

**Dated**

**2020**

**(1) THE COUNCIL OF THE BOROUGH OF AMBER VALLEY**

**(2) DERBYSHIRE COUNTY COUNCIL**

**(3) OMNIVALE LIMITED**

**(4) WHEELDON BROTHERS LIMITED**

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**Planning Obligations by Deed of Agreement under  
Section 106 of the Town and Country Planning Act 1990**

**Relating to Land at Woodside Farm, The Common, Crich, Derbyshire**

**Application Reference: AVA/2017/1363**

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THIS DEED is made the

day of

2020

**BETWEEN:**

1. **THE COUNCIL OF THE BOROUGH OF AMBER VALLEY** of Town Hall, Market Place, Ripley, Derbyshire DE5 3BT ("**the Council**");
2. **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, DE4 3AG ("**the County Council**");
3. **OMNIVALE LIMITED** (company registration number 03430446) whose registered office is situated at Manor House Farm, East Drayton, Retford, Nottinghamshire DN22 0LG ("**the Owner**"); and
4. **WHEELDON BROTHERS LIMITED** (Co. Regn. No. 02441153) whose registered office is situated at Wheeldon House, Prime Enterprise Park, Prime Park Way, Derby DE1 3QB ("**the 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 Site is situated.
- (2) The County Council is the education authority for the purposes of the Education Act 1996 and the county planning authority for the purposes of Section 106 of the 1990 Act in respect of the area within which the Site is situated.
- (3) The Owner is the freehold owner of the part of the Site registered at the Land Registry under title numbers DY315410 and DY348910.

- (4) The Developer has entered into an option agreement dated 22 November 2017 with the Owner to purchase the Site and has submitted the Planning Application to the Council for the proposed Development of the Site.
- (6) The Council has resolved to grant the Planning Permission subject to the prior completion of this Agreement.
- (8) The Owner and the Developer by entering into this Agreement do so to create planning obligations in respect of their interests in the Site in favour of the Council and County 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, and subject to any exclusions contained in, this Agreement.

**NOW THIS DEED WITNESSES** as follows:

**WORDS AND EXPRESSIONS**

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

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

**"Affordable Housing"** means:

- (a) housing provided to eligible households whose needs are not met by the market, eligibility being determined with regard to local

incomes and local house prices in accordance with Annex 2 of the National Planning Policy Framework (February 2019) published by the Ministry of Housing, Communities and Local Government (or any future guidance or initiative that replaces or supplements it from time to time); 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 Scheme”** means a scheme for the provision of Affordable Housing on the Site which has been submitted to and approved by the Council (subject to any variations that may be agreed in writing between the Council and the Owner from time to time) and which shall include details as to the type, location (by reference to plot numbers) and tenure of the Affordable Dwellings.

**“Affordable Housing Unit(s)”** mean those Dwellings being Social Rented Housing and Shared Ownership Housing to be provided on the Site in accordance with the provisions of Part 1 of Schedule 6.

**“Biodiversity Enhancement Area”** means the area of land within the Public Open Space Land immediately adjacent to the SSSI Buffer Zone shown indicatively hatched on Plan 2 being not less than 1,693 square

metres in area on which biodiversity enhancement measures are to be carried out and which shall include a mown pathway for users.

**“Chargee”** means any mortgagee or chargee of the Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or the successors in title to such mortgagee, chargee, receiver or manager.

**“Commencement of Development”** means beginning to carry out a material operation (as defined in Section 56(4) of the 1990 Act) on the Site pursuant to the Planning Permission **SAVE THAT** for the purposes of this Agreement but not further or otherwise the expression “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 and **“Commenced”** and **“Commence the Development”** shall be construed accordingly.

**“Completion”** means the date on which the construction of a Dwelling is completed and the Dwelling is available for Occupation.

**“Development”** means the development of the Site permitted by the Planning Permission.

**“Dwelling(s)”** means the dwellings to be constructed on the Site pursuant to the Planning Permission which expression includes the Market Dwellings and the Affordable Housing Units.

**“First Occupation”** means the date on which a Dwelling is first Occupied.

**“Healthcare Contribution”** means the financial contribution of £27,840.00 (Twenty Seven Thousand, Eighty Hundred and Forty Pounds) (as may be increased by Indexation) to be paid to the Council and used towards increasing capacity at Crich, Alfreton Park and Alfreton Limes GP Practices.

**“Homes and Communities Agency”** means the Homes and Communities Agency (operating as ‘Homes England’) or any successor to its functions 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).

**“Independent Valuer”** means an independent valuer being either a suitably qualified chartered surveyor of the Government Valuation Office or any successor department or an independent firm of private surveyors in either case to be appointed by the Council and the Owner jointly.

**“Indexation”** means any increase to (as the case may be) the Off-Site Affordable Housing Contribution, the Primary School Contribution or the Healthcare Contribution by the operation of Clause 7 of this Agreement.

