

Dated 28 September 2021

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FROM

ANNE PARR, EDWARD CLARKE ELLIOT  
AND MARY ELIZABETH PARR (1)

AND

LOCHEIL HOMES & DEVELOPMENTS LTD (2)

AND

BELLWAY HOMES LIMITED (3)

TO

ASHFIELD DISTRICT COUNCIL (4)

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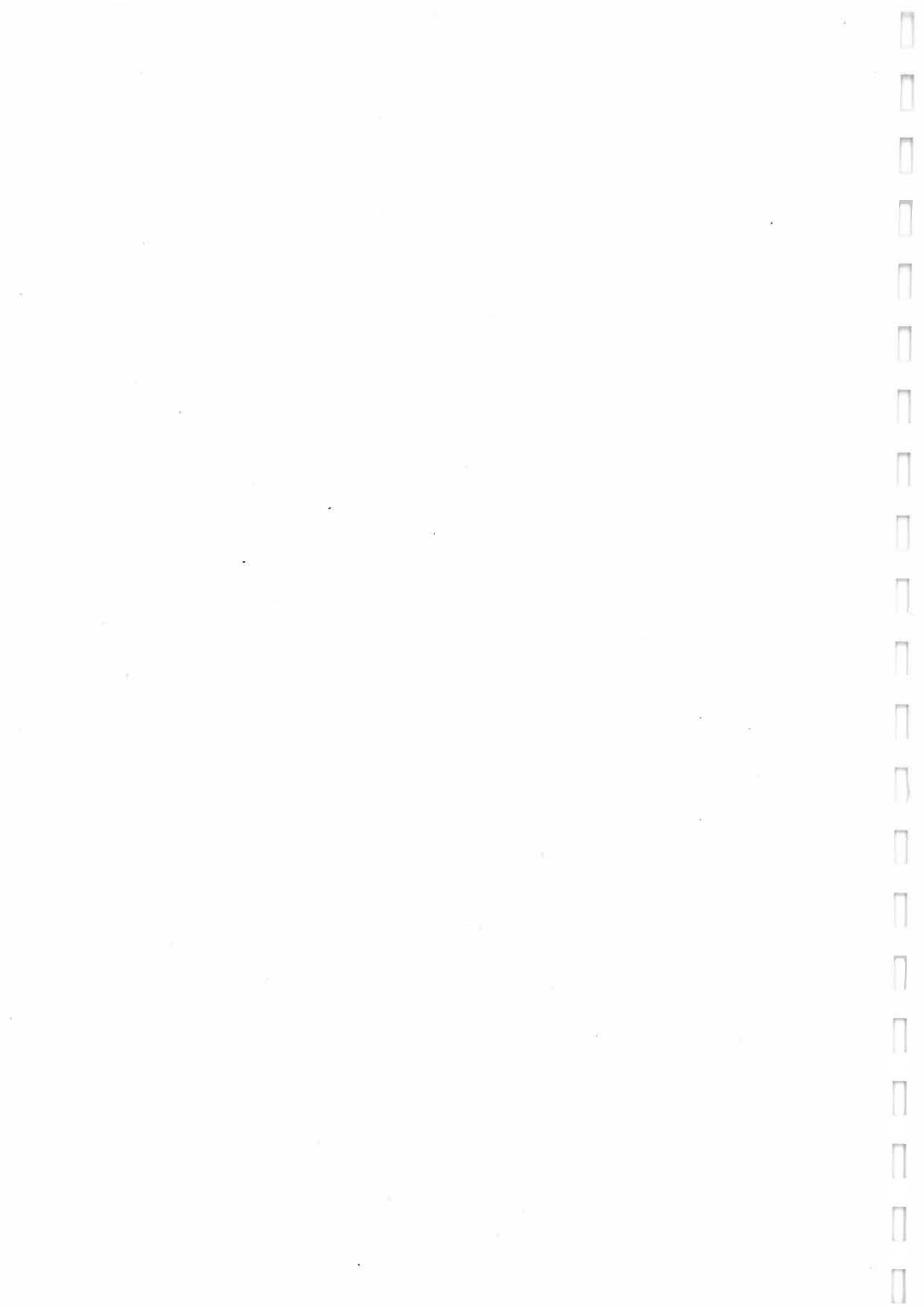
DEED

