

Dated 28 September 2021

ASHFIELD DISTRICT COUNCIL (1)

AND

**ANNE PARR, EDWARD CLARKE ELLIOT
AND MARY ELIZABETH PARR (2)**

AND

LOCHEIL HOMES & DEVELOPMENTS LTD (3)

AND

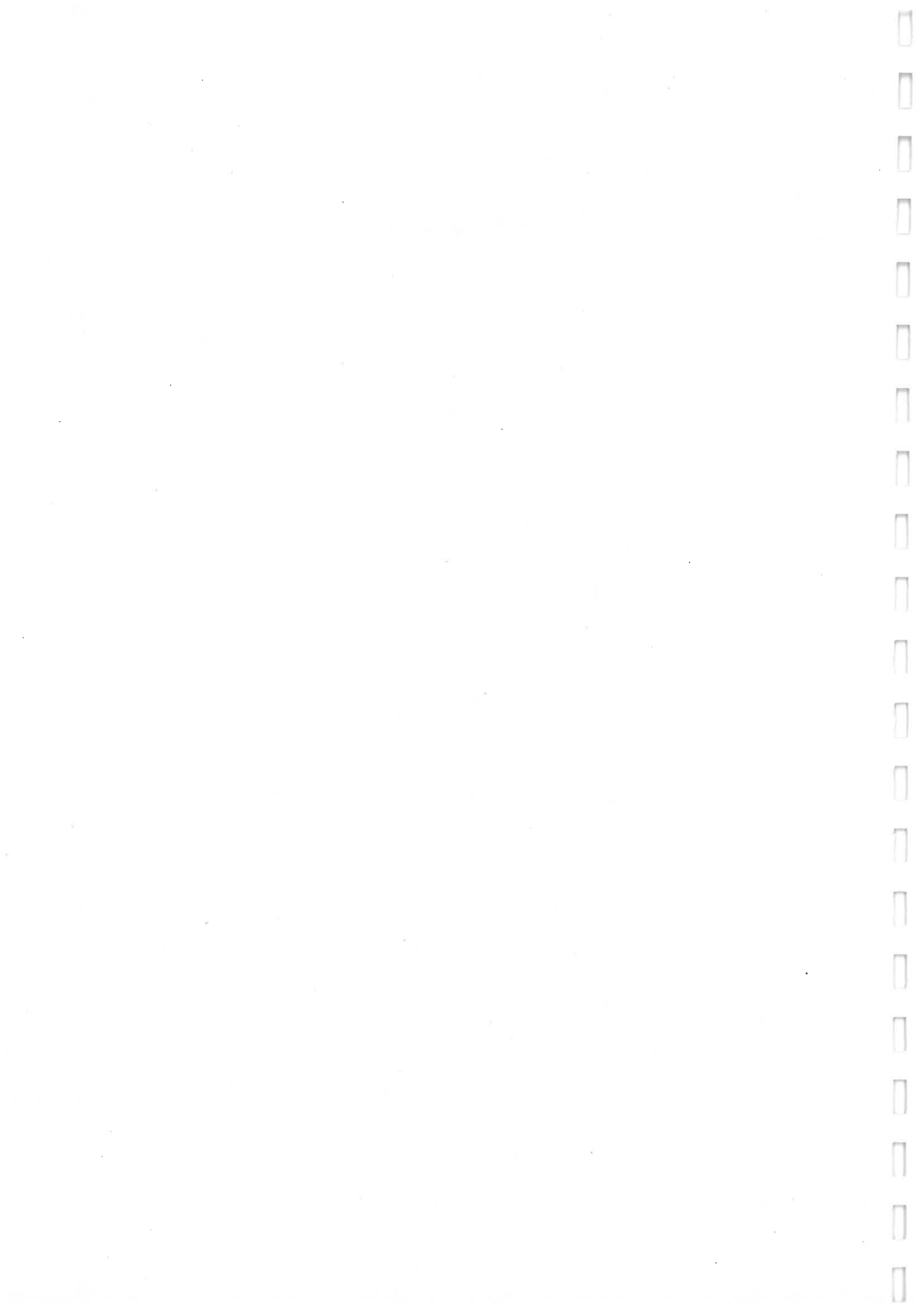
BELLWAY HOMES LIMITED (4)

DEED

Pursuant to Section 106 of the Town and Country
Planning Act 1990 (as amended) relating to Land
on the North West side of Ashland Road West,
Sutton-in-Ashfield

Appeal Reference: APP/W3005/W/21/3274818





CONTENTS

Clause	Heading	Page
1	DEFINITIONS	2
2	CONSTRUCTION OF THIS DEED	8
3	LEGAL BASIS	9
4	CONDITIONALITY	9
5	THE OWNER'S COVENANTS.....	10
6	THE COUNCIL'S COVENANTS	10
7	MISCELLANEOUS.....	10
8	DETERMINATION OF DISPUTES	12
9	WAIVER	14
10	CHANGE IN OWNERSHIP	14
11	INDEXATION	14
12	NOTICES	14
13	INTEREST	14
14	VAT	14
15	JURISDICTION	15
16	DELIVERY	15
SCHEDULE 1	OWNER'S TITLE AND DESCRIPTION OF THE SITE.....	16
SCHEDULE 2	OWNER'S COVENANTS TO THE COUNCIL	17
SCHEDULE 3	OWNER COVENANTS TO THE COUNTY COUNCIL	26
SCHEDULE 4	COUNCIL'S COVENANTS	29



THIS DEED is made the 28 day of September

2021

BETWEEN:

- (1) **ASHFIELD DISTRICT COUNCIL** of Council Offices, Urban Road, Kirkby in Ashfield Nottingham NG17 8DA (the "**Council**");
- (2) **ANNE PARR** of Lorelei, Whitehead Lane, Skegby, Sutton-in-Ashfield, Nottinghamshire and **EDWARD CLARKE ELLIOTT** of 15 Crampton Close, Sutton-in-Ashfield, Nottinghamshire and **MARY ELIZABETH PARR** of 18 Keats Avenue, Sutton in Ashfield, Nottinghamshire (the "**Owner**");
- (3) **LOCHEIL HOMES & DEVELOPMENTS LTD** (Company Number 05435296) whose registered office is at 21 Station Terrace, Hucknall, Nottingham, Nottinghamshire NG15 7TQ ("**Locheil**"); and
- (4) **BELLWAY HOMES LIMITED** (Company Number 00670176) whose registered office is at Woolsington House, Woolsington, Newcastle Upon Tyne, United Kingdom NE13 8BF (the "**Developer**").

INTRODUCTION

- (A) The Council is the local planning authority for the area in which the Site is situated.
- (B) Nottinghamshire County Council is the local highway authority and local education authority for the purposes of the Act for the area in which the Site is situated.
- (C) The Owner is the freehold owner of the Site as registered under title number NT338962.
- (D) Locheil has the benefit of an option to purchase the Site pursuant to a deed dated 5 May 2010 entered into by the Owner and Locheil.
- (E) The Developer has the benefit of a sub-option to purchase the Site pursuant to a deed dated 14 February 2020 entered into by Locheil and the Developer.
- (F) The Developer submitted the Application for outline planning permission for the Development which was refused on 23 March 2021 (the "**Refusal**").

- (G) The Developer has subsequently submitted an appeal to the Refusal and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed which shall take effect if planning permission is granted pursuant to the Appeal.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

Act	the Town and Country Planning Act 1990 (as amended);
Affordable Dwelling	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 2021 (or any future guidance or initiative that replaces or supplements it);
Affordable Housing Contribution	the sum to be agreed between the Council and the Owner and which shall represent the difference between the sum of the Open Market Value of the relevant Affordable Dwellings at the time the relevant dwellings were to be transferred and the estimated lump – sum that would have been paid to the Owner by an Affordable Housing Provider for the relevant Affordable Dwellings which may be payable by the Owner to the Council in accordance with the provisions of paragraph 11.1 of part 5 to schedule 2 for use by the Council towards the provision of Affordable Housing within the District of Ashfield;
Affordable Housing Provider	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 any other housing provider approved in writing by the Council

- Affordable Housing Scheme** the scheme for the provision of Affordable Dwellings which shall specify the location of the Affordable Dwellings within the Development, the intended Affordable Housing Provider and the Tenure Mix;
- Affordable Rented Dwelling** those Affordable Dwellings to be let at an affordable rent being up to 80% of the open market rental value for the unit type such rent to be in accordance with the National Planning Policy Framework 2021 or such successor framework;
- Appeal** the appeal in respect of the Refusal of the Application with reference number APP/W3005/W/21/3274818;
- Application** the application for outline planning permission submitted to the Council and allocated reference V/2020/0184;
- BCIS Index** the All In Tender Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation in circulation at the time that the relevant contribution under this Deed is paid;
- Built Sport Facilities Contribution** the sum of two hundred and fifty eight thousand pounds (£258,000.00) payable to the Council to cater for built leisure facilities at Lammas LC;
- Bus Service Contribution** the sum of ninety thousand pounds (£90,000.00) payable to the Council to provide an increased service and a larger vehicle on the number 417 bus service which serves Ashland Road;
- Bus Stops Contribution** the sum of twenty eight thousand pounds (£28,000.00) payable to the Council for bus stop infrastructure at stops on Rooley Avenue, Norwood Close, George Street and Siddalls Drive;

Commencement of Development	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of construction of access, site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of other adverse ground conditions, diversion and laying out of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and " Commence Development " shall be construed accordingly;
Council Monitoring Contribution	the sum of two thousand five hundred pounds (£2,500.00) payable to the Council towards the Council's costs in monitoring the Owner's compliance with the obligations contained in this Deed;
County Council	means Nottinghamshire County Council or any successor body which may succeed it as county authority;
Development	the residential development of the Site for up to 300 dwellings and associated infrastructure and landscaping with all matters reserved except for means of access pursuant to the Planning Permission;
Discounted Market Dwelling	a Dwelling to be sold by the Owner at 80% of its Open Market Value;
Dwelling	a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and any reserved matters approval consequent thereto;
Eligible Household	those households registered as live applicants on the Council's housing register as being in housing need and by reason of the level of their income are in need of Affordable Housing;

Healthcare Authority	means the NHS Mansfield and Ashfield Clinical Commission Group
Healthcare Contribution	the sum of one hundred and sixty two thousand five hundred and sixty two pounds (£162,562.00) payable to the Council towards additional healthcare provisions required as a result of the Development;
Head of Development Control	the individual holding the most senior post with day to day responsibility for planning on behalf of the Council;
Highways - Sustainable Transport Contribution	the sum of one hundred and thirty thousand pounds (£130,000.00) payable to the Council as a contribution towards cycling measures to support sustainable transport and reduce the impact of motorised vehicles on the highway;
Homes England	Homes England or its statutory successor or agent in respect of the relevant function;
Housing Need	living in unsuitable housing conditions and either unable to afford to rent at market rent or unable to buy suitable housing at open market prices;
Index	the BCIS Index or such other index as the Council may approve in writing;
Interest	interest at eight per cent above the base lending rate of the Bank of England;
Intermediate Dwellings	Affordable Housing which is provided as Shared Ownership Housing or Discounted Market Dwellings;
Library Contribution	the sum of ten thousand five hundred and seventy one pounds (£10,571.00) payable to the Council towards additional stock at Sutton-in-Ashfield library required as a result of the Development;

