

**DATED**

**2024**

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**NORTH SOMERSET COUNCIL (1)**

And

**BRIDGET PRATT and JUDITH HODGE (2)**

And

**OLIVER CHESLIN MATTHEWS (3)**

And

**PERSIMMON HOMES LIMITED (4)**

Planning References: 23/P/0664/OUT  
Planning Appeal Reference APP/D0121/W/24/3343144

**Section 106 Agreement**  
relating to

**LAND AT RECTORY FARM YATTON**

THIS DEED is made the

day of

2024

## **PARTIES**

1. **NORTH SOMERSET COUNCIL** of the Town Hall Walliscote Grove Road Weston-super-Mare North Somerset BS23 1UJ (“the Council”)
2. **BRIDGET PRATT** of 35 Grange Road, Bishop’s, Stortford CM23 5NG and **JUDITH HODGE** of Olive Lodge, Waimaori Road RD2 Raglan, New Zealand (“the First Owner”)
3. **OLIVER CHESLIN MATTHEWS** of Rectory Farm, Chescombe Road, Yatton, Bristol BS49 4EU (“the Second Owner”;
4. **PERSIMMON HOMES LIMITED** a company incorporated and registered in England and Wales with Company Number (004108747) whose registered office is at Persimmon House, Fulford, York, YO19 4FE (“the Developer”)

## **INTRODUCTION**

1. The Council is a unitary authority and is the local planning for the area in which the Land is situated acting in its capacity as such.
2. The First Owner is the freehold owner of that part of the Land the title to which is registered at the Land Registry with Title Absolute under title number ST359846 free from encumbrances.
3. The Second Owner is the freehold owner of that part of the Land the title to which is registered at the Land Registry with Title Absolute under title number AV125643 free from encumbrances
4. The Developer has by contracts dated 19 May 2022 and 4 October 2022 agreed to buy the Land conditional on the grant of planning permission .
5. Persimmon Homes Severn Valley [sic] submitted the Planning Application to the Council
6. The Council did not determine the Planning Application and Persimmon Homes Severn Valley [sic] has submitted an appeal.
7. An appeal to the Secretary of State has been lodged under reference number APP/D0121/W/24/3343144\_ which is to be determined by his Inspector following a public inquiry commencing on 24th September 2024

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings unless inconsistent with the context:-

"The Act"	means the Town and Country Planning Act 1990
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Land other than (for the purposes of this Deed and for no other purpose) the following operations:  operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" and all cognate expressions shall be construed accordingly
"Courts"	means the Courts of England and Wales
"CMF Contribution"	means the sum of £1,048 towards the cost of monitoring the contributions' obligations contained in the Third Schedule to this Deed
"Development"	means the development of the Land authorised by the Planning Permission
"Director"	means the Director of Place for the time being of the Council or her duly authorised deputy

“Dwelling”	means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission (references in this Deed to the number or percentage of Dwellings, such as in connection with occupation triggers, being references in relation to the number of Dwellings approved at the reserved matters stage)
“Education Transport Contribution”	Means the sum of one million and eighty-six thousand and seventy-four pounds and thirty-three pence [(£1,086,074.33) towards the costs of providing transport for pupils to and from the Land to school (being £849,656.06 towards secondary education transport and £236,418.27 towards special educational needs transport) ]
“Index”	means the United Kingdom Retail Prices Index (All items) as published by the United Kingdom Office for National Statistics or in the event of the said Index being discontinued the nearest equivalent Index
“Index Figure”	The figure calculated by the fraction A/B where: <ul style="list-style-type: none"> <li>• A = the Index figure published for the calendar month preceding the date the relevant payment is due to be made; and</li> <li>• B = the Index figure for the calendar month preceding the date of this Deed</li> </ul>
“Interest”	means interest at 4 per cent above the base lending rate published by the Bank of England from time to time or if such rate shall not be published at any time such other comparable rate of interest as the Council may then in writing specify having regard to interest rates current at such time

"Land"	means the site at Rectory Farm Yatton as showed edged red on <b>Plan 1 attached at Annexure 1</b>
"Lining Contribution"	means the sum of £2,200 towards the cost of lining improvements at local junctions
"Occupation"	means occupation for the purposes permitted by the Planning Permission (but not including occupation by persons engaged in construction or fitting out or occupation for marketing or occupation in relation to marketing or security operations of the Development) and "Occupiers" and "Occupied" and all other cognate expressions shall be construed accordingly
"Owner"	Means together the First Owner and the Second Owner
"Planning Application"	means the application for outline planning application for the development of up to 190 no. homes (including 50% affordable homes) to include flats and semi-detached, detached and terraced houses 0.13ha of land reserved for Class E uses, allotments, car parking, earthworks to facilitate sustainable drainage systems, orchards, open space comprising circa 70% of the gross area including children's play with a minimum of 1no. LEAP and 2no. LAPS, bio-diversity net gain of a minimum of 20% in habitat units and 40% in hedgerow units, and all other ancillary infrastructure and enabling works with means of access from Shiners Elms for consideration. All other matters (means of access from Chescombe Road, internal access, layout, appearance and landscaping) reserved for subsequent approval and given planning references 23/P/0664/OUT .
"Planning Permission"	means the outline planning permission (subject to conditions) if granted pursuant to the appeal and the

expression Planning Permission shall include all approvals granted thereunder and any permission granted pursuant to s.73 of the Act to vary the conditions imposed on the Planning Permission