**“Interest”** means interest at 2 per cent above the base lending rate of the Bank of England from time to time.

**“Land Drainage Scheme”** means a scheme containing details of the construction of the SUDS serving the Development (subject to any variations that may be agreed in writing between the Council and the Owner from time to time).

**“Management Company”** means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner and approved by the Council for the purposes of carrying out future maintenance of the Public Open Space Land and SUDS and:

- (a) which is incorporated in England and Wales; and
- (b) which has its registered office in England and Wales; and
- (c) whose primary object permit it to maintain and renew the Public Open Space and SUDS;

**“Management Company Fees”** means the aggregate of the Initial Management Company Fee and the Annual Management Company Fee paid to the Management Company by the Owner of each Dwelling in accordance with paragraph 2 of Schedule 4.

**“Market Dwelling(s)”** means any Dwelling constructed on the Site as part of the Development for sale on the open market which is not Affordable Housing.

**"Occupation"** 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"** and **"Occupied"** shall be construed accordingly.

**"Off-Site Affordable Housing Contribution"** means a financial contribution of £19,242.00 (Nineteen Thousand and Two Hundred and Forty Two Pounds) (as may be increased by Indexation) to be paid to the Council and used towards the provision of Affordable Housing within the vicinity of the Site.

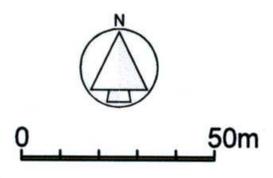
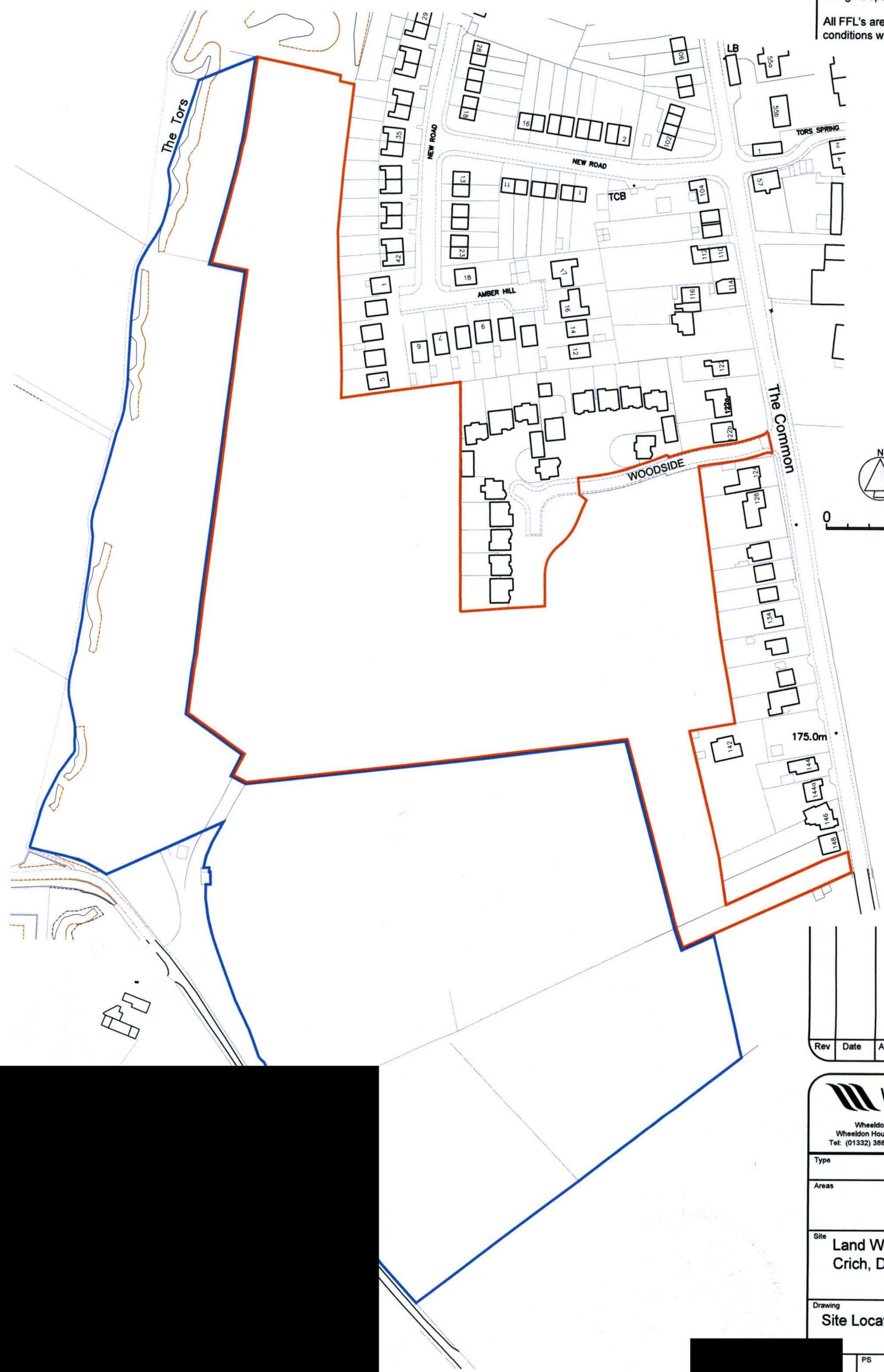
**"Plan 1"** means the plan attached hereto with drawing reference CR2/PL/01 showing the location of the Site.

