

**DATED** 23 January 2019/20

**AMBER VALLEY BOROUGH COUNCIL**

- and -

**RICHARD BUNTING & MARK BUNTING (as executors of the estate of the late CYRIL BUNTING deceased)**

- and -

**PEVERIL HOMES LIMITED**

**AGREEMENT AND PLANNING OBLIGATION**

**under Section 106 of the Town and Country Planning Act 1990 (as amended)**  
relating to land at 86 Wessington Lane, South Wingfield, Alfreton, Derbyshire

**WALKER MORRIS LLP**

33 Wellington Street  
LEEDS  
LS1 4DL  
Tel: 0113 2832500  
Fax: 0113 2459412  
Ref: CAS/PEV00006.45

THIS DEED is made the

23

day of

January

2020

**BETWEEN:-**

1. **THE COUNCIL OF THE BOROUGH OF AMBER VALLEY** of Town Hall, Market Place, Ripley, Derbyshire DE5 3BT ("**Council**");
2. **RICHARD BUNTING** of 8 Royal Gate, Belper, Derby DE56 0DQ and **MARK BUNTING** of 86 Wessington Lane, South Wingfield, Alfreton DE55 7ND ("**Executors**"); and
3. **PEVERIL HOMES LIMITED** (Company No. 01888444) whose registered office is situate at High Edge Court, Heage, Belper, Derbyshire DE56 2BW ("**Developer**").

**WHEREAS:**

- (1) The Council is the local planning authority for the purposes of the 1990 Act in respect of the area within which the Application Site is situated.
- (2) The Executors are the executors of the estate of the late **CYRIL BUNTING** (deceased) of 86 Wessington Lane, South Wingfield, Alfreton DE55 7ND who was formerly the registered freehold proprietor with absolute title of the Application Site and registered at HM Land Registry under Title Numbers DY506384 and DY392346.
- (3) The Developer has an interest in the Application Site by way of an option agreement dated 16 January 2019 and made between the Executors and the Developer.
- (4) The Planning Application has been submitted to the Council on behalf of the Developer.
- (5) The Council has resolved to grant the Planning Permission for the Planning Application subject to the Executors and the Developer entering into this Agreement.
- (6) For the avoidance of doubt the Planning Permission will be bound by this Agreement.
- (7) The Executors by entering into this Agreement do so to create planning obligations in respect of the Application Site in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Agreement.

**NOW THIS DEED WITNESSES** as follows:

1. In this Agreement the following words and expressions shall where the context so requires or admits have the following meaning:

1.1 **DEFINITIONS AND INTERPRETATION**

**"Affordable Housing"**

means:

- (a) housing provided to eligible households whose needs are not met by the market and eligibility is determined with regard to local incomes and local house prices in accordance with Annex 2 of the National Planning Policy Framework; or
- (b) housing which can be accessed by households with an income that is on or below the median income of all households within the administrative area of the Council subject to the additional requirement that households who fall into this category should not spend over 25% of their income on housing.

**"Affordable Housing  
Commutated Sum"**

means the sum of £19,242.00 (nineteen thousand two hundred and forty two pounds) to be paid to the Council by the Executors and used by the Council towards the provision and enabling of Affordable Housing accommodation in lieu of the provision of 0.4 units of Affordable Housing on the Development.

**"Affordable Housing  
Contribution"**

means if applicable a sum to be paid to the Council by the Executors and applied by the Council towards the provision of Affordable Housing in the administrative district of the Council in lieu of provision (part or whole) of Affordable Housing Units on the Application Site such sum to be calculated on the basis of a 40% Market Value of the relevant Affordable Housing Units with Market Value determined by the average selling price of a 2 (two) bedroom property within the postcode area of

the Development in the previous 3 (three) months prior to this Agreement being signed.

**"Affordable Housing Units"**

means 5 (five) of the Dwellings comprising 3 (three) Affordable Rented Housing Units and 2 (two) Shared Ownership Housing Units to be provided on the Application Site in accordance with the provisions of Schedule 2 and **"Affordable Housing Unit"** shall be construed accordingly.

**"Affordable Rented Housing"**

means 3 (three) of the Affordable Housing Units (shown marked with a pink asterisk on Plan 2) consisting of 2 (two) bedroom units to be provided on plots 8 (eight) to 10 (ten) (inclusive) of the Development or in such other locations that may be agreed in writing between the Council and the Executors from time to time that are let by local authorities or private Registered Providers of social housing to households who are eligible for Affordable Rented Housing. Affordable rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges where applicable) and **"Affordable Rented Housing Unit(s)"** shall be construed accordingly.

**"Alternative Registered Provider"**

has the meaning given in paragraph 6 of Schedule 2;

**"Application Site"**

means the land shown for the purposes of identification only edged red on Plan 1.

**"Commencement of the Development"**

means the carrying out of a material operation pursuant to the Planning Permission in accordance with the provisions of Section 56(4) of the 1990 Act **SAVE THAT** for the purposes of this Agreement but not further or otherwise the term "material operation" shall not include operations in connection with any work of or associated with demolition site clearance,

remediation works, environmental investigations, site archaeological investigation and soil surveys, erection of contractors work compound, erection of fencing to site boundary or other means of enclosure, the temporary display of site notices or advertisements.

**“Commencement Notice”**

means a notice to be served by the Executors on the Council 2 (two) weeks prior to the Commencement of the Development in accordance with paragraph 2 of Schedule 2.

**“Development”**

means the development of the Application Site pursuant to the Planning Permission including works required by or pursuant to the conditions thereof.

**“Drainage Management Company”**

means a properly constituted company which may already be in existence or which may be formed by the Executors for the purposes of carrying out future maintenance of the On-Site Sustainable Drainage Features as set out in Schedule 4.