Market Housing Units	that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing;
Nomination Agreement	an agreement in a form to be agreed by the Council and the Affordable Housing Provider (both acting reasonably) relating to the nominations procedure and local lettings plans for the Affordable Rented Dwellings;
Occupation and Occupied	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
Open Market Value	the value of a Dwelling to be sold on the open market based on the following assumptions: a willing seller, a reasonable period for the proper marketing of the Dwelling; and market conditions at the time of the valuation
Plan 1	the plan attached to this Deed;
Planning Permission	the outline planning permission subject to conditions to be issued pursuant to the determination of the Appeal;
Practical Completion	issue of a certificate of practical completion by the National House Building Council or other body nominated by the Owner to inspect the Development for the purposes of compliance with building regulations;
Primary Education Contribution	the sum of one million three hundred and seventeen thousand eight hundred and thirty four pounds (£1,317,834) payable to the Council towards the provision of an additional 63 primary school places in the vicinity of the Site required within the Sutton Town Planning Area as a result of the Development;

Protected Tenant

any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling;
- (c) has been granted a shared ownership lease by a 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) 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;

**Public Open Space
Contribution**

the sum of six hundred thousand (£600,000.00) (which shall include maintenance payments) payable to the Council towards the provision of usable recreational open space at either Riley Recreation Ground Huthwaite Welfare Park or Brierley Forest Park;

**Residents Travel
Information Pack**

means a travel information pack to be submitted to and approved by the Council (in consultation with the County Council as highway authority) and be issued to each Dwelling on the Development prior to first Occupation of such Dwelling;

Shared Ownership Housing

Affordable Dwellings for sale on a shared ownership basis whereby not more than 75% and not less than 25% of the dwelling is initially sold to the purchaser by the Affordable Housing Provider and rent is paid on the remaining share of the Affordable Dwelling in accordance with Homes England

	Model Lease which remains in the ownership of the Affordable Housing provider until 100% staircasing is agreed;
Site	Land on the North West side of Ashland Road West, Sutton-in-Ashfield against which this Deed may be enforced as shown edged red on Plan 1;
Social Rented Dwellings	those Affordable Dwellings to be let at an affordable rent set in accordance with the government's rent policy for social rent;
Sustainable Transport Contribution	the sum of twenty thousand pounds (£20,000.00) payable to the Council towards the provision of an up to two-month or equivalent bus pass for use on the local bus network;
Tenure Mix	75% Affordable Rented Dwellings and Social Rented Dwellings and 25% Intermediate Dwellings
Travel Plan	means a plan or plans with the aims and objectives set out for the residential areas for the Development to include the provision of a Residents Travel Information Pack for each Dwelling
Travel Plan Co-ordinator	such person as is appointed in relation to the Development in accordance with the provisions of paragraph 1 of part of 4 of schedule 2;

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.

- 2.4 Wherever there is 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.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall (save where otherwise specified) 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 respective statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and in so far as any provision of this Deed is not within the powers of Section 106, Sections 111, 120 and 139 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and section 9 of the Open Spaces Act 1906.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner by the Council 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.
- 3.3 The provisions of this Deed bind the Site.

4 CONDITIONALITY

- 4.1 This Deed is conditional upon:
- (a) the grant of the Planning Permission; and
 - (b) the Commencement of Development,

save for the provisions of this clause, clauses 7.1, 7.3, 7.8, 7.14, 7.15, 7.16, 8, 12, 15 and 16 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

The Owner covenants with the Council as set out in schedule 2 and schedule 3.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owner as set out in schedule 4.

7 MISCELLANEOUS

- 7.1 Upon completion of this Deed the Developer shall pay to the Council the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 save that for the avoidance of doubt successors in title to the Owner shall be entitled to enforce the covenants of the Council as set out in schedule 4.
- 7.3 This Deed shall be registered as a Local Land Charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall at the request of the Owner forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed insofar as the remaining clauses remain intelligible and capable of performance.
- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or the part of the Site in respect of such breach occurred but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 A chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part of parts of the Site or any receiver appointed by such chargee or mortgagee or any person deriving title through such chargee, mortgagee, receiver of all or any part of the Site will not incur any liability for any breach of the obligations contained in this Deed unless and until it becomes a mortgagee in possession of the Site or appoints a receiver or administrative receiver under a security PROVIDED THAT:
- (a) any mortgagee, receiver or administrative receiver shall only be liable for any breach that itself has caused whilst mortgagee in possession and shall not be liable for any pre-existing breach; but
 - (b) any sale by any mortgagee, receiver or administrative receiver shall itself be subject to any pre-existing breach and such breach shall be binding on any successor in title to the relevant mortgagee, receiver or administrative receiver.
- 7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.11 For the avoidance of doubt a failure to pay a sum when required to be paid by this Deed shall, until it is remedied, be deemed to be a continuing breach enforceable (at the election of the enforcing authority) against any successor in title to, and any person deriving title from, the person in default at the time payment was first due to be paid against the first defaulter.
- 7.12 The obligations in this Deed will not be enforceable against:
- (a) any chargee or mortgagee in possession of the Site (pursuant to clause 7.9 above);
 - (b) any individual owner or occupier of a Dwelling nor their successors in title, save for the provisions of paragraphs 12 13 14 and 15 of part 5 of schedule 2;
 - (c) statutory undertakers.

7.13 Where in the opinion of the Owner any of the provisions of this Deed have been satisfied wholly or in part the Owner shall be entitled to apply to the Council for a certificate to that effect and upon the Council being satisfied that the whole or relevant part of the relevant obligation or covenant as the case may be has been satisfied it shall forthwith issue a certificate in writing to the Owner to such effect.

