

Process de port d'avis

Dated

2019

SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

relating to

**proposed residential development on land
on the west side of Beck Lane Sutton-in-Ashfield**

between

STAGS LIMITED

and

ASHFIELD DISTRICT COUNCIL

and

NOTTINGHAMSHIRE COUNTY COUNCIL

and

RACHEL MARGOT HASLAM and DAVID MICHAEL HOWARTH

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Please do not date

THIS AGREEMENT is made as a Deed the _____ day of _____ Two thousand and nineteen

BETWEEN:

- (1) **STAGS LIMITED** incorporated and registered in England and Wales with company number 2807612 whose registered office is at Flat 12 Ranmoor Grange Park Road Sheffield S10 3GX ("the Owner");
- (2) **ASHFIELD DISTRICT COUNCIL** of Urban Road Kirkby in Ashfield Nottingham NG17 8DA ("the District Council"); and
- (3) **NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall, West Bridgford, Nottinghamshire NG2 7OP ("the County Council")
- (4) **RACHEL MARGOT HASLAM** of ~~Stable Cottage Nether End Baslow Bakewell DE45 1SR~~ and **DAVID MICHAEL HOWARTH** of Long Meadow Froggatt Calver Hope Valley S32 3ZA ("the Mortgagee")

RECITALS:

- (A) The District Council is the Local Planning Authority for the purposes of the Act for the area within which the Application Land is situated.
- (B) The County Council is the Education Authority and the Highway Authority for the area within which the Application Land is located for the County of Nottinghamshire.
- (C) The District Council is a Principal Council within the meaning of the Local Government Act 1972.
- (D) The Owner is the freehold owner of the Application Land registered at HM Land Registry with title absolute under title number NT381050.
- (E) Lovel (East Midlands) Limited submitted the Planning Application to the District Council for planning permission to carry out the Development.
- (F) The Appeal was lodged against the non-determination of the Planning Application.
- (G) The Owner, the District Council and the County Council have agreed to enter into this Agreement.
- (H) The Mortgagee is the proprietor of a registered charge on the Application Land dated 24 March 2014 and has agreed to enter into this Agreement to give its consent to the terms of this Agreement.

OPERATIVE PROVISIONS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall have the following meanings:

- "Act"** the Town and Country Planning Act 1990 as amended.
- "Affordable Dwellings"** means 10% of the Dwellings to be provided and Occupied as Affordable Housing in accordance with the Affordable Housing Scheme and "Affordable Dwelling" shall be construed accordingly.
- "Affordable Housing"** means housing provided to eligible households whose needs are not met by the market in accordance with the definition set out in the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it).
- "Affordable Housing Contribution"** means the sum to be agreed between the District Council and the Owner and which shall represent the difference between the sum of the Open Market Value of the relevant Affordable Dwellings at the time the relevant dwellings were to be transferred and the estimated lump-sum that would have been paid to the Owner by an Affordable Housing Provider for the relevant Affordable Dwellings as determined by an independent valuer appointed with the agreement of the District Council and the Owner (to be calculated having regard to market conditions at the time the Affordable Housing Contribution is to be paid and the transfer values of similar affordable dwellings that have been or would be acquired by other Affordable Housing Providers within Ashfield District at or around this time), which may be payable by the Owner to the District Council in accordance with the provisions of clause 3.24.9 for use by the District Council towards the provision of Affordable Housing within the District of Ashfield.
- "Affordable Housing Provider"** means:
- (i) a non-profit registered provider of social housing under the Housing and Regeneration Act 2008 and registered

- with the Homes and Communities Agency (or such successor authority) as a registered provider; or
- (ii) any other housing provider approved in writing by the District Council

"Affordable Housing Scheme"

means the scheme for the provision of Affordable Dwellings which shall specify:

- (i) the location of the Affordable Dwellings within the Development;
- (ii) the Intended Affordable Housing Provider; and
- (iii) the mix and tenure of Affordable Dwellings.

"Affordable Rented Dwellings"

means Dwellings let by an Affordable Housing Provider at rent of not more than eighty per cent (80%) of local market rent.

"Appeal"

means the appeal against the non-determination of the Planning Application by the District Council allocated reference number APP/W3005/W/18/3213342.

"Application Land"

means the land shown edged red on the Plan.

"Bus Service Contribution"

means the sum calculated by the formula:

£280 per Dwelling

Index Linked payable by the Owner to the County Council in accordance with the provisions of clause 3.9 towards extending the 417 service to serve the Development, including mornings and evening peaks, to provide a bus service to and from Sutton.

"Bus Stop Improvement Contribution"

means the sum calculated by the formula:

£106 per Dwelling

Index Linked payable by the Owner to the County Council in accordance with the provisions of clause 3.11 towards improvements to bus stops AS0443 Fox & Crown and AS0445 Fox & Crown to serve the Development ~~or new stops within the Development at the discretion of the County Council.~~





SIGNATORIES
INITIALS

CHAIRMAN
Deputy Chief Executive
Ashfield District Council



CLIENT: MR P LEVEL
PROJECT: BUTTON IN ASHFIELD
DRAWING: LOCATION PLAN

DRAWING NUMBER: 15 1958 05
SCALE @ A1: 1:1250
DRAWN: NBR
CHECKED: LB

DATE: JAN 18
DATE: JAN 18



05 / LOCATION PLAN

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"Bus Taster Tickets Contribution" means the sum calculated by the formula:
£101 per Dwelling
Index Linked payable by the Owner to the County Council in accordance with the provisions of clause 3.13 towards the subsidy of smartcard bus passes for new residents of the Dwellings to encourage use of sustainable modes of travel.

"CCG" means the NHS Mansfield and Ashfield Clinical Commissioning Group of Birch House, Ransom Wood Business Park, Southwell Road West, Rainworth, Mansfield, Nottinghamshire, NG21 0HJ.

"CIL Regulations" means the Community Infrastructure Levy Regulations 2010 (as amended).

