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**Dated:**

17<sup>th</sup> October

2019

- (1) Angela Joan Caulton and Peter John Wass
- (2) Angela Joan Caulton and Emma Louise Wass
- (3) Lindrick Park Development Limited
- (4) Ashfield District Council

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**Planning Agreement**

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section 106 of the Town and Country Planning Act 1990 relating to proposed residential development on land at The Quarry, to the rear of 57 Stoneyford Road, Sutton-in-Ashfield, Nottinghamshire NG17 4DA

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THIS AGREEMENT is made on

17<sup>th</sup> October

2019

**BETWEEN**

- (1) **Angela Joan Caulton** of Elm Tree Farm, Elmton, Worksop, Derbyshire, S80 4LS and **Peter John Wass** of 31 Eveson Road, Stourbridge, DY8 3BS (the "**First Owners**");
- (2) **Angela Joan Caulton** of Elm Tree Farm Elmton Elm Tree Farm, Worksop, Derbyshire S80 4LS and **Emma Louise Wass** of 144 Huthwaite Road, Sutton-in-Ashfield, Nottinghamshire, NG17 2GX (the "**Second Owners**");
- (3) **Lindrick Park Development Limited** (Company Registration No 09761580) whose registered office is situate at 12 Nightingale Court, Nightingale Close, Rotherham S60 2AD (the "**Developer**"); and
- (4) **Ashfield District Council** of Urban Road, Kirkby in Ashfield, Nottingham, NG17 8DA (the "**District Council**").

**BACKGROUND**

- (A) By means of the Planning Application planning permission is sought by the Developer from the District Council to carry out the Development.
- (B) The District Council is the Local Planning Authority for the purposes of the Act for the area within which the Application Land is situated.
- (C) The District Council is a Principal Council within the meaning of the Local Government Act 1972.
- (D) The First Owners are the freehold owners of that part of the Application Land registered at the Land Registry with title absolute under title number NT252488 as shown coloured green on the Plan.
- (E) The Second Owners are the freehold owners of that part of the Application Land registered at the Land Registry with title absolute under title number NT252489 as shown coloured yellow on the Plan.
- (F) The Developer has the benefit of an option to purchase the land owned by the First Owners dated 5 February 2018 and the benefit of an option to purchase the land owned by the Second Owners dated 5 February 2018 and has agreed to be party to this Deed to acknowledge the terms contained herein.
- (G) The District Council has resolved to grant the Planning Permission for the Development subject to certain conditions and the completion of this Agreement.
- (H) The Owners have agreed to enter into this Agreement with the intent that their interests in the Application Land shall be subject to the covenants and obligations contained herein and with the intention that those covenants and obligations should create planning obligations pursuant to section 106 of the Act.
- (I) The District Council is satisfied that the provisions of this Agreement and the planning obligations contained herein comply with their respective policies in relation to section 106 of the Act and are sufficient in respect thereof.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions have the following meanings:

- "Act"** the Town & Country Planning Act 1990 as amended
- "Affordable Dwellings"** 10% of the total number of Dwellings to be constructed as part of the Development as Affordable Housing to be provided in accordance with the Tenure Mix
- "Affordable Housing"** 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 (February 2019) (or any future guidance or initiative that replaces or supplements it)
- "Affordable Housing Contribution"** the sum to be agreed between the District Council and the Owners 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 Owners by an Affordable Housing Provider for the relevant Affordable Dwellings (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 Owners to the District Council in accordance with the provisions of paragraph 1.8 of Part 1 of Schedule 1 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 Homes England (or such successor authority) as a registered provider; or
  - ii. any other housing provider approved in writing by the District Council
- as shall be approved by the District Council and dependent upon the Affordable Housing Provider being able to demonstrate to the District Council its ability to deliver the Affordable Housing on the Application Land in accordance with the terms of this Agreement