7.14 If a planning inspector concludes in any decision letter relating to the Appeal that any of the planning obligations set out in this Deed is/are not necessary to make the Development acceptable in planning terms and/or in their view do not comply with Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended) the said planning obligation shall cease to have effect from the date of the decision letter and shall not be binding on the Owner and "planning inspector" shall be taken to include a planning inspector appointed on behalf of the Secretary of State for ~~Housing Communities and Local Government~~ and the Secretary of State for ~~Housing Communities and Local Government~~ in the event of a call-in.

AMENDED BY
ASHFIELD DISTRICT
COUNCIL FOR AND
ON BEHALF OF
ALL PARTIES

LEVELLING UP, HOUSING AND COMMUNITIES

LEVELLING UP, HOUSING AND COMMUNITIES

7.15 Locheil hereby confirms that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that his interest in the Site shall take effect subject to this Deed PROVIDED ALWAYS THAT Locheil shall only be bound by the terms of this Deed in the event that it takes a freehold or leasehold interest in the Site and derives title from the Owner or any successor in title to the Owner.

7.16 The Developer hereby confirms that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that its interest in the Site shall take effect subject to this Deed PROVIDED ALWAYS THAT the Developer shall only be bound by the terms of this Deed in the event that it takes a freehold or leasehold interest in the Site and derives title from the Owner or any successor in title to the Owner.

8 DETERMINATION OF DISPUTES

8.1 Any dispute or difference relating to any matter or thing arising out of or in connection with this Deed shall be determined by an independent expert (who will act as an expert not an arbitrator) (the "Expert") in accordance with the following paragraphs.

8.2 If the parties do not make the appointment of the Expert by agreement within 14 days of service of the notice requiring reference of the dispute, the Expert shall be nominated upon the application of any party by the President or other officer to whom the making of such appointments is for the time being delegated of the professional body chiefly in England to the

Expert's qualifications and the Expert shall be an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than ten years.

- 8.3 Unless the Expert shall direct to the contrary, not more than 28 days after his appointment the parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon.
- 8.4 The Expert shall be at liberty to visit the land relevant to the dispute unaccompanied and to call for such written evidence from the parties as he may require.
- 8.5 The Expert shall not, unless the Expert directs to the contrary, hear oral representations from any party to the dispute.
- 8.6 The Expert shall fully consider all submissions and evidence when making his decision.
- 8.7 The Expert shall give their decision in writing and shall give reasons.
- 8.8 The Expert shall use all reasonable endeavours to give their decision and the reason for it as speedily as possible and in any event within 42 days of their appointment.
- 8.9 The Expert's decision including any decision as to costs shall be final and binding other than in the case of manifest or material error.
- 8.10 The Expert's fees shall be payable by the parties in such proportions as the Expert shall determine and in default of such determination equally between them.
- 8.11 If it shall be impossible to procure the appointment of such an Expert or if the Expert so appointed shall fail or be unable to reach a determination of the matter referred to the Expert then any party to the dispute shall be entitled to have the dispute referred to Court.
- 8.12 The provisions of this clause shall not affect the ability of any party to apply for and be granted any of the following: declaratory relief, injunction, specific performance, any other means of enforcing this Deed and consequential and interim orders and relief.

9 WAIVER

No waiver (whether expressed or implied) by the Council or Owner 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 or the Owner as the case may be from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give to the Council within ten working days written notice of any change in ownership (save for any transfer in respect of a Dwelling) of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan.

11 INDEXATION

Any financial contribution referred to in schedule 2 and schedule 3 shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum or part thereof is payable.

12 NOTICES

Any written communication or notice required by this Deed to be served on the Council shall be deemed to have been received if addressed to the Council at the address set out herein and sent by postal recorded delivery service two clear working days after delivery.

13 INTEREST

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

14 VAT

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

15 JURISDICTION

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

16 DELIVERY

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

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

SCHEDULE 1

Owner's Title and Description of the Site

In respect of the Site, the freehold land known as land on the North West side of Ashland Road West, Sutton-in-Ashfield shown edged in red on Plan 1 to the extent that it is registered under title number NT338962.

SCHEDULE 2

Owner's Covenants To The Council

The Owner covenants to the Council:

Part 1 - Built Sport Facilities Contribution

- 1 To pay fifty percent (50%) of the Built Sport Facilities Contribution to the Council prior to Occupation of ten percent (10%) of the Dwellings on the Site.
- 2 To pay the remaining fifty percent (50%) of the Built Sport Facilities Contribution to the Council prior to Occupation of fifty percent (50%) of the Dwellings on the Site.
- 3 Not to Occupy more than ten percent (10%) of the Dwellings on the Site or permit or allow the Occupation of more than ten percent (10%) Dwellings on the Site until fifty percent (50%) of the Built Sport Facilities Contribution has been paid to the Council.
- 4 Not to Occupy more than fifty percent (50%) of the Dwellings on the Site or permit or allow the Occupation of more than fifty percent (50%) Dwellings on the Site until all of the Built Sport Facilities Contribution has been paid to the Council.

Part 2 - Public Open Space Contribution

- 1 To pay the Public Open Space Contribution as follows:
 - 1.1 Fifty percent (50%) of the Public Open Space Contribution is payable prior to Commencement of Development;
 - 1.2 Fifty percent (50%) of the Public Open Space Contribution is payable prior to Occupation of fifty percent (50%) of the Dwellings on the Site; and
 - 1.3 Not to Commence or permit or allow the Commencement of Development until the first fifty percent (50%) of the Public Open Space Contribution is paid and not to Occupy or permit or allow the Occupation of more than fifty percent (50%) of the Dwellings on the Site until the final fifty percent (50%) of the Public Open Space Contribution has been paid to the Council pursuant to paragraphs 1.1 and 1.2 above.