**“Dwellings”**

means all dwellings to be constructed on the Application Site as part of the Development pursuant to the Planning Permission to include the Market Dwellings and the Affordable Housing Units and **“Dwelling”** shall be construed accordingly.

**“Homes England”**

means Homes England or any successor to its function within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act).

**“Interest”**

means interest at 4 (four) per cent above the base lending rate of the Bank of England from time to time.

<b>"Land Drainage Scheme"</b>	means the scheme to be submitted to the Council for approval pursuant to Schedule 4.
<b>"Landscaped Areas"</b>	means the areas of land which are to be provided as landscaped areas as part of the Development shown shaded green on Plan 3.
<b>"Landscape Maintenance Scheme"</b>	means the scheme to be submitted to the Council for approval pursuant to Schedule 5 for the future long-term management and maintenance of the Landscaped Areas.
<b>"Landscape Management Company"</b>	means a limited company registered at Companies House which may already be in existence or which may be formed for the purposes of carrying out ongoing maintenance of the Landscaped Areas and which has been approved by the Council.
<b>"Market Dwelling"</b>	means any Dwelling constructed on the Application Site as part of the Development for sale on the open market which is not an Affordable Housing Unit and <b>"Market Dwellings"</b> shall be construed accordingly.
<b>"Market Value"</b>	means the estimated amount for which a relevant Dwelling should sell on the valuation date assuming a sale between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.
<b>"National Planning Policy Framework"</b>	means the National Planning Policy Framework published by The Ministry of Housing, Communities and Local Government in February 2019 (as updated in June 2019) (or any future guidance or initiative that replaces or supplements it).
<b>"Occupation"</b>	means 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 and "Occupy" shall be construed accordingly.

**"On-Site Sustainable Drainage Features"** means the drainage areas located on the Application Site as identified by the Land Drainage Scheme.

**"Plan 1"** means drawing no. EPD-Pev002/002 marked "Plan 1" annexed hereto.

**"Plan 2"** means drawing no. EPD-Pev002/003/Rev B marked "Plan 2" annexed hereto.

**"Plan 3"** means drawing no. 152 marked "Plan 3" annexed hereto.

**"Planning Application"** means the full planning application submitted on behalf of the Developer to the Council under reference AVA/2019/0120 for the demolition of 86 Wessington Lane and the erection of 19 dwellings and associated infrastructure.

**"Planning Permission"** means a planning permission to be granted by the Council pursuant to the Planning Application.

**"Reasonable Endeavours"** means it is agreed by the parties that the party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court, public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the party to perform such obligation) may be reasonable.

**"Recreational Open Space Contribution"** means the financial contribution set out in paragraph 1 of Schedule 3 to be used by the Council towards

"Plan 1"

