

Dated 7th February 2019/20

AMBER VALLEY BOROUGH COUNCIL

-and-

DERBYSHIRE COUNTY COUNCIL

-and-

JOHN MOSLEY AND VALERIE ELIZABETH MOSLEY

-and-

WATERS HOMES LIMITED

PLANNING OBLIGATION BY WAY OF AGREEMENT

**under Section 106 of the Town and Country Planning Act 1990
relating to land south of Wingfield Road, Alfreton
AVA/2018/0978**

THIS DEED is made the 7th day of February 2019 20

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF AMBER VALLEY** of Town Hall, Market Place, Ripley, Derbyshire DE5 3BT ("the Council"); and
2. **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, Derbyshire DE4 3AG ("the County Council"); and
3. **JOHN MOSLEY AND VALERIE ELIZABETH MOSLEY** of 513 New Street, Hilcote, Alfreton DE55 5HU ("the Owner")
4. **WATERS HOMES LIMITED** (Company Registration Number 04111665) whose registered office is situated at Charnwood Accountants & Business Advisors LLP Granite Way Mountsorrel Loughborough Leicestershire LE12 7TZ ("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 Land is situated and is the authority by whom the planning obligations hereby created are enforceable.
- (2) The County Council is the county planning authority in respect of the area within which the Land is situated.
- (3) Both the Council and the County Council are therefore local planning authorities for the purposes of Section 106 of the 1990 Act for the area in which the Land is situated.
- (4) The County Council is also the education authority for the purposes of the Education Act 1996 for the area in which the Land is situated.
- (5) The Owner is the freehold owner of the Land registered at HM Land Registry under title number DY447207.
- (6) The Developer has an interest in the Land by way of an option agreement dated 28 September 2018
- (7) The Application has been submitted to the Council for the Development.

- (8) The Council has resolved to grant the Planning Permission provided that the Owner enters into this Agreement.
- (9) The Owner has agreed to enter into this Agreement so as to create planning obligations in respect of the Land in favour of the Council and the 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.

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:

"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 the National Planning Policy Framework 2019 (or any future guidance or initiative that replaces or supplements it); 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 relating to the provision of the Affordable Dwellings on the Land which has been

approved in writing by the Council and providing details of the following:

1. the location of the Affordable Dwellings on the Land by reference to a plan;
2. the house types, mix (which will comprise 1, 2 and 3 bed units only) and specification of each Affordable Dwelling;
3. the mix of tenure of the Affordable Rented Housing and the Intermediate Housing;
4. the layout of each Affordable Dwelling by reference to it being Intermediate Housing and Affordable Rented Housing and including the number of habitable rooms proposed for each Affordable Dwelling, together with the gross internal floorspace of each of the Affordable Dwellings;
5. how the Affordable Dwellings will be allocated to Eligible Persons including details of the order or priority in which Eligible Persons will be allocated that Affordable Dwelling and the qualifying criteria potential occupants must meet in order to qualify as an Eligible Person,

PROVIDED THAT the Affordable Housing Scheme may (at the absolute discretion of the Council) be varied by agreement between the Owner and the Council;

"Affordable Dwellings"

means 30% of the Dwellings to be provided as Affordable Housing comprising 75% Affordable Rented Housing and 25% Intermediate Housing (unless otherwise agreed in writing with the Council)

and "**Affordable Dwelling**" shall be construed accordingly;

"Affordable Rented Housing"

means affordable housing for rent which meets all the following conditions:

- (a) the rent is set in accordance with the Government's Rent Policy for Social Rent or Affordable Rent or is at least 20% below market rents (including service charges where applicable);
- (b) the landlord is a Registered Provider; and
- (c) it includes provision to remain at an affordable price for future Eligible Persons, or for the subsidy to be recycled for alternative affordable housing provision

"Application"

means the application for outline planning permission for the Development (with all matters reserved except access) made by or on behalf of the Owner registered by the Council on 3 October 2018 under reference AVA/2018/0978;

"Certificate of Practical Completion"

means a certificate in respect of the On Site Public Open Space issued in accordance with the provisions of paragraph 3 of Schedule 4 to this Agreement

"Certificate of Final Completion"

means a certificate in respect of the On Site Public Open Space issued in accordance with the provisions of paragraph 5 of Schedule 4 to this Agreement

"Chargee"

means any mortgagee or chargee of the Affordable Dwellings or the successors in title to such mortgagee or chargee or any receiver or manager

(including an administrative receiver) appointed pursuant to the Law of Property Act 1925

"Children's Play Area"

means an equipped children's play facility of 500 square metres which is to be provided as part of the Development unless paragraph 12 of Schedule 4 applies

"Commencement of 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, diversion and laying of services, 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 **"Commence Development"** and **"Commence"** and **"Commenced"** shall be construed accordingly;

"Completed"

means the stage when a Dwelling can be used for the purpose and operate in the manner for which it was designed and fitted out so that it is available for Occupation;

"Development"

means the residential development of the Land for up to 40 dwellings pursuant to the Planning Permission;

"Dwellings"

means all dwellings to be constructed on the Land as part of the Development pursuant to the Planning Permission to include the Market Dwellings and the

Affordable Dwellings and "**Dwelling**" shall be construed accordingly;

"Education Contribution"

means either:

- (a) in the event that Reserved Matters Approval is granted for a total of 40 (forty) Dwellings the sum of £80,938.20 (eighty thousand nine hundred and thirty eