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**Dated:** 9<sup>th</sup> January 2024

- (1) Martin Oliver Rollinson and Wendy Jane Rollinson
- (2) Jane Alexander and Deborah Marles and Richard Holliday
- (3) Gleeson Regeneration Limited
- (4) Ashfield District Council

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**Planning Agreement**

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section 106 of the Town and Country Planning Act 1990 relating to proposed residential development on land at Coxmoor Lodge Farm Access from Walesby Drive, Kirkby in Ashfield, Nottingham NG17 7HF

**THIS AGREEMENT** is made on

9<sup>th</sup> January

2024

**BETWEEN**

- (1) **Martin Oliver Rollinson and Wendy Jane Rollinson** of Coxmoor Lodge Farm, Farm View Road, Kirkby in Ashfield, Nottinghamshire NG17 7HF (the "**First Owner**");
- (2) **Jane Alexander** of The Mains Of Balnamoon, Grange, Keith, Banffshire AB55 6DN **and Deborah Marles** of 16 Fernhill Close, Crawley Down, Crawley, West Sussex RH10 4UE **and Richard Holliday** of 332 Musters Road, West Bridgford, Nottingham NG2 7DF (the "**Second Owner**")
- (3) **Gleeson Regeneration Limited** (Company Registration Number 03920096) whose registered office is at 6 Europa Court, Sheffield Business Park, Sheffield, S9 1XE (the "**Developer**");
- (4) **Ashfield District Council** of Urban Road, Kirkby in Ashfield, Nottingham NG17 8DA (the "**District Council**").

**BACKGROUND**

- (A) By means of the Planning Application (reference V/2020/0518) planning permission is sought by the Developer from the District Council to carry out the Development.
- (B) The District Council is the Local Planning Authority for the purposes of the Act for the area within which the Application Land is situated.
- (C) The District Council is a Principal Council within the meaning of the Local Government Act 1972.
- (D) The First Owner is the freehold owner of the part of the Application Land registered at the Land Registry with title absolute under title number NT364147.
- (E) The Second Owner is the freehold owner of the part of the Application Land registered at the Land Registry with title absolute under title number NT466308.
- (F) The First Owner and the Developer have entered into a sale contract in respect of the sale and purchase of the First Owner's land which forms part of the Application Land and the Developer is the beneficiary of a restriction in the registers against Title Number NT364147.
- (G) The Second Owner and the Developer have entered into a sale contract in respect of the sale and purchase of part of the Second Owner's land which forms part of the Application Land and the Developer is the beneficiary of a restriction in the registers against Title Number NT466308.

- (H) The District Council has resolved to grant the Planning Permission for the Development subject to certain conditions and the completion of this Agreement.
- (I) The Owner has agreed to enter into this Agreement with the intent that its interest in the Application Land shall be subject to the covenants and obligations contained herein and with the intention that those covenants and obligations should create planning obligations pursuant to section 106 of the Act.
- (J) The Developer has agreed to enter into this Agreement to give its consent to the terms of this Agreement in respect of the Application Land.
- (K) The District Council is satisfied that the provisions of this Agreement and the planning obligations contained herein comply with their respective policies in relation to section 106 of the Act and are sufficient in respect thereof.

**OPERATIVE PROVISIONS**

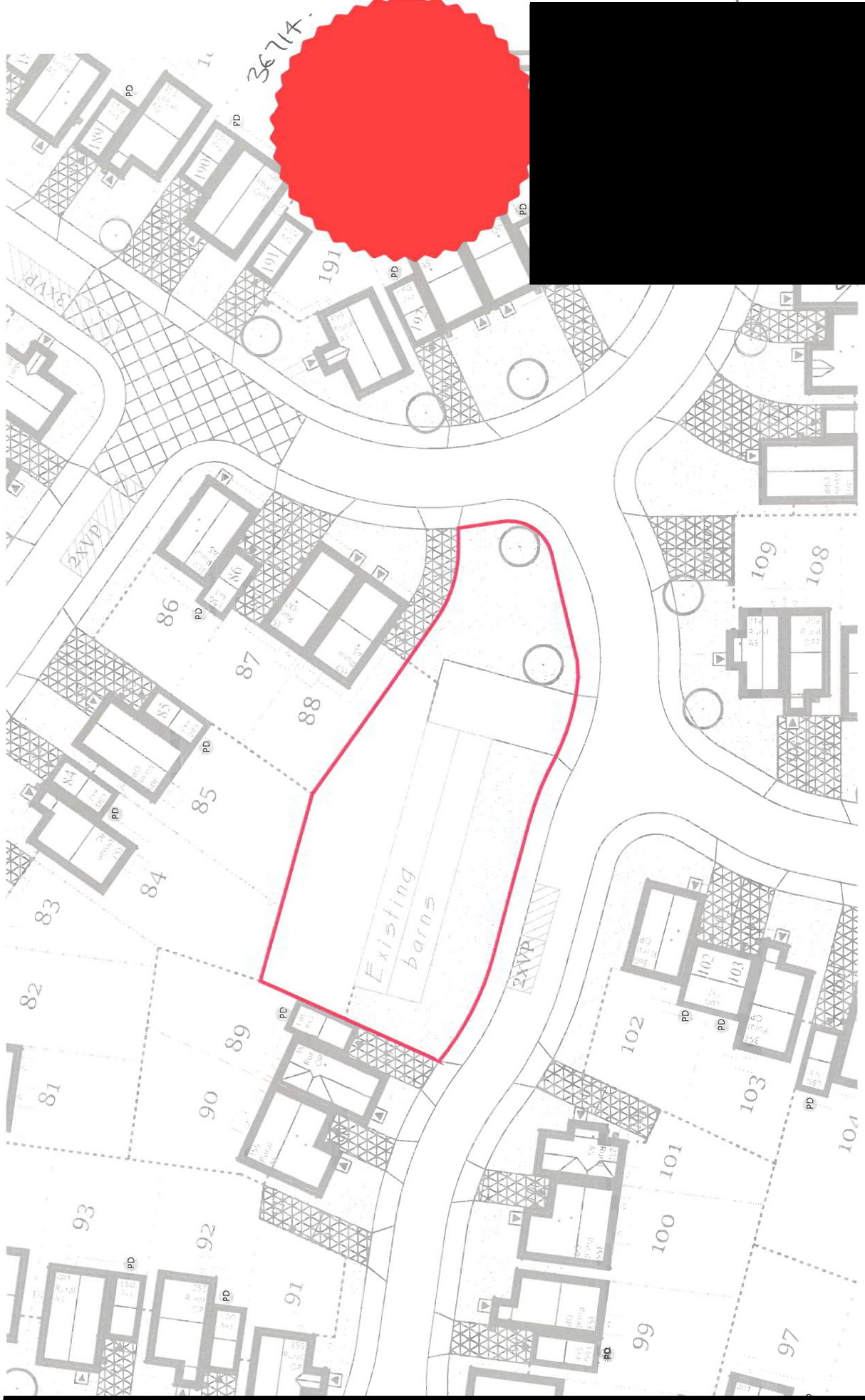
**1. DEFINITIONS AND INTERPRETATION**

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

- “Act”** the Town and Country Planning Act 1990 as amended
- “Affordable Dwellings”** 10% of the total number of Dwellings to be constructed as part of the Development as Affordable Housing to be provided in accordance with the Tenure Mix
- “Affordable Housing”** housing provided to eligible households whose needs are not met by the market in accordance with the definition set out in the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it)
- “Affordable Housing Provider”**
  - i. a non-profit registered provider of social housing under the Housing and Regeneration Act 2008 and registered with Homes England (or such successor authority) as a registered provider; or
  - ii. any other housing provider approved in writing by the District Council

as shall be approved by the District Council and dependent upon the Affordable Housing Provider being able to demonstrate to the District Council its

	ability to deliver the Affordable Housing on the Application Land in accordance with the terms of this Agreement
<b>“Affordable Housing Scheme”</b>	<p>the scheme for the provision of Affordable Dwellings which shall specify:</p> <p>(i) the location of the Affordable Dwellings within the Development;</p> <p>(ii) the intended Affordable Housing Provider; and</p> <p>(iii) the Tenure Mix</p>
<b>“Application Land”</b>	the land shown edged red and additionally the land edged blue on the Plan
<b>“Barn B Land”</b>	means all of the land and buildings on the part of the Application Land outlined in red on the Barn B Plan.
<b>“Barn B Plan”</b>	means the plan appended to this Agreement and marked ‘Barn B Plan’ with drawing number 3097 – A04- 01 identifying the location of the Barn B Land on the Application Land edged in red
<b>“Barn B Transfer Heads of Terms ”</b>	means the heads of terms for the transfer of the Barn B Land to the District Council appended to this Deed at Schedule 5
<b>“Bus Infrastructure Contribution”</b>	the sum of £23,000 (Twenty Three Thousand Pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of paragraph 1.1 of Part 4 to Schedule 1 towards improvements to local bus infrastructure
<b>“Commencement of Development”</b>	the earliest date on which any of the material operations (as defined by section 56(4) of the Act) pursuant to the implementation of the Development is begun save that irrespective of the provisions of section 56(4) of the Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development:



Farm View Road - Existing Barn Land Transfer



**gleeson**

**NORTH MIDLANDS**  
 Technical Department  
 One Oakwood Court - Little Oak Drive, Sherwood  
 NOTTINGHAM NG15 0DR

Drawn No. 3097-A04-01	Rev-
Scale 1:500 or A4	Date 03-08-23
Drawn by RW	Checked by

- (a) trial holes or other operations to establish the ground conditions of the Application Land, site survey work, or works of remediation;
- (b) archaeological investigations on the Application Land;
- (c) any works of demolition or site clearance;
- (d) any structural planting or landscaping works;
- (e) ecological or nature conservation works associated with the Development;
- (f) construction of site compounds boundary fencing or hoardings;
- (g) construction of access or highway works or provision of services (including drainage and media);
- (h) any other preparatory works agreed in writing with the District Council,

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

**"the County Council"**

Nottinghamshire County Council

**"Cycle Parking Contribution"**

the sum of £1,500 (One Thousand and Five Hundred Pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of paragraph 1.3 of Part 4 to Schedule 1 towards the provision of cycle parking at Sutton Parkway railway station

**"Development"**

the development described in the Planning Application and to be carried out pursuant to the Planning Permission

**"Discounted Market Dwellings"**

a Dwelling to be sold by the Owner at eighty per cent (80%) of its Open Market Value

<b>“Dwelling(s)”</b>	a dwelling built pursuant to the Planning Permission whether or not an Affordable Dwelling
<b>“Healthcare Authority”</b>	the NHS Mansfield and Ashfield Clinical Commission Group
<b>“Healthcare Contribution”</b>	the sum of £108,375 (One Hundred and Eight Thousand Three Hundred and Seventy Five Pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of paragraph 1.5 of Part 4 to Schedule 1 towards the enhancement of capacity and/or infrastructure in local practices
<b>“Housing Need”</b>	living in unsuitable housing conditions and either unable to afford to rent at market rent or unable to buy suitable housing at open market prices
<b>“Index Linked”</b>	the application to the sum concerned of the indexation set out in Schedule 0 hereto
<b>“Libraries Contribution”</b>	the sum of £6,909 (Six Thousand Nine Hundred and Nine Pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of paragraph 1.10 of Part 4 to Schedule 1 towards the provision of additional library stock
<b>“Management Company”</b>	a management company elected by the Owner and approved in writing by the District Council (such approval not to be unreasonably withheld or delayed) to be responsible for the long-term management and maintenance of the On Site Open Space and the On Site SUDS
<b>“Market Dwelling”</b>	Dwellings for sale on the open market which is constructed as part of the Development and which is not an Affordable Dwelling
<b>“Monitoring Contribution”</b>	the sum of £2,500 (Two Thousand Five Hundred Pounds) Index Linked payable by the Developer to the District Council in accordance with the provisions of clause 2.27 towards the District Council’s costs of monitoring compliance with the obligations contained in this Agreement

<b>“Nominations Agreement”</b>	an agreement in a form to be agreed by the District Council and the Affordable Housing Provider (both acting reasonably) relating to the nominations procedure and local lettings plans for the Affordable Rented Dwellings
<b>“Occupation”</b>	<p>in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include:</p> <ul style="list-style-type: none"> <li>(a) daytime occupation by workmen involved in the erection fitting out or decoration of any part of the Development;</li> <li>(b) the use of any Dwelling for the marketing of the Development; or</li> <li>(c) the storage of plant and materials,</li> </ul> <p>and <b>“Occupy”</b> and <b>“Occupied”</b> shall be construed accordingly</p>
<b>“Offer Period”</b>	means the period of 6 months beginning on the date on which the District Council receives from the Owner an offer to transfer the Barn B Land to the District Council in accordance with paragraph 1.3 of Part 5 of Schedule 1;
<b>“On Site Open Space”</b>	the on-site open space including all structural landscaping and vegetation to be improved and provided as part of the Development pursuant to the Planning Permission and the On Site Open Space Scheme
<b>“On Site Open Space Scheme”</b>	the scheme for the provision, laying out and long term maintenance of the On Site Open Space to be submitted by the Owner to the District Council in accordance with the provisions of Part 2 to Schedule 1
<b>“On Site SUDS”</b>	the on-site sustainable drainage system to be provided as part of the Development pursuant to the Planning Permission and the On Site SUDS Scheme



<b>“On Site SUDS Scheme”</b>	the scheme for the provision, laying out and long term maintenance of the On Site SUDS to be submitted by the Owner to the District Council in accordance with the provisions of Part 3 to Schedule 1
<b>“Open Market Value”</b>	means the value of a Dwelling to be sold on the open market based on the following assumptions: <ul style="list-style-type: none"> <li>a) a willing seller;</li> <li>b) a reasonable period for the proper marketing of the Dwelling; and</li> <li>c) market conditions at the time of the valuation</li> </ul>
<b>“the Owner”</b>	the First Owner and the Second Owner
<b>“Plan”</b>	the plan attached hereto (drawing number FVR/CP/01 Rev C)
<b>“Planning Application”</b>	the planning application submitted to the District Council and allocated reference number V/2020/0518 applying for planning permission for residential development of 196 dwellings and ancillary works
<b>“Planning Permission”</b>	a planning permission granted pursuant to the Planning Application
<b>“POS Contribution”</b>	the sum of £428,000 (Four Hundred and Twenty Eight Thousand Pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of paragraph 1.7 of Part 4 to Schedule 1 towards the improvement of off-site public open space and access at Holidays Hill, or other community use within the vicinity of the Application Land
<b>“Practical Completion”</b>	the stage of construction or conversion of any Dwelling or other building comprising the Development such that it is capable of beneficial Occupation and <b>“Practically Complete”</b> shall be construed accordingly
<b>“Protected Tenant”</b>	any tenant who:



C	Nov 23	Additional council plan subject
B	March 20	Plan A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AB, AC, AD, AE, AF, AG, AH, AI, AJ, AK, AL, AM, AN, AO, AP, AQ, AR, AS, AT, AU, AV, AW, AX, AY, AZ, BA, BB, BC, BD, BE, BF, BG, BH, BI, BJ, BK, BL, BM, BN, BO, BP, BQ, BR, BS, BT, BU, BV, BW, BX, BY, BZ, CA, CB, CC, CD, CE, CF, CG, CH, CI, CJ, CK, CL, CM, CN, CO, CP, CQ, CR, CS, CT, CU, CV, CW, CX, CY, CZ, DA, DB, DC, DD, DE, DF, DG, DH, DI, DJ, DK, DL, DM, DN, DO, DP, DQ, DR, DS, DT, DU, DV, DW, DX, DY, DZ, EA, EB, EC, ED, EE, EF, EG, EH, EI, EJ, EK, EL, EM, EN, EO, EP, EQ, ER, ES, ET, EU, EV, EW, EX, EY, EZ, FA, FB, FC, FD, FE, FF, FG, FH, FI, FJ, FK, FL, FM, FN, FO, FP, FQ, FR, FS, FT, FU, FV, FW, FX, FY, FZ, GA, GB, GC, GD, GE, GF, GG, GH, GI, GJ, GK, GL, GM, GN, GO, GP, GQ, GR, GS, GT, GU, GV, GW, GX, GY, GZ, HA, HB, HC, HD, HE, HF, HG, HH, HI, HJ, HK, HL, HM, HN, HO, HP, HQ, HR, HS, HT, HU, HV, HW, HX, HY, HZ, IA, IB, IC, ID, IE, IF, IG, IH, II, IJ, IK, IL, IM, IN, IO, IP, IQ, IR, IS, IT, IU, IV, IW, IX, IY, IZ, JA, JB, JC, JD, JE, JF, JG, JH, JI, JJ, JK, JL, JM, JN, JO, JP, JQ, JR, JS, JT, JU, JV, JW, JX, JY, JZ, KA, KB, KC, KD, KE, KF, KG, KH, KI, KJ, KK, KL, KM, KN, KO, KP, KQ, KR, KS, KT, KU, KV, KW, KX, KY, KZ, LA, LB, LC, LD, LE, LF, LG, LH, LI, LJ, LK, LL, LM, LN, LO, LP, LQ, LR, LS, LT, LU, LV, LW, LX, LY, LZ, MA, MB, MC, MD, ME, MF, MG, MH, MI, MJ, MK, ML, MM, MN, MO, MP, MQ, MR, MS, MT, MU, MV, MW, MX, MY, MZ, NA, NB, NC, ND, NE, NF, NG, NH, NI, NJ, NK, NL, NM, NN, NO, NP, NQ, NR, NS, NT, NU, NV, NW, NX, NY, NZ, OA, OB, OC, OD, OE, OF, OG, OH, OI, OJ, OK, OL, OM, ON, OO, OP, OQ, OR, OS, OT, OU, OV, OW, OX, OY, OZ, PA, PB, PC, PD, PE, PF, PG, PH, PI, PJ, PK, PL, PM, PN, PO, PP, PQ, PR, PS, PT, PU, PV, PW, PX, PY, PZ, QA, QB, QC, QD, QE, QF, QG, QH, QI, QJ, QK, QL, QM, QN, QO, QP, QQ, QR, QS, QT, QU, QV, QW, QX, QY, QZ, RA, RB, RC, RD, RE, RF, RG, RH, RI, RJ, RK, RL, RM, RN, RO, RP, RQ, RR, RS, RT, RU, RV, RW, RX, RY, RZ, SA, SB, SC, SD, SE, SF, SG, SH, SI, SJ, SK, SL, SM, SN, SO, SP, SQ, SR, SS, ST, SU, SV, SW, SX, SY, SZ, TA, TB, TC, TD, TE, TF, TG, TH, TI, TJ, TK, TL, TM, TN, TO, TP, TQ, TR, TS, TT, TU, TV, TW, TX, TY, TZ, UA, UB, UC, UD, UE, UF, UG, UH, UI, UJ, UK, UL, UM, UN, UO, UP, UQ, UR, US, UT, UY, UV, UW, UX, UY, UZ, VA, VB, VC, VD, VE, VF, VG, VH, VI, VJ, VK, VL, VM, VN, VO, VP, VQ, VR, VS, VT, VU, VV, VW, VX, VY, VZ, WA, WB, WC, WD, WE, WF, WG, WH, WI, WJ, WK, WL, WM, WN, WO, WP, WQ, WR, WS, WT, WU, WV, WW, WX, WY, WZ, XA, XB, XC, XD, XE, XF, XG, XH, XI, XJ, XK, XL, XM, XN, XO, XP, XQ, XR, XS, XT, XU, XV, XW, XX, XY, XZ, YA, YB, YC, YD, YE, YF, YG, YH, YI, YJ, YK, YL, YM, YN, YO, YP, YQ, YR, YS, YT, YU, YV, YW, YX, YY, YZ, ZA, ZB, ZC, ZD, ZE, ZF, ZG, ZH, ZI, ZJ, ZK, ZL, ZM, ZN, ZO, ZP, ZQ, ZR, ZS, ZT, ZU, ZV, ZW, ZX, ZY, ZZ

Revision:

**Gleeson Homes - North Midlands**  
 4 Aspect Court  
 Aspect Business Park  
 Bennerley Road  
 Bulwell  
 Nottingham  
 NG6 8WR

Tel: 0115 9848850



Scale: 1:1250 @ A3

Date: July 19

Drawn By:

Project:  
 Residential Development at  
 Farm View Road  
 Kirkby-in-Ashfield

Title:  
 Application Land Plan

Dwg. No: FVR/CP/01 Rev: C

- i. has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling;
- ii. has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling;
- iii. has been granted a shared ownership lease by an Affordable Housing Provider (or similar arrangement where a share of the Affordable Dwelling is owned by the tenant and a share is owned by the Affordable Housing Provider) in respect of a particular Affordable Dwelling and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Dwelling; or
- iv. has otherwise obtained full ownership of a single Affordable Dwelling.

**“Section 73 Consent”**

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

**“Secured”**

means the boundary of the land identified on the Barn B Plan shall be secured from trespass and vandalism (to the District Council satisfaction) prior to any transfer of the Barn B Land

**“Serviced Site”**

means the provision of all service installations (to include water, drainage (foul and surface water), electricity and telecommunications (including broadband)) and roads to the boundary of the said land, identified on the Barn B Plan

**“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's Model Lease (as amended from time to time by Homes England) which remains in the ownership of the Affordable Housing Provider until 100% staircasing is agreed

**"Social Rented Dwellings"**

means housing to be offered and occupied via an Affordable Housing Provider pursuant to an assured tenancy which rents (including service charges) are determined in accordance with the rent standard in "The Regulatory Framework for Social Housing in England from April 2012" published by Homes England (or such replacement or alternative publication issued by Homes England that may from time to time replace and/or update this document) and in accordance with Annex 2 of the National Planning Policy Framework (or such other national policy that may from time to time replace and/or update this framework) and which shall be offered for rent by a Affordable Housing Provider to persons who are otherwise unable to secure private sector housing for purchase or rent in the prevailing economic circumstances and who have in the opinion of the District Council need for such housing and to be occupied in accordance with the nominations rights set out in and pursuant to the Nomination Agreement

**"Sustainable Travel Contribution"**

the sum of £21,400 (Twenty One Thousand and Four Hundred Pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of paragraph 1.12 of Part 4 to Schedule 1 towards the provision of a 1-month smartcard bus pass to all new residents

**"Tenure Mix"**

means the provision of:

- 75% x Social Rented Dwellings
- 25% x Shared Ownership Housing

or any other tenure mix as may be agreed in writing by the Owner and the District Council

**“Traffic Lights Contribution”**

the sum of £25,000 (Twenty Five Thousand Pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of paragraph 1.14 of Part 4 to Schedule 1 towards the provision of upgraded traffic lights at the junction of Low Moor Road and Alexandra Street

**“Waste Contribution”**

the sum of £10,999 (Ten Thousand and Nine Hundred and Ninety Nine Pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of paragraph 1.16 of Part 4 to Schedule 1 towards the provision and improvement of waste disposal and recycling facilities

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

**2. GENERAL PROVISIONS**

**Statutory Authority**

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

## Liability

- 2.3 The covenants given by the Owner contained herein are made with the intent that the covenants will bind its interest in the Application Land and be binding on and enforceable against its respective successors in title or assigns and subject to **clause 2.5** those deriving title under the Owner provided that without prejudice to the enforcement of covenants against successors in title no person shall be liable for any breach or non-performance of the covenants contained herein or for the performance of any obligations which arise from the carrying out of the Development on and in respect of any land of which he is no longer seised save in respect of any prior subsisting breach.
- 2.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof or amendment and/or variation thereto including a Section 73 Consent) granted (whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply provided that the obligations in this Agreement can be applied to any planning permission granted subsequent to the grant of the Planning Permission as herein defined by agreement between the Owner and/or the Developer and the District Council as evidenced by a memorandum endorsed on this Agreement.
- 2.5 The covenants contained in this Agreement shall not be enforceable against:
- 2.5.1 individual purchasers or lessees of Dwellings on the Application Land constructed pursuant to the Planning Permission, SAVE FOR the provisions relating to Shared Ownership Housing in Part 1 of Schedule 1 hereto which shall be enforceable against subsequent purchasers of the Shared Ownership Housing; or
  - 2.5.2 statutory undertakers in relation to any parts of the Application Land acquired by them for electricity sub-stations gas governor stations or pumping stations; or
  - 2.5.3 anyone whose only interest in the Application Land or any part of it is in the nature of the benefit of an easement or covenant; or
  - 2.5.4 a chargee, mortgagee or Receiver (as defined in paragraph 8 Schedule 1 Part 1) of an Affordable Housing Provider; or
  - 2.5.5 save for the provisions of paragraphs 7-10 of Schedule 1 Part 1, an Affordable Housing Provider unless all or part of the Application Land is transferred to an Affordable Housing Provider and the Affordable Housing Provider builds out the Development pursuant to the Planning Permission in which case the covenants and obligations in this Agreement shall apply in full to the Affordable Housing Provider as successor in title to the Owner.

- 2.6 In the event that the Owner disposes of its interest in the Application Land any part thereof (other than a disposal to a purchaser of a Dwelling) it shall within 28 days of such disposal give written notice of the name and address of its successors in title to the District Council together with sufficient details of the land included in the disposal to allow its identification.

### **Contingencies**

- 2.7 The obligations in this Agreement shall be conditional upon the issuing of the Planning Permission and the Commencement of Development and save for this clause and **clauses 2.8, 2.12, 2.13, 2.16, 2.17, 2.18, 2.19, 2.21, 2.23, 2.26 and 2.27** which shall come in to effect upon completion of this Agreement then until such time all other provisions not herein specified shall be of no effect.
- 2.8 In the event of the Planning Permission expiring or in the event of the revocation of the Planning Permission the obligations under this Agreement shall cease absolutely and the District Council shall upon written request from the Owner procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith upon request of the Owner.
- 2.9 Where this Agreement is released in part by a future agreement, the District Council shall upon written request from the Owner place a note against the entry made in the Register of Local Land Charges stating which obligations no longer have effect.
- 2.10 If the Owner makes a request in writing for the District Council to place a note against the entry made in the Register of Local Land Charges stating which obligations under this Agreement have been discharged and complied with, the District Council will place such a note against the entry to the extent which such obligations are deemed by the District Council to have been discharged and complied with under the terms of this Agreement.
- 2.11 Following the performance and satisfaction of all covenants and obligations contained in this Agreement the District Council shall upon written request from the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

### **Commencement of Development**

- 2.12 The Owner shall give the District Council seven days' notice in advance of the Commencement of Development and the date on which Commencement of Development has taken place shall be confirmed by exchange of correspondence between the Owner and the District Council provided that default in giving notice or confirming the date by exchange of correspondence shall not prevent Commencement of Development occurring.

## **Determination by Expert**

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

2.13.1 the person to be appointed pursuant to clause 2.13 shall if possible be a person having ten years or more relevant post-qualification experience of the issue in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute; and

2.13.2 the reference to the expert shall be on terms that:

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

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

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

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

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

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



### **Time Periods**

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

### **Approvals**

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

### **Notices**

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

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

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

### **Void Provisions**

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

### **Application of this Agreement**

- 2.20 If any Section 73 Consent is granted after the date of this deed:

2.20.1 the obligations in this deed shall relate to and bind such Section 73 Consent; and

2.20.2 the definitions of Planning Application, Development and Planning Permission (other than for the purpose of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent, the development permitted by the Section 73 Consent and the Section 73 Consent itself.

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

#### **No Fetter of Discretion**

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

#### **Effect of any Waiver**

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

#### **General Requirement to Co-operate**

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

#### **Interest**

2.24 If any payment due to the District Council under this Agreement is paid late interest will be payable from the date the payment is due, calculated on a daily basis at a rate of 8% above the Bank of England base for the period the payment is overdue.

### **Developer's Consent**

- 2.25 The Developer acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Application Land shall be bound by the obligations contained in this Agreement PROVIDED THAT save in respect of clauses 2.26 and 2.27 below the Developer shall otherwise have no liability under this Agreement unless it acquires an interest (being more than a conditional contract or option to purchase) in the Application Land or part thereof in which case it too will be bound by the obligations as if it were a person deriving title from the Owner in respect of any part which it has so acquired.

### **Legal and Monitoring Fees**

- 2.26 Prior to the completion of this Agreement the Developer shall pay the District Council's reasonable legal costs incurred in respect of the preparation this Agreement, up to the maximum sum of £2,500 plus VAT.
- 2.27 The Developer shall pay the Monitoring Contribution prior to the completion of this Agreement.

### **Jurisdiction**

- 2.28 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## **SCHEDULE 1**

### **THE OWNER'S AND THE DEVELOPER'S OBLIGATIONS TO THE DISTRICT COUNCIL**

The Owner covenants with the District Council as follows:

#### **Part 1 – Affordable Housing**

1. To submit to the District 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 District 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 thereto.
3. The Owner covenants with the District Council not to dispose of any interest in the Social Rented Dwellings or the Shared Ownership Housing save to an Affordable Housing Provider or the District Council in accordance with this Part 1 to this Schedule or allow the same to be disposed of otherwise than in accordance with this Part 1 to this Schedule.
4. The Owner covenants with the District Council not to Occupy or permit or suffer or allow the Occupation of more than 50% of the Market Dwellings until:-
  - 4.1 50% of the Affordable Dwellings have achieved Practical Completion and are ready for Occupation; and
  - 4.2 the freehold of the relevant Social Rented Dwellings and the Shared Ownership Housing have been transferred to an Affordable Housing Provider or the District Council or binding contracts to transfer such units to an Affordable Housing Provider or the District Council have been exchanged.
5. The Owner covenants with the District Council not to Occupy or permit or suffer or allow the Occupation of more than 80% of the Market Dwellings until:-
  - 5.1 the remaining 50% of the Affordable Dwellings have achieved Practical Completion and are ready for Occupation; and
  - 5.2 the freehold of the remaining Social Rented Dwellings and Shared Ownership Housing have been transferred to an Affordable Housing Provider or the District Council or binding contracts to transfer such units to an Affordable Housing Provider or the District Council have been exchanged
6. The transfer or binding contract, as the case may be, referred to in paragraphs 4.2 and 5.2 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 District Council of such transfer or contract has been provided.
7. Subject to paragraph 8 below, the Owner covenants with the District 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 Agreement.
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 Agreement relating to Affordable Housing and on the basis that any person deriving title through or under such mortgagee, chargee or receiver shall not be bound by the provisions in this Agreement; or
  - 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 Agreement.
9. The Owner covenants with the District Council not to transfer the 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 District Council; and
  - 9.2 a provision that the Affordable 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 Schedule 1 Part 1 of this Agreement applies.
10. The Owner covenants with the District Council to procure that the Affordable Housing Provider permits the District Council or its agent to nominate 100% of the first occupiers and 50% of the second occupiers of the Affordable 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 District 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.

## **Part 2 – On Site Open Space**

- 1. The Owner covenants with the District Council:
  - 1.1 to submit to the District Council and obtain the District Council’s approval of the On Site Open Space Scheme prior to the Commencement of Development (such approval not to be unreasonably withheld or delayed).
  - 1.2 to provide the On Site Open Space in accordance with the On Site Open Space Scheme or any variation thereto approved in advance by the District Council.
  - 1.3 not to allow or permit the Occupation of more than 50% of the Dwellings unless and until the On Site Open Space has been laid out and made available for use by the residents of the Development in accordance with the approved On Site Open Space Scheme or any variation thereto approved in advance by the District Council.
- 2. Following completion of the On Site Open Space pursuant to the provisions of paragraph 1.3 of this Part 2:
  - 2.1 the Owner covenants to:
    - 2.1.1 serve notice on the District Council inviting it to inspect the On Site Open Space and issue a certificate confirming that such works have been completed in accordance with the approved On Site Open Space Scheme;
    - 2.1.2 pay to the District Council an inspection fee of £325 (three hundred and twenty five pounds) and any fees reasonably requested by the District

Council towards any independent surveyor inspections / reports reasonably required to remedy any defects identified in respect of the On Site Open Space.