- “Plan 1” means the plan annexed at **Annexure 1** to this Deed and numbered accordingly
- “Plan 2” means [Figure 23 (“Land Use as Percentage of Site Area” and Figure 24 (“Land Use Parameter”) of Chapter 4 of the Design and Access Statement] annexed at **Annexure 2** to this Deed and numbered accordingly
- “Public Transport Improvements Contribution” Means the sum of one hundred and sixty thousand pounds (£160,000) to be paid by the Owner to the Council under the terms of Schedule 3 to be used by the Council for the improvement of bus stops and to increase the frequency of local bus services
- “Strawberry Line Contribution” Means the sum of forty-four thousand pounds (£44,000) to be paid by the Owner to the Council and to be used by the Council to improve the Strawberry Line
- “Sustainable Travel Contribution” Means the sum of £180 per Dwelling to be paid by the Owner to the Council for the provision of travel information packs, public transport taster tickets and cycle vouchers to be spent provided to residents to encourage sustainable travel and to be paid in accordance with provisions of the **Third Schedule**
- “TRO Contribution” means the sum of £3,400 towards the cost of a Traffic Regulation Order
- “Traffic Calming Contribution” means the sum of £5,500 to be paid by the Owner to the Council to be used by the Council towards the cost of traffic calming measures on Mendip Road

“Working Day” any day (other than a Saturday or a Sunday) on which banks are open for domestic business in the City of London

## 2. **INTERPRETATION**

- 2.1 The validity construction and performance of this Deed shall be governed by English Law and each party agrees to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising under this Deed.
- 2.2 Reference to any statute or statutory provisions includes a reference to:-
- 2.2.1 Any modification extension or re-enactment of that statute or statutory provision; and
- 2.2.2 all instruments orders permissions and directions for the time being made issued or given pursuant to it whether before or after the date of this Deed.
- 2.3 Where in this Deed references is made to any clause paragraph or schedule such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule in this Deed.
- 2.4 The headings in this Deed are intended for convenience only and shall not affect the construction or interpretation of the Deed.
- 2.5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.6 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.7 Whenever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.8 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party, and, in the case of the Council, the successors to its statutory functions.

2.9 The remedies provided in this Deed are cumulative and not exclusive of any remedies provided by law.

3. **LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act Section 111 and Sections 1 and 2 of the Localism Act 2011 and any other enabling powers.

3.2 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner but without prejudice to all and any other means of enforcing them at law or in equity or by statute and a planning obligation not to do any act or thing shall also be construed as an obligation not to cause or permit or allow that act or thing to be done (and an obligation not to permit or allow something shall also be construed as an obligation not to do it).

4. **COMMENCEMENT**

4.1 Save for the obligation contained in **clause 7.1** (legal fees) (which shall take effect immediately on the date hereof) and any other provisions which either expressly or by necessary implication are required to come into effect beforehand this Deed is conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of Development.

5. **INTEREST AND INDEXATION**

5.1 If any sum due under this Deed is paid late Interest will be payable from the date the payment is due to the date of payment both before and after any judgement in addition to the principal sum.

5.2 If any sum due under this Deed shall be paid more than six months from the date of this Deed then the sum provided shall be increased to take account of inflation by a sum obtained by multiplying the relevant payment by the Index Figure.

6. **VAT**

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



7. **MISCELLANEOUS**

- 7.1 The Developer shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation preparation and execution of this Deed.
- 7.2 This Deed shall be registrable as a local land charge by the Council.
- 7.3 Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or any other powers vested in the Council under any statute byelaw statutory instruments orders and regulations (already or in the future to be passed) or any government department public or competent Council or Court of competent jurisdiction.
- 7.4 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.
- 7.5 No failure or delay by the Council to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right power or remedy by the Council.
- 7.6 The Owner warrants to the Council that they have the power to enter into this Deed and to carry out the obligations under this Deed; and warrants further to the Council that there are no other persons with an interest in the Land
- 7.7 Any notices to be served or document to be submitted on or to any party to this Deed shall be in writing and shall be validly served if personally delivered or if sent by post (including recorded delivery) to that party at the address specified as theirs at the head of this Deed and in the case of the Council addressed to the appropriate officer.
- 7.8 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership disposition or charge of any of its interests in the Land occurring before all of the obligations under this Deed have been fully discharged such notice to give details of the transferee's or chargee's full name and registered office (if a company

or usual address if not) together with details of the interest acquired and the area of the Land or unit of occupation purchased by reference to a plan save that in the event of a disposition of any Dwelling or the creation of a legal charge this obligation will only apply if the information is specifically requested by the Council.

- 7.9 The Owner agrees with the Council to:
- 7.9.1 give the Director at least ten (10) Working Days' written notice of its intention to Commence Development; and
  - 7.9.2 confirm in writing within seven Working Days following Commencement of Development that the Development has commenced
  - 7.9.3 give the Director written notice within seven (7) Working Days of the occurrence of each of the following events in connection with the Development and to specify in that notice the date on which it occurred:
    - 7.9.3.1 the Occupation of the 1<sup>st</sup> Dwelling;
    - 7.9.3.2 the Occupation of the 50<sup>th</sup> Dwelling;
    - 7.9.3.3 the Occupation of the 150<sup>th</sup> Dwelling ;
    - 7.9.3.4 the Occupation of the last Dwelling;

PROVIDED THAT failure to provide either of the notifications shall not render this Deed inoperative.

- 7.10 Insofar as any **clause** or **clauses** of this Deed are found by the Courts (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.11 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires prior to the Commencement of Development
- 7.12 For the avoidance of doubt and with reference to Sections 1 and 2 of the Contracts (Rights of Third Parties) Act 1999 no terms of this Deed shall

be enforceable by a third party and any term thereof may be rescinded or varied without the consent of any third party.

7.13 Save for the obligations contained in this Deed regulating the occupation or use of land or buildings, the Council shall not enforce any planning obligation contained in this Deed against:

7.13.1 a bona fide residential owner-occupier or tenant (or their mortgagee) of any Dwelling constructed pursuant to the Planning Permission; or

7.13.2 any statutory undertaker who acquires any part of the Land or any interest in it for the purposes of the supply of electricity gas water drainage telecommunication services.

7.14 No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest.

## 8. **DISPUTES PROCEDURE**

8.1 Any dispute arising out of the provisions of this Deed shall be referred to a person having appropriate qualifications and experience in such matters (“the Expert”) for the determination of that dispute PROVIDED THAT the provisions of this **Clause 8** shall be without prejudice to the right of any party to seek the resolution of any matter relating to the Deed to the Courts and/or in accordance with Section 106 (6) of the 1990 Act and the referral of any matter to the Expert shall not prejudice prevent or delay the recourse of any party to the Courts or to the provisions of Section 106 (6) for the resolution of any matter arising from the Deed.