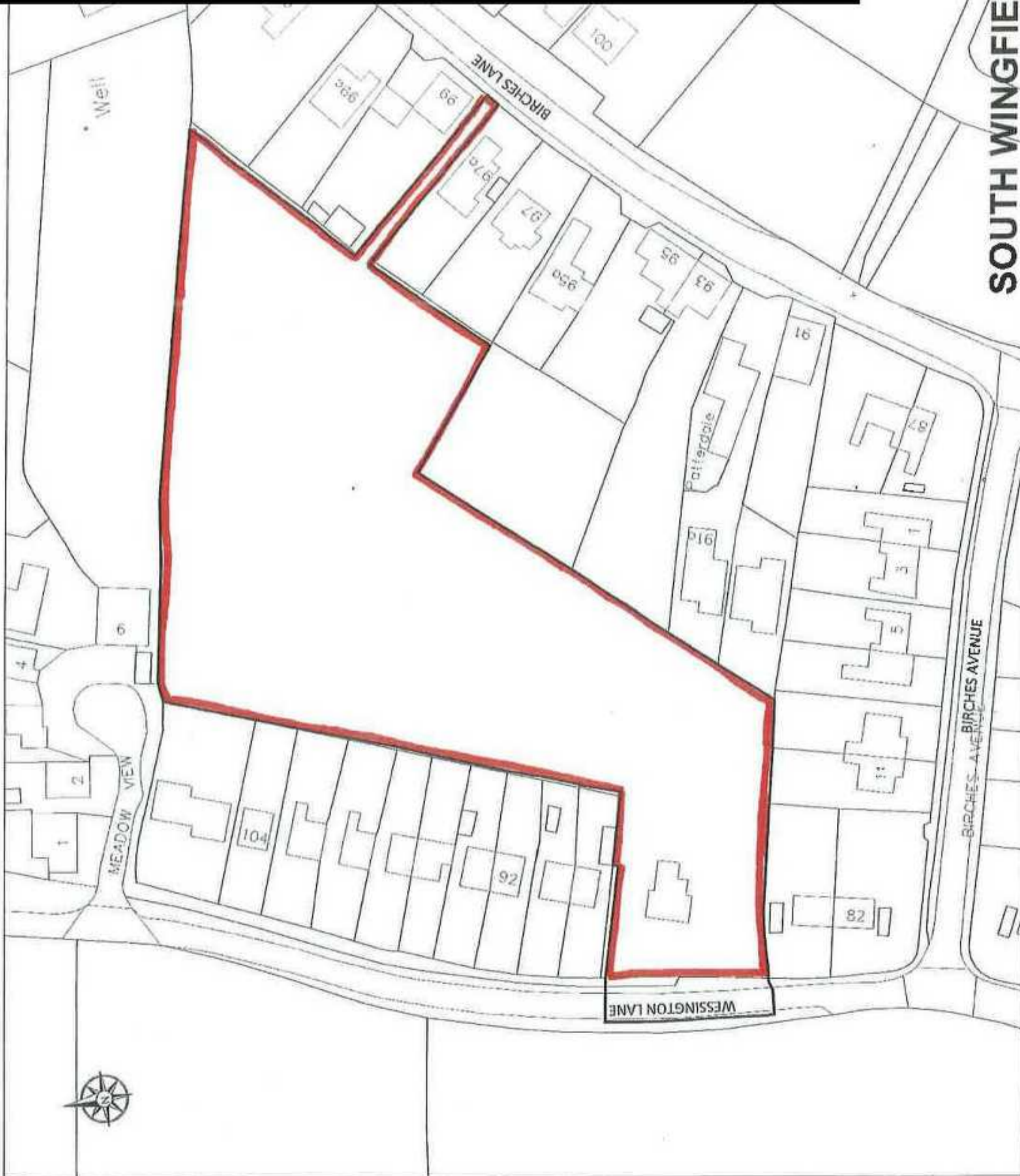
COMMUNITY PLAN

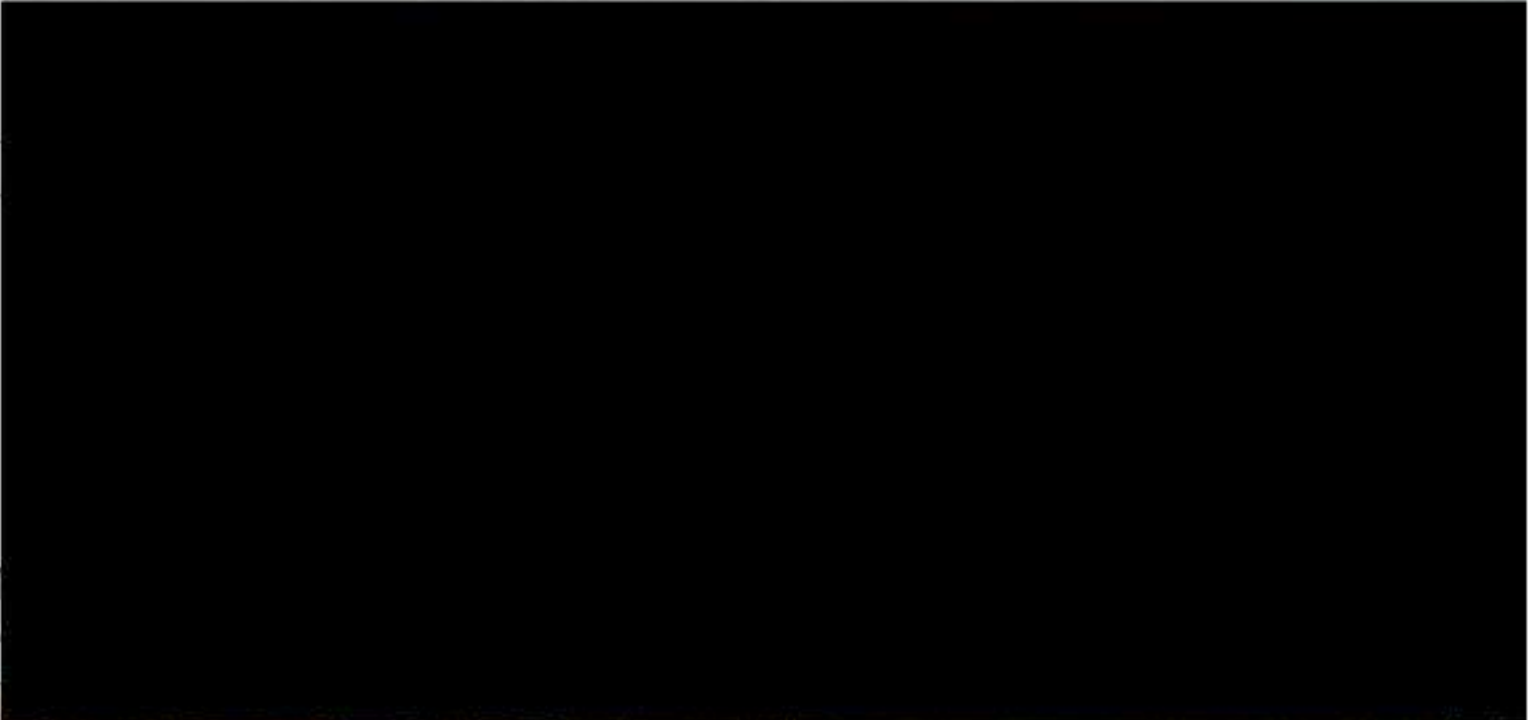
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Scale	DRAFT	Size	1500 @ A2
Job No	EPD-Pev002	Page	002