- 2.2 subject to payment of the inspection fee pursuant to paragraph 2.1.2 of this Part 2, the District Council covenants to inspect the On Site Open Space within thirty days of receiving notice pursuant to paragraph 2.1 above and may identify remedial works necessary to comply with the approved On Site Open Space Scheme and shall serve notice of any remedial works on the Owner, to complete such notified remedial works in accordance with the approved On Site Open Space Scheme within 45 days (or such reasonable longer period as is agreed in writing with the District Council);
- 2.3 upon completion of any such remedial works, the Owner covenants to
  - 2.3.1 serve notice on the District Council inviting it to inspect those remedial works and issue a certificate confirming that such works have been completed in accordance with the approved On Site Open Space Scheme; and
  - 2.3.2 pay to the District Council a further inspection fee of £325 (three hundred and twenty five pounds)
- 2.4 the provisions of paragraphs 2.3 and 2.4 shall continue to apply until the District Council is satisfied that the On Site Open Space have been provided to a satisfactory standard.
- 2.5 to maintain the On Site Open Space for a period of 12 months following the issue of the certificate pursuant to paragraph 2.3.1 above and if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period to reinstate or replace it as necessary and in the case of any tree shrub or any other planted material the replacement should be the same size and species or such other size and species as may be agreed with the District Council.
- 2.6 at the end of the maintenance period referred to in paragraph 2.5 to serve written notice on the District Council that the 12 month period for maintenance has expired and subject to the District Council being reasonably satisfied on an inspection that the On Site Open Space have been satisfactorily carried out and maintained in accordance with the On Site Open Space Scheme the District Council shall issue a certificate to such effect provided that if the District Council is not so satisfied the Owner shall remain responsible for the proper maintenance of the area of open space in question as the case may be and the maintenance period for such land shall be extended until such time as the District Council certifies in

writing that any outstanding work has been completed or the defects have been remedied as the case may be.

- 2.7 Following the issue of the certificate pursuant to paragraph 2.6, the Owner shall transfer the On Site Open Space to the Management Company (in accordance with the provisions in Schedule 4 hereto) on terms that ensure that the public shall continue to have access to the On Site Open Space as set out in the approved On Site Open Space Scheme AND FOR THE AVOIDANCE OF DOUBT the Owner shall maintain the On Site Open Space in accordance with the On Site Open Space Scheme and in a clean and tidy condition until the transfer to the Management Company has been completed.

### **Part 3 - On Site SUDS**

1. The Owner covenants with the District Council:
  - 1.1 to submit to the District Council and obtain the District Council's approval of the On Site SUDS Scheme prior to the Commencement of Development (such approval not to be unreasonably withheld or delayed).
  - 1.2 to provide the On Site SUDS in accordance with the On Site SUDS Scheme or any variation thereto approved in advance by the District Council.
  - 1.3 not to allow or permit the first Occupation on the Development unless and until the On Site SUDS has been laid out and provided on the Development in accordance with the approved On Site SUDS Scheme or any variation thereto approved in advance by the District Council.
2. Following completion of the On Site SUDS pursuant to the provisions of paragraph 1.3 of this Part 3:
  - 2.1 the Owner covenants to:
    - 2.1.1 serve notice on the District Council inviting it to inspect the On Site SUDS and issue a certificate confirming that such works have been completed in accordance with the approved On Site SUDS Scheme;
    - 2.1.2 pay to the District Council an inspection fee of £325 (three hundred and twenty five pounds) and any fees reasonably requested by the District Council towards any independent surveyor inspections / reports reasonably required to remedy any defects identified in respect of the On Site SUDS.
  - 2.2 subject to payment of the inspection fee pursuant to paragraph 2.1.2 of this Part 3, the District Council covenants to inspect the On Site SUDS within thirty days of receiving notice pursuant to paragraph 2.1 above and may identify remedial works



necessary to comply with the approved On Site SUDS Scheme and shall serve notice of any remedial works on the Owner, to complete such notified remedial works in accordance with the approved On Site SUDS Scheme within 45 days (or such reasonable longer period as is agreed in writing with the District Council);

- 2.3 upon completion of any such remedial works, the Owner covenants to
- 2.3.1 serve notice on the District Council inviting it to inspect those remedial works and issue a certificate confirming that such works have been completed in accordance with the approved On Site SUDS Scheme; and
- 2.3.2 pay to the District Council a further inspection fee of £325 (three hundred and twenty five pounds)
- 2.4 the provisions of paragraphs 2.3 and 2.4 shall continue to apply until the District Council is satisfied that the On Site SUDS have been provided to a satisfactory standard.
- 2.5 to maintain the On Site SUDS for a period of 12 months following the issue of the certificate pursuant to paragraph 2.3.1.
- 2.6 at the end of the maintenance period referred to in paragraph 2.5 to serve written notice on the District Council that the 12 month period for maintenance has expired and subject to the District Council being reasonably satisfied on an inspection that the On Site SUDS have been satisfactorily carried out and maintained in accordance with the On Site SUDS Scheme the District Council shall issue a certificate to such effect provided that if the District Council is not so satisfied the Owner shall remain responsible for the proper maintenance of the area of On Site SUDS in question as the case may be and the maintenance period for such land shall be extended until such time as the District Council certifies in writing that any outstanding work has been completed or the defects have been remedied as the case may be.
- 2.7 Following the issue of the certificate pursuant to paragraph 2.6, the Owner shall transfer the On Site SUDS to the Management Company AND FOR THE AVOIDANCE OF DOUBT the Owner shall maintain the On Site SUDS in accordance with the On Site SUDS Scheme and in a clean and tidy condition until the transfer to the Management Company has been completed.

#### **Part 4 – Financial Contributions**

1. The Owner covenants with the District Council to pay to the District Council the following contributions in accordance with the following timescales:

##### **Bus Infrastructure Contribution**

- 1.1 the Bus Infrastructure Contribution prior to first Occupation of the first Dwelling.
- 1.2 not to permit or suffer first Occupation of the first Dwelling unless and until it has paid the Bus Infrastructure Contribution to the District Council.

#### **Cycle Parking Contribution**

- 1.3 the Cycle Parking Contribution prior to first Occupation of the first Dwelling.
- 1.4 not to permit or suffer first Occupation of the first Dwelling unless and until it has paid the Cycle Parking Contribution to the District Council.

#### **Healthcare Contribution**

- 1.5 the Healthcare Contribution on Commencement of Development.
- 1.6 not to Commence Development unless and until it has paid the Healthcare Contribution to the District Council.

#### **POS Contribution**

- 1.7 the POS Contribution as follows:
  - 1.7.1 50% prior to the Commencement of the Development;
  - 1.7.2 the remaining 50% prior to Occupation of the 75<sup>th</sup> Dwelling.
- 1.8 not to Commence Development unless and until 50% of the POS Contribution has been paid to the District Council.
- 1.9 not to permit or suffer the Occupation of more than 74 Dwellings unless and until it has paid the POS Contribution to the District Council.

#### **Libraries Contribution**

- 1.10 the Libraries Contribution prior to first Occupation of the first Dwelling.
- 1.11 not to permit or suffer the first Occupation of the first Dwelling unless and until it has paid the Libraries Contribution to the District Council.