**"Affordable Housing Scheme"**

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 Tenure Mix

**"Application Land"**

the land shown edged red on the Plan

**"Bus Stop Contribution"**

the sum of £5,000 (Five Thousand Pounds) Index Linked payable by the Owners to the District Council in accordance with the provisions of paragraphs 3.1.1 and 3.1.2 of Part 3 of Schedule 1 towards improvements at the bus stop ASO478 and ASO720 on Quarrydale Road

**"Commencement of Development"**

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 **"Commencement Date"** shall be interpreted accordingly

<b>"Development"</b>	the development described in the Planning Application and to be carried out pursuant to the Planning Permission
<b>"Discounted Market Dwellings"</b>	a Dwelling to be sold by the owner at seventy five per cent (75%) of its Open Market Value
<b>"Dwelling(s)"</b>	a dwelling built pursuant to the Planning Permission whether or not an Affordable Housing Unit
<b>"Healthcare Authority"</b>	the NHS Mansfield and Ashfield Clinical Commission Group
<b>"Healthcare Contribution"</b>	the sum of £26,010.00 (Twenty Six Thousand and Ten Pounds) Index Linked payable by the Owners to the District Council in accordance with the provisions of paragraphs 3.1.3 and 3.1.4 of Part 3 of Schedule 1 towards the enhancement of capacity and/or infrastructure in local practices
<b>"Housing Need"</b>	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
<b>"Index Linked"</b>	the application to the sum concerned of the indexation set out in Schedule 3 hereto
<b>"Management Company"</b>	a management company elected 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
<b>"Market Dwelling"</b>	Dwellings for sale on the open market which is constructed as part of the Development and which is not an Affordable Dwelling
<b>"Monitoring Contribution"</b>	the sum of £1,600.00 (One Thousand and Six Hundred Pounds) Index Linked payable by the Owners to the District Council in accordance with the provisions of paragraph 3.2 of Part 3 of Schedule 1 towards the monitoring of compliance with this Agreement
<b>"Nominations Agreement"</b>	an agreement in a form specified by the District Council relating to the nominations procedure or a local lettings plans for the Affordable Dwellings as the case may be
<b>"Occupation"</b>	in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include:

- i. daytime occupation by workmen involved in the erection fitting out or decoration of any part of the Development;
- 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

**"Off Site Open Space Contribution"**

the sum of £48,000 (Forty Eight Thousand Pounds) Index Linked payable by the Owners to the District Council in accordance with the provisions of paragraphs 3.1.5 – 3.1.7 of Part 3 of Schedule 1 for works to play provision and/or general landscape improvements and footpath works, boundary enhancement and access works at Sutton Lawn

**"On Site Open Space"**

the on-site open space including all structural landscaping and vegetation to be improved and provided as part of the Development

**"On Site Open Space Scheme"**

the scheme for the provision, laying out and long term maintenance of the On Site Open Space to be submitted by the Owners to the District Council in accordance with the provisions of Part 2 of Schedule 1

**"Open Market Value"**

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

**"Owners"**

together the First Owners and the Second Owners

**"Plan"**

the plan attached hereto

**"Planning Application"**

the planning application submitted to the District Council and allocated reference number V/2018/0213 applying for planning permission for the residential development for up to 48 dwellings including the demolition of existing buildings

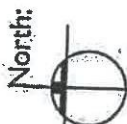
**"Planning Permission"**

a planning permission granted pursuant to the Planning Application

**"Practical Completion"**

the stage of construction or conversion of any Dwelling or other building comprising the

# Location Plan:



## Legend:

-  Application site.
-  Adjacent sites in same ownership.