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# SOUTH WINGFIELD



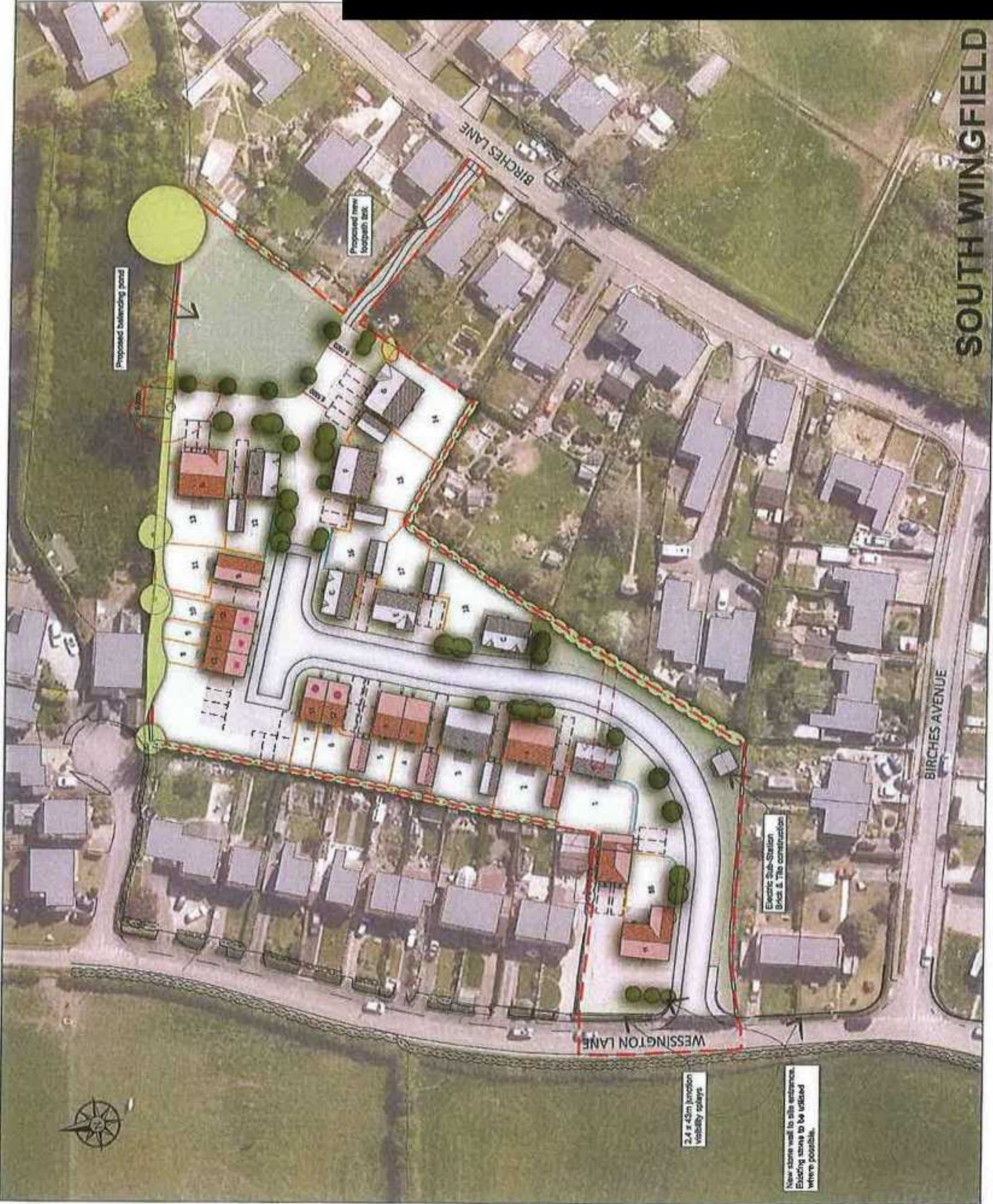


SCHEDULE OF ACCOMMODATION

NO.	DESCRIPTION	NO. UNITS	AREA
1	1 BED BUNGALOW	10	1000
2	2 BED BUNGALOW	10	2000
3	3 BED BUNGALOW	10	3000
4	4 BED BUNGALOW	10	4000
5	5 BED BUNGALOW	10	5000
6	6 BED BUNGALOW	10	6000
7	7 BED BUNGALOW	10	7000
8	8 BED BUNGALOW	10	8000
9	9 BED BUNGALOW	10	9000
10	10 BED BUNGALOW	10	10000
11	11 BED BUNGALOW	10	11000
12	12 BED BUNGALOW	10	12000
13	13 BED BUNGALOW	10	13000
14	14 BED BUNGALOW	10	14000
15	15 BED BUNGALOW	10	15000
16	16 BED BUNGALOW	10	16000
17	17 BED BUNGALOW	10	17000
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19	19 BED BUNGALOW	10	19000
20	20 BED BUNGALOW	10	20000
21	21 BED BUNGALOW	10	21000
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97	97 BED BUNGALOW	10	97000
98	98 BED BUNGALOW	10	98000
99	99 BED BUNGALOW	10	99000
100	100 BED BUNGALOW	10	100000

LEGEND

- AFFORDABLE HOUSING - SHARED OWNERSHIP
- AFFORDABLE HOUSING - RENTED
- APPLICATION BOUNDARY
- 2.0m x 3.0m PROPOSED VISIBILITY SPAYS



SOUTH WINGFIELD

2.4 x 4.8m junction visibility spays

New stone wall to site entrance. Existing stone to be utilised where possible.

Legend



**Peveril Homes**  
Homes to build a life.

Westington Lane  
South Wingfield

**Plan 3**  
Management Transfer Plan

Drawn by	ARE	Date	DEC '19
Client		Units	1,500 @ A2
Job No	<b>EPD-Pev002</b>	Page No	<b>152</b>

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**WESSINGTON LANE - SOUTH WINGFIELD**

procuring the refurbishment of the nearby High Road Play Area the need for which directly arises in order to mitigate impacts arising from the Development;

**“Registered Provider”**

means a registered provider as defined by and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body as may be proposed by the Executors and approved by the Council and **“Registered Providers”** shall be construed accordingly.

**“Shared Ownership Housing”**

means 2 (two) of the Affordable Housing Units (shown marked with a pink dot on Plan 2) consisting 2 (two) bedroom units to be provided on plots 6 (six) and 7 (seven) of the Development or in such other locations that may be agreed in writing between the Council and the Executors from time to time of which will be disposed of by way of a Shared Ownership Lease pursuant to which such lessee obtains a share of the equity in the Shared Ownership Housing ranging between 25% and 75% from the Registered Provider who retains any remainder and in respect of which an affordable rent is payable on the remaining equity or such other housing as approved in writing by the Council that provides a subsidised route to home ownership and which complies with either definition (c) "Discounted market sales housing" or definition (d) "Other affordable routes to home ownership" as set out within Annex 2 of the National Planning Policy Framework and **"Shared Ownership Housing Unit(s)"** shall be construed accordingly.