Part 3 - Travel Plan

1 The Owner covenants to:

1.1 within six months of the Commencement of Development, to submit to and obtain the Council's approval (in consultation with the County Council in its capacity as highway authority) of the Travel Plan and the Residents Travel Information Pack.

1.2 Not to permit first Occupation of any Dwelling until the Travel Plan has been implemented in its approved form including the provision to the first occupant(s) of each Dwelling of a Residents Travel Information Pack on the completion of the transfer of that Dwelling subject to such variations as may be agreed from time to time between the Owner and the Council in consultation with the County Council in its capacity as highway authority.

(a) The Residential Travel Plan will set out:

(i) the measures to be adopted to encourage non-car travel;

(ii) the programme for implementing such measures;

(iii) the process for review and monitoring;

(iv) the steps that will be taken if targets are not met; and

(v) such other matters that are agreed between the Owner and the Council (in consultation with the County Council as highway authority).

Part 4 - Travel Plan Co-Ordinator

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

2 The Owner shall ensure that the Travel Plan Co-Ordinator shall:

2.1 comply with the process for review and monitoring set out in the Travel Plan;

- 2.2 submit reports to update the TRIGS database in accordance with the Standard Assessment Methodology (SAM) or similar to be approved and submit to the Council in accordance with the monitoring periods identified within the Travel Plan; and
- 2.3 the monitoring reports submitted to the Council shall summarise the data collected over the monitoring period and propose revised initiatives and measures where travel plan targets are not being met including implementation dates to be approved in writing by the Council
- 3 In the event that the target for modal shift for the Development is not met by the end of the Travel Plan monitoring period, the Owner, the Travel Plan Co-ordinator and the Council (in consultation with the County Council in its capacity as highway authority) shall meet to identify the failure to reach such target
- 4 Following the arrangements referred to in paragraph 3 above the Owner and/or the Travel Plan Co-ordinator shall propose to the Council reasonable corrective measures necessary (in accordance with the approved Residential Travel Plan) to remedy such failure together with a programme for the implementation of such measures for the conditional approval of the Council (in consultation with the County Council in its capacity as highway authority) and thereafter the Owner shall comply with such approval and which shall include the provision of parking restrictions and associated signage and lining at the discretion of the Council (in consultation with County Council in its capacity as highway authority) acting reasonably
- 5 In the event that the freehold interest in the whole or any part of the Site is transferred by the Owner to another party then the requirements to liaise with, obtain approval from, report to and meet with the Council and the requirements to appoint a Travel Plan Co-ordinator in this Part 4 shall be deemed instead to be requirements to liaise with, obtain approval from, report to and meet with the County Council as local highways and transport authority

Part 5 - Affordable Housing: On Site Provision

The Owner covenants with the Council as follows:

- 1 To submit to the Council for approval (such approval not to be unreasonably withheld or delayed) prior to the Commencement of Development the Affordable Housing Scheme and not to Commence Development unless and until the Affordable Housing Scheme has been approved by the Council.

- 2 To provide 10% of the total number of Dwellings constructed as part of the Development as Affordable Dwellings and in accordance with the Affordable Housing Scheme approved pursuant to paragraph 1 above or any approved variation thereof.
- 3 The Owner covenants with the Council not to dispose of any interest in the Affordable Rented Dwellings, Social Rented Dwellings or the Shared Ownership Housing save to an Affordable Housing Provider or the Council in accordance with this part 5 to this schedule or allow the same to be disposed of otherwise than in accordance with this part 5 to this schedule.
- 4 The Owner covenants with the Council not to Occupy or permit or suffer or allow the Occupation of more than 50% of the Market Dwellings until:
 - 4.1 fifty percent (50%) of the Affordable Housing has achieved Practical Completion; and
 - 4.2 the freehold of the relevant Affordable Rented Dwellings, Social Rented Dwellings or the Shared Ownership Housing has been transferred to an Affordable Housing Provider or the Council.
- 5 The Owner covenants with the Council not to Occupy or permit or suffer or allow the Occupation of more than 80% of the Market Dwellings until:
 - 5.1 all of the Affordable Housing has achieved Practical Completion; and
 - 5.2 the freehold of the remaining Affordable Rented Dwellings, Social Rented Dwellings or the Shared Ownership Housing has been transferred to an Affordable Housing Provider or the Council.
- 6 The transfer or binding contract, as the case may be, referred to in paragraphs 4 and 5 above shall provide inter alia for:
 - 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 relevant Affordable Dwellings and the provision of roads and services rendering them suitable for immediate Occupation; and
 - 6.2 the imposition of such covenants as the Owner shall reasonably require as are consistent with the sale of any Dwellings within the Development; and

- 6.3 where the Affordable Dwellings are being transferred to an Affordable Housing Provider, evidence to the Council of such transfer or contract has been provided.
- 7 Subject to paragraph 8 below, the Owner covenants with the Council not to use or allow or suffer the Affordable Dwellings to be used for any purpose other than for Affordable Housing in accordance with the terms of this Deed.
- 8 The parties agree that the restriction referred to in paragraph 7, the Nominations Agreement referred to in paragraph 9 and paragraph 10 below shall not apply to:
- 8.1 a Protected Tenant or any person deriving title under a Protected Tenant; or
- 8.2 any mortgagee or chargee of the Affordable Dwellings or any of them nor to any receiver appointed by any such mortgagee or chargee to the intent that any such mortgagee, chargee or receiver may deal with or dispose of the Affordable Dwellings or any of them free from the provisions and restrictions of this Deed relating to Affordable Housing and on the basis that any person deriving title through or under such mortgagee, chargee or receiver shall not be bound by the provisions in this Deed; or
- 8.3 any 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 an Affordable Housing Provider in the event of a default under a mortgage or charge or any successors in title to such mortgagee or chargee or Receiver and it is further acknowledged that any mortgagee or chargee exercising its powers in relation to any Affordable Dwellings shall be entitled to dispose of the Affordable Dwellings on the open market free from the restrictions within this Deed.
- 9 The Owner covenants with the Council not to transfer the Affordable Rented Dwellings, Social Rented Dwellings and/or the Shared Ownership Housing to an Affordable Housing Provider without first procuring that the transfer includes:
- 9.1 a provision that the Affordable Housing Provider shall undertake to enter into a Nominations Agreement with the Council; and
- 9.2 a provision that the Affordable Rented Dwellings, Social Rented Dwellings and/or the Shared Ownership Housing shall not be used for any purpose other than for Affordable Housing save where clause 2.5 and paragraph 8 of part 5 of schedule 2 of this Agreement applies.

- 10 The Owner covenants with the Council to procure that the Affordable Housing Provider permits the Council or its agent to nominate 100% of the first occupiers and 50% of the second occupiers of the Affordable Rented Dwellings, Social Rented Dwellings and/or the Shared Ownership Housing, such occupier being someone who is in Housing Need PROVIDED THAT on each nomination request this paragraph 10 shall not apply where the Council has failed to respond to the Affordable Housing Provider within 15 working days requesting such nomination for an Affordable Rented Dwelling and/or Shared Ownership Housing and the Affordable Housing Provider shall be free to select their own occupiers provided that they are in Housing Need.
- 11 In the event the Owner has not entered into a binding contract with an Affordable Housing Provider within 12 months of Commencement of Development pursuant to this part 5 to this schedule or binding contract with a prospective purchaser (in respect of any Discounted Market Dwellings) within 12 months of when the relevant Discounted Market Dwelling was first marketed (satisfactory evidence of first marketing the relevant Discounted Market Dwellings to be provided to the Council) to notify the Council (such notification to include evidence of the Owner's reasonable endeavours to enter into a binding contract with an Affordable Housing Provider or prospective purchaser) and:
- 11.1 If the Council (acting reasonably) is satisfied that the notification provided pursuant to paragraph 11 demonstrates that the Owner has used reasonable endeavours to enter into a binding contract with an Affordable Housing Provider or prospective purchaser, it shall determine whether to take a transfer of all or part of the Affordable Dwellings or to accept an Affordable Housing Contribution and:
- (a) In the event the Council determines pursuant to part 5 of schedule 2 that an Affordable Housing Contribution shall be payable in lieu of provision of all or part of the Affordable Dwellings on the Site then the Owner shall pay the Affordable Housing Contribution prior to the first Occupation of eighty per cent (80%) of the Market Dwellings AND the Owner shall be entitled to dispose of the Dwellings that would have been Affordable Dwellings as Market Dwellings and the provisions relating to Affordable Housing in this Agreement shall no longer apply to such dwellings.
 - (b) In the event that the Council elects pursuant to part 5 of schedule 2 to take a transfer of the Affordable Dwellings the Owner shall offer to transfer the Affordable Dwellings to the Council for a sum to be agreed between the Owner and the Council such sum to represent 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 Council (such contracts to be on the terms contained in paragraph 6 above) within three months of the Owner receiving written acceptance of the offer.

- (c) If within three months of the Owner receiving written acceptance of the offer from the Council, legally binding contracts have not been exchanged with the Council or the Council has provided written confirmation of its withdrawal from acceptance of the offer the Owner shall be entitled to withdraw the offer from negotiations PROVIDED THAT the Dwellings that would have been Affordable Rented Dwellings and/or Shared Ownership Housing shall be provided as Discounted Market Dwellings (and the transfer of all such dwellings shall contain a provision to ensure that future transfers shall be restricted in perpetuity so that the sale price does not exceed 80% 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 HM Land Registry).

11.2 If the Council (acting reasonably) is not satisfied that the notification provided pursuant to paragraph 11 demonstrates that the Owner has used reasonable endeavours to enter into a binding contract with an Affordable Housing Provider or prospective purchaser, the Council shall serve written notice on the Owner that the Owner shall be required to use reasonable endeavours to enter into such a contract within six months from the date of notification by the Council and if at the end of that six month period the Owner has not been able to enter into a binding contract with an Affordable Housing Provider the provisions of paragraph 11 shall apply PROVIDED THAT at the conclusion of the six month period under this paragraph 11 the Council shall not be entitled to again serve a notice under this paragraph and the provisions of paragraphs 11.1(a), 11.1(b) and 11.1(c) shall apply.

12 In respect of the Affordable Dwellings to be sold as Discounted Market Dwellings pursuant to this part of this schedule, in order that the future ownership and selling price of all and any Discounted Market Dwelling shall be controlled so as to ensure that each such dwelling remains a Discounted Market Dwelling available to persons in Housing Need in perpetuity, on the first disposal of each Discounted Market Dwelling the Owner shall secure the registration at HM Land Registry of the following restriction (or in such other form as the Chief Land Registrar shall deem appropriate) against the title to the Discounted Market Dwelling and shall provide the Council with a copy of such title (showing the restrictions unless otherwise agreed in writing):

"no disposition of the registered estate other than a charge by the proprietor of the registered estate, or by the proprietor of a charge, not being a charge registered before the entry of this restriction shall be completed by way of registration without a certificate signed by Ashfield District Council that the provisions of the Deed dated [] 2021 between Anne

Parr, Edward Clarke Elliot, Mary Elizabeth Parr, Locheil Homes & Developments Ltd and Bellway Homes Limited and Ashfield Council have been complied with"

13 On each subsequent disposal of any Discounted Market Dwelling the new owner (the "Subsequent Owner") shall procure the registration at the Land Registry of a restriction in the same form as set out above at paragraph 12 against the title to the Discounted Market Dwelling in which they have acquired an interest and supply a copy of such title (showing the restriction) to the Council.