"Commencement of Development" means the earliest date on which any of the material operations (as defined by Section 56(4) of the Act) pursuant to the implementation of the Development is begun save that irrespective of the provisions of Section 56(4) of the Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development:

- (i) trial holes or other operations to establish the ground conditions of the Application Land, site survey work, or works of remediation;
- (ii) archaeological investigations on the Application Land;
- (iii) any works of demolition or site clearance;
- (iv) any structural planting or landscaping works;
- (v) ecological or nature conservation works associated with the Development;
- (vi) construction of site compounds boundary fencing or hoardings;
- (vii) construction of access or highway works or provision of services (including drainage and media);
- (viii) any other preparatory works agreed in writing with the District Council

and "Commence" and "Commencement Date" shall be interpreted accordingly.

- "Decision Letter"** means the decision letter issued by the Inspector or the Secretary of State confirming whether or not the Appeal is allowed.
- "Development"** means the development described in the Planning Application and to be carried out pursuant to the Planning Permission.
- "Dwelling(s)"** means a dwelling built pursuant to the Planning Permission and whether an Affordable Dwelling or not.
- "Discounted Market Dwellings"** means a Dwelling to be sold by the Owner at seventy five per cent (75%) of its Open Market Value.
- "Healthcare Authority"** means the NHS Mansfield and Ashfield Clinical Commission Group, Birch House, Ransom Wood Business Park, Southwell Rd W, Rainworth, Mansfield
- "Healthcare Contribution"** means the sum calculated by the formula:
£542 per Dwelling
Index Linked payable by the Owner to the District Council in accordance with the provisions of clause 3.19 towards improving the facilities and/or enhancing the capacity at the Skegby Family Medical Centre or such other general practitioner surgery within a 2 mile radius of the Application Land identified by a detailed options appraisal (commissioned by the CCG in the event the Planning Permission is granted) as being the most capable of maximising the use of the Healthcare Contribution.
- "Highway Contribution"** means the sum of Twenty nine thousand pounds (£29,000.00) Index Linked payable by the Owner to the County Council in accordance with the provisions of clause 3.7 towards the following highway mitigation schemes:

- provision of pedestrian crossing detection equipment at the Beck Lane/Kings Mill Road/Skegby Lane/Mansfield Road (B6014) – ‘Fox & Crown Junction’ junction;
- installation of CCTV equipment at the Mansfield Road/Dalestorth Road junction;
- installation of CCTV equipment at the Dalestorth Street/Mansfield Road/Outram Street junction;
- installation of CCTV equipment at the Mansfield Road/Priestsic Road/Stoneyford Road/Downing Street junction; and
- re-validation of SCOOT at the Dalestorth Street/Mansfield Road/Outram Street and Mansfield Road/Priestsic Road/Stoneyford Road/Downing Street junctions.

“Housing Need”

means living in unsuitable housing conditions and either unable to afford to rent at market rent or unable to buy suitable housing at open market prices.

“Index Linked”

means the application to the sum concerned of the indexation set out in the First Schedule hereto.

“Inspector”

means the Inspector appointed by the Secretary of State in relation to the Appeal.

“Intermediate Dwelling”

means housing which meets the criteria set out in the National Planning Policy Framework Annex 2 (or any future guidance or initiative that replaces or supplements it) which can include Shared Equity Housing and other low cost homes for sale and intermediate rent.

“Management Company”

means a management company selected by the Owner and approved in writing by the District Council (such approval not to be unreasonably withheld or delayed) to be responsible for the long-term management and maintenance of the On Site Open Space.

“Market Dwelling” means a Dwelling for sale on the open market which is constructed as part of the Development and which is not an Affordable Dwelling.

“Nominations Agreement” means an agreement in a form specified by the District Council relating to the nominations procedure and local lettings plans for the Affordable Dwellings.

“Occupation” means in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include:

- (i) occupation by workmen involved in the erection fitting out or decoration of any part of the Development; or
- (ii) the use of any Dwelling for the marketing of the Development; or
- (iii) the storage of plant and materials

and **“Occupy”** and **“Occupied”** shall be construed accordingly.

“On Site Open Space” means the on-site open space to be provided as part of the Development.

“On Site Open Space Scheme” means the scheme for the provision, laying out and long term maintenance of the On Site Open Space to be submitted by the Owner to the District Council in accordance with the provisions of clause 3.15.

“Open Market Value” means the value of a Dwelling to be sold on the open market based on the following assumptions:

- (i) a willing seller;
- (ii) a reasonable period for the proper marketing of the Dwelling; and
- (iii) market conditions at the time of the valuation.

“Plan” means the plan attached hereto.

“Planning Application”

means the planning application submitted to the District Council and allocated reference number V/2016/0569 applying for outline planning permission with means of access (into but not within Application Land) for residential development.

“Planning Permission”

means the planning permission for the Development which may be granted on Appeal.

“Primary Education Contribution”

means the sum calculated by using the formula set out below:
 $0.21 \text{ (pupil product)} \times \text{number of Dwellings permitted in the reserved matters for the Planning Permission} \times \text{£}16,892 \text{ (sixteen thousand eight hundred and ninety two pounds)}$

Index Linked payable by the Owner to the County Council in accordance with the provisions of clause 3.1 towards the provision of new or improved facilities at Brierley Forest Primary and Nursery School or and in the event of it becoming impossible to expend the contribution at Brierley Forest Primary and Nursery School the contribution shall be spent at another school within a 2 mile radius of the Application Land, the identity of the school to be agreed between the Owner and the County Council or selected by the County Council in the absence of agreement

“Protected Tenant”

means any tenant who:

- (i) 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 Dwelling;
- (ii) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling;
- (iii) has been granted a shared ownership lease by an Affordable Housing Provider (or similar arrangement where a share of the Affordable Dwelling is owned by the tenant and a share is owned by the Affordable Housing

- Provider) In respect of a particular Affordable Dwelling and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Dwelling; or
- (iv) has otherwise obtained full ownership of a single Intermediate Dwelling.

“Public Realm Contribution”

means the sum calculated in accordance with the formula:

£2,000 per Dwelling

Index Linked payable by the Owner to the District Council in accordance with the provisions of clause 3.21 towards the following projects:

- Portland Square; or
- Sutton Old Market Place and Albert Square; or
- any public realm improvement project as identified in future adopted Ashfield District Council plans and policies.

“Relevant Agreement”

means an agreement to secure planning obligations under section 106 of the Town and Country Planning Act 1990 (as amended) and which relates to planning permission granted for development where such agreement has been entered into on or after 6th April 2010.