**“Shared Ownership Lease”**

means a shared ownership lease in the model form approved by Homes England.

**"Working Day"** means a weekday (Saturdays, Sundays and public holidays days excepted) and **"Working Days"** shall be construed accordingly.

**"1990 Act"** means the Town and Country Planning Act 1990 (as amended).

1.2 Where the context so requires:

1.2.1 clause headings and contents list are for reference only and shall not affect the construction of this Agreement;

1.2.2 where more than one person is included in the expressions the **"Council"** and the **"Executors"** and the **"Developer"** agreements and obligations expressed to be made or assumed by such party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally;

1.2.3 any covenant by the Executors not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing;

1.2.4 the masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa;

1.2.5 a reference to a clause, sub-clause, schedule, paragraph or recital (or any part of them) shall (unless the context otherwise requires) be references to a clause, sub-clause, schedule, paragraph or recital contained in this Agreement; and

1.2.6 unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.

## 2 STATUTORY PROVISIONS

2.1 This Agreement:

2.1.1 is made pursuant to the provisions of Section 106 of the 1990 Act and to the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism

Act 2011 and all other powers so enabling;

- 2.1.2 is a planning obligation for the purposes of Section 106 of the 1990 Act;
- 2.1.3 is given with intent to bind the Executors' freehold interest, and the Developer's interest, in the Application Site;
- 2.1.4 shall be enforceable by the Council as local authority; and
- 2.1.5 is executed by the parties hereto as a deed.

### 3 COVENANTS

- 3.1 The Executors hereby covenant with the Council that they will comply with the obligations contained in this Agreement and the Developer acknowledges that its interest in the Application Site shall be bound by the obligations contained in this Agreement.
- 3.2 This Agreement takes effect from the date hereof **SAVE THAT** (except where otherwise specifically stated in this Agreement) the covenants contained in this Agreement on behalf of the Executors are conditional upon:
  - (a) the grant of the Planning Permission; and
  - (b) the Commencement of the Development.
- 3.3 The Council covenants with the Executors to comply with the covenants contained in Schedule 6 and where applicable with the covenants contained in Schedules 2, 3, 4 and 5.

### 4 AGREEMENTS AND DECLARATIONS

- 4.1 Subject to having first complied with the provisions of clause 5, no person shall be liable for any breach of the restrictions and obligations or other provisions contained in this Agreement after that person has parted with all interest (and for the avoidance of doubt including the freehold interest) in the Application Site or the part in respect of which the breach occurs but without prejudice to any liability for any breach committed prior to such parting.
- 4.2 No owner of an interest in any part of the Application Site who occupies that part as their residence shall be treated as a person deriving title from the Executors for the purposes of Section 106(3) of the 1990 Act.

- 4.3 No person shall be liable for breach of the covenants contained in this Agreement if he or it shall be an occupier or tenant or a purchaser of a site or sites required for statutory undertaker infrastructure purposes in relation to the Development.
- 4.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 4.5 In this Agreement the expressions the "**Executors**" and the "**Developer**" shall where the context so admits be deemed to include their respective successors in title and assigns and the expression the "**Council**" shall include its successors as local planning authority or other public authority.
- 4.6 If the Planning Permission shall expire before the Commencement of the Development or shall at any time be modified (without the consent of the Executors), quashed or revoked this Agreement shall terminate and cease to have effect and the Council upon receiving notice from the Executors that the Planning Permission has expired or has been revoked shall as soon as is reasonably practicable remove any entry relating to this Agreement from the Register of Local Land Charges.
- 4.7 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights, powers, duties and obligations in any capacity as a local or public authority.
- 4.8 Wherever this Agreement requires the approval agreement determination or consent of the Council or the Executors such approval agreement determination or consent is not to be unreasonably withheld or delayed.
- 4.9 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.
- 4.10 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the 1990 Act (and the Council is satisfied that no revised planning obligations are required as a result of such amendment) this Agreement shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.

5      **CHANGE IN OWNERSHIP**

The Executors agree with the Council to give the Council immediate written notice of any change in ownership in any of its interests in the whole or any part of the Application Site occurring before all the obligations under the Agreement have been discharged with such notice giving details of the transferee's full name and address (and address of the registered office if applicable) together with the area of the Application Site or unit of occupation by reference to a plan **PROVIDED THAT** it is agreed that the provisions of this clause 5 will not apply to individual disposals of Dwellings.

6      **INDEXATION**

6.1     The Affordable Housing Commuted Sum and the Recreational Open Space Contribution shall be increased by the amount by which the Index for the month preceding the date on which each such contribution is paid exceeds the Base Figure where:

6.1.1    "Index" means the Construction Materials Price Index published by the Department for Business Innovation and Skills or during any period when no such index exists the index which replaces it or is the nearest equivalent to it and;

6.1.2    "Base Figure" is the Index Figure at the date of this Agreement

**PROVIDED THAT** if the basis of computation of the Index is changed or if publication of the Index is permanently discontinued an alternative method of fixing the sum of the relevant contribution shall be agreed between the Council and the Executors in respect of the Affordable Housing Commuted Sum and the Recreational Open Space Contribution to ensure as nearly as possible that such shall fluctuate (but in an upwards direction only) in accordance with the general level of retail prices and any dispute as to such method shall be determined in accordance with the provisions of clause 10.

7      **INTEREST**

If any payment due to the Council under this Agreement is not paid by the date it is due Interest will be payable from the due date to the date of payment.

8      **REGISTRATION**

This Agreement shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council.