8.2 The Expert shall be appointed by the relevant parties to the dispute (“the Relevant Parties”) or in default of agreement by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the parties.

8.3 The decision of the Expert shall be final and binding upon the Relevant Parties and the following provisions shall apply:-

8.3.1 the charges and expenses of the Expert shall be borne equally between the Relevant Parties unless the Expert shall otherwise direct;

8.3.2 the Expert shall give the Relevant Parties an opportunity to make representations and counter representations to him before making his decision;

8.3.3 the Expert shall be entitled to obtain opinions from others if he so wishes;

8.3.4 the Expert shall make his decision within the range of any representations made by the Relevant Parties themselves; and

8.3.5 the Expert shall comply with any time limit or other directions agreed by the Relevant Parties on or before his appointment.

9. **COVENANTS BY OWNER**

9.1 The Owner covenants with the Council so as to bind the Land and every part of it that it will carry out and complete the various works and observe and perform the obligations and restrictions set out in this Deed including its Schedules.

9.2

10. **DELIVERY**

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

11. **DEVELOPER'S DECLARATION**

The Developer consents to the completion of this Deed and declares that its interest in the Land shall be bound by the terms of this Deed.

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

Executed as a DEED  
By affixing the COMMON SEAL of  
**NORTH SOMERSET COUNCIL**  
In the presence of:

.....  
Solicitor for the Council

(please print name) .....

SIGNED AS A DEED by

**BRIDGET PRATT**

In the presence of:

Witness signature

Witness name

Witness address

Witness occupation

SIGNED AS A DEED by [NAME OF ATTORNEY]

as attorney for

**JUDITH HODGE** under a power of attorney dated [ ... ]

in the presence of:

Witness signature

Witness name

Witness address

Witness occupation

SIGNED AS A DEED by

**OLIVER CHESLIN MATTHEWS**

In the presence of:

Witness signature

Witness name

Witness address

Witness occupation

**EXECUTED** as a deed by )  
**PERSIMMON HOMES** )  
**LIMITED** )  
acting by its Attorneys: )

First Attorney

Second Attorney

and

both in the presence of:

First Witness Signature .....

Witness Name .....

Witness Address .....

.....

Witness Occupation .....

Second Witness Signature .....

(if different to the witness to the First Attorney execution)

Witness Name .....

Witness Address .....

.....

Witness Occupation .....

## FIRST SCHEDULE

### AFFORDABLE HOUSING PROVISIONS

#### 1. DEFINITIONS

1.1 In this Schedule and where used elsewhere in this Deed and its Schedules the following definitions apply:-

“Additional Affordable Housing Units”	Means 20% of the total number of Dwellings to be constructed on the Land that shall be provided as Shared Ownership Units in accordance with this Schedule (including inter alia the relevant part of Table 1 and paragraph 2.2)
Affordable Housing	means housing defined by the NPPF (Annex 2) or any subsequent amendment or modification or replacement of the NPPF or in any regulation or statute relating to affordable housing from time to time in force.
Affordable Housing Land	Those parts of the Land upon which the Owner shall construct the Affordable Housing Units including garages, parking spaces and other curtilage
Affordable Housing Plans	The plan(s) to be submitted to the Council for the Council’s approval showing the Affordable Housing Land and the quantity, location and tenure of the Affordable Housing Units and which shall accord with this Schedule (including inter alia paragraphs 2.2 and 2.3 and <b>Table 1</b> ) of this <b>Schedule</b> and shall include details of the Additional Affordable Housing Units to be provided including the dwelling type and location of the Additional Affordable Housing Units.
Affordable Housing Units	means Dwellings to be used solely for Affordable Housing (being 50% of the total number of Dwellings approved at reserved matters stage; for example, if



	<p>190 Dwellings are approved at reserved matters, then 95 of these would be affordable housing units) (30% of the total number of Dwellings approved at reserved matters shall be Policy Affordable Housing Units and 20% of the total number of Dwellings approved at reserved matters shall be Additional Affordable Housing Units) (with associated car parking spaces to comply with the Council's minimum parking standards for dwellings) to be constructed on the Affordable Housing Land and being residential units designed and built or procured by the Owner to meet the Construction Requirements and which shall be used as Affordable Housing and in accordance with <b>Table 1 and the other provisions of this Schedule.</b></p>
Applicants	<p>A person or persons who:</p> <ul style="list-style-type: none"> <li>• meet the requirements of the Criteria; and</li> <li>• are considered by the Council and the HARP (where appropriate) to be people being in need of and eligible for Affordable Housing and in the Council's consideration of such need the HARP or such other transferor of an Affordable Housing Unit shall adopt and abide by the Council's Nomination Policy</li> </ul>
Cluster	<p>Means a group of Affordable Housing Units having contiguous boundaries with each other</p>
Construction Requirements	<p>Means (unless otherwise previously agreed with the Council in writing) Housing constructed or procured by the Owner to be:</p> <ul style="list-style-type: none"> <li>• Externally indistinguishable from the Open Market Units in terms of appearance; and</li> <li>• In compliance with the nationally described space and accessibility standards issued by</li> </ul>

	<p>the Department for Communities and Local Government (March 2015 or at the time of Commencement of Development of the relevant Affordable Housing Units) or the reasonable requirements of any higher standard by the HARP or as otherwise agreed with the Council in writing; and</p> <ul style="list-style-type: none"> <li>• At least 10% of the Affordable Housing Units shall accord with wheelchair accessible standard set out in Requirement M4(3) of the Building Regulations</li> </ul>
Council's Nominations Policy	Means North Somerset Council's HomeChoice Lettings and Assessment Policy or such other nomination policy as the Council shall from time to time reasonably adopt
Council's Register	The Council's HomeChoice Register or such other register as the Council shall from time to time reasonably adopt
Criteria	Means people who immediately prior to occupation have a local connection to the District of North Somerset as defined in the Council's Nomination Policy
"Enabling Fees"	means affordable housing enabling fees of £570 (five hundred and seventy pounds) in respect of each Affordable Housing Unit
HARP	means a Housing Association Registered Provider of social housing registered with the Homes England (or any successor in function), and has not been removed from the register, as defined in Section 80 of the Housing and Regeneration Act 2008 ("the 2008 Act") and selected by the Owner on the basis that it is either:

	<ul style="list-style-type: none"> <li>• an approved member of the West of England HomesWest Partnership; or</li> <li>• a HARP approved by the Council and who has signed a non-partner compliance agreement with the Council for the delivery of Affordable Housing such approval not to be unreasonably withheld or delayed.</li> </ul>
HARP Transfer	A transfer of the Affordable Housing Units to a HARP at the Transfer Price and incorporating the Transfer Requirements.
Homes England	The body formerly known as the Homes and Communities Agency (“HCA”) (as defined in Section 56 of the Housing Act (1996) or its successor in function)
HP Index	The House Prices Index published by the Ministry of Housing Communities and Local Government or in the event of the said House Prices Index ceasing to exist the nearest equivalent index
“NPPF”	means National Planning Policy Framework (or its successor in function from time to time)
“Notional Social Housing Grant”	means in respect of any Affordable Housing Unit the difference on the date of Commencement of Development between the Open Market Value of that Affordable Housing Unit and the HARP Transfer Price
“Notional Social Housing Grant Element”	Means the net proceeds from Staircasing (less allowable expenses and any deemed loan debt in accordance with any relevant Homes England (or HCA guidelines from time to time) multiplied by the Staircasing Index Figure

“Open Market Dwellings”	means all those Dwellings forming part of the Development on the Land excluding the Affordable Housing Units.
“Open Market Value”	Means the open market value of the Affordable Housing Units with the benefit of the residential planning permission but ignoring the fact that the Affordable Housing Units are constructed or to be constructed for Affordable Housing purposes and assuming that there are no Affordable Housing restrictions thereon and further assuming that all the said units are private and available for sale on the open market and having regard to all other relevant circumstances. The Open Market Value shall be agreed between the Owner and the Council or in default determined by an independent chartered surveyor (member of the Royal Institution of Chartered Surveyors) whose costs shall be payable by the Owner.
“Policy Affordable Housing Units”	Means 30% of the total number of Dwellings approved at reserved matters to be constructed on the Land that are to be provided as Affordable Housing Units without the use of Public Subsidy
Practical Completion	Means the issue of a certificate of practical completion issued by the Owner’s architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect
Public Subsidy	Means capital funding or equity funding or other financial assistance provided by Homes England the HCA, public body or other body
RPI	means the United Kingdom Retail Prices Index (All Items) as published by the United Kingdom Office for

	National Statistics or in the event of the said RPI being discontinued the nearest equivalent index
“Rent Standard”	means (for Social Rented Units) the rent to be set by the HARP in accordance with the rent standard set by the Regulator of Social Housing for properties of that size in that location or (in the event that the Regulator of Social Housing ceases to set rent standards) rent assessed according to the nearest equivalent measure of assessment
“Service Charge”	Means the amount payable by the occupant of any Affordable Housing Unit for all communal services, repairs, maintenance, improvements, insurance of the building and curtilage, plus estate management costs and ground rent to the extent that the costs have been reasonably incurred and remain at a reasonable level that will maintain affordability for the occupants.
“Service Media”	means all pipes sewers drains mains ducts conduits gutters watercourses wires cables channels flues and any other apparatus for the Services
“Services”	shall mean the supply of water electricity gas and the disposal of foul and surface water
“Shared Ownership Units”	those shared ownership Affordable Housing Units to be offered by the HARP to Applicants which meet the definition of other affordable routes to home ownership contained within the NPPF (but not equity loans) or any subsequent or replacement tenure as may be agreed between the Council and the Owner in writing, and to be provided in accordance with the requirements of this <b>First Schedule</b>
Social Rented Units	means those Affordable Housing Units to be constructed and provided in accordance with the Rent Standard in force at the time of the HARP

	transfer which meets the definition of social rented housing as contained within the NPPF or any subsequent or replacement tenure as may be agreed between the Council and the Owner in writing, and to be rented in accordance with the requirements of this <b>Schedule</b>
“Staircasing”	Means in connection with the Shared Ownership Units the acquisition after the date of the initial purchase by the Occupier of additional tranches of equity within the said unit and references to “Staircase” or “Staircased” shall be interpreted accordingly.
“Staircasing Index Figure”	The figure calculated by the fraction A/B where: <ul style="list-style-type: none"> <li>• A= the figure published for the HP Index for the calendar month preceding the date the relevant Staircasing payment is made; and</li> <li>• B = the figure published for the HP Index for the calendar month preceding the date of Commencement of Development.</li> </ul>
Tenant Purchaser	Any tenant who <ul style="list-style-type: none"> <li>• has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;</li> <li>• has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;</li> <li>• has been granted a shared ownership lease by a HARP (or similar arrangement where a share of the Affordable Housing Unit is owned by the HARP) in respect of a particular</li> </ul>

	<p>Affordable Housing Unit and the tenant has subsequently purchased from the HARP all the remaining shares so that the tenant owns the entire Affordable Housing Unit.</p>
<p>Transfer Price</p>	<p>Consideration that (unless otherwise agreed in writing by the Council) allows the HARP :</p> <ul style="list-style-type: none"> <li>a) to provide the Social Rented Units in line with Rent Standard (taking into consideration also the Service Charge level as per <b>paragraph 4.3.5</b>); and</li> <li>b) in relation to the Policy Affordable Housing Units at initial sale to provide the Shared Ownership Units at no more than 40% of the Open Market Value and place a limit on the rental element of Shared Ownership Units to a maximum annual rent equivalent to one point five percent (1.5%) of the equity retained by the HARP (excluding reasonable Service Charges); and</li> <li>c) in relation to the Additional Affordable Housing Units at initial sale to provide the Shared Ownership Units at no more than 40% of the Open Market Value and place a limit on the rental element of Shared Ownership Units to a maximum annual rent equivalent to [two point seven five (2.75%)]% of the equity retained by the HARP (excluding reasonable Service Charges);</li> </ul> <p>in the case of the Policy Affordable Housing Units [(but not necessarily the Additional Affordable Housing Units)] without the need for Public Subsidy</p>

	or other funding from either Homes England or the Council or internally from the HARP
Transfer Requirements	The requirements of <b>paragraph 4 of this Schedule</b>