Project:

**Proposed Residential Development.  
Outline Planning Application.**

Project Address:

**Land at 57 Stoneyford Road,  
Sutton in Ashfield.**

Client:

**Lindrick Park Development Ltd.**

**Jackson Design Associates**

Latimer House, Latimer Way,  
Sherwood Energy Village,  
Ollerton, Nottinghamshire, NG22 9QW

Telephone: (01623) 863 222  
Facsimile: (01623) 863 555  
www.jacksonsdesign.co.uk

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Scale: (Size):  
1:1250 (at A4)  
Drawing No (Rev):  
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Date:  
March 2018

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Paper Check - Actual Size  
0 10mm 20mm  
A4

SIGNATURES  
INITIALS

*[Handwritten signatures and initials in blue ink]*  
B.S. Caulton  
C.L. [unclear]  
[unclear]

Development such that it is capable of beneficial Occupation and "**Practically Complete**" shall be construed accordingly

**"Primary Education Contribution"**

the sum of £150,216.00 (One Hundred and Fifty Thousand Two Hundred and Sixteen Pounds) Index Linked payable by the Owners to the District Council in accordance with the provisions of paragraphs 3.1.8 – 3.1.10 of Part 3 to Schedule 1 towards the cost of primary education at Leamington Primary School on Clare Road, Sutton-in-Ashfield

**"Protected Tenant"**

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 Affordable Dwelling.

**"Public Realm Contribution"**

the sum of £96,000.00 (Ninety Six Thousand Pounds) Index Linked payable by the Owners to the District Council in accordance with the provisions of paragraphs 3.1.11 – 3.1.13 of Part 3 of Schedule 1 towards general improvements to Low Street including paving and street furniture

**"Secondary Education Contribution"**

the sum of £142,024.00 (One Hundred and Forty Two Thousand and Twenty Four Pounds) Index Linked payable by the Owners to the District Council in accordance with paragraphs 3.1.14 – 3.1.16 of Part 3 to Schedule 1 towards the cost of educational facilities at Quarrydale Academy on Stoneyford Road, Sutton-in-Ashfield

**"Section 73 Consent"**

a planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes any

condition to which the Planning Permission and/or to which such planning permission granted pursuant to Section 73 of the 1990 Act was granted subject to

**"Social Rented Dwellings"**

rented housing provided by an Affordable Housing Provider for which guideline target rents are determined through the national rent regime

**"Tenure Mix"**

means:

- 3 x Social Rented Dwellings; and
- 2 x Dwellings which satisfy any one of the criteria set out in the definition of Affordable Housing in the National Planning Policy Framework (February 2019) or its successor policy document

- 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 The expression "the Owners" shall where the context so admits include their respective successors and assigns.

**2. GENERAL PROVISIONS**

**Statutory Authority**

- 2.1 This Agreement and each of the covenants given by the Owners contained herein is a planning obligation and is made pursuant to section 106 of the Act.
- 2.2 The covenants by the Owners contained herein shall be enforceable by the District Council.

**Liability**

- 2.3 The covenants given by the Owners contained herein are made with the intent that the covenants will bind their respective interests in the Application Land and be binding on and enforceable against their respective successors in title or assigns and subject to **clause 2.5** those deriving title under the Owners 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.
- 2.5 The covenants contained in this Agreement shall not be enforceable against individual purchasers or lessees (or their mortgagees) of Dwellings on the Application Land constructed pursuant to the Planning Permission or against statutory undertakers in relation to any parts of the Application Land acquired by them for electricity sub-stations gas governor stations or pumping stations 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 Owners dispose of their interest in the Application Land or any part thereof (other than a disposal to a purchaser of a Dwelling) it shall within 28 days of such disposal give written notice of the name and address of its successors in title to the District 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 the issuing of the Planning Permission and the Commencement of Development and save for this clause and **clauses 2.8, 2.12, 2.13, 2.16, 2.17, 2.18, 2.19, 2.21, 2.23 and 3.3** which shall come in to effect upon completion of this Agreement then until such time all other provisions not herein specified 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 Owners procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith upon request of the Owners.
- 2.9 Where this Agreement is released in part by a future agreement, the District Council shall upon written request from the Owners 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 Owners make 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 a 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.
- 2.11 Following the performance and satisfaction of all covenants and obligations contained in this Agreement the District Council shall upon written request from the Owners effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