#### **Sustainable Travel Contribution**

- 1.12 the Sustainable Travel Contribution prior to first Occupation of the first Dwelling.
- 1.13 not to permit or suffer first Occupation of the first Dwelling unless and until it has paid the Sustainable Travel Contribution to the District Council.

#### **Traffic Lights Contribution**

- 1.14 the Traffic Lights Contribution prior to first Occupation of the first Dwelling.
- 1.15 not to permit or suffer first Occupation of the first Dwelling unless and until it has paid the Traffic Lights Contribution to the District Council.

**Waste Contribution**

- 1.16 the Waste Contribution prior to the Occupation of 50% of Dwellings.
- 1.17 not to permit or suffer the Occupation of more than 49% of Dwellings unless and until it has paid the Waste Contribution to the District Council.

**Part 5 – Barn B Land**

- 1. The Owner covenants with the District Council:
  - 1.1 within 6 months following the Commencement Date to offer to transfer the Barn B Land to the District Council on terms substantially in accordance with the Barn B Transfer Heads of Terms and grant the District Council access rights to enable the District Council to carry out an assessment of the Barn B Land pursuant to paragraph 1.14 Part 3 of Schedule 2;
  - 1.2 in the event that the District Council accepts a transfer of the Barn B Land in accordance with paragraph 1.14 of Part 3 of Schedule 2 to transfer the Barn B Land to the District Council within 3 months of the District Council accepting the transfer in accordance with the Barn B Transfer Heads of Terms SUBJECT ALWAYS TO:
    - 1.2.1 the Barn B Land being transferred to the District Council as a Serviced Site and Secured;
    - 1.2.2 such transfer securing all necessary vehicular and pedestrian access rights to the Barn B Land from the nearest highway maintainable at the public expense (including, if applicable, over third party land) for the benefit of the District Council and the general public; and
    - 1.2.3 such transfer securing the ongoing use of the Barn B Land as a community use, subject to the District Council being responsible for regularising the use.
  - 1.3 In the event that the Council does not accept the transfer in accordance with paragraph 1.14 of Part 3 of Schedule 2 or within the Offer Period, the provisions of this Part 5 of this Schedule 2 shall no longer be of any force or effect.

**Part 6 - General**

- 1. The Owner covenants to give the District Council not less than 21 (twenty one) days prior written notice of:
  - 1.1 the Commencement of Development;
  - 1.2 Occupation of the first (1st) Dwelling;
  - 1.3 Practical Completion of 50% of the Dwellings;
  - 1.4 Occupation of 50% of the Dwellings.
- 2. To give the District Council written notice upon:

- 2.1.1 Occupation of 50% of the Market Dwellings; and
- 2.1.2 Occupation of 80% of the Market Dwellings.

## **SCHEDULE 2**

### **DISTRICT COUNCIL'S COVENANTS TO THE OWNER**

1. The District Council covenants with the Owner as follows:

#### **Part 1 - Financial Contributions**

##### **Healthcare Contribution**

- 1.1 To pass to the Healthcare Authority the Healthcare Contribution following receipt of written confirmation from the Healthcare Authority that:
- 1.1.1 Such monies shall be used solely for the enhancement of capacity and/or infrastructure in local practices and for no other purpose whatsoever; and
  - 1.1.2 If all or any part of the monies shall remain unexpended after the period of seven years from the date of payment by the Owner to the District Council it shall following receipt of a request from the District Council or the Owner repay such unexpended monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.
- 1.2 To forward to the Owner any monies received from the Healthcare Authority pursuant to paragraph 1.1.2 above.

##### **Bus Infrastructure Contribution, Sustainable Travel Contribution and Traffic Lights Contribution**

- 1.3 To pass to the County Council (in its capacity as the Highways Authority) each of the Bus Infrastructure Contribution, Sustainable Travel Contribution and Traffic Lights Contribution following receipt of written confirmation from the County Council (in its capacity as the Highways Authority) that:
- 1.3.1 Such monies shall be used solely for the purposes stated in this agreement and for no other purpose whatsoever; and
  - 1.3.2 If all or any part of the monies shall remain unexpended after the period of seven years from the date of receipt by the County Council of the payment by the Owner to the District Council it shall following receipt of a request from the District Council or the Owner repay such unexpended monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.
- 1.4 To forward to the Owner any monies received from the County Council (in its capacity as Highways Authority) pursuant to paragraph 1.3.2 above.

### **Libraries Contribution**

1.5 To pass to the County Council (in its capacity as provider of library facilities) the Libraries Contribution following receipt of written confirmation from the County Council that:

1.5.1 Such monies shall be used solely for the purposes stated in this agreement and for no other purpose whatsoever; and

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

1.6 To forward to the Owner any monies received from the County Council (in its capacity as provider of library facilities) pursuant to paragraph 1.5.2 above.

### **POS Contribution**

1.7 To use the POS Contribution solely for the purposes set out in this Agreement and for no other purpose whatsoever.

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

### **Waste Contribution**

1.9 To use the Waste Contribution solely for the purposes set out in this Agreement and for no other purpose whatsoever.

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

### **Cycle Parking Contribution**

1.11 To use the Cycle Parking Contribution solely for the purposes set out in this Agreement and for no other purpose whatsoever.

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

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

**Part 2 – not used**

**Part 3 – Barn B Land**

- 1.13 In the event that the District Council receives an offer from the Owner to transfer the Barn B Land to the District Council pursuant to paragraph 1.1 Part 5 of Schedule 1, the District Council shall within the Offer Period carry out an assessment of Barn B (at the District Council's expense) and respond in writing to the Owner confirming whether or not (at the District Council's absolute discretion) the District Council wishes to accept a transfer of the Barn B Land.

## SCHEDULE 3

### INDEXATION PROVISIONS

1. In this Schedule:

<b>"Base Index Date"</b>	means the date of this Agreement
<b>"Base Index Figure"</b>	the figure published in respect of the Index immediately prior to the Base Index Date
<b>"Final Index Figure"</b>	the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the relevant contribution is paid
<b>"Index"</b>	the Retail Prices Index ("RPI") as published by the Office for National Statistics or any successor body or such other index as shall be agreed between the Owner and the District Council

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

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

where:

2.1 "A" equals the relevant contribution;

2.2 "B" equals the Base Index Figure; and

2.3 "C" equals the Final Index Figure.

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

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



## **SCHEDULE 4**

### **TRANSFER OF ON SITE OPEN SPACE**

#### **1. GENERAL**

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

1.1 The Transfer shall be in accordance with the Law Society's Standard Conditions of Sale (5<sup>th</sup> Edition) "Standard Conditions" in so far as they are not inconsistent with the terms of this Agreement.