## 2. **CONSTRUCTION OF AFFORDABLE HOUSING UNITS**

2.1 Unless otherwise agreed in writing with the Council the Owner shall at its own cost construct or procure the construction of the Affordable Housing Units on the Land in accordance with the approved Affordable Housing Plan and the Construction Requirements and the tenure and other mix set out in Table 1 below (which in the case of the Policy Affordable Housing Units shall be delivered without the need for Public Subsidy):

**Table 1**

Tenure	Type of Accommodation	Number of Persons occupying	Percentage of the Non-Subsidy Social Rented Units	Minimum Size
<b>Social Rented Units</b> (77% of the Policy Affordable Housing Units ) of which:				
Social Rent	1 bed flat	2	20	50m2
Social Rent	2 bed Flat	3	18	[61 ] m2
Social Rent	2 bed house	4	23	79m2
Social Rent	3 bed house	5	31	93m2
Social Rent	4+ bed house	6+	8	[ 106 ]m2
<b>Shared Ownership Units</b> (23% of the Policy Affordable Housing Units ) of which:				
			<b>Percentage of the Non-Subsidy Shared Ownership Units</b>	
Shared Ownership	1 bed flat	2	13	50m2
Shared Ownership	2 bed Flat	3	21	[ 61 ] m2
Shared Ownership	2 bed house	4	25	79m2
Shared Ownership	3 bed house	5	[35]	93m2
Shared Ownership	4+ bed house	6+	6	[ 106 ]m2
<b>Shared Ownership Units</b> (100% of the <b>Additional Affordable Housing Units</b> ) of which:				



			<b>Percentage of Additional Affordable Units</b>	
Shared Ownership	1 bed flat	2	13	50m2
Shared Ownership	2 bed Flat	3	21	[ 61 ] m2
Shared Ownership	2 bed house	4	25	79m2
Shared Ownership	3 bed house	5	[35]	93m2
Shared Ownership	4+ bed house	6+	6	[ 106 ]m2

- 2.2 In relation to the Additional Affordable Housing Units the Owner shall provide these as Shared Ownership Units such that up to 40% of the initial equity of the Dwelling may be sold with a rent of up to two point seven five percent (2.75%) rent charged on the remaining equity unless otherwise agreed in writing between the Owner and the Council
- 2.3 Prior to Commencement of Development the Owner shall submit to the Council the Affordable Housing Plan for approval; and
- 2.3.1 Unless otherwise agreed in writing with the Council, the Owner covenants and agrees with the Council that the Affordable Housing Units shall be seamlessly integrated and distributed throughout the Development and there shall be no more than six (6) Affordable Housing Units in a Cluster and no more than 6 apartments in a block sharing the same entrance; and
- 2.3.2 each Cluster shall be separated from each other Cluster by either Open Market Dwellings or public open space;
- 2.3.3 Timescale for the delivery of the Affordable Housing Units and
- 2.3.4 no more than six flats shall share an entrance.
- 2.3.5 different tenure Affordable Housing units shall not share an entrance
- 2.4 The Owner shall not Commence Development until receipt of the Council's approval of the Affordable Housing Plan.
- 2.5 For the avoidance of doubt, if any calculation of the percentage of the Dwellings or Affordable Housing Units does not produce a whole number then any fraction less than 0.5 shall be rounded down and any fraction which is 0.5 or more shall be rounded up.
- 2.6 The Owner covenants to pay to the Council the relevant Enabling Fees due in respect of the Affordable Housing Units on or prior to Occupation of the first

Affordable Housing Unit and not to Occupy or permit Occupation of any of the Affordable Housing Units unless and until the relevant Enabling Fees have been paid to the Council but for the avoidance of doubt where a HARP has acquired an interest in the Land the Enabling Fees shall be payable by the HARP.

3. **USE**

3.1 The Owner covenants subject to **Paragraph 5 of this Schedule**

3.1.1 not to use the Affordable Housing Land save for the construction and use of the Affordable Housing Units in accordance with the provisions of this Schedule including Table 1 and the Tenure Mix and the Construction Requirements and the approved Affordable Housing Plan; and

3.1.2 Subject to the provisions of this **Schedule** from the date of Practical Completion of the Affordable Housing Units they shall not be used other than as Affordable Housing (i.e. as Social Rented Units and Shared Ownership in accordance with this Schedule including Table 1 and the approved Affordable Housing Plan) by Applicants (save that this shall not apply to:

3.1.2.1 any Tenant Purchaser or any mortgagee or chargee of the Tenant Purchaser or any person deriving title from the Tenant Purchaser; or

3.1.2.2 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor).

4. **TRANSFER OF THE AFFORDABLE HOUSING UNITS (TRANSFER REQUIREMENTS)**

4.1 The Owner covenants that no more than 35% of the Open Market Dwellings shall be occupied until 25% of the Affordable Housing Units (including the associated Affordable Housing Land; with at least 60% of such Affordable Housing Units being Policy Affordable Housing Units) have been constructed and the unencumbered freehold thereof has been transferred to the HARP with full title guarantee for the Transfer Price subject to the Transfer Requirements and ready for immediate occupation.