9 **NOTICES**

Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid special or recorded delivery post to the party to be delivered at its address herein specified or such other address as may from time to time be notified for the purpose by notice served under this Agreement specifically referring to this clause and the intention of the notice to notify an address thereunder. Notices or other written communication to be served on the Council in respect of Affordable Housing matters should be addressed to the Housing Strategy Officer and in respect of open space contribution matters to the Building and Open Spaces Officer and all other matters should be addressed to the Planning Manager.

10 **ARBITRATION**

10.1 Any dispute or difference which cannot be resolved by prior agreement between the parties relating to any matter arising out of or in connection with this Agreement shall be referred to arbitration in accordance with the Arbitration Act 1996 except to the extent that it provides otherwise.

10.2 If the parties do not agree upon the appointment of the arbitrator within 28 (twenty eight) days of the service of an arbitration notice, the arbitrator shall be nominated upon the application of either party by the President or Vice President for the time being of the Royal Institution of Chartered Surveyors which arbitrator shall be an independent person who is professionally qualified for a minimum period of 10 (ten) years in respect of the subject matter of the dispute.

10.3 Unless the arbitrator shall direct to the contrary:

10.3.1 not more than 28 (twenty eight) days after the arbitrator's appointment the claimant shall send to the arbitrator and respondent a summary of its case together with a bundle of key documents relied upon;

10.3.2 not more than 28 (twenty eight) days after the receipt of the claimant's submission the respondent shall send the arbitrator and the claimant a summary of its case together with a bundle of key documents relied upon;

10.4 The arbitrator shall be at liberty to visit the Application Site.

10.5 The arbitrator may call for such written evidence from the parties as he may require.

10.6 The arbitrator shall use all reasonable endeavours to issue his decision and the reasons for it in writing as quickly as possible and in any event within 90 (ninety) days of his appointment followed by within 21 (twenty one) days of the receipt of the arbitrator's decision either party being able to apply to the arbitrator for further written clarification of his decision and the reasons including details of the methodology of any calculation and the arbitrator shall provide such clarification within 21 (twenty one) days of the application.

10.7 The arbitrator's costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

## **11 WAIVER**

11.1 No waiver (whether expressed or implied) by the Council or the Executors of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or the Executors from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

## **12 JURISDICTION**

12.1 This Agreement is governed by and interpreted in accordance with the law of England and Wales

## **13 DELIVERY**

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

## SCHEDULE 1

### GENERAL COVENANTS

1. In addition to the specific covenants set out in the following Schedules the Executors covenant that they will:
  - 1.1 Notify the Council (Planning Manager) in writing 14 (fourteen) days prior to the following:
    - 1.1.1 the date of the Commencement of the Development;
    - 1.1.2 the date of first Occupation of the first Dwelling;
    - 1.1.3 the date of each of the triggers referred to in Schedules 2, 3, 4 and 5.
  - 1.2 observe all restrictions and perform all obligations contained in this Agreement.
  - 1.3 Pay to the Council on completion of this Agreement an amount for its legal costs properly and reasonably incurred in the negotiation, preparation, execution and registration of this Agreement; and
  - 1.4 Pay to the Council upon the Commencement of the Development an amount for the monitoring of this Agreement in the sum of £300.00 (three hundred pounds) plus VAT.

## SCHEDULE 2

### AFFORDABLE HOUSING MATTERS

The Executors covenant with the Council as follows:

#### Affordable Housing – On-Site Provision

1. To construct the Affordable Housing Units in accordance with the Planning Permission and approved plans (or in accordance with any amended plans showing the location, type and mix of the Affordable Housing Units approved in writing by the Council).
2. To serve on the Council a Commencement Notice at least 2 (two) weeks prior to the Commencement of the Development.
3. Not to Occupy more than 4 (four) of the Market Dwellings (or such other number of Market Dwellings that may be agreed in writing between the Council and the Executors) until the Executors have used Reasonable Endeavours to reach agreement with a Registered Provider for the transfer of the freehold interest in the Affordable Rented Housing Units and the Shared Ownership Housing Units to the Registered Provider (and shall provide written evidence of the use of such endeavours to the Council at the Council's request), such transfer to include the following:
  - 3.1 the grant by the Executors to the Registered Provider of all rights of access and passage of services and other rights of entry reasonably necessary for the purpose of the Affordable Rented Housing Units and the Shared Ownership Housing Units;
  - 3.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Affordable Rented Housing Units and the Shared Ownership Housing Units;
  - 3.3 a covenant by the Registered Provider with the Executors not to use or dispose of the Affordable Rented Housing Units and the Shared Ownership Housing Units otherwise than in accordance with the provisions of this Schedule and the provisions of paragraphs 4 to 7 inclusive of this Schedule shall be applicable.
4. Not to Occupy more than 9 (nine) of the Market Dwellings (or such other number of Market Dwellings that may first be agreed in writing by the Council) until the Affordable Rented Housing Units and the Shared Ownership Housing Units have been made available for Occupation and transferred to a Registered Provider.