“Secondary Education Contribution” means the sum calculated by using the formula set out below:

0.16 (pupil product) x number of dwellings permitted in the reserved matters for the Planning Permission x £22,520 (twenty two thousand five hundred and twenty pounds)

Index Linked payable by the Owner to the County Council in accordance with the provisions of clause 3.4 towards the provision of education facilities at Quarrydale Academy School or such successor facility as may replace that school and in the event of it becoming impossible to expend the contribution at Quarrydale Academy School the contribution shall be spent at another school within a 2 mile radius of the Application Land, the identity of the

school to be agreed between the Owner and the County Council or selected by the County Council in the absence of agreement

“Secretary of State” means the Secretary of State for Housing, Communities and Local Government or other appropriate Minister.

“Shared Equity Housing” means Dwellings for sale on a shared equity basis whereby not more than 75% and not less than 25% of the equity is initially sold to the purchaser by the Affordable Housing Provider with flexibility to increase their degree of ownership if they so wish.

“Social Rented Dwellings” means rented housing provided by an Affordable Housing Provider for which guideline target rents are determined through the national rent regime.

- 1.2 Words in this Agreement importing the singular meaning shall where the context so admits include the plural meaning and vice versa.
- 1.3 Words in this Agreement of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa.
- 1.4 References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force.
- 1.5 Where in this Agreement reference is made to a Clause Schedule or plan such reference (unless the context otherwise requires) is a reference to a Clause or Schedule of or in the case of a plan attached to this Agreement.
- 1.6 Covenants made hereunder on the part of the District Council shall be enforceable against the District Council and any statutory successor to it as planning authority.
- 1.7 Covenants made hereunder on the part of the County Council shall be enforceable against the County Council and any statutory successors to it as either education authority or highway authority.

1.8 The expression "the Owner" and "the Mortgagee" shall where the context so admits include its successors and assigns.

2. GENERAL PROVISIONS

Statutory Authority

2.1 This Agreement and each of the covenants given by the Owner contained herein is a planning obligation and is made pursuant to Section 106 of the Act.

2.2 The covenants by the Owner contained herein shall be enforceable by the District Council and the County Council.

Liability

2.3 The covenants given by the Owner contained herein are made with the intent that the covenants will bind its interest in the Application Land and be binding on and enforceable against its successors in title or assigns and subject to clause 2.5 those deriving title under the Owner PROVIDED THAT without prejudice to the enforcement of covenants against successors in title no person shall be liable for any breach or non-performance of the covenants contained herein or for the performance of any obligations which arise from the carrying out of the Development on and in respect of any land of which he is no longer seised save in respect of any prior subsisting breach.

2.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof) granted (whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply PROVIDED THAT the obligations in this Agreement can be applied to any planning permission granted subsequent to the grant of the Planning Permission as herein defined by agreement between the Owner and the District Council as evidenced by a memorandum endorsed on this Agreement.

2.5 The covenants contained in this Agreement shall not be enforceable against individual purchasers or lessees of Dwellings on the Application Land constructed pursuant to the Planning Permission, those deriving title from or through such purchasers or lessees or their mortgagees or against statutory undertakers in relation to any parts of the Application Land acquired by them for electricity sub-stations, gas governor stations, pumping stations or other similar matter for the provision of services or against

a highway authority in relation to any parts of the Application Land acquired by it in connection with the adoption or dedication of public highway or against anyone whose only interest in the Application Land or any part of it is in the nature of the benefit of an easement or covenant.

- 2.6 In the event that the Owner disposes of his interest in the Application Land or any part thereof (other than a disposal to a purchaser or lessee of a Dwelling) it shall within twenty-eight days of such disposal give written notice of the name and address of its successors in title to the District Council and the County Council together with sufficient details of the land included in the disposal to allow its identification.

Contingencies

- 2.7 The obligations in this Agreement shall be conditional upon issue of the Planning Permission and the Commencement of Development and, save for this clause and clauses 2.8, 2.11, 2.13, 2.15, 2.16, 2.17, 2.18, 2.23, 2.25, 3.26 and 3.27 which shall come in to effect upon completion of this Agreement, until then the provisions of this Agreement, other than this clause and clauses 2.8, 2.11, 2.13, 2.15, 2.16, 2.17, 2.18, 2.23, 2.25, 3.26 and 3.27, shall be of no effect.
- 2.8 In the event of the Planning Permission expiring or in the event of the revocation of the Planning Permission the obligations under this Agreement shall cease absolutely and the District Council shall upon written request from the Owner procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith.
- 2.9 Where this Agreement is released in part by a future agreement, the District Council shall upon written request from the Owner place a note against the entry made in the Register of Local Land Charges stating which obligations no longer have effect.
- 2.10 If the Owner makes a request in writing for the District Council to place a note against the entry made in the Register of Local Land Charges stating which obligations under this Agreement have been discharged and complied with, the District Council will place such note against the entry to the extent which such obligations are deemed by the District Council to have been discharged and complied with under the terms of this Agreement.

Commencement of Development

- 2.11 The Owner shall give the District Council and the County Council seven days' notice in advance of the Commencement of Development and the date on which Commencement of Development has taken place shall be confirmed by exchange of correspondence between the Owner, the District Council and

the County Council PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent commencement of Development occurring.

Determination by Expert

2.12 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owner and the District Council concerning this Agreement including any dispute as to whether or not an obligation has been performed or matter to be agreed under any of the provisions of this Agreement the matter may at the written option of any relevant party (notice of which shall be given to the other party or parties) be referred to such expert as they may agree or (in default of agreement within 20 working days of the date of giving of the notice) appointed by the Chairman for the time being of the Planning and Environment Bar Association whose appointment shall be conducted on the following terms:

2.12.1 The person to be appointed pursuant to Clause 2.12 shall if possible be a person having fifteen years or more relevant post-qualification experience of the issue in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute.

2.12.2 The reference to the expert shall be on terms that:

2.12.2.1 the expert shall afford the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;

2.12.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;

2.12.2.3 the expert shall be bound to have regard to the said submissions and representations;

2.12.2.4 the expert shall have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the expert shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;

2.12.2.5 the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and

- 2.12.2.6 the findings of the expert shall save in the case of manifest material error be final and binding on the Owner and the District Council save that the parties retain the right to refer to the Courts on a matter of law.