14 It is hereby agreed that if a Subsequent Owner of a Discounted Market Dwelling who wishes to dispose of the dwelling is not able to locate a prospective purchaser who is a person or persons in Housing Need after a period of three months of first advertising the Discounted Market Dwelling for sale then the Subsequent Owner may sell the Discounted Market Dwelling at a price which is representative of the open market value (evidence of such sum to be provided to the Council as being the average sum of three independent valuations) and the Subsequent Owner shall pay to the Council upon completion of the sale of the Discounted Market Dwelling as an open market dwelling the sum which is 20% (Twenty Percent) of the open market value and the obligations in this part of this schedule shall no longer apply to that dwelling.

15 Prior to entering into a contract for the sale of the Discounted Market Dwelling with a prospective purchaser, the Owner shall provide the Council with the following information:

15.1 evidence that the prospective purchaser is a person or persons that has/have a Housing Need;

15.2 evidence as to the local market value of the Discounted Market Dwelling; and

15.3 details as to the proposed sale price,

and the Owner shall not enter into a contract for sale of a Discounted Market Dwelling unless and until the Council has provided it with a letter (such letter not to be unreasonably withheld or delayed and in any event to be provided within ten working days of written request) confirming that the Council accepts the evidence provided to it pursuant to this paragraph 15 or, where the Council does not accept the evidence provided, the full reasons as to why it does not accept the evidence.

Part 6 - Council Monitoring Contribution

- 1 To pay the Council Monitoring Contribution to the Council prior to Commencement of Development on the Site.
- 2 Not to Commence Development on the Site until the Council Monitoring Contribution has been paid to the Council.

SCHEDULE 3

Owner Covenants To The Council in respect of Contributions to the County Council and Healthcare Authority

The Owner covenants to the Council:

Part 1 - Primary Education Contribution

To pay the Primary Education Contribution to the Council as follows:

- 1 fifty percent (50%) of the Primary Education Contribution is payable prior to Commencement of Development; and
- 2 the remaining fifty percent (50%) of the Primary Education Contribution is payable prior to Occupation of fifty percent (50%) of the Dwellings on the Site
- 3 Not Commence or permit or allow the Commencement of the Development until fifty percent (50%) of the Primary School Contribution has been paid to the Council pursuant to paragraph 1;
- 4 Not to Occupy or permit or allow the Occupation of the final fifty percent (50%) of the Dwellings on the Site until the all of the Primary School Contribution has been paid to the Council pursuant to paragraph 2 above.

Part 2 - Library Contribution

- 1 To pay the Library Contribution to the Council prior to Commencement of Development on the Site.
- 2 Not to Commence Development on the Site until the Library Contribution has been paid to the Council.

Part 3 - Bus Service Contribution

- 1 To pay fifty percent (50%) of the Bus Service Contribution to the Council prior to Occupation of ten percent (10%) of the Dwellings on the Site.

2 To pay the remaining fifty percent (50%) of the Bus Service Contribution to the Council prior to Occupation of fifty percent (50%) of the Dwellings on the Site.

3 Not to Occupy more than ten percent (10%) of the Dwellings on the Site or permit or allow the Occupation of more than ten percent (10%) of Dwellings on the Site until fifty percent (50%) of the Bus Service Contribution has been paid to the Council.

4 Not to Occupy more than fifty percent (50%) of the Dwellings on the Site or permit or allow the Occupation of the final fifty percent (50%) of Dwellings on the Site until the remaining fifty percent (50%) the Bus Service Contribution has been paid to the Council.

Part 4 – Bus Stops Contribution

1 To pay the Bus Stops Contribution to the Council prior to Occupation of 10% of the Dwellings on the Site.

2 Not to Occupy more than ten percent (10%) of the Dwellings on the Site or permit or allow the Occupation of any Dwellings on the Site until the Bus Stops Contribution has been paid to the Council.

Part 5 – Sustainable Transport Contribution

1 To pay the Sustainable Transport Contribution to the Council prior to Occupation of ten percent (10%) of the Dwellings on the Site.

2 Not to Occupy more than ten percent (10%) of the Dwellings on the Site or permit or allow the Occupation of any Dwellings on the Site until the Sustainable Transport Contribution has been paid to the Council.

Part 6 - Highways - Sustainable Transport Contribution

1 To pay fifty percent (50%) of the Highways - Sustainable Transport Contribution to the Council prior to Occupation of ten percent (10%) of the Dwellings on the Site.

2 To pay the remaining fifty percent (50%) of the Highways - Sustainable Transport Contribution to the Council prior to Occupation of fifty percent (50%) of the Dwellings on the Site.

- 3 Not to Occupy more than ten percent (10%) of the Dwellings on the Site or permit or allow the Occupation of any Dwellings on the Site until fifty percent (50%) of the Highways - Sustainable Transport Contribution has been paid to the Council.
- 4 Not to Occupy more than fifty percent (50%) of the Dwellings on the Site or permit or allow the Occupation of any Dwellings on the Site until all of the Highways - Sustainable Transport Contribution has been paid to the Council.

Part 7 – Healthcare Contribution

- 1 To pay the Healthcare Contribution to the Council prior to the Commencement of the Development.
- 2 Not to Commence or permit or allow the Commencement of Development until the Healthcare Contribution has been paid to the Council.