5. That subject to paragraph 10 of this Schedule the Affordable Rented Housing Units and the Shared Ownership Housing Units shall not be used for any purpose other than Affordable Housing.
6. That in the event that the Registered Provider referred to in paragraph 3 of this Schedule declines or is unable to accept the transfer of some or all of the Affordable Rented Housing Units and the Shared Ownership Housing Units on the terms of this Agreement or if in the Executors' or the Council's opinion (acting reasonably) insufficient progress is being made towards exchange of contracts with the Registered Provider for the transfer of some or all of the Affordable Rented Housing Units and the Shared Ownership Housing Units within a period of 6 (six) months from the date of the offer referred to in paragraph 3 of this Schedule either the Executors or the Council shall give written notice to the other ("**Notice**") and the Executors may nominate an alternative Registered Provider or Registered Providers for the Council's approval with any such nomination to be made within 14 (fourteen) days of the service of the Notice **PROVIDED THAT** if the Council does not notify the Executors within 10 (ten) Working Days of receipt of nomination (or such longer period if agreed between the Council and the Executors) of its approval or disapproval of the alternative Registered Provider(s) nominated by the Executors it shall be deemed that the Council has approved the alternative Registered Provider(s) nominated by the Executors.
7. That immediately upon receiving confirmation of the Council's approval or deemed approval of the nominated alternative Registered Provider or Registered Providers in accordance with paragraph 6 of this Schedule the Executors shall offer to enter into negotiations with the alternative Registered Provider or Registered Providers for the transfer of the Affordable Rented Housing Units and the Shared Ownership Housing Units (or any individual Affordable Rented Housing Units and Shared Ownership Housing Units that have not been transferred or may not have been contracted to be sold to a Registered Provider).
8. That in the event that the nominated alternative Registered Provider or Registered Providers referred to in paragraph 7 of this Schedule declines or is unable to accept the transfer of some or all of the Affordable Rented Housing Units and the Shared Ownership Housing Units on the terms of this Agreement or in the event that no offers are received from a nominated alternative Registered Provider or Registered Providers within a period of 3 (three) months from the date of the offer referred to in paragraph 7 of this Schedule then the Executors shall be entitled to:
  - 8.1 notify the Council in writing of that fact within 14 (fourteen) days thereof; and
  - 8.2 submit evidence of their compliance with paragraph 7 of this Schedule to the Council together with evidence from the nominated alternative Registered Provider or Registered Providers (if

such evidence is available) that they are not willing to so purchase some or all of the Affordable Rented Housing Units and the Shared Ownership Housing Units on the terms of this Agreement.

9 In the event that the Council acting reasonably confirms in writing that it is satisfied that:

9.1 the Executors have used Reasonable Endeavours to dispose of the Affordable Rented Housing Units and the Shared Ownership Housing Units in accordance with paragraph 7 of this Schedule; and

9.2 offers have not been received from a Registered Provider to purchase any of the Affordable Rented Housing Units and the Shared Ownership Housing Units that have not been previously transferred to the nominated alternative Registered Provider or Registered Providers within a period of 3 (three) months from the date of the offer referred to in paragraph 7 of this Schedule;

then in lieu of the provision of the Affordable Housing Units on the Application Site the Executors may dispose of the relevant Affordable Housing Unit(s) on the open market and pay to the Council the relevant Affordable Housing Contribution towards the provision of Affordable Housing in the administrative district of the Council **PROVIDED THAT** it is agreed that the Affordable Housing Contribution will be paid by the Executors to the Council within 25 (twenty five) Working Days of the sale of each relevant Affordable Housing Unit on the open market.

10 That the covenants in this Schedule shall not be binding upon:

10.1 a tenant of an individual Affordable Housing Unit exercising a right to buy or right to acquire pursuant to any statutory right to acquire or any purchaser from or successor acquiring from such tenant; or

10.2 any mortgagee in possession exercising a power of sale over any of the individual Affordable Housing Units under their mortgage or any purchaser from or successor to such mortgagee or any receiver appointed by such mortgage in possession; or

10.3 any person who has acquired an Affordable Housing Unit by staircasing up to 100% in respect of the relevant Affordable Housing Unit including any mortgagee of any such Affordable Housing Unit.

#### **Affordable Housing Commuted Sum**

11. Not to Occupy more than 9 (nine) of the Market Dwellings until the Affordable Housing Commuted Sum has been paid to the Council.

### SCHEDULE 3

#### **RECREATIONAL OPEN SPACE CONTRIBUTION**

1. The Executors covenant with the Council to pay to the Council the Recreational Open Space Contribution in the total sum of £33,740.20 (thirty three thousand seven hundred and forty pounds and twenty pence) (as adjusted in accordance with clause 6).
2. The Recreational Open Space Contribution shall be paid to the Council in 2 (two) equal instalments as follows:
  - 2.1 Not to Occupy any of the Dwellings until 50% of the Recreational Open Space Contribution (as adjusted in accordance with clause 6) has been paid to the Council.
  - 2.2 Not to Occupy more than 9 (nine) of the Market Dwellings until the remaining balance of 50% of the Recreational Open Space Contribution (as adjusted in accordance with clause 6) has been paid to the Council.

## SCHEDULE 4

### SUSTAINABLE DRAINAGE SYSTEM

1. The Executors shall prior to the Commencement of the Development:
  - 1.1 Submit to the Council for approval in writing the Land Drainage Scheme with details including:
    - 1.1.1 flood alleviation;
    - 1.1.2 surface and ground water drainage;
    - 1.1.3 provision of On-Site Sustainable Drainage Features by reference to a plan; and
    - 1.1.4 any other matters reasonably required by the Council.
  - 1.2 Submit to the Council a management and maintenance plan in respect of the On-Site Sustainable Drainage Features and include projected costs to enable the effective maintenance and management of the On-Site Sustainable Drainage Features.
  - 1.3 Provide details of the Drainage Management Company to the Council for approval with a copy of the certificate of incorporation, its structure and long term funding plans.
2. The Executors shall ensure that the On-Site Sustainable Drainage Features are constructed prior to the Occupation of the first Dwelling in accordance with the conditions annexed to the Planning Permission, and the Land Drainage Scheme.
3. The Executors shall ensure that the On-Site Sustainable Drainage Features from the time of construction are maintained in accordance with the management and maintenance plan referred to in paragraph 1.2 of this Schedule (subject to any variations that may be agreed in writing between the Council and the Executors from time to time) and shall keep them maintained until such time as they are transferred to the Drainage Management Company **PROVIDED THAT** it is agreed that it shall be a term of the appointment of the Drainage Management Company that the transfer is on the condition that they shall manage and maintain the On-Site Sustainable Drainage Features in accordance with the Land Drainage Scheme.
4. As soon as reasonably practicable following the Occupation of the final Dwelling to transfer the On Site-Sustainable Drainage Features to the Drainage Management Company and to notify the Council in writing within 5 (five) Working Days of the date that the transfer took place.