Time Periods

- 2.13 It is agreed between the parties that any of the periods specified in the Agreement may be extended by mutual agreement in writing between the Owner and the District Council or the County Council

Approvals

- 2.14 For the purposes of this Agreement where a party is required to make a request, give confirmation, approval or consent, express satisfaction with, agree to vary, or to give notice of any matter, such request, confirmation, approval, consent, expression of satisfaction, agreement to vary, or notice shall be deemed to have not been given or expressed unless given or expressed in writing and shall not be unreasonably withheld or delayed.

Notices

- 2.15 The service of notices and communications pursuant to this Agreement shall be sent to the addressee to the address stated in this Agreement or at such other address as the addressee shall have notified to the others in writing.
- 2.16 Notices and communications under this Agreement may be sent by personal delivery or by pre-paid first class post or other next working day delivery service and any notice or communication sent by pre-paid first class post or other next working day delivery service and correctly addressed shall be conclusively deemed to have been received by the addressee on the second business day following the date of posting.

Exclusion of the Contracts (Rights of Third Parties) Act 1999

- 2.17 Nothing herein contained or implied shall give or be construed as giving rights, privileges, powers or enforceability other than to the specific parties executing this document and their successors (if any) as defined herein and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained.

Void Provisions

2.18 Insofar as any provision of this Agreement is 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 Agreement.

No Fetter of Discretion

2.19 Save as permitted by law in equity nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the District Council and the County Council in their rights powers duties and obligations under all public and private statutes bylaws and regulations which may be as fully and effectually exercised as if the District Council and/or the County Council were not a party to this Agreement.

Effect of any Waiver

2.20 No waiver (whether express or implied) by the District Council and or the County Council of any breach or default by the Owner in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the District Council and or the County Council (as relevant) from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner.

General Requirement to Co-operate

2.21 Without prejudice to its statutory duties the District Council, the County Council and the Owner shall act in good faith and shall co-operate with each other to facilitate the discharge and performance of the obligations of the others contained within this Agreement within the timescales specified.

Interest

2.22 It is hereby agreed that if any payment due to the District Council and/or the County Council under this Agreement is paid late interest will be payable from the date the payment is due to the date of payment at 3% above the Bank of England base lending rate prevailing at the time.

CIL Regulations

2.23 If in determining the Appeal the Secretary of State or the Inspector expressly states in the Decision Letter that any planning obligation contained in this Deed:

2.23.1 does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the CIL Regulations; or

2.23.2 requires funding or provision towards a project or towards a type of infrastructure where the Council has entered into five (5) or more Relevant Agreements which provide for the funding or provision towards the same project or towards that type of infrastructure,

then subject to clause 2.18 of this Agreement such planning obligation shall not be enforceable pursuant to this Agreement and shall cease to have effect within this Agreement save as set out in the Decision Letter.

Mortgagee Consent

2.24 The Mortgagee acknowledges that the obligations in this Agreement shall bind the Application Land and agrees the security of its charge shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall not be liable for any breach of the obligations in this Agreement unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Application Land in which case it will be bound by the obligations as if it were a person deriving title from the Owner.

Counters

2.25.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

2.25.2 No counterpart shall be effective until each party shall have at least one counterpart.

3. OWNER'S COVENANTS TO THE COUNTY COUNCIL

Primary Education Contribution

3.1 The Owner covenants with the County Council to pay the Primary Education Contribution to the District Council as follows:

3.1.1 50% prior to the Commencement of the Development ;

3.1.2 50% prior to Completion of 50% of the Dwellings or the date which is 3 years after Commencement of Development whichever is the sooner.

3.2 The Owner covenants with the County Council not to permit or allow the Commencement of the Development unless and until 50% of the Primary Education Contribution has been paid to the County Council.

3.3 The Owner covenants with the County Council not to permit or allow the Completion of more than 50% of the Dwellings unless and until all of the Primary Education Contribution has been paid to the County Council.

Secondary Education Contribution

3.4 The Owner covenants with the County Council to pay the Secondary Education Contribution to the County Council as follows:

3.4.1 50% prior to the Commencement of the Development

3.4.2 50% prior to Completion of 50% of the Dwellings or the date which is 3 years after Commencement of Development whichever is the sooner and

3.5 The Owner covenants with the County Council not to permit or allow the Commencement of the Development unless and until 50% of the Secondary Education Contribution has been paid to the County Council.

3.6 The Owner covenants with the County Council not to permit or allow the Completion of more than 50% of the Dwellings unless and until all of the Secondary Education Contribution has been paid to the County Council.

Highway Contribution

3.7 The Owner covenants with the County Council to pay the Highway Contribution to the County Council prior to the Commencement of Development.

3.8 The Owner covenants with the County Council not to permit or allow the Commencement of the Development unless and until the Highway Contribution has been paid to the County Council.

Bus Service Contribution

3.9 The Owner covenants with the County Council to pay the Bus Service Contribution to the County Council prior to the Commencement of Development.

3.10 The Owner covenants with the County Council not to permit or allow the Commencement of Development unless and until the Bus Service Contribution has been paid to the County Council.

Bus Stop Improvement Contribution

3.11 The Owner covenants with the ~~District~~ County Council to pay the Bus Stop Improvement Contribution to the County Council prior to the Commencement of Development.

3.12 The Owner covenants with the County Council not to permit or allow the Commencement of the Development unless and until the Bus Stop Improvement Contribution has been paid to the County Council.

Bus Taster Tickets Contribution

3.13 The Owner covenants with the County Council to pay the Bus Taster Tickets Contribution to the County Council prior to the Commencement of the Development.

3.14 The Owner covenants with the County Council not to permit or allow the Commencement of the Development unless and until the Bus Taster Tickets Contribution has been paid to the County Council.

OWNER'S COVENANTS TO THE DISTRICT COUNCIL

On Site Open Space

3.15 The Owner covenants with the District Council to submit the On Site Open Space Scheme to the District Council prior to the Commencement of Development for approval (such approval not to be unreasonably withheld or delayed).