#### **Commencement of Development**

- 2.12 The Owners shall give the District 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 and

the District 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**

2.13 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owners the Developer 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:

- 2.13.1 the person to be appointed pursuant to **clause 2.13** shall if possible be a person having ten 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; and
- 2.13.2 the reference to the expert shall be on terms that:
  - 2.13.2.1 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;
  - 2.13.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
  - 2.13.2.3 the expert shall be bound to have regard to the said submissions and representations;
  - 2.13.2.4 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;
  - 2.13.2.5 the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and
  - 2.13.2.6 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**

2.14 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 Owners and the District Council.

### **Approvals**

2.15 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**

- 2.16 The service of notices and communications pursuant to this Agreement shall be sent to the addressee at the address stated in this Agreement or at such other address as the addressee shall have notified to the others in writing.
- 2.17 Notices and communications under this Agreement may be sent by personal delivery or by first class post (recorded delivery) and any notice or communication sent by first class post (recorded delivery) 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**

- 2.18 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**

- 2.19 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the forgoing provisions would be to defeat the original intention of the parties.

### **Application of this Agreement**

- 2.20 If any Section 73 Consent is granted after the date of this Agreement:
- 2.20.1 the obligations in this Agreement shall relate to and bind such Section 73 Consent; and
- 2.20.2 the definitions of Planning Application, Development and Planning Permission (other than for the purpose of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent, the development permitted by the Section 73 Consent and the Section 73 Consent itself.

PROVIDED THAT In the event of a different section 106 obligation agreed by the District Council being binding on any Section 73 Consent, this obligation shall not apply to that Section 73 Consent if that separate section 106 obligation expressly states that it is in substitution for the obligations in this obligation.

### **No Fetter of Discretion**

- 2.21 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 in its 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 were not a party to this Agreement.

**Effect of any Waiver**

2.22 No waiver (whether express or implied) by the District 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 (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 Owners.

**Developer's Consent**

2.23 The Developer is party to this Agreement to acknowledge the terms and provisions contained herein but it shall not be liable for the obligations contained herein unless and until it acquires an interest in the Application Land being more than an option to purchase following which it will become liable as successor in title to the Owners.

**General Requirement to Co-operate**

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

**Interest**

2.25 If any payment due to the District Council under this Agreement is paid late interest will be payable from the date the payment is due to the date of payment at 8% above the Bank of England base lending rate prevailing at the time.

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

# SCHEDULE 1

## THE OWNERS' OBLIGATIONS TO THE DISTRICT COUNCIL

### Part 1 – Affordable Housing

1. The Owners covenant with the District Council as follows:
  - 1.1 To submit to the District Council for approval prior to the Commencement of Development the Affordable Housing Scheme.
  - 1.2 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 paragraph 1.1 above or any approved variation thereto.
  - 1.3 Not to dispose of any interest in the Affordable Dwellings save to an Affordable Housing Provider or the District Council in accordance with this Part 1 of this Schedule or allow the same to be disposed of otherwise than in accordance with this Part 1 of this Schedule.
  - 1.4 Not to Occupy or permit or suffer or allow the Occupation of more than 50% of the total number of Dwellings until:-
    - 1.4.1 50% of the Affordable Dwellings have achieved Practical Completion and are ready for Occupation; and
    - 1.4.2 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
  - 1.5 Not to Occupy or permit or suffer or allow the Occupation of more than 80% of the total number of Dwellings until:-
    - 1.5.1 the remaining 50% of the Affordable Dwellings have achieved Practical Completion and are ready for Occupation; and
    - 1.5.2 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
  - 1.6 The transfer or binding contract, as the case may be, referred to in paragraphs 1.4.2 and 1.5.2 above shall provide inter alia for:
    - 1.6.1 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; and
    - 1.6.2 the imposition of such covenants as the Owners shall reasonably require as are consistent with the sale of any Dwellings within the Development; and
    - 1.6.3 where the Affordable Dwellings are being transferred to an Affordable Housing Provider, evidence to the District Council of such transfer or contract has been provided.