5. Not to wind up the Drainage Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council has otherwise first agreed in writing.
6. The written agreement of the Council shall be sought in the event the Drainage Management Company proposes to transfer the On-Site Sustainable Drainage Features to another body or Drainage Management Company who is willing to accept the transfer on the condition detailed in paragraph 3 of this Schedule.

## SCHEDULE 5

### LANDSCAPED AREAS

1. Prior to the Commencement of the Development the Executors shall:
  - 1.1 Submit to the Council for approval in writing the Landscape Maintenance Scheme; and
  - 1.2 Provide details of the Landscape Management Company to the Council for approval with a copy of the certificate of incorporation, its structure and long-term funding plans.
2. The Executors shall layout and landscape the Landscaped Areas in accordance with the Planning Permission and approved plans prior to the Occupation of more than 9 (nine) of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council).
3. The Executors shall maintain the Landscaped Areas in accordance with the Landscape Maintenance Scheme approved in accordance with paragraph 1.1 of this Schedule and shall keep them maintained until such time as they are transferred to the Landscape Management Company **PROVIDED THAT** it is agreed that it shall be a term of the appointment of the Landscape Management Company that the transfer is on the condition that they shall manage and maintain the Landscaped Areas in accordance with the Landscape Maintenance Scheme.
4. As soon as reasonably practicable following the Occupation of the final Dwelling the Executors shall transfer the Landscaped Areas to the Landscape Management Company and notify the Council in writing within 5 (five) Working Days of the date that the transfer took place.
5. Not to wind up the Landscape Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council has otherwise first agreed in writing.
6. The written agreement of the Council shall be sought in the event the Landscape Management Company proposes to transfer the Landscaped Areas to another body or Landscape Management Company who is willing to accept the transfer on the condition details in paragraph 3 of this Schedule.

## SCHEDULE 6

### COUNCIL'S COVENANTS

1. The Council covenants with the Executors to use all sums received under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid and not to expend the sums for any other purposes and the Council shall (on the reasonable request of the payer or the payer's nominee) provide evidence that the monies have been so applied.
2. The Council shall pay to the Executors (or the payer if not the Executors or the Executors nominee) such amount of any payment made to the Council under this Agreement which has not been expended or allocated in accordance with the provisions of this Agreement within 10 (ten) years of the date of receipt by the Council of such payment or where payment is made in instalments the date of receipt of the final instalment together with Interest accrued from time to time for the period from the date of payment to the date of refund.
3. The Council will following receipt of the written request of the Executors at any time or times after any of the obligations in this Agreement have been discharged upon confirmation of same issue written confirmation thereof as soon as reasonably practicable and / or at any time after all of the obligations in this Agreement have been discharged or at any time after this Agreement ceases to have effect or if the Council receives notice from the Executors that the Planning Permission has expired or been quashed or revoked will upon confirmation of same thereafter cancel all relevant entries in the Register of Local Land Charges as soon as reasonably practicable.

IN WITNESS whereof this Agreement has been duly executed as a Deed by the parties the day and year first before written.

EXECUTED AS A DEED by affixing the  
Common Seal of THE COUNCIL OF  
THE BOROUGH OF AMBER VALLEY  
in the presence of:-



Mayor



Executive Director (resources)



12645(x1)

SIGNED AS A DEED

(but not delivered until dated) by

RICHARD BUNTING

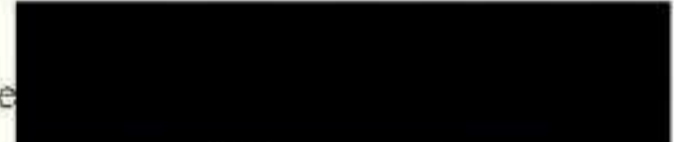
as Executor of the estate of the late

CYRIL BUNTING (deceased)

in the presence of:-



Witness's signature



Name (print): THOMAS BROSTER

Occupation: LAND AND TECHNICAL MANAGER

Address: 15 THE CROFT, ASHBY, LEICESTER, LE65 1FP

SIGNED AS A DEED

(but not delivered until dated) by

MARK BUNTING

as Executor of the estate of the late

CYRIL BUNTING (deceased)

in the presence of:-



Witness's signature:



Name (print): THOMAS BROSTER

Occupation: LAND AND TECHNICAL MANAGER

Address: 15 THE CROFT, ASHBY, LEICESTER, LE65 1FP

**EXECUTED AS A DEED** by  
**PEVERIL HOMES LIMITED**

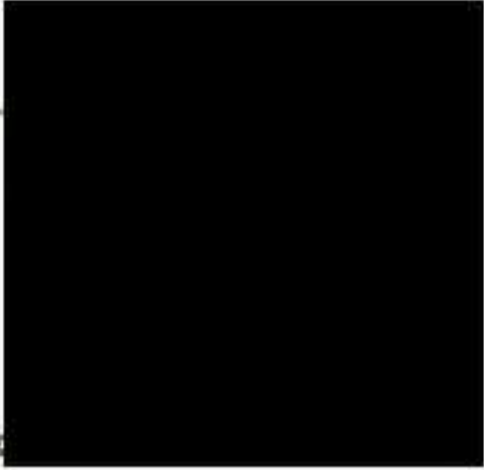
acting by two directors or a director and  
the company secretary:-



)

)

Director



Director/Secretary