3.16 The Owner covenants with the District Council to provide the On Site Open Space in accordance with the On Site Open Space Scheme or any variation thereto approved in advance by the District Council.

3.17 The Owner covenants with the District Council not to allow or permit the Occupation of more than 25% of the Dwellings unless and until the On Site Open Space has been laid out and made available for use

Handwritten notes: County, DLT, DLT, ✓, 1/4, 1/3



by the residents of the Development in accordance with the approved On Site Open Space Scheme or any variation thereto approved in advance by the District Council.

3.17.1 The Owner covenants with the District Council to maintain the On Site Open Space for a period of 12 months after notice of practical completion of the works for the On Site Open Space has been given to the District Council 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 to reinstate or replace it as necessary and in the case of any tree shrub or any other planted material the replacement should be the same size and species or such other size and species as may be agreed with the District Council.

3.17.2 At the end of the maintenance period referred to in clause 3.17.1 to serve written notice on the District Council that the 12 month period for maintenance has expired and subject to the District Council being reasonably satisfied on an inspection that all requirements of clauses 3.15 to 3.17.1 have been satisfactorily carried out and the covenants performed the District Council shall issue a certificate to such effect provided that if the District Council is not so satisfied the Owner shall remain responsible for the proper maintenance of the area of open space in question as the case may be and the maintenance period for such land shall be extended until such time as the District Council certifies in writing that the outstanding work has been completed or the defects have been remedied as the case may be.

3.18 The Owner shall not permit more than 50% of the Dwellings to be Occupied unless the On Site Open Space has been transferred to a Management Company for the sum of £1.00 such transfer to be made in accordance with the relevant provisions of the Second Schedule AND FOR THE AVOIDANCE OF DOUBT the Owner shall maintain the On Site Open Space in a clean and tidy condition until the transfer to the Management Company has been completed.

Healthcare Contribution

3.19 The Owner covenants with the District Council to pay the Healthcare Contribution to the District Council prior to the Commencement of Development;

3.20 The Owner covenants with the District Council not to permit or allow the Commencement of the Development unless and until the Healthcare Contribution has been paid to the District Council.

Public Realm Contribution

3.21 The Owner covenants with the District Council:

3.21.1 to pay 25% of the Public Realm Contribution prior to the Commencement of Development.

3.21.2 to pay the final 75% of the Public Realm Contribution prior to first Occupation of 50% of the Dwellings to be Occupied.

3.22 The Owner covenants with the District Council not to permit or allow the Commencement of the Development unless and until 25% of the Public Realm Contribution has been paid to the District Council.

3.23 The Owner covenants with the District Council not to permit or allow the Occupation of more than 50% of the Dwellings unless and until all of the Public Realm Contribution has been paid to the District Council.

Affordable Housing

3.24 The Owner covenants with the District Council as follows:

3.24.1 To submit to the District Council for approval prior to the Commencement of Development the Affordable Housing Scheme.

3.24.2 To provide 10% of the total number of Dwellings constructed as part of the Development as Affordable Dwellings in accordance with the Affordable Housing Scheme approved pursuant to clause 3.24.1 above or any approved variation thereto and to provide at least 70% of the Affordable Dwellings as Social Rented Dwellings.

3.24.3 The Owner covenants with the District Council not to dispose of any interest in the Affordable Dwellings save to an Affordable Housing Provider or the District Council in accordance with this clause 3.24 or allow the same to be disposed of otherwise than in accordance with this clause 3.24.

3.24.4 The Owner covenants with the District Council not to Occupy or permit or suffer or allow the Occupation of more than 50% of the Market Dwellings until:

- (a) 50% of the Affordable Dwellings have achieved practical completion and are ready for Occupation;
- (b) the freehold of 50% of the Affordable Dwellings has been transferred to an Affordable Housing Provider or the District Council or binding contracts to transfer such units to an Affordable Housing Provider or the District Council have been exchanged; and
- (c) where the Affordable Dwellings are being transferred to an Affordable Housing Provider, evidence has been provided of the transfer or contract to the District Council.

3.24.5 The Owner covenants with the District Council not to Occupy or permit or suffer or allow the Occupation of more than 75% of the Market Dwellings until:

- (a) the remaining 50% of the Affordable Dwellings have achieved practical completion and are ready for Occupation;
- (b) the freehold of the remaining 50% of the Affordable Dwellings has been transferred to an Affordable Housing Provider or the District Council or binding contracts to transfer such units to an Affordable Housing Provider or the District Council have been exchanged; and
- (c) where the Affordable Dwellings are being transferred to an Affordable Housing Provider, evidence has been provided of the transfer or contract to the District Council.

3.24.6 The transfer or binding contract, as the case may be, referred to in clauses 3.24.4(b) and 3.24.5(b) above shall provide inter alia for:

- (i) the transfer of the freehold title to be with full title guarantee with such rights of access and passage of other rights reasonably necessary for the beneficial enjoyment of the Affordable Dwellings and the provision of roads and services rendering them suitable for immediate Occupation;
- (ii) the imposition of such covenants as the Owner shall reasonably require as are consistent with the sale of any Dwellings within the Development; and

(iii) the reservation of such rights as the Owner shall reasonably require for the benefit of the remainder of the Development.

3.24.7 Subject to clause 3.24.8 below, the Owner covenants with the District Council not to use or allow the Affordable Dwellings to be used for any purpose other than for Affordable Housing in accordance with the terms of this Agreement.

3.24.8 The Owner covenants with the District Council not to transfer the Affordable Dwellings to an Affordable Housing Provider without first procuring that the transfer includes:

(a) a provision that the Affordable Housing Provider shall undertake to enter into a Nominations Agreement with the District Council; and

(b) a provision that the Affordable Dwellings shall not be used for any purpose other than for Affordable Housing and in accordance with the terms of this Agreement.