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

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THIS DEED is made the 28 day of September

2021

**FROM:**

- (1) **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");
- (2) **LOCHEIL HOMES & DEVELOPMENTS LTD** (Company Number 05435296) whose registered office is at 21 Station Terrace, Hucknall, Nottingham, Nottinghamshire, NG15 7TQ ("**Locheil**"); and
- (3) **BELLWAY HOMES LIMITED** (Company Number 00670176) whose registered office is at Woosington House, Woosington, Newcastle Upon Tyne, United Kingdom, NE13 8BF (the "**Developer**")

**TO**

- (4) **ASHFIELD DISTRICT COUNCIL** of Council Offices, Urban Road, Kirkby in Ashfield Nottingham, NG17 8DA (the "**Council**").

**INTRODUCTION**

- (A) The Council is the local planning authority for the area in which the Site is situated.
- (B) The Owner is the freehold owner of the Site as registered under title number NT338962.
- (C) 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.
- (D) 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.
- (E) The Developer submitted the Application for outline planning permission for the Development which was refused on 23 March 2021 (the "**Refusal**").

(F) 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;

**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;

**Biodiversity Contribution**

the sum of one hundred and thirty four thousand three hundred pounds (£134,300.00) payable to the Council to be used towards biodiversity enhancement schemes in the

vicinity of the Site, **AT BRIERLEY PARK, SUTTON LAWN, HEADSNOOD REC, STONEYFORD REC, QUARRIDALE REC AND TREE PLANTING IN SUTTON TOWN CENTRE;**

**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;

<b>Development</b>	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;
<b>Dwelling</b>	a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and any reserved matters approval consequent thereto;
<b>Index</b>	the BCIS Index;
<b>Interest</b>	interest at eight per cent above the base lending rate of the Bank of England;
<b>Occupation and Occupied</b>	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;
<b>Plan 1</b>	the plan attached to this Deed;
<b>Planning Permission</b>	the outline planning permission subject to conditions to be issued pursuant to the determination of the Appeal;
<b>Site</b>	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.

## **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.

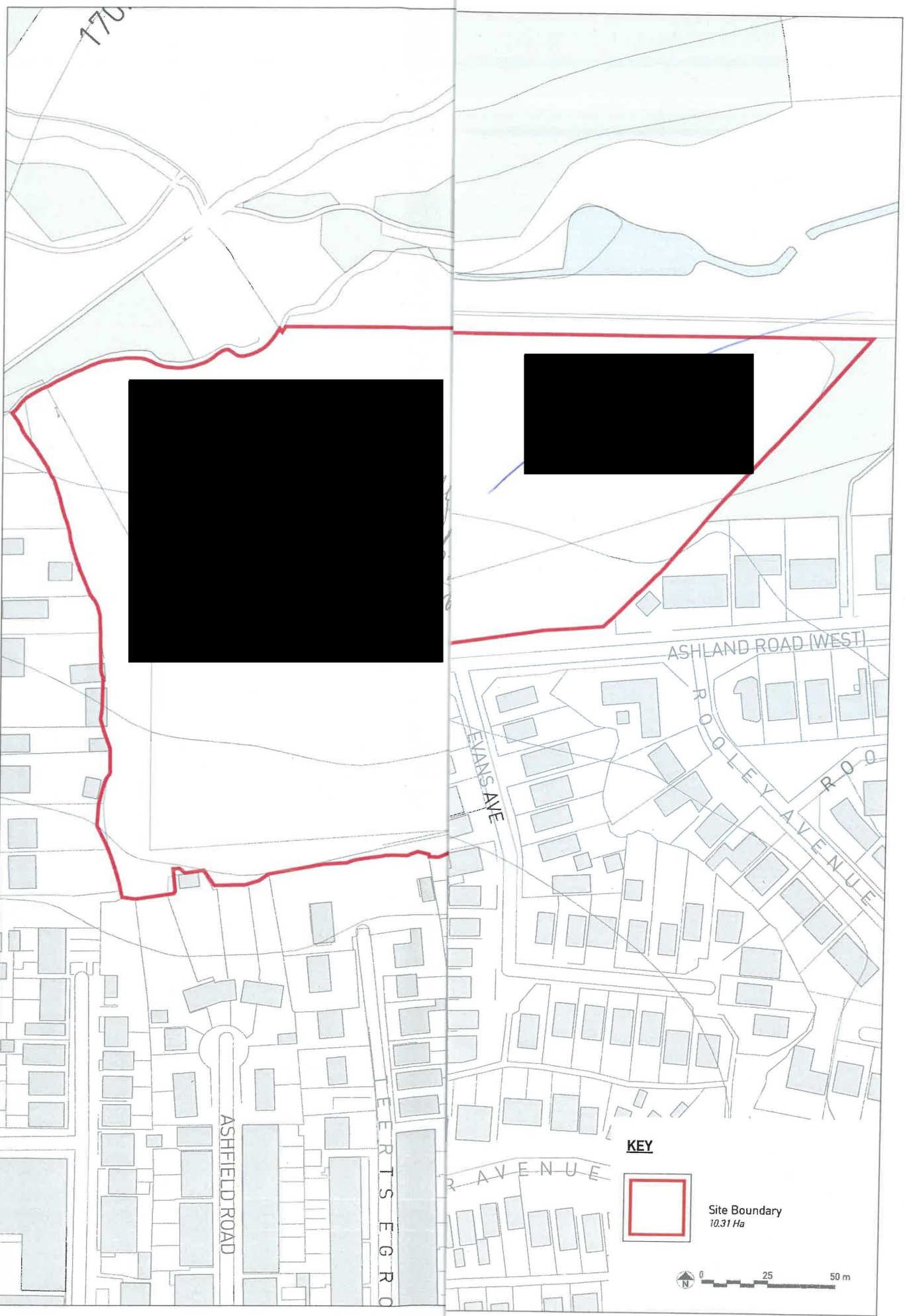
### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act.
- 3.2 Subject to clause 6.10 and 4.1, the:
- (a) covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner; and
  - (b) the provisions of this Deed bind the Site.