- 1.7 Subject to paragraph 1.8 below, the Owners covenant 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.
- 1.8 The parties agree that the restriction referred to in paragraph 1.7 above shall not apply to a Protected Tenant (or its mortgagee) or any person deriving title under a Protected Tenant.
- 1.9 The obligations contained in this Part 1 of Schedule 1 shall not be binding upon a mortgagee or chargee of any Affordable Housing Provider (or any receiver (including an administrative receiver) or administrator appointed by such mortgagee or chargee or any other person appointed under any security document to enable such mortgagee or chargee to realise its security (each a Receiver)) or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
- 1.9.1 such mortgagee or chargee or Receiver shall first give written notice to the District Council of its intention to dispose of any Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to another Affordable Housing Provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 1.9.2 if such disposal has not completed within the three month period the mortgagee charge or Receiver shall be entitled to dispose of the Affordable Dwellings free from the Affordable Housing provisions in this Agreement which shall determine absolutely
- 1.10 Not to transfer the Affordable Dwellings to an Affordable Housing Provider without first procuring that the transfer includes:
- 1.10.1 a provision that the Affordable Housing Provider shall undertake to enter into a Nominations Agreement with the District Council in respect of the Affordable Dwellings; and
- 1.10.2 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 PROVIDED THAT the transfer shall also include a mortgagee clause in substantially the same for as paragraphs 1.9 – 1.9.2 of Schedule 1 hereof.
- 1.11 To procure that the Affordable Housing Provider permits the District Council or its agent to nominate 100% of the first occupiers and 50% of the second occupiers of the Affordable Dwellings, such occupier being someone who is in Housing Need.
- 1.12 In the event the Owners have not entered into a binding contract with an Affordable Housing Provider within twelve months of Commencement of Development pursuant to this Part 1 of this Schedule to notify the District Council (such notification to include evidence of the Owner's reasonable endeavours to enter into a binding contract with Affordable Housing Provider) and:
- 1.12.1 If the District Council (acting reasonably) is satisfied that the notification provided pursuant to paragraph 1.12 demonstrates that the Owners have 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 Part 2 of Schedule 2 that an Affordable Housing Contribution shall be payable in lieu of provision of the Affordable Dwellings on the Application Land then the Owners shall pay the Affordable Housing Contribution prior to the first Occupation of eighty per cent (80%) of the Market Dwellings AND the Owners shall be entitled to dispose of the Dwellings that would have been Affordable Dwellings as Market Dwellings.
- (b) In the event that the District Council elects pursuant to Part 2 of Schedule 2 to take a transfer of the Affordable Dwellings the Owners 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 request the build cost provision of services 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 paragraph 6 above) within 3 months of the Owners receiving written acceptance of the offer.
- (c) If within 3 months of the Owners 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 Owners shall be entitled to withdraw the offer from negotiations and shall be released from the requirement to comply with the provisions of this Agreement in relation to the provision of Affordable Housing PROVIDED THAT the Dwellings that would have been Affordable Dwellings shall be provided as Discounted Market Dwellings (and the transfer of such dwellings shall contain a provision to ensure 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 inserted to the title register at the Land Registry).

1.13 If the District Council (acting reasonably) is not satisfied that the notification provided pursuant to paragraph 11 demonstrates that the Owners have used reasonable endeavours to enter into a binding contract with an Affordable Housing Provider, the District Council shall serve written notice on the Owners that they shall be required to use reasonable endeavours to enter into such a contract within six months from the date of notification by the District 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 paragraph 1.12.1 shall apply PROVIDED THAT at the conclusion of the six month period under this paragraph 1.12 the District Council shall not be entitled to again serve a notice under this paragraph.