3.24.9 In the event the Owner has not entered into a binding contract with an Affordable Housing Provider within twelve months of Commencement of Development pursuant to this clause 3.24 to notify the District Council (such notification to include evidence of the Owner's reasonable endeavours to enter into a binding contract with an Affordable Housing Provider) and if the District Council (acting reasonably) is satisfied that the evidence so provided demonstrates that the Owner has used reasonable endeavours to enter into a binding contract with an Affordable Housing Provider, it shall determine whether to take a transfer of the Affordable Dwellings or to accept an Affordable Housing Contribution and:

(a) In the event the District Council determines pursuant to this clause 3.24.9 that an Affordable Housing Contribution shall be payable in lieu of provision of the Affordable Dwellings on the Application Land then the Owner shall pay the Affordable Housing Contribution prior to the first Occupation of 50% of the Market Dwellings and clauses 3.24.1 to 3.24.8 (Inclusive) shall cease to apply and the Owner shall be entitled to dispose of the Dwellings that would have been Affordable Dwellings as Market Dwellings free from clauses 3.24.1 to 3.24.8 (Inclusive);

(b) In the event that the District Council elects pursuant to this clause 3.24.9 to take a transfer of the Affordable Dwellings the Owner shall offer to transfer the Affordable Dwellings to the District Council for a sum to be agreed between the Owner and the District Council such sum to reflect the build cost, provision of services and infrastructure and land as part of the Development and to use reasonable endeavours to exchange legally binding contracts with the District Council (such contracts to be on the terms contained in clause 3.24.6 above) within 3 months of the Owner receiving written acceptance of the offer AND on exchange of such contracts the provisions of clauses 3.24.1 to 3.24.8 shall cease to apply;

(c) If within 3 months of the Owner receiving written acceptance of the offer from the District Council, legally binding contracts have not been exchanged with the District Council or the District Council has provided written confirmation of its withdrawal from acceptance of the offer the Owner shall be entitled to withdraw the offer from negotiations and clauses 3.24.1 to 3.24.8 (inclusive) shall cease to apply and the Owner shall be entitled to dispose of the Dwellings that would have been Affordable Dwellings as Discounted Market Dwellings (and the transfer of such dwellings shall contain a provision that future transfers shall be restricted in perpetuity so that the sale price does not exceed 75% of the Open Market Value at the time of such sale, such provision to require a restriction to be interested on the title register at the Land Registry) free from clauses 3.24.1 to 3.24.8 (inclusive)

3.24.10 If the District Council (acting reasonably) is not satisfied that the evidence provided pursuant to clause 3.24.9 demonstrates that the Owner has used reasonable endeavours to enter into a binding contract with an Affordable Housing Provider, the District Council shall serve written notice on the Owner that it shall be required to use reasonable endeavours to enter into such a contract within six months from the date of notification by the Council and if at the end of that six month period the Owner has not been able to enter into a binding contract with an Affordable Housing Provider the provisions of clause 3.24.9.1 shall apply PROVIDED THAT at the conclusion of the six month period under this clause 3.24.10 the District Council shall not be entitled to again serve a notice under this clause.

3.25 The Owner and the District Council agree that the restriction referred to in clause 3.24.7 shall not apply to:

3.25.1 a Protected Tenant or any person deriving title under a Protected Tenant; or

3.25.2 any mortgagee or chargee of the Affordable Dwellings or any of them nor to any receiver appointed by any such mortgagee or chargee to the intent that any such mortgagee, chargee or receiver may deal with or dispose of the Affordable Dwellings or any of them free from the provisions and restrictions of this Agreement relating to Affordable Housing and on the basis that any person deriving title through or under such mortgagee, chargee or receiver shall not be bound by the provisions in this Agreement; or

3.25.3 any mortgagee or chargee of an Affordable Housing Provider in the event of a default under a mortgage or charge or any receiver appointed by them or any successors in title to such mortgagee or chargee and it is further acknowledged that any mortgagee or chargee taking possession of any Affordable Dwellings shall be entitled to dispose of the Affordable Dwellings on the open market free from the restrictions within this Agreement.

District Council's and County Council's Legal Costs

3.26 The Owner covenants with the District Council to pay the District Council's reasonable legal costs in respect of the preparation of this Agreement on its execution.

3.27 The Owner covenants with the County Council to pay the County Council's reasonable legal costs in respect of the preparation of this Agreement on its execution.

4. COUNTY COUNCIL'S COVENANTS TO THE OWNER

4.1 The County Council covenants with the Owner as follows:

Primary Education Contribution

4.1.1 To use the Primary Education Contribution solely towards the provision of new or improved facilities at Brierley Forest Primary and Nursery School or in the event of it becoming impossible to expend the contribution at Brierley Forest Primary and Nursery School to spend the Primary Education Contribution at another school within a two mile radius of the Application Land, the identity of the school to be agreed between the Owner and the County Council or selected by the County Council in the absence of agreement.

4.1.2 If all or any part of the monies shall remain unexpended after the period of seven years from the date of payment by the Owner to the County Council it shall following receipt of a request

from the County Council or the Owner repay such unexpended monies to the County Council together with interest thereon calculated from the date of payment to the date of repayment provided that where such monies are payable in instalments the period of seven years will run from the date of payment of the final instalment.

Secondary Education Contribution

4.1.3 To use the Secondary Education Contribution solely towards the provision of new or improved facilities at Quarrydale Academy School or such successor facility as may replace that school or in the event of it becoming impossible to expend the contribution at Quarrydale Academy School to spend the Secondary Education Contribution at another school within a two mile radius of the Application Land, the identity of the school to be agreed between the Owner and the County Council or selected by the County Council in the absence of agreement.

4.1.4 If all or any part of the monies shall remain unexpended after the period of seven years from the date of payment by the Owner to the County Council it shall following receipt of a request from the County Council or the Owner repay such expended monies to the County Council together with interest thereon calculated from the date of payment to the date of repayment provided that where such monies are payable in Instalments the period of seven years will run from the date of payment of the final instalment.

Highway Contribution

4.1.5 To use the Highway Contribution solely towards the following Highway mitigation schemes:

- provision of pedestrian crossing detection equipment at the Beck Lane/Kings Mill Road/Skegby Lane/Mansfield Road (B6014) – ‘Fox & Crown Junction’ junction;
- installation of CCTV equipment at the Mansfield Road/Dalestorth Road Junction;
- installation of CCTV equipment at the Dalestorth Street/Mansfield Road/Outram Street junction;
- installation of CCTV equipment at the Mansfield Road/Priestsic Road/Stoneyford Road/Downing Street junction; and
- re-validation of SCOOT at the Dalestorth Street/Mansfield Road/Outram Street and Mansfield Road/Priestsic Road/Stoneyford Road/Downing Street junctions.