**"Plan 2"** means the plan attached hereto with drawing reference CR2/PL/03 showing the proposed locations of the Public Open Space Land (including the Biodiversity Enhancement Area) and the SSSI Buffer Zone.

**"Planning Application"** means the application for planning permission validated by the Council on 18 December 2017 and allocated reference number AVA/2017/1363.

**"Planning Permission"** means the planning permission to be granted pursuant to the Planning Application together with (as the case may be)

**Notes**  
 Please refer to figured dimensions only.  
 All dimensions to be checked on site.  
 Report any discrepancy immediately to the Design Department before proceeding.  
 All FFL's are subject to alteration to site conditions within maximum  $\pm 0.5m$



Rev	Date	Amendments	By



Wheeldon Brothers Ltd. & Omnivale Ltd.  
 Wheeldon House, Prime Parkway, Derby DE1 3QB  
 Tel: (01332) 388 400 Fax: (01332) 388 401

Type

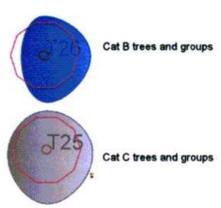
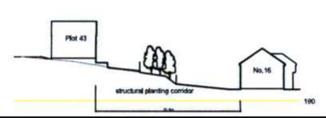
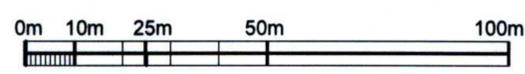
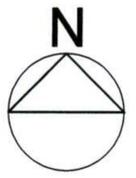
Areas

Site **Land West of The Common, Crich, Derbyshire.**

Drawing **Site Location Plan**

PS	BS	QS
December 2017		Scale 1:1250
CR2/PL/01		Rev

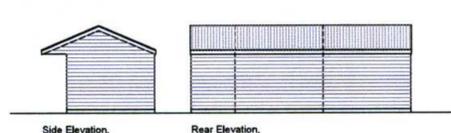
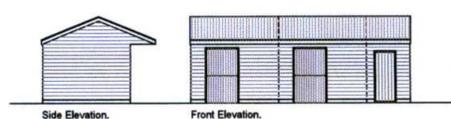
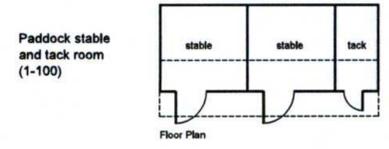
Notes



# Additional fenestration to increase natural surveillance (Secure by Design)  
\* BCP Bin Collection Point

- PROPOSED HOUSE WITH TYPE REFERENCE
- PRIVATE PARKING WITH PLOT NUMBER REFERENCE
- PATIO AND PATHS
- FRONT GARDEN LANDSCAPING
- PRIVATE REAR GARDENS
- INDICATIVE TREE PLANTING
- LAND NOT PUBLICLY ACCESSIBLE
- PUBLIC OPEN SPACE exceeds minimum requirement of 3248sqm

AFFORDABLE HOUSING  
Shared Equity plots 21-24 & 40-42  
Affordable Rented plots 7-11 & 16-20



Rev	Date	Amendments	By
J	28.11.19	Rumble strips to Lane 3 deleted, lane apron to paddock access reduced.	
I	22.11.19	Road 3 kerb level further enlarged to accommodate refuse truck turning following tracking check.	
H	20.11.19	General response for Highway Officer. Plots 25 & 26 rotated to face south and plot 27 rotated. Plot 2 & 38 corner type changed. Stable block relocated.	
G	14.10.19	Plots 11 and 10 changed from Rubble, Rumples to Paved (Part M42) hungarlock.	
F	06.09.19	Scheme reduced to 50 plots. Turning head later out of boundary line, paddock, stable and Heritage Pathway added.	
E	19.06.19	SSSII buffer extended north, and public open space amended.	
D	13.07.18	Layout amended following extensive liaison with OCC/Archaeology, Derbyshire Wildlife Trust and Amber Valley Planning Dept.	
C	13.02.18	Minor amendments to Planners request.	
B	06.02.18	Plots 50 and 72-75 moved to improve overlooking distances and garden layout.	
A	06.01.18	Site layout amended to Planners comments.	

**WHELDON**  
Wheeldon Brothers Ltd & Group  
Wheeldon House, Prime Parkway, Derby DE1 3JH  
Tel: (01332) 366 400 Fax: (01332) 366 401

Type: \_\_\_\_\_  
Area: \_\_\_\_\_  
Site: Land West of The Common, Crich, Derbyshire.