- 4.2 The Owner covenants that no more than 60% of the Open Market Dwellings shall be occupied until 62.5% of the Affordable Housing Units (including the associated Affordable Housing Land; with at least 60% of such Affordable Housing Units being Policy Affordable Housing Units) have been constructed and the unencumbered freehold thereof has been transferred to the HARP with full title guarantee for the Transfer Price subject to the Transfer Requirements and ready for immediate occupation.
- 4.3 The Owner covenants that no more than 85% of the Open Market Dwellings shall be occupied until 100% of the Affordable Housing Units (including the Affordable Housing Land) have been constructed and the unencumbered freehold thereof has been transferred to the HARP with full title guarantee for the Transfer Price subject to the Transfer Requirements and ready for immediate occupation

### **Rights**

- 4.4 The Transfer deed shall include:
- 4.4.1.1 a grant of full and free rights of access both pedestrian and vehicular from the public highway or roads intended to become public highway to the Affordable Housing Land and Affordable Housing Units;
  - 4.4.1.2 a grant of full and free rights to the passage of Services through Service Media which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Land all such Services to be connected to the mains;
  - 4.4.1.3 as far as reasonably possible the benefit of the same rights covenants obligations and other provisions as shall apply to the Open Market Dwellings;

### **HARP's Covenants**

- 4.5 The Affordable Housing Units shall be subject to (and the HARP Transfer deed shall expressly include) covenants for the benefit of and enforceable by the Council that the HARP will:
- 4.5.1 adopt and abide by the provisions of the Council's Nomination Policy for lettings of Social Rented Unit;
  - 4.5.2 grant to the Council the right to nominate Applicants from the Council's Register on all lettings of each Social Rented Unit;
  - 4.5.3 not use or permit the Affordable Housing Land to be used for any other purpose except for the provision of Affordable Housing Units and in accordance with any proper requirements of Homes England;

- 4.5.4 in relation to the Social Rented Units to include a covenant by the HARP that the rents charged shall be in line with Target Rents; and
- 4.5.5 ensure the Service Charge payable by the occupants of any Affordable Housing Unit shall be limited to no more than £550 per annum from 1st October 2013 and indexed to increases in the RPI annually from the date of Occupation thereafter.

**Stair-casing**

- 4.6 Unless otherwise agreed in writing with the Council the HARP shall use any net capital receipt received as a result of any Stair-casing or otherwise staged purchase by a tenant of a Shared Ownership Unit to provide Affordable Housing in the administrative area of the Council (less reasonable costs incurred by the Housing Association Registered Provider as approved by the Council).
- 4.7 In relation to the Shared Ownership Units (unless otherwise agreed in writing by the Council) the HARP shall ensure that:
  - 4.7.1 in the event that Stair-casing occurs, the HARP will apply the Notional Social Housing Grant Element on other Affordable Housing schemes in North Somerset; and
  - 4.7.2 the initial tranche of equity share transferred to a tenant of a Shared Ownership Unit is not more than 40% of the Open Market Value and there is a limit on the rental element to a maximum annual rent equivalent to one point five percent 1.5% in the case of the Policy Affordable Housing Units and up to two point seven five percent (2.75%) in the case of the Additional Affordable Housing Units of the equity retained by the HARP (excluding reasonable Service Charges).
- 4.8 Where either:
  - 4.8.1.1 following Stair-casing a tenant of a Shared Ownership Unit increases his equity share to 100%; or
  - 4.8.1.2 a tenant of a Social Rented Unit has exercised a right to buy or acquire in accordance with the legislation in force at the time of the said acquisition;

the Parties agree that any such tenant shall be free from the restrictions in this Agreement as will any successor in title or any mortgagee or charge and their successors in title and the provisions of this Schedule shall cease to bind such an Affordable Housing Unit.

5. **MORTGAGEE IN POSSESSION**

- 5.1 The Affordable Housing provisions in this Deed shall not be binding on a mortgagee or chargee (or any receiver including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
- 5.2 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units 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 Housing Units to another HARP or to the 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
- 5.3 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Deed which provisions shall determine absolutely.

## SECOND SCHEDULE

### OPEN SPACE PROVISIONS

#### Part 1

#### **1. Definitions relating to Open Space**

1.1. The words below shall mean as follows:-

“Allotments”	Means part of the Open Space to be managed by the Management Company (unless otherwise agreed by the Council) for use as community allotments
“Community Park”	Means that part of the Open Space to be laid out as a community park to be managed by the Management Company (unless otherwise agreed by the Council)
“Ecology Area”	Means that part of the Open Space and which is to be laid out and managed by the Management Company (unless otherwise agreed by the Council) to promote and enhance ecology on the Land
“LAP”	Means a local area of play (with a 20m buffer from any Dwelling) such area to be imaginatively landscaped to encourage play but shall not include formal play equipment
“LEAP”	Means a local equipped area for play of not less than 400 square metres (excluding 20 metre buffer from any dwellings) such area to be imaginatively landscaped to encourage play with at least 6 pieces of play equipment to conform with Council policy including safety surface perimeter anti-neck railings

	two self-closing mono gates maintenance gate and seating for adults
“Maintenance Period”	means the period from the date of issue of written confirmation by the Council that the relevant part of the Open Space and Play Areas Works have been satisfactorily completed in accordance with Part 1 of this Fourth Schedule until the date of completion of the Open Space and Play Areas Transfer to the Management Company
“Management Company”	means a management company proposed by the Owner and approved in writing by the Council set up or appointed for ownership and maintenance of the Open Space and the Play Areas, the proposed details of the management company to be submitted to the Council to include (but not limited to) details of the Articles of Association (if relevant), funding sources, financial sustainability (including requirements to maintain reserves equal to the cost of maintaining, insuring, repairing and replacing the Open Space and Play Areas), form of representation of occupiers of Dwellings and appropriate accountability to them and (if relevant) to shareholders and the provision and maintenance of a capital reserve equivalent to the cost of maintaining the Open space and Play Areas (for a period of not less than 15 years) together with safeguards in the event of problems arising with these arrangements