4.1.6 If all or any part of the monies shall remain unexpended after the period of seven years from the date of payment by the Owner to the County Council it shall following receipt of a request

from the County Council or the Owner repay such unexpended monies to the County Council together with interest thereon calculated from the date of payment to the date of repayment.

Bus Stop Improvement Contribution

4.1.7 To use the Bus Stop Improvement Contribution solely towards improvements to bus stops AS0443 Fox & Crown and AS0445 Fox & Crown to serve the Development ~~or new stops within the Development at the discretion of the County Council.~~

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4.1.8 If all or any part of the monies shall remain unexpended after the period of seven years from the date of payment by the Owner to the County Council it shall following receipt of a request from the County Council or the Owner repay such unexpended monies to the County Council together with interest thereon calculated from the date of payment to the date of repayment.

Bus Taster Tickets Contribution

4.1.9 To use the Bus Taster Tickets Contribution solely towards the subsidy of smartcard bus passes for new residents of the Dwellings to encourage use of sustainable modes of travel.

4.1.10 If all or any part of the monies shall remain unexpended after the period of seven years from the date of payment by the Owner to the County Council it shall following receipt of a request from the County Council or the Owner repay such unexpended monies to the County Council together with interest thereon calculated from the date of payment to the date of repayment.

Bus Service Contribution

4.1.11 To use the Bus Service Contribution solely towards extending the 417 service to serve the Development, including mornings and evening peaks, to provide a bus service to and from Sutton.

4.1.12 If all or any part of the monies shall remain unexpended after the period of seven years from the date of payment by the Owner to the County Council it shall following receipt of a request from the County Council or the Owner repay such unexpended monies to the County Council together with interest thereon calculated from the date of payment to the date of repayment.

THE DISTRICT COUNCIL'S COVENANTS WITH THE OWNER

Public Realm Contribution

4.2 The District Council covenants with the Owner as follows:

4.2.1 To use the Public Realm Contribution solely towards the following projects:

- Portland Square; or
- Sutton Old Market Place and Albert Square; or
- any public realm improvement project as identified in future adopted Ashfield District Council plans and policies.

4.2.2 If all or any part of the Public Realm Contribution shall remain unexpended after the period of seven years from the date of payment by the Owner to the District Council it shall following receipt of a request from the Owner repay such unexpended monies to the Owner together with interest thereon calculated from the date of payment to the date of repayment.

Affordable Housing

4.2.3 In the event that the Owner serves notice on the District Council pursuant to clause 3.24.9 confirming that the Owner has been unable to enter into a binding contract with an Affordable Housing Provider for the Affordable Dwellings the District Council shall determine whether to take a transfer of the Affordable Dwellings or whether an Affordable Housing Contribution shall be payable in lieu of provision of the Affordable Dwellings on site and shall notify the Owner of that election prior to the first Occupation of 30% of the Market Dwellings.

4.2.4 In the event the District Council determines that an Affordable Housing Contribution is payable, the District Council shall use such contribution solely for the provision of Affordable Housing within the District of Ashfield and for no other purpose whatsoever.

Healthcare Contribution

4.2.5 To pass to the Healthcare Authority the Healthcare Contribution following receipt of written confirmation from the Healthcare Authority that:

4.2.5.1 such monies shall be used solely for the purpose defined herein and for no other purpose whatsoever, and

4.2.5.2 if all or any part of the monies shall remain unexpended after the period of seven years from the date of payment by the Owner to the District Council it shall

following receipt of a request from the District Council or the Owner repay such unexpended monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.

4.2.6 To forward to the Owner any monies received from the Healthcare Authority pursuant to clause 4.2.5 above.

Monitoring

4.2.7 Following receipt of a written request from the Owner to produce full details of the expenditure of all monies paid pursuant to clause 3 of this Agreement.

THE FIRST SCHEDULE

INDEXATION PROVISIONS

1. In this Schedule:-

"Index" means for the calculation of the Affordable Housing Contribution, the Bus Service Contribution, the Bus Stop Improvement Contribution, the Bus Taster Tickets Contribution, the Healthcare Contribution, Highway Contribution and the Public Realm Contribution the Retail Prices Index ("RPI") as published by the Office for National Statistics or any successor body or such other index as shall be agreed between the Owner and the District Council and for the calculation of the Primary Education Contribution and the Secondary Education Contribution the BCIS All-in Tender Price Index produced by the Building Cost Information Service on behalf of the Department for Business, Energy and Industrial Strategy or in the event of discontinuance any replacement thereof such alternative index as may be agreed in writing between the Owner and the County Council

"Base Index Date" means the date of this Agreement.

"Base Index Figure" means the figure published in respect of the Index immediately prior to the Base Index Date.

"Final Index Figure" means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the relevant contribution is paid.

2. The relevant contribution shall be increased to such sum, if any, in pounds sterling as shall be equal to the sum calculated according to the following formula:-

$$\text{Increased Sum} = \frac{A \times C}{B}$$

Where: "A" equals the relevant contribution

"B" equals the Base Index Figure

"C" equals the Final Index Figure

3. If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made.

4. If any substitution for the said RPI or any Index previously substituted therefore shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the RPI or any index previously substituted therefore on the other hand.

THE SECOND SCHEDULE

TRANSFER OF ON SITE OPEN SPACE

1. GENERAL

The following provisions shall apply in relation to the transfer of the On Site Open Space pursuant to this Agreement ("the Transfer").

- 1.1 The Law Society's Standard Conditions of Sale (5th Edition) ("Standard Conditions") shall apply in relation to the Transfer in so far as they are not inconsistent with the terms of this Agreement.
- 1.2 Standard Conditions 2.1, 2.2, 2.3, 4.3, 5.2 and 6.1 shall not apply in relation to the Transfer.
- 1.3 The Transferor shall grant reasonable easements and rights to enable the use of the land for the purposes permitted under this Agreement.
- 1.4 The Transferor may reserve such rights as are reasonable in favour of the remainder of the Development including but not limited to:
- (a) rights of way;
 - (b) rights of way to carry out work on the On Site Open Space;
 - (c) the right to lay, retain, maintain, repair, alter, renew, remove and use services; and
 - (d) the right to develop the remainder of the Development even if the passage of light and air to the land transferred is affected.
- 1.5 The Transferor may include a covenant on the part of the Transferee providing that the Transferee shall not suffer or permit to be done any act or thing which may be or become a nuisance to the Owner or occupiers of the remainder of the Development.
- 1.6 The Transfer shall not impose any unduly restrictive or burdensome covenant or clause upon the Transferee in addition to the provisions contained in this Schedule.