Drawing: Proposed Site Layout and Site Sections

Checked	FS	BS	GS
Date	December 2017	Scale	1:500 @ A0
Drawn	CRC/PL03	Rev	J

any non-material amendments made to it pursuant to Section 96A of the 1990 Act.

**“Play Area”** means the children’s play area to be provided within the Public Open Space Land in accordance with the Play Area Scheme.

**“Play Area Scheme”** means a scheme for the works comprising the construction of the Play Area including a specification of the play equipment to be provided thereon.

**“Play Area Works”** means the works to be carried out in accordance with the Play Area Scheme.

**“Practical Completion”** the issuing of a certificate of practical completion by the Owner’s contractor.

**“Primary School Contribution”** means a financial contribution of £134,497.92 (One Hundred and Thirty Four Thousand, Four Hundred and Ninety Seven Pounds and Ninety Two Pence) (as may be increased by Indexation) to be paid to the County Council and allocated to fund Fritchley Church of England (Aided) Primary and Nursery School to accommodate the primary age pupils generated by the Development .

**“Protected Tenant”** means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any similar statutory provision for the time being in force

(or any equivalent right) in respect of a particular Affordable Housing Unit;

- (b) has exercised any statutory right to buy (or any equivalent right) in respect of a particular Affordable Housing Unit; or
- (c) has been granted a shared ownership lease of a Shared Ownership Housing Unit by a Registered Provider or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit.

**“Public Open Space Land”** means the areas of land within the Site to be provided as public open space in the locations shown coloured light green on Plan 2 or in such other locations as may be agreed in writing between the Council and the Owner or Developer and which are to be managed and maintained by a Management Company.

**“Public Open Space Scheme”** means a scheme for the works comprised in the laying out and provision of the Public Open Space Land (including the Biodiversity Enhancement Area) which has been submitted to and approved in writing by the Council (subject to any variations that may be agreed in writing between the Council and the Owner from time to time).

**“Public Open Space Works”** means the works to be carried out to the Public Open Space Land (including the Biodiversity Enhancement Area) in accordance with the Public Open Space Scheme.

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

**“Shared Ownership Housing”** means an Affordable Housing Unit provided for ‘part buy’ and ‘part rent’ where the owner purchases a minimum of 25% share of the property and pays subsidised rent on the remaining share of the property charged at 80% or less of the open market rent for the area for the size and type of property in question with the owner having the option to purchase the rented share of the property to ‘staircase’ up to full ownership and **“Shared Ownership Housing Unit(s)”** shall be construed accordingly.

**“Site”** means the land against which this Deed may be enforced being land at Woodside Farm, The Common, Crich, Derbyshire registered at the Land Registry under title numbers DY315410 and DY348910 and shown (for the purposes of identification only) edged red on Plan 1.

**“Social Rented Housing”** means housing that is owned by local authorities and/or Registered Providers for which guideline target rents

are determined through the national rent regime together with those owned by other persons and provided under equivalent rental arrangements to those entered into by local authorities and Registered Providers as agreed with the Council or with the Homes and Communities Agency and **“Social Rented Housing Unit(s)”** shall be construed accordingly.

**“SSSI Buffer Zone”** means the area of land shown indicatively coloured dark green on Plan 2 to be provided as a buffer zone and wildlife corridor without public access.

**“SSSI Buffer Zone Maintenance Sum”** means a sum of £20,000.00 (Twenty Thousand Pounds) to be paid by the Owner to the Management Company in accordance with paragraph 2 of Schedule 4 and used towards the management and maintenance of the SSSI Buffer Zone.

**“SUDS”** means the sustainable drainage system to be provided for the disposal of surface water and foul sewage from the Development in accordance with the Land Drainage Scheme together with all necessary ancillary and associated works.

**“SUDS Management Plan”** means a plan setting out details of the proposed future management and maintenance of the SUDS (subject to any variations that may be agreed in writing between the Council and the Owner from time to time).

**“Working Days”** means Mondays to Fridays (excluding days that in England and Wales are public holidays) inclusive.

1.2 Where the context so requires:

- (a) clause headings and contents list are for reference only and shall not affect the construction of this Agreement;
- (b) where more than one person is included in the expressions **“the Council”**, **“the County Council”**, **“the Developer”** or **“the Owner”** then 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 comprising the relevant party jointly and severally;
- (c) any covenant by the Owner and the Developer 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;
- (d) the masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa;
- (e) 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

- (f) 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.

### **STATUTORY PROVISIONS**

2. This Agreement:

- 2.1. 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 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;
- 2.2. is a planning obligation for the purposes of the Section 106 of the 1990 Act;
- 2.3. is given with intent to bind the Owner and its freehold interest in the Site subject to the provisions of this Agreement and no obligation or provision in this Agreement shall be enforceable against the Owner unless it has an interest in the part of the Site to which the obligation or provision relates;
- 2.4. shall be enforceable by the Council and County Council as local planning authorities; and

2.5. is executed by the parties hereto as a deed.

