 Obligation Land in accordance with a planning permission (other than the DWH V/2014/0350 Planning Permission) granted after the date of this Agreement
- 8.11 The parties to this Agreement do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a part to it
- 8.12 The Agreement is a local land charge and shall be registered as such
- 8.13 For the avoidance of doubt it is hereby agreed and declared that any land which is subject to the obligations contained in the Principal Agreement as varied by this Agreement but is not subject to the New Obligations shall remain subject to the obligations contained in the Principal Agreement as varied by this Agreement and is not released from those obligations by operation of the Deed
- 8.14 The Restriction referred to in Paragraph 8.4.4 of the Third Schedule to the Principal Agreement shall be amended to include a reference also to this Agreement
- 8.15 If the Council agrees in writing with the Owner pursuant to an application under Section 73 of the Town and Country Planning Act 1990 to any variation or release of any condition contained in the DWH V/2014/0350 Planning Permission the covenants or provisions of this Agreement shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless otherwise stated by the Council



8.16 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected

9. Costs

9.1 The Owner shall on the execution of this Agreement pay the Council's reasonable costs incurred in the preparation and settlement of this Agreement in the sum of Seven Thousand and Eighty Pounds (£7,337.00)

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

EXECUTED AS A DEED by

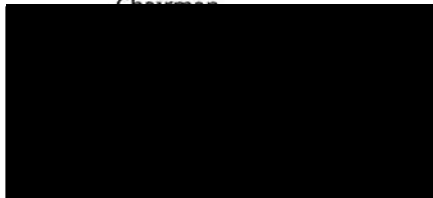
ASHFIELD DISTRICT COUNCIL

Having affixed its COMMON SEAL

To this deed in the presence of



Chairman

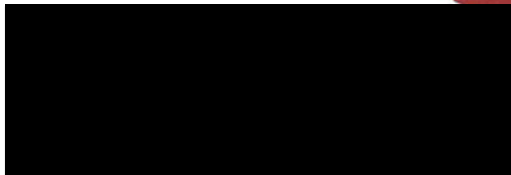


EXECUTED AS A DEED by

NOTTINGHAMSHIRE COUNTY COUNCIL

Having affixed its COMMON SEAL

To this deed in the presence of



Authorised Signatory



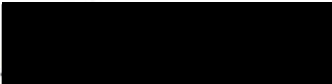
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EXECUTED as a DEED by  
BDW TRADING LIMITED  
by two of its Attorneys under  
Power of Attorney dated 2 July 2014

Attorney: .....



Witness signature: .....



Witness name: .....

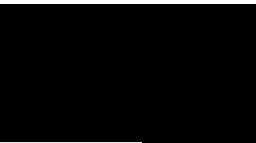
*R. SHEPHERD*

Witness address: .....  
David Wilson Homes  
~~Forest Business Park~~  
Cartwright Way, Bardon Hill  
Leicestershire  
.....~~LE67 1GL~~.....

Witness occupation: .....

*Secretary*

Attorney: .....



*R. SHEPHERD*

Witness signature: .....



Witness name: .....

*R. SHEPHERD*

Witness address: .....  
David Wilson Homes  
~~Forest Business Park~~  
Cartwright Way, Bardon Hill  
Leicestershire  
.....~~LE67 1GL~~.....

Witness occupation: .....

*Secretary*