1.7 The land will be transferred subject to:

- (a)** all local land charges;
- (b)** all notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this Agreement;
- (c)** all actual or proposed orders, directions, notices, charges, restrictions, conditions, agreements and other matters arising under any statute affecting the land;
- (d)** all rights of way, drainage, watercourses, light or other easements, or quasi or reputed easements, and rights of adjoining Owner affecting the land, and all liability to repair or covenants to repair paths, ways, passages, fences, and other like matters; and
- (e)** any interests overriding the title to the land.

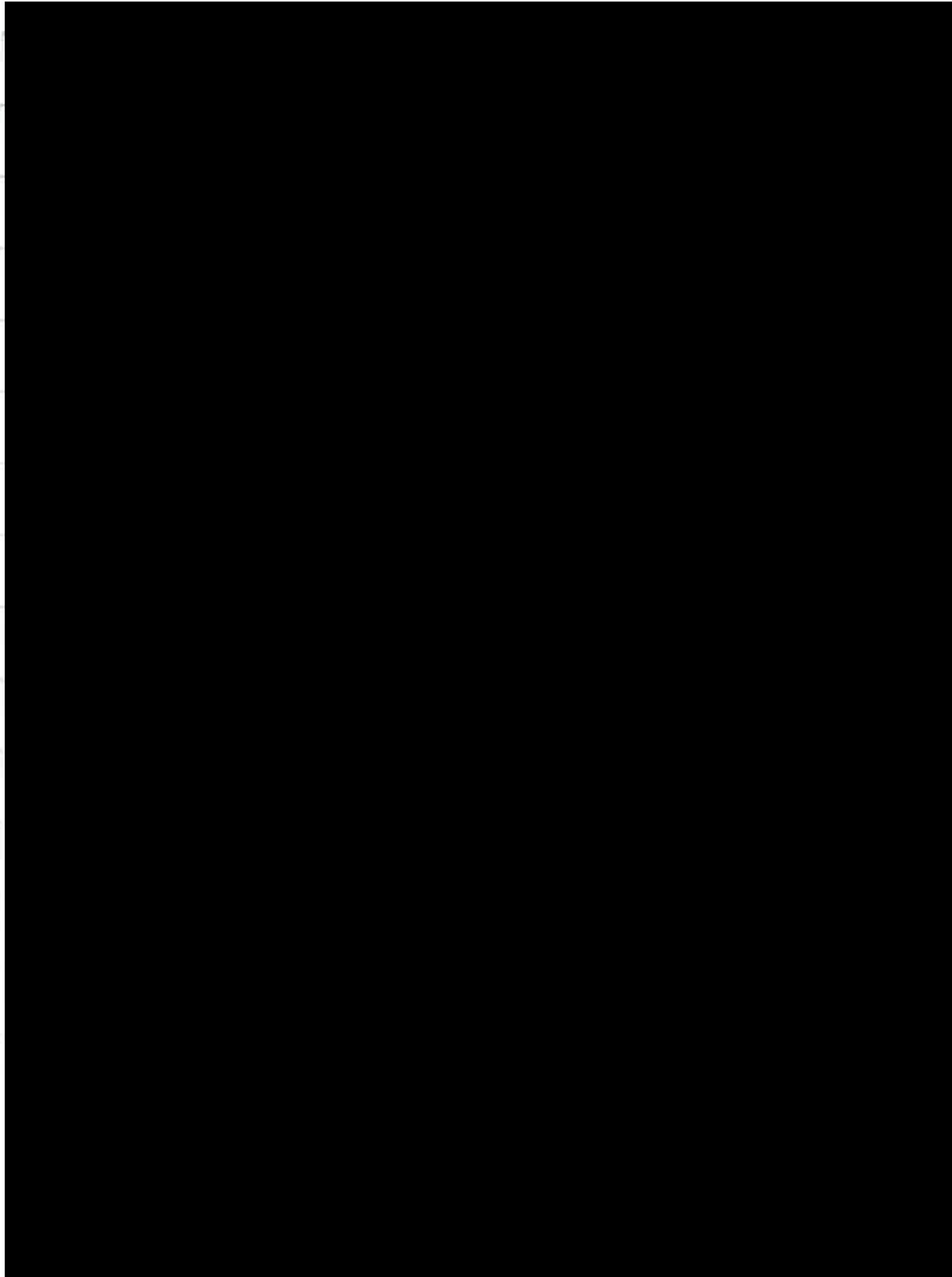
1.8 The Transfer may include an indemnity from the Transferee to observe and perform the covenants affecting the title to the land as at the date of the Transfer will be included in the Transfer.

1.9 The following restrictive covenants will be included in the Transfer for the benefit of the Owner of retained land (being the remainder of the Development):-

- (a)** restrictions preventing use of the On Site Open Space for any purpose other than public open space;
- (b)** restrictions preventing use of the On Site Open Space for a trade or business;
- (c)** restrictions preventing use of the On Site Open Space for residential purposes;
- (d)** obligations to keep land in good repair and condition;
- (e)** restrictions prohibiting the obstruction of public highway;
- (f)** obligations to keep and properly maintain the boundaries in good repair and condition;
- (g)** obligations to properly keep and maintain any landscaping;

- (h) obligations to keep and maintain the land in a clean and tidy condition;
- (i) restrictions prohibiting the Transferee from causing or knowingly permitting any nuisance on the land;
- (j) a requirement on any transfer of the On Site Open Space or any part thereof to procure that any transferee shall simultaneously enter into a direct covenant with the owner of the whole or relevant parts of the retained land to observe and perform these covenants; and
- (k) restrictions prohibiting the erection of any buildings or other erections except buildings or other erections which are ancillary to the purpose for which the land is transferred.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed on the date first above written.



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