### **CONDITIONALITY**

3. This Agreement is conditional upon:

3.1.1 the grant of the Planning Permission pursuant to the Appeal; and

3.1.2 Commencement of Development

SAVE FOR the provisions of Clauses 4.1 (to the extent that it brings into effect paragraphs 3 and 4 of Schedule 1 only) 4.2, 4.3, 5, 6, 9, 10, 11 and 12 which shall come into effect immediately upon completion of this Agreement.

### **COVENANTS**

4.1 The Owner covenants that it will comply with the obligations contained in Schedules 1 to 7 (inclusive).

4.2 The Developer consents to the entering into of this Agreement by the Owner and covenants with the Council and (where appropriate) the County Council to comply with the obligations set out in Schedules 1 to 7 (inclusive) upon acquiring the freehold or a leasehold interest in any part of the Site.

4.3 The Developer covenants to pay the Council's and the County Council's costs as set out in Schedule 1.

- 4.4 The Council covenants with the Owner and the Developer to comply with the covenants contained in Schedule 8.
- 4.5 The County Council covenants with the Owner and the Developer to comply with the covenants contained in Schedule 9.

### **AGREEMENTS AND DECLARATIONS**

- 5.1 Subject to compliance with Clause 6, no person shall be liable for any breach of the restrictions and obligations contained in this Agreement after that person has parted with all of its interest in the 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.
- 5.2 No owner-occupiers or tenants of any of the Dwellings shall be treated as a person deriving title from the Owner for the purposes of Section 106(3) of the 1990 Act.
- 5.3 No person shall be liable for any breach of the covenants contained in this Agreement if he or it shall be an occupier or tenant or a purchaser of land required for the purposes of a statutory undertaker or utility.
- 5.4 This Agreement shall not be binding upon:

- (a) any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees;
  - (b) any Chargee; or
  - (c) any purchaser of an individual Affordable Housing Unit from a mortgagee or chargee pursuant to any default by the individual mortgagor or chargor.
- 5.5 Nothing in this Agreement 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 Agreement.
- 5.6 In this Agreement the expressions **“the Owner”**, **“the Council”**, **“the County Council”** and **“Developer”** shall where the context so admits be deemed to include their respective successors in title and assigns and the expressions **“the Council”** and **“the County Council”** shall include any successors to their respective statutory functions.
- 5.7 This Agreement 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.
- 5.8 Nothing in this Agreement shall be construed as restricting the exercise by the Council or County 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 or County Council's rights, powers, duties and obligations in any capacity as a local or public authorities.

5.9 Wherever this Agreement (including any provisions of the Schedules hereto) requires the approval, agreement, determination or consent of the Council or the County Council such approval, agreement, determination or consent shall not be unreasonably withheld or delayed.

5.10 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.

5.11 This Agreement constitutes the entire agreement between the parties in respect of the Planning Permission.

5.12 Insofar as any clauses of this Agreement 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.

5.13 In the event that an application is made pursuant to Section 73 of the 1990 Act to carry out the Development without complying with a condition or conditions attached to the Planning Permission and a planning permission is granted in respect of that application then references to the "*Planning Permission*" in this Deed shall be deemed to also be references to that new planning permission and (without prejudice to the Council's and County Council's discretion to require additional or modified planning obligations to be secured in order to make the development authorised by any new planning permission acceptable in planning terms) this Deed shall apply to and remain in full force in respect of that new

planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.

### **CHANGE IN OWNERSHIP**

6. The Owner agrees with the Council to give to the Council written notice within 15 Working Days of any change in ownership in any of its interests in the 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 Site or unit of occupation purchased by reference to a plan **PROVIDED THAT** it is agreed that the provisions of this Clause 6 will not apply to individual disposals of Dwellings.

### **INDEXATION**

7. The Off-Site Affordable Housing Contribution, Primary School Contribution and Healthcare 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:
  - (1) "Index" means in the case of the Primary School Contribution the All in Tender Price Index of the Building Cost Information Service as published by the Royal Institute of Chartered Surveyors and in the case of the Off-

Site Affordable Housing Contribution and Healthcare Contribution the "all items" figures of the All Items Index of Retail Prices; and

- (2) "Base Figure" is the next Index figure published after 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 each such contribution shall be agreed between the Council or the County Council (as appropriate), the Developer and the Owner to ensure as nearly as possible that such shall fluctuate 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 11.

#### **INTEREST**

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

#### **REGISTRATION**

9. This Agreement shall be registered by the Council as a local land charge in the Register of Local Land Charges maintained by the Council **PROVIDED THAT** following the performance and satisfaction of all the obligations contained in this

Agreement the Council shall as soon as reasonably practicable effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

### **NOTICES**

10. 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, facsimile transmission 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 County Council in respect of education matters should be addressed to the Executive Director of Children's Services.