<p>“Open Space”</p>	<p>means those parts of the Land (the types and minimum sizes of which shall be at least compliant with relevant Council policy and suitably consonant with the land use percentages, other than “Residential”, referred to in Figure 23 of Plan 2 and which shall inform the reserved matters application ) to be laid out landscaped retained and used as open space by the Owner in accordance with the Planning Permission and this Deed and including (unless the context otherwise requires)</p> <ul style="list-style-type: none"> <li>- The Allotments</li> <li>- The Community Park</li> <li>- The Ecology Area</li> <li>- The Orchard.</li> <li>- LEAP and LAPs</li> <li>- The SUDS</li> <li>- Such other areas as are identified and agreed to be Open Space between the Owner and the Council under the terms below or otherwise</li> </ul>
<p>“Open Space Supervision Fee”</p>	<p>means the Council’s fees relating to the supervision and inspection of the Open Space Works charged at an hourly rate of £34 or any reasonable revised or replacement rate published by the Council up to a maximum of 2.5% of the estimated cost of the Open Space Works which the Council is inspecting</p>
<p>“Open Space Transfer”</p>	<p>means a transfer of the Open Space to the Management Company in accordance with Part 2 of this Second Schedule</p>



<p>“Open Space Works”</p>	<p>1.1. means the landscaping and laying out of the Open Space including:</p> <ul style="list-style-type: none"><li>1.1.1. any remedial works to improve drainage or clean up of any environmental pollution or damage;</li><li>1.1.2. the design layout and installation of the Play Areas to include full details of the play equipment (where appropriate) and the safety features and measures of the play equipment and the Play Areas;</li><li>1.1.3. full details of green corridors to be provided (including between Dwellings) to include enhancement and retention of existing trees and hedges;</li><li>1.1.4. details of the Allotments including access arrangements and any servicing</li><li>1.1.5. details of the setting out of the Community Park including any pedestrian and or cycleways crossing this area</li><li>1.1.6. details of the setting out of Ecology Area</li><li>1.1.7. details of the setting out of Orchard and</li></ul>
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	1.1.8. a detailed schedule of the estimated costs for the Open Space and Play Areas Works
“Play Areas”	“Play Areas” means the LEAP and the 2 LAPs to be provided on the Land by the Owner, the design and specification of which shall be proposed and approved in writing by the Council
“Orchard”	Means part of the Open Space to be planted as an orchard in accordance with details to be agreed in the Open Space Works and to be managed by the Management Company (unless otherwise agreed by the Council)
“Services”	means the supply of water electricity gas and the disposal of foul and surface water and telecommunications (including broadband)
“Service Media”	means all pipes sewers drains mains ducts conduits gutters watercourses wires cables channels flues and any other apparatus for the Services
“SOS Manager”	means the Streets and Open Spaces Manager for the Council or his duly appointed deputy

## **2. Open Space**

### **Agreeing the Open Space**

2.1. The Owner shall submit to the Council for approval :

- 2.1.1. a detailed specification of the Open Space Works to include the design layout and landscaping of the relevant areas of Open Space;

- 2.1.2. a plan showing the location scale size and configuration of the relevant areas of Open Space Land;
- 2.1.3. a timetable for the carrying out and completion of the Open Space Works and
- 2.1.4. a schedule of the specifications for the Open Space Works and an estimate of the costs for carrying out the Open Space Works from a reputable contractor retained to carry out the Open Space Works ,
- and when Approved by the Council, these specifications shall be the Open Space Works

#### Carrying Out The Open Space Works

- 2.2. The Owner shall prior to the commencement of the Open Space Works give to the Council not less than 10 (ten) Working Days' written notice of the intention to commence the Open Space Works.
- 2.3. The Owner shall, at its own cost and expense, carry out and complete the approved Open Space Works in a good and workmanlike manner and with sound and good quality materials and vegetation and in accordance with good horticultural and ecological practice to adoptable standards and to the reasonable satisfaction of the SOS Manager and shall carry out and complete the approved Open Space Works prior to Occupation of more than 125 Dwellings in accordance with the timescales agreed under Paragraph 2.1 (but for the avoidance of doubt no Dwellings shall be Occupied until the pedestrian and cycling connections to the Strawberry Line have been completed to the reasonable satisfaction of the SOS Manager)
- 2.4. The Owner shall pay the Open Space Supervision Fee to the Council within 30 (thirty) days from the date of the invoice for payment of the Supervision Fee (such invoice not to be issued prior to the Owner giving notice of intention to commence the Open Space Works in accordance with paragraph 2.2 of this Schedule).

- 2.5. Save as may otherwise be agreed in writing by the Council, the Owner shall not at any time allow or permit the Open Space to be developed or used save for purpose for which that part of the Open Space is laid out (as agreed under the agreed Open Space Works (and for the avoidance of doubt they shall not be used as a works compound for the storage of construction materials, the depositing of spoil, the parking and storage of plant or as a site office or welfare facilities).
- 2.6. Upon completion of the construction of the Open Space Works (or a specified element of the Open Space) the Owner shall notify the Council and the SOS Manager shall inspect the said works as soon as reasonably practicable.
- 2.7. If the Council acting reasonably considers that the Open Space (or the relevant element of the Open Space) have been completed to a satisfactory standard the Council will give written confirmation to this effect to the Owner following which the Maintenance Period shall commence in respect of the Open Space (or the relevant element of the Open Space).
- 2.8. If the Council do not consider that the Open Space (or the relevant element of the Open Space) have been satisfactorily completed it shall notify the Owner of its reasons within 28 (twenty eight) Working Days and shall allow the Owner a reasonable period of time up to a maximum period of 4 (four) months or as otherwise agreed between the Parties to remedy any defects and thereafter the process in paragraphs 2.5 and 2.7 of Part 1 of this Schedule shall be repeated a maximum of 3 (three) times.
- 2.9. If the process of paragraphs 2.5 and 2.7 has been carried out three times without written confirmation that the Open Space (or the relevant element of the Open Space) have reached a satisfactory standard the Council shall have the right to enter onto the Land and to rectify any defects in the Open Space and the Owner shall pay the reasonable costs of the Council doing so PROVIDED ALWAYS that in the event any such defects constitute a risk to health and safety, the Council may enter the Land and rectify any such

defects and/or take enforcement action irrespective of the number of times the processes at paragraphs 2.5 and 2.7 have been carried out.