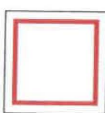
### **4 CONDITIONALITY**

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

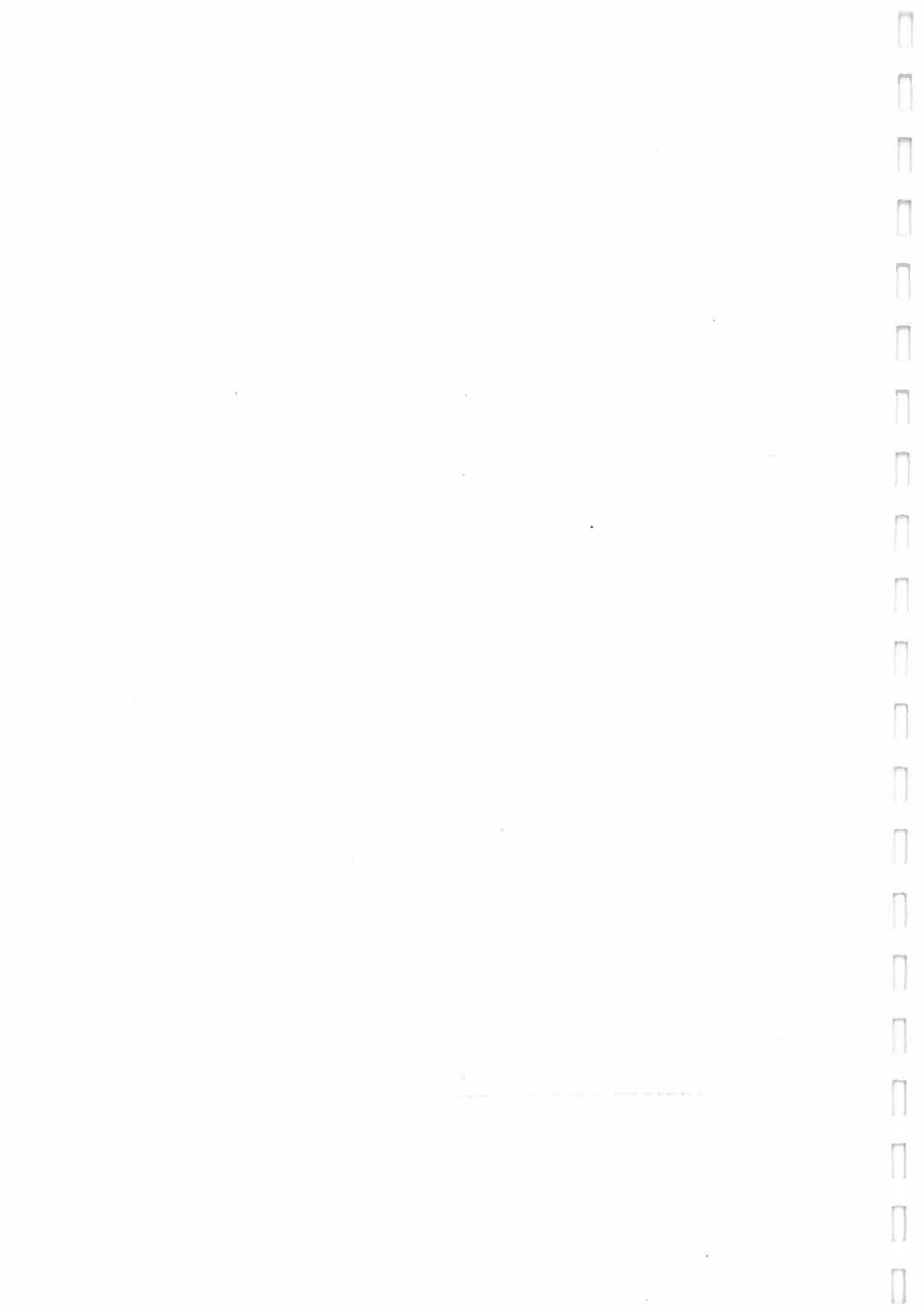
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**KEY**