### **DISPUTE PROVISIONS**

11. (a) In the event of any dispute or difference arising between any of the parties to this Agreement in respect of any matter contained in this Agreement which cannot be resolved by prior agreement between the said parties then such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications ("the Expert") to be appointed (in the absence of an agreement) by or on behalf of the president

for the time being of the professional body chiefly relevant in England with experience of resolving such matters as may be in dispute and the Expert shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares.

(b) In the absence of an agreement as to the appointment or suitability of the Expert to be appointed pursuant to Clause 11(a) or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his 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.

(c) The Expert shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days after the conclusion of any hearing that takes place or 20 Working Days after he has received any file or written representation.

- (d) The Expert shall be required to give notice to each of the parties to the dispute requiring them to submit to him within 10 Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter submission within a further 10 Working Days.

### **JURISDICTION**

12. This Agreement is governed by and interpreted in accordance with the law of England and Wales as it applies in England.

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

## **SCHEDULE 1**

### **GENERAL COVENANTS**

In addition to the specific covenants set out in the following Schedules the Owner covenants with the Council and County Council:

1. To notify the Council and County Council in writing no less than 5 Working Days prior to:
  - (i) the date of the Commencement of Development;
  - (ii) the date of First Occupation of any of the Dwellings.
2. To observe all restrictions and perform all obligations contained in this Agreement.
3. To pay to the Council on completion of this Agreement the sum of £1,000.00 (One Thousand Pounds) in respect of the Council's reasonable legal costs properly incurred in the negotiation, preparation and execution of this Agreement.
4. To pay to the County Council on completion of this Agreement the sum of £1,000.00 (One Thousand Pounds) in respect of the County Council's reasonable legal costs properly incurred in the negotiation, preparation and execution of this Agreement.
5. Upon Commencement of Development to pay to the Council the sum of £100.00 (One Hundred Pounds) in respect of the Council's reasonable costs in

monitoring compliance with the planning obligations contained in this Agreement.

## **SCHEDULE 2**

### **EDUCATION**

The Owner covenants with the County Council:

1. to pay the Primary School Contribution to the County Council in two equal instalments with the first instalment payable upon Occupation of 50% of the Dwellings and the second instalment payable upon Occupation of 80% of the Dwellings;
2. that no more than 50% of the Dwellings shall be Occupied unless and until the first instalment of the Primary School Contribution is paid to the Council in accordance with paragraph 1 above; and
3. that no more than 80% of the Dwellings shall be Occupied unless and until the second instalment of the Primary School Contribution is paid to the Council in accordance with paragraph 1 above.

### **SCHEDULE 3**

#### **HEALTHCARE**

The Owner covenants with the Council:

1. to pay the Healthcare Contribution to the Council in two equal instalments with the first instalment payable upon Completion of 50% of the Market Dwellings and the second instalment payable upon Completion of 80% of the Market Dwellings;
2. that no more than 50% of the Market Dwellings shall be Occupied unless and until the first instalment of the Healthcare Contribution is paid to the Council in accordance with paragraph 1 above; and
3. that no more than 80% of the Market Dwellings shall be Occupied unless and until the second instalment of the Healthcare Contribution is paid to the Council in accordance with paragraph 1 above.

## SCHEDULE 4

### **FORMATION / NOMINATION AND FUNDING OF THE MANAGEMENT COMPANY**

The Owner covenants with the Council:

1. Not to Commence the Development unless and until:
  - (a) details of the proposed Management Company including its directors, officers and membership and the mechanism of funding the Management Company to carry out the management and maintenance of the Public Open Space Land and the SUDS have been submitted to and approved in writing by the Council;
  - (b) the Management Company has been properly constituted or nominated (as relevant) by the Owner in accordance with the details approved pursuant to sub-paragraph (a) above;
  - (c) the Management Company has entered into a written agreement on reasonable terms with the Council covenanting:
    - (i) not to wind up the Management Company or materially alter its constitution without the prior written agreement of the Council; and
    - (ii) to maintain the Public Open Space Land and/or (as the case may be) to manage and maintain the SUDS in accordance with the SUDS Management Plan.
  
2. The Owner shall procure that:

- 2.1 upon completion of the sale of each Dwelling the owner of the Dwelling shall pay the sum of £200.00 (Two Hundred Pounds) to the Management Company ("**the Initial Management Company Fee**"); and
- 2.2 the owner of each Dwelling from time to time shall upon receipt of an invoice from the Management Company pay a subsequent management fee of no less than £150.00 (One Hundred and Fifty Pounds) to the Management Company on an annual basis ("**the Annual Management Company Fee**").