- 2.10. Following satisfactory completion of the Open Space the Owner covenants to make the Open Space available to the public (in so far as appropriate according to the specific purpose of each part of the Open Space) in perpetuity free of charge unless otherwise agreed in writing with the Council and save for any closure reasonably required for maintenance purposes or for reasons of public safety
- 2.11. The Owner shall maintain the Open Space and shall make good any defects throughout the Maintenance Period to a standard suitable for their use and to the reasonable satisfaction of the SOS Manager and arrange a twice monthly inspection of the Play Areas by a suitably qualified operative and provide copies of the post installation safety check documents to the SOS Manager.
- 2.12. The Owner shall transfer the Open Space to the Management Company in a clean and tidy condition and free from all litter unless it is agreed between the Council and the Owner to transfer the land to a nominee of the Council.

### 3. Approval of Management Company

- 3.1. Regarding the transfer of the Open Space to the Management Company :
  - 3.1.1. prior to such transfer the Owner shall submit details of the Management Company to the Council for written approval (such approval not to be unreasonably withheld or delayed); and
  - 3.1.2. within such transfer the Owner shall include provisions to secure the management and maintenance of the Open Space and the Play Areas in perpetuity in accordance with a detailed specification (approved as part of the Management Company) for the upkeep and future maintenance and management of the Open Space.
- 3.2. In the event that it is agreed to transfer the Open Space to a nominee of the Council then the terms of the transfer shall be as for the transfer to the

Management Company in paragraph 3.1 (mutatis mutandis) and subject to such amendments as the Parties may agree (which would include such commuted sums and financial contributions as required by the Council).

3.3. If and despite the reasonable endeavours of the Owner and the council's nominee to agree terms for a transfer within 3 months of a first offer to transfer from the Owner then the Owner may transfer the Open Space to the Management Company under paragraph 3.1

## **Part 2**

### **Principal terms of the Open Space Transfer to the Management Company**

1. The Open Space Transfer(s) to the Management Company shall be for the purchase price of £1.00 (One Pound) payable upon completion and shall:
  - 1.1. transfer the Open Space with a good freehold title absolute with full title guarantee free from incumbrances (save for any incumbrances (not being financial charges) existing prior to the date of this Deed) and with vacant possession given on completion;
  - 1.2. grant full and free rights of access both pedestrian and vehicular from the public highway (or roads intended to become public highway) to the Open Space (in so far as appropriate according to the specific purpose of each part of the Open Space)
  - 1.3. grant full and free rights to the passage of any Services through Service Media now or in the future under over or in the Open Space
  - 1.4. include the Standard Commercial Property Conditions (Third Edition – 2018 Revision) insofar as not inconsistent with the terms of this Deed;
  - 1.5. include a covenant on the part of the transferee not to use or cause or permit the Open Space to be used other than as open space for the recreation and other amenity of the residents of Dwellings on the Land and the public at large (in so far as appropriate according to the specific purpose of each part of the Open Space)

- 1.6. include a covenant on the part of the transferee not to use the Play Areas other than as a children's play area and to permit the residents of Dwellings and the public at large to use the Play Areas for such purpose
- 1.7. a covenant on the part of the transferee not to erect any buildings or structures on the Open Space other than any structure ancillary to the use as Open Space and (in the case of the Play Areas) children's play equipment
- 1.8. (if any transfer of a Dwelling includes a rentcharge in respect of the maintenance repair replanting and management of the Open Space) a covenant to the effect that the amount of such rentcharge shall be fair and reasonable .
- 1.9. The Open Space Transfer to a Management Company shall include covenants for the benefit of and enforceable by the occupiers on the Development that the Management Company will thereafter:
  - 1.9.1. maintain the Open Space in a proper and workmanlike manner and with sound and good quality materials and vegetation and in accordance with good horticultural and ecological practice;
  - 1.9.2. maintain the Play Areas in a proper and workmanlike manner and with sound and good quality materials to meet as a minimum the British Standard for playground equipment and surfacing BS EN 1176 or such other guidance as shall from time to time replace it .

## **THIRD SCHEDULE CONTRIBUTIONS**

### **1. Contributions**

#### **1.1 The Owner covenants with the Council:**

1.1.1 to pay to the Council the following contributions prior to Commencement of Development:

1.1.1.1 the Strawberry Line Contribution

1.1.1.2 the TRO Contribution

1.1.1.3 the Traffic Calming Contribution

1.1.1.4 the CMF Contribution

(and not to Commence Development unless and until such contributions have been paid to the Council); and

1.1.2 to pay to the Council the Sustainable Travel Contribution, the Public Transport Improvements Contribution and the Lining Contribution prior to Occupation of the first Dwelling (and not to permit Occupation of any Dwellings unless and until these contributions have been paid to the Council); and

1.1.3 to pay to the Council the Education Transport Contribution in five equal (subject to indexation under clause 5.2) tranches as follows :

1.1.3.1 prior to Occupation of the first Dwelling (and not to permit the Occupation of any Dwellings unless and until this has been paid):

1.1.3.2 prior to Occupation of more than 20% of the Dwellings (and not to permit more than 20% of the Dwellings to be Occupied unless and until this has been paid to the Council)

1.1.3.3 prior to Occupation of more than 40% of the Dwellings (and not to permit more than 40% of the Dwellings to be



Occupied unless and until this has been paid to the Council)

- 1.1.3.4 prior to Occupation of more than 60% of the Dwellings (and not to permit more than 60% of the Dwellings to be Occupied unless and until this has been paid)
- 1.1.3.5 prior to Occupation of more than 80% of the Dwellings (and not to permit more than 80% of the Dwellings to be Occupied unless and until this has been paid)

## **FOURTH SCHEDULE**

### **COUNCIL'S COVENANTS**

1. The Council hereby covenants with the Owner
- 1.1 to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.
- 1.2 to pay to the paying party such amount of the TRO Contribution and Sustainable Travel Contribution payable by the Owner to the Council under the terms of this Deed which has not been expended or committed in accordance with the provisions of this Deed within 5 (five) years of the date of receipt by the Council of such payment

**ANNEXURE 1**

**PLAN 1 – 'THE SITE'**

**ANNEXURE 2**

**PLAN 2 – ‘**