Site Boundary  
10.31 Ha





(b) the Commencement of Development,

save for the provisions of clauses 6, 10 and 11 which shall come in to effect immediately upon completion of this Deed.

## **5 THE OWNER'S COVENANTS**

The Owner undertakes to the Council as set out in the Schedule.

## **6 MISCELLANEOUS**

- 6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.2 This Deed shall be registered as a Local Land Charge.
- 6.3 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.
- 6.4 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.
- 6.5 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.
- 6.6 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.
- 6.7 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.
- 6.8 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.
- 6.9 The obligations in this Deed will not be enforceable against:
- (a) any chargee or mortgagee in possession of the Site;
  - (b) any individual owner or occupier of a Dwelling nor their successors in title; or
  - (c) statutory undertakers.
- 6.10 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 his or her 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  
ISHFIELD  
DISTRICT COUNCIL  
OR AND ON  
BEHALF OF  
ALL PARTIES

LEVELLING UP, HOUSING AND COMMUNITIES  
LEVELLING UP, HOUSING AND COMMUNITIES

6.11 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 its 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.

6.12 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.

## **7 INDEXATION**

The financial contribution referred to in the Schedule 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.

## **8 INTEREST**

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

## **9 VAT**

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

## **10 JURISDICTION**

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

## **11 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

### **Biodiversity Contribution**

The Owner undertakes to the Council:

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



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

EXECUTED as a DEED by

ANNE PARR

in the presence of:

Witness Signature .....

Witness Name .....

Witness Address .....

*CHARLES GEOFFREY DAWSON*

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:

Witness Signature .....

Witness Name .....

Witness Address .....

*CHARLES GEOFFREY DAWSON*

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:

Witness Signature .....

Witness Name .....

Witness Address .....

*CHARLES GEOFFREY DAWSON*

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

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**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**

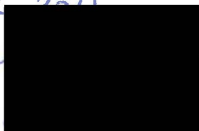
**BELLWAY HOMES LIMITED**

*ITS ATTORNEY NIGEL CLASBY ON PURSUANT  
TO A POWER OF ATTORNEY DATED 11<sup>th</sup> SEPTEMBER 2021  
IN THE PRESENCE OF :*

acting by a Director and its Secretary or two Directors



Director  
*ATTORNEY*



Director/Secretary



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