## **SCHEDULE 5**

### **OPEN SPACE, PLAY AREA & SSSI BUFFER ZONE**

#### **Part 1 – Provision and Transfer of Public Open Space Land**

The Owner covenants with the Council as follows:

1. No Dwelling shall be Occupied unless and until the Public Open Space Scheme has been submitted to and approved in writing by the Council.
2. No more than 50% of the Dwellings shall be Occupied unless:
  - (a) the Public Open Space Works have been carried out on the Public Open Space Land (including the Biodiversity Enhancement Area) in accordance with the approved Public Open Space Scheme to the reasonable satisfaction of the Council; and
  - (b) an agreement for the transfer of the freehold interest in the Public Open Space Land to the proposed Management Company on terms which accord with paragraphs 3 and 4 of this Schedule and that require the Management Company to maintain the Public Open Space Land has been entered into between the Owner and the Management Company.
3. The Owner shall transfer the Public Open Space Land to the Management Company and such transfer shall contain the grant of all rights of access, passage of services and other rights reasonably necessary for the beneficial enjoyment of the Public Open Space Land and the reservation of such rights and easements for the benefit of the Site and/or any adjoining land retained by the

Owner as are reasonably necessary and required in connection with the Development and/or the Owner's retained land.

4. Upon completion of the transfer of the Public Open Space Land to the Management Company, the Management Company shall use reasonable endeavours to maintain and manage the Public Open Space Land in a clean and tidy condition using part of the Management Company Fees.

### **Part 2 – Provision of Play Area**

The Owner covenants with the Council:

1. No Dwelling shall be Occupied unless and until the Play Area Scheme has been submitted to and approved in writing by the Council;
2. No more than 25% of the Dwellings shall be Occupied unless the Owner has carried out the Play Area Works in accordance with the approved Play Area Scheme.

### **Part 3 – Transfer of SSSI Buffer Zone**

The Owner covenants with the Council:

- (a) To complete a transfer of the SSSI Buffer Zone to the Management Company no later than First Occupation of any of the Dwellings, such transfer to contain the grant of all rights of access, passage of services and other rights reasonably necessary for the beneficial use of the SSSI Buffer Zone and the reservation of such rights and easements for the benefit of

the Site and/or any adjoining land retained by the Owner as are reasonably necessary and required in connection with the Development and/or the Owner's retained land;

- (b) To pay the SSSI Buffer Zone Maintenance Sum to the Management Company upon the transfer of the SSSI Buffer Zone to the Management Company in accordance with paragraph (a) above;
- (c) Following completion of the transfer of the SSSI Buffer Zone to the Management Company, the Management Company shall use reasonable endeavours to maintain and manage the SSSI Buffer Zone in a clean and tidy condition, including carrying out any repairs to the fencing along the boundary thereof and any re-planting considered to be necessary by the Management Company, using the SSSI Buffer Zone Maintenance Sum initially and following the expenditure of the SSSI Buffer Zone Maintenance Sum using part of the Management Company Fees in respect of all future management and maintenance.

**SCHEDULE 6**  
**AFFORDABLE HOUSING**

The Owner covenants with the Council as follows:

**Part 1 – Provision of On-site Affordable Housing**

1. The Development shall not be Commenced until:
  - (d) the Owner has submitted to the Council for approval an Affordable Housing Scheme which:-
    - (i) provides for 17 (Seventeen) of the Dwellings to be provided as Affordable Housing;
    - (ii) provides for no less than 10 (Ten) of the Affordable Housing Units to be Social Rented Housing and no more than 7 (Seven) of the Affordable Housing Units to be Shared Ownership Housing; and
    - (iii) sets out a timetable for the construction of the Affordable Housing Units which shall provide for Completion of the Affordable Housing Units no later than Completion of 80% of the Market Dwellings.
2. The Affordable Housing Units shall be located and constructed in accordance with the Affordable Housing Scheme unless otherwise agreed in writing between the Council and the Owner.
3. The Affordable Housing Units shall not be disposed of other than by way of a freehold transfer (or transfers) to a Registered Provider nominated by the Owner.

4. The Owner shall ensure that any transfer of the Affordable Housing Units to a Registered Provider shall include the following:-
  - (a) the grant by the Owner to the Registered Provider of all rights of access and passage of services and other rights of entry reasonably necessary for the benefit of the Affordable Housing Units; and
  - (b) a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the benefit of the Market Dwellings.
5. Subject always to the provisions of paragraph 5 below the Owner covenants that from the date of Completion of the Affordable Housing Units shall not be disposed of otherwise than as Affordable Housing.
6. In the event that the Registered Provider referred to in paragraph 2 above declines or is unable to accept the transfer of some or all of the Affordable Housing Units on the terms of this Agreement or insufficient progress is being made towards exchange of contracts with the Registered Provider for the transfer of some or all of the Affordable Housing Units within a period of 3 months from the date of an offer to the Registered Provider:
  - (a) the Owner shall give written notice to the Council and the Owner may nominate an alternative Registered Provider or Registered Providers with any such nomination to be made within 10 Working Days of the service of such notice; and
  - (b) the Owner shall offer to enter into negotiations with the alternative Registered Provider or Registered Providers for the transfer to it of the

Affordable Housing Units (or any individual Affordable Housing Units that have not been transferred or may not have already been contracted to be sold to a Registered Provider) and the restriction on Occupation in paragraph 1(a)(iii) above shall cease to apply.