#### **Part 2 – On Site Open Space**

- 2. The Owners covenant with the District Council as follows:
  - 2.1 To submit to the District Council for approval the On Site Open Space Scheme prior to the Commencement of Development for approval (such approval not to be unreasonably withheld or delayed).

- 2.2 Not to Commence the Development unless the Owners have submitted details of the Management Company to the District Council for the approval of the District Council and the District Council has approved the same.
- 2.3 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.
- 2.4 Not to allow or suffer or permit the Occupation of more than 60% of the Dwellings unless and until the On Site Open Space has been laid out and made available for use 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.
- 2.4.1 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 offered to and accepted by 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.
- 2.4.2 At the end of the maintenance period referred to in paragraph 2.4.1 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 paragraphs 2.1 to 2.4.1 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 Owners 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.
- 2.5 Not to allow or suffer or permit the Occupation of more than 80% of the Dwellings unless the On Site Open Space has been transferred to a Management Company for the sum of £1.00 such transfer to be in accordance with the relevant provisions of Schedule 4 AND FOR THE AVOIDANCE OF DOUBT the Owners shall maintain the On Site Open Space in a clean and tidy condition until the transfer to the Management Company has been completed PROVIDED THAT in the event that the On Site Open Space is to be managed by an Affordable Housing Provider then no such transfer to a Management Company shall be required BUT FOR THE AVOIDANCE OF DOUBT the Affordable Housing Provider will continue to comply with the maintenance provisions of the agreed On Site Open Space Scheme or any agreed variation thereto.

### **Part 3 – Financial Contributions**

- 3.1 The Owners covenant with the District Council to pay to the District Council the following financial contributions:

#### **Bus Stop Contribution**

- 3.1.1 The Bus Stop Contribution prior to the first Occupation of the first Dwelling to be Occupied.

- 3.1.2 The Owners covenant with the District Council not to permit or allow the Occupation of any Dwellings unless and until all of the Bus Stop Contribution has been paid to the District Council.

**Healthcare Contribution**

- 3.1.3 The Healthcare Contribution on Commencement of Development.
- 3.1.4 The Owners covenant with the District Council that it shall not Commence Development unless and until it has paid the Healthcare Contribution to the District Council.

**Off Site Open Space Contribution**

- 3.1.5 The Off Site Open Space Contribution as follows:
- 3.1.5.1 50% of the Off Site Open Space Contribution prior to the first Occupation of 50% of the total number of Dwellings; and
  - 3.1.5.2 the remaining 50% of the Off Site Open Space Contribution prior to the first Occupation of 80% of the total number of Dwellings.
- 3.1.6 The Owners covenant with the District Council not to permit or allow the Occupation of 50% of the Dwellings unless and until 50% of the Off Site Open Space Contribution has been paid to the District Council.
- 3.1.7 The Owners covenant with the District Council not to permit or allow the Occupation of 80% of the Dwellings unless and until all of the Off Site Open Space Contribution has been paid to the District Council.

**Primary Education Contribution**

- 3.1.8 The Primary Education Contribution as follows:
- 3.1.8.1 50% of the Primary Education Contribution on Commencement of Development;
  - 3.1.8.2 the remaining 50% of the Primary Education Contribution prior to Occupation of 50% of the total number of Dwellings.
- 3.1.9 The Owners covenant with the District Council not to Commence Development unless and until 50% of the Primary Education Contribution has been paid to the District Council.
- 3.1.10 The Owners covenant with the District Council not to permit or allow the Occupation of 50% of the Dwellings unless and until all of the Primary Education Contribution has been paid to the District Council.

**Public Realm Contribution**

- 3.1.11 The Public Realm Contribution as follows:
- 3.1.11.1 50% of the Public Realm Contribution prior to the first occupation of 10% of the total number of Dwellings;

- 3.1.11.2 the remaining 50% of the Public Realm Contribution prior to the first Occupation of 70% of the total number of Dwellings.
- 3.1.12 The Owners covenant with the District Council not to permit or allow the Occupation of 10% of the Dwellings unless and until 50% of the Public Realm Contribution has been paid to the District Council.
- 3.1.13 The Owners covenant with the District Council not to permit or allow the Occupation of 70% of the Dwellings unless and until all of the Public Realm Contribution has been paid to the District Council.