1.2 Standard Conditions 2.1, 2.2, 2.3, 4.3, 5.2 and 6.1 shall not apply to the Transfer.

1.3 The Transferor granting all reasonable easements and rights to allow the development and use of the land for the purposes specified in this Agreement.

1.4 The Transferor making such reservations of rights as are reasonable in favour of the remainder of the Development including but not limited to

1.4.1 rights of way;

1.4.2 rights of way to carry out work on the On Site Open Space;

1.4.3 the right to lay, retain, maintain, repair, alter, renew, remove and use new services; and

1.4.4 the right to develop the remainder of the Development even if the passage of light and air to the land transferred is affected.

1.5 The inclusion of a covenant on the part of the Transferee providing that the Transferee shall not suffer or permit to be done any act or thing which may be or become a nuisance to the Owner or occupiers of the remainder of the Development providing that use as public open space shall not be capable of being deemed nuisance.

1.6 No unduly restrictive or burdensome covenant or clause being imposed upon the Transferee in addition to the provisions contained in this Schedule.

1.7 The land will be transferred subject to:

(a) all local land charges;

(b) all notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this Agreement;

- (c) all actual or proposed orders, directions, notices, charges, restrictions, conditions, agreements and other matters arising under any statute affecting the land;
- (d) all rights of way, drainage, watercourses, light or other easements, or quasi or reputed easements, and rights of adjoining Owner affecting the land, and all liability to repair or covenants to repair paths, ways, passages, fences, and other like matters; and
- (e) any interests overriding the title to the land.

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

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

- (a) restriction preventing use of the On Site Open Space for any purpose other than public open space and/or as provided for by the On Site Open Space Scheme;
- (b) not to be used for a trade or business providing that this shall not prevent the charging of fees by the Management Company to the relevant Dwellings in respect of the management and maintenance of the On Site Open Space Scheme;
- (c) not to be used for residential purposes;
- (d) to keep land in good repair and condition;
- (e) not to obstruct public highway;
- (f) to keep and properly maintain the boundaries in good repair and condition providing that the boundaries forming the boundaries with any Dwellings shall be the sole responsibility of the owner of the Dwelling;
- (g) to properly keep and maintain any landscaping;
- (h) to keep and maintain the land in a clean and tidy condition;
- (i) not to cause or knowingly permit any nuisance on the land providing that use as public open space and/or in accordance with the On Site Open Space Scheme shall not be capable of being deemed nuisance;
- (j) on any transfer of the On Site Open Space or any part thereof to procure that any transferee shall simultaneously enter into a direct covenant with the owner/developer or the whole or relevant parts of the retained land to observe and perform these covenants; and

- (k) not to erect any buildings or other erections except buildings or other erections which are ancillary to the purpose for which the land is transferred.

PROVIDED THAT the covenants will be subject to any variation as to use of the On Site Open Space agreed between the Transferee and Ashfield District Council from time to time.

## **SCHEDULE 5**

### **Heads of Terms - Transfer of Barn B Land**

### Barn B Transfer – Heads of Terms

<b>Seller</b>	Gleeson Regeneration Limited (Company Registration Number 03920096) of 6 Europa Court, Sheffield Business Park, Sheffield, S9 1XE
<b>Buyer</b>	Ashfield District Council of Urban Road, Kirkby in Ashfield, Nottingham, NG17 8DA
<b>Property</b>	"Barn B", Coxmoor Lodge Farm, Farm View Road, Kirkby in Ashfield as shown edged red on the attached plan.
<b>Title Number</b>	Registered at HM Land Registry as part of title NT364147
<b>Interest</b>	Freehold interest with vacant possession on completion
<b>Price</b>	£1.00
<b>Transfer Terms</b>	<p>Seller to be obliged to construct all service installations for the passage of services (to include water, drainage (foul and surface water) electricity and telecommunications (including broadband)) up to the boundary of the Property.</p> <p>Buyer to be granted rights to connect into and use the service installations for the proposed use of the Property.</p> <p>Seller to be obliged to construct a vehicular accessway along a route designated by the Seller (acting reasonably) from the adopted highway to the boundary of the Property suitable for its proposed use.</p> <p>Buyer to be granted a right of way over the accessway for the proposed use of the Property.</p> <p>Transfer to include a restrictive covenant restricting the use of the Property to community use.</p> <p>The Buyer shall be responsible for obtaining all necessary planning permissions and other consent required for the proposed use of the Property.</p>

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

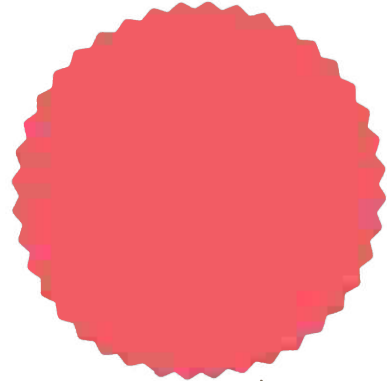
**EXECUTED** as a **DEED** )  
by **ASHFIELD DISTRICT COUNCIL** )  
having affixed its common seal )  
to this deed in the presence of:- )



Chairman / Vice Chairman



Chief Executive / Deputy Chief Executive



36716.

**EXECUTED** as a **DEED** by  
**GLEESON REGENERATION LIMITED**  
acting by two directors or  
a director and company secretary



**SIGNED as a DEED by  
MARTIN OLIVER ROLLINSON**

in the presence of:

Signature:.....

Witness' Signature:

Witness' Name:

Witness' Address:

ZBIGNIEW KLIM  
75 CAROLINE COURT  
BURTON ON TRENT  
DE14 3NG

**SIGNED as a DEED by  
WENDY JANE ROLLINSON**

in the presence of:

Signature:.....

Witness' Signature:

Witness' Name:

Witness' Address:

ZBIGNIEW KLIM  
75 CAROLINE COURT  
BURTON ON TRENT  
DE14 3NG

**SIGNED as a DEED by  
JANE ALEXANDER**

in the presence of:

Signature:.....

Witness' Signature:

Witness' Name:

Witness' Address:

AMIE IRVING  
C/O 1 OAKWOOD COURT, SHEPHERD BUSINESS PARK, NOLSON

**SIGNED as a DEED by  
DEBORAH MARLES**

in the presence of:

Signature:.....

Witness' Signature:

Witness' Name:

Witness' Address:

AMIE IRVING  
C/O 1 OAKWOOD COURT, SHEPHERD BUSINESS PARK, NOLSON

**SIGNED as a DEED by  
RICHARD HOLLIDAY**

in the presence of:

Signature:.....

Witness' Signature:

Witness' Name:

Witness' Address:

AMIE IRVING  
C/O 1 OAKWOOD COURT, SHEPHERD BUSINESS PARK, NOLSON