## **Part 2 – Payment of Off-Site Affordable Housing Contribution**

The Owner covenants with the Council:

1. to pay the Off-Site Affordable Housing Contribution in two equal instalments with the first instalment payable upon Completion of 50% of the Market Dwellings and the second instalment payable upon Completion of 80% of the Market Dwellings;
2. that no more than 50% of the Market Dwellings shall be Occupied unless and until the first instalment of the Off-Site Affordable Housing Contribution is paid to the Council in accordance with paragraph 1 above; and
3. that no more than 80% of the Market Dwellings shall be Occupied unless and until the first instalment of the Off-Site Affordable Housing Contribution is paid to the Council in accordance with paragraph 1 above.

## **SCHEDULE 7**

### **DRAINAGE**

The Owner covenants with the Council:

1. Not to Commence the Development unless and until the SUDS Management Plan has been submitted to and approved by the Council.
2. No more than 50% of the Dwellings shall be Occupied unless:
  - (a) the SUDS has been constructed to the reasonable satisfaction of the Council;
  - (b) an agreement for the transfer of the freehold interest in the SUDS to the proposed Management Company on terms which accord with paragraph 3 of this Schedule and that require the Management Company to maintain the SUDS has been entered into between the Owner and the Management Company;
  - (c) arrangements have been put in place to the reasonable satisfaction of the Council to ensure that the Management Company is funded in accordance with the details approved by the Council pursuant to Schedule 4.
3. To ensure that the SUDS from the time of its Practical Completion is maintained in accordance with the SUDS Management Plan (subject to any variations thereof agreed in writing between the Council and the Owner from time to time) and to keep the SUDS maintained in accordance with the SUDS Management

Plan until such time as it is transferred to a Management Company in accordance with paragraph 4 of this Schedule.

4. The Owner shall transfer the SUDS to the Management Company and such transfer shall contain the grant of all rights of access, passage of services and other rights reasonably necessary for the use and maintenance of the SUDS and the reservation of such rights and easements for the benefit of the Site and/or any adjoining land retained by the Owner as are reasonably necessary and required in connection with the Development and/or the Owner's retained land.
5. Upon completion of the transfer of the SUDS to the Management Company, the Management Company shall manage and maintain the SUDS in accordance with the SUDS Management Plan (subject to any variations thereof agreed in writing between the Council and the Owner from time to time).

## **SCHEDULE 8**

### **COUNCIL'S COVENANTS**

The Council covenants with the Owner and the Developer:

1. 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.
2. To pay to the person who paid any sum to the Council under this Agreement any part of the payment which has not been expended or allocated in accordance with the provisions of this Agreement within five years of the date of receipt by the Council of such payment together with all interest actually accrued for the period from the date of receipt by the Council to the date of refund.
3. To provide to the Owner and the Developer such evidence as the Owner and/or the Developer shall reasonably require in order to confirm the expenditure of the sums paid to the Council under this Agreement.
4. Following receipt of a written request from the Owner or the Developer at any time or times after any of the obligations in this Agreement have been discharged, to 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 Owner or the Developer 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.

## **SCHEDULE 9**

### **COUNTY COUNCIL'S COVENANTS**

The County Council covenants with the Owner and the Developer:

1. 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 except that it may use public funds to carry out works in advance of receiving the monies and may then apply any monies received to offsetting the amount spent from public funds.
2. To pay to the person who paid any sum to the County Council under this Agreement such part of any such payment which has not been expended or allocated in accordance with the provisions of this Agreement within ten years of the date of receipt by the County Council of such payment together with all interest actually accrued for the period from the date of receipt by the County Council to the date of refund.
3. To provide to the Owner and the Developer such evidence as the Owner and/or the Developer shall reasonably require in order to confirm the expenditure of the sums paid to the County Council under this Agreement.
4. For the avoidance of doubt, for the purposes of paragraph 2 of this Schedule, the Primary School Contribution shall be deemed to have been committed if the County Council has entered into any contract or given any undertaking (whether

enforceable in law or otherwise) the performance or fulfilment of which will require the County Council to expend funds in the future.

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



12649(2)

Mayor



Executive Director (Resources)

**EXECUTED AS A DEED** by affixing the )  
Common Seal of **DERBYSHIRE** )  
**COUNTY COUNCIL** )  
in the presence of:-



Authorised signatory

*H* Director of Legal Services

Number in Seal  
Book

2020/114

**EXECUTED as a DEED by** )  
**OMNIVALE LIMITED** )

acting by:-

Signature:

Capitals:

**Director**

Signature:

Capitals:

**Director / Secretary**

**EXECUTED as a DEED by** )  
**WHEELDON BROTHERS** )

**LIMITED** acting by:-

Signature:

Capitals:

**Director**

Signature:

Capitals:

**Director / Secretary**