**Secondary Education Contribution**

- 3.1.14 The Secondary Education Contribution as follows:
  - 3.1.14.1 50% of the Secondary Education Contribution on Commencement of Development;
  - 3.1.14.2 the remaining 50% of the Secondary Education Contribution prior to Occupation of 50% of the total number of Dwellings.
- 3.1.15 The Owners covenant with the District Council not to Commence Development unless and until 50% of the Secondary Education Contribution has been paid to the District Council.
- 3.1.16 The Owners covenant with the District Council not to permit or allow the Occupation of 50% of the Dwellings unless and until all of the Secondary Education Contribution has been paid to the District Council.

**District Council's Costs**

- 3.2 The Owners covenant with the District Council to pay the Monitoring Contribution to the District Council on execution of this Agreement.
- 3.3 The Owners covenant with the District Council to pay the District Council's reasonable legal costs in respect of the preparation of this Agreement on its execution.

## SCHEDULE 2

### DISTRICT COUNCIL'S COVENANTS TO THE OWNERS

#### Part 1 – Affordable Housing

1. The District Council covenants with the Owners as follows:
  - 1.1.1 In the event that the Owners serve notice on the District Council pursuant to paragraph 1.11 of Part 1 of Schedule 1 above confirming that the Owners have 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 Owners of that election prior to the first Occupation of fifty per cent (50%) of the Dwellings.
  - 1.1.2 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.

#### Part 2 – Financial Contributions

2. The District Council covenants with the Owners as follows:

##### Primary Education Contribution

- 2.1 To pass to Nottinghamshire County Council the Primary Education Contribution or any part thereof following receipt of written confirmation from Nottinghamshire County Council that:
  - 2.1.1 such monies shall be used solely towards the provision of primary education at Leamington Primary School on Clare Road, Sutton-in-Ashfield and for no other purposes whatsoever; and
  - 2.1.2 if all of any part of the monies shall remain unexpended after the period of five (5) years from the date of payment by the Owners to the District Council it shall following receipt of a request from the District Council or the Owners repay such unexpended monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.
- 2.2 To forward to the Owners any monies received from Nottinghamshire County Council pursuant to paragraph 2.1.2 above.

##### Secondary Education Contribution

- 2.3 To pass to Nottinghamshire County Council the Secondary Education Contribution or any part thereof following receipt of written confirmation from Nottinghamshire County Council that:
  - 2.3.1 such monies shall be used solely towards the provision of primary education at Quarrydale Academy on Stoneyford Road, Sutton-in-Ashfield and for no other purposes whatsoever; and

- 2.3.2 if all of any part of the monies shall remain unexpended after the period of five (5) years from the date of payment by the Owners to the District Council it shall following receipt of a request from the District Council or the Owners repay such unexpended monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.
- 2.4 To forward to the Owners any monies received from Nottinghamshire County Council pursuant to paragraph 2.3.2 above.

#### **Healthcare Contribution**

- 2.5 To pass to the Healthcare Authority the Healthcare Contribution following receipt of written confirmation from the Healthcare Authority that:
- 2.5.1 such monies shall be used solely for the enhancement of capacity and/or infrastructure in local practices and for no other purpose whatsoever; and
- 2.5.2 if all or any part of the monies shall remain unexpended after the period of five years from the date of payment by the Owners 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.
- 2.6 To forward to the Owners any monies received from the Healthcare Authority pursuant to paragraph 2.5.2 above.

#### **Bus Stop Contribution**

- 2.7 To pass to Nottinghamshire County Council the Bus Stop Contribution following receipt of written confirmation from Nottinghamshire County Council that:
- 2.7.1 such monies shall be used solely for improvements to bus stops ASO478 and ASO720 on Quarrydale Road and for no other purpose whatsoever; and
- 2.7.2 if all or any part of the monies shall remain unexpended after the period of five years from the date of payment by the Owners 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.
- 2.8 To forward to the Owners any monies received from Nottinghamshire County Council pursuant to paragraph 2.7.2 above.

#### **Off Site Open Space Contribution**

- 2.9 To use the Off Site Open Space Contribution solely for play provision and/or general landscape improvements including footpath works, boundary enhancements and access works at Sutton Lawn and for no other purpose whatsoever.
- 2.10 If all or any part of the Off Site Open Space Contribution shall remain unexpended after the period of five (5) years from the date of payment of the final tranche of the contribution by the Owners to the District Council it shall following receipt of a written request from the Owners repay such unexpended monies to the Owners together with interest thereon calculated from the date of payment to the date of repayment.

### **Public Realm Contribution**

- 2.11 To use the Public Realm Contribution solely for the provision of general improvement works to Low Street including paving and street furniture and for no other purpose whatsoever.
- 2.12 If all or any part of the Public Realm Contribution shall remain unexpended after the period of five (5) years from the date of payment of the final tranche of the contribution by the Owners to the District Council it shall following receipt of a written request from the Owners repay such unexpended monies to the Owners together with interest thereon calculated from the date of payment to the date of repayment.

### **Part 3 – Monitoring**

- 3. The District Council covenants with the Owners that following receipt of a written request from the Owners it will produce full details of the expenditure of all monies paid pursuant to this Agreement.



## SCHEDULE 3

### INDEXATION PROVISIONS

1. In this Schedule:

<b>"Base Index Date"</b>	means the date of this Agreement
<b>"Base Index Figure"</b>	the figure published in respect of the Index immediately prior to the Base Index Date
<b>"Final Index Figure"</b>	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
<b>"Index"</b>	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 Owners and the District Council.

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; and

"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.

## SCHEDULE 4

### TRANSFER OF ON SITE OPEN SPACE

#### 1. GENERAL

The following provisions shall apply to all transfers of On Site Open Space pursuant to this Agreement ("the Transfer") AND FOR THE AVOIDANCE OF DOUBT the transfer of the On Site Open Space may be in the form of more than one transfer and reference in this Schedule to "the Transfer" shall mean any one of those transfers.

- 1.1 The Transfer shall be in accordance with the Law Society's Standard Conditions of Sale (5<sup>th</sup> Edition) "Standard Conditions" 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 to the Transfer.
- 1.3 The Transferor granting all reasonable easements and rights to allow the development and use of the land for the purposes specified in this Agreement.
- 1.4 The Transferor making such reservations of rights as are reasonable in favour of the remainder of the Development including but not limited to
  - 1.4.1 rights of way;
  - 1.4.2 rights of way to carry out work on the On Site Open Space;
  - 1.4.3 the right to lay, retain, maintain, repair, alter, renew, remove and use new services; and
  - 1.4.4 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 inclusion of 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 Owners or occupiers of the remainder of the Development.
- 1.6 No unduly restrictive or burdensome covenant or clause being imposed 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 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 Owners of retained land (being the remainder of the Development): -

- (a) restriction preventing use of the On Site Open Space for any purpose other than public open space;
- (b) not to be used for a trade or business;
- (c) not to be used for residential purposes;
- (d) to keep land in good repair and condition;
- (e) not to obstruct public highway;
- (f) to keep and properly maintain the boundaries in good repair and condition;
- (g) to properly keep and maintain any landscaping;
- (h) to keep and maintain the land in a clean and tidy condition;
- (i) not to cause or knowingly permit any nuisance on the land;
- (j) 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/developer or the whole or relevant parts of the retained land to observe and perform these covenants; and
- (k) not to erect any buildings or other erections except buildings or other erections which are ancillary to the purpose for which the land is transferred.