SCHEDULE 4

Council's Covenants

1 REPAYMENT OF CONTRIBUTIONS

- 1.1 The Council hereby covenants with the Owner to use the Affordable Housing Contribution, the Built Sport Facilities Contribution and the Public Open Space Contribution received from the Owner under the terms of this Deed for the purposes specified in this Deed and for no other purpose.
- 1.2 The Council covenants with the Owner that it will pay to the person who made the payments made pursuant to schedule 2 such amount of any payment made by the Owner to the Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment together with interest at the Bank of England base rate from time to time for the period from the date of payment to the date of refund.
- 1.3 The Council shall provide to the person who made the payment pursuant to schedule 2 such evidence, as he she or it shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

2 DISCHARGE OF OBLIGATIONS

At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed which relate to the Council when satisfied that such obligations have been performed.

3 PAYMENTS TO THE COUNTY COUNCIL

3.1 Primary Education Contribution

- (a) To pass to the County Council (in its capacity as Education Authority) the Primary Education Contribution or any part thereof following receipt of written confirmation from the County Council that:
- (i) such monies shall be used solely towards the provision of primary education within the Sutton Town Primary Planning Area and for no other purposes whatsoever; and
 - (ii) if all or any part of the monies shall remain unexpended after the period of ten years from the date of receipt by the County Council of the final payment pursuant to paragraph 1 of part 1 of schedule 3 by the Owner to the Council it shall following receipt of a request from the Council or the Owner repay such unexpended monies to the Council together with interest thereon calculated from the date of payment to the date of repayment.
- (b) To forward to the payer within 28 days of receipt any monies received from the County Council (in its capacity as Education Authority) pursuant to paragraph 3.1 of this schedule 4.

3.2 Other Financial Contributions

- (a) To pass the Bus Stops Contribution, the Bus Service Contribution, the Library Contribution and the Highways - Sustainable Transport Contribution and the Sustainable Transport Contribution to the County Council following receipt of written confirmation from the County Council that:
- (i) such monies shall be used solely for the respective purposes set out in this Agreement and for no other purposes whatsoever; and
 - (ii) if all or any part of the monies shall remain unexpended after the period of seven years (save for the Library Contribution in which case it is five years) from the date of payment by the Owner to the Council it shall following receipt of a request from the Council or the Owner repay such unexpended monies to the

Council together with interest thereon calculated from the date of payment to the date of repayment.

- (b) To forward to the payer within 28 days of receipt any monies received from the County Council pursuant to paragraph 3.2(b) of this schedule 4

4 PAYMENTS TO THE HEALTHCARE AUTHORITY

4.1 Healthcare Contribution

- (a) To pass to the Healthcare Authority the Healthcare Contribution following receipt of written confirmation from the Healthcare Authority that:
 - (i) such monies shall be used solely for the enhancement of capacity and/or infrastructure in local practices and for no other purpose whatsoever; and
 - (ii) if all or any part of the monies shall remain unexpended after the period of five years from the date of payment by the Owner to the Council it shall following receipt of a from the Council or the Owner repay such unexpended monies to the Council together with interest thereon calculated from the date of payment to the date of repayment.
- (b) To forward to the payer within 28 days of receipt any monies received from the Healthcare Authority pursuant to paragraph 4.1(b) of this schedule 4.

IN WITNESS of which this Deed has been executed on the first day before written



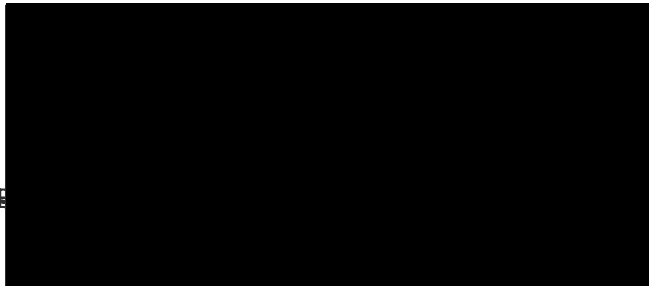
THE COMMON SEAL of
ASHFIELD DISTRICT COUNCIL

was hereunto affixed
in the presence of:



Chairman/~~Vice Chairman~~

Chief Executive/~~Deputy Chief Executive~~



EXECUTED as a DEED by

ANNE PARR

in the presence of:



W
SIGN
FULL NAME
ADDRESS

Harrop White, Vallance & Dawson
Solicitors
9/11 Albert Street, Mansfield.
Notts.. NG18 1EA

EXECUTED as a DEED by

EDWARD CLARKE ELLIOTT

in the presence of:



W
SIGN
FULL NAME
ADDRESS

Harrop White, Vallance & Dawson
Solicitors
9/11 Albert Street, Mansfield.
Notts.. NG18 1EA

EXECUTED as a DEED by

MARY ELIZABETH PARR

in the presence of:



W
SIGN
FULL NAME
ADDRESS

CHARLES & GEOFFREY DAWSON -

Harrop White, Vallance & Dawson
Solicitors
9/11 Albert Street, Mansfield.
Notts.. NG18 1EA

1911

1912

1913

1914

SIGNED as a DEED by
LOCHEIL HOMES LIMITED

acting by a Director and its Secretary or two Directors

Director

Director/Secretary

SIGNED as a DEED by

BELLWAY HOMES LIMITED

*ITS ATTORNEY NIGEL CLASBY PURSUANT TO A POWER OF
acting by a Director and its Secretary (or two Directors)
ATTORNEY DATED 1ST SEPTEMBER 2021 IN THE PRESENCE OF :*

Director
ATTORNEY

Director/Secretary
WITNESS

(11)
Duncan Fisher
Group Legal Manager
Bellway Homes Limited
Woolsington House
Woolsington
Newcastle upon Tyne
NE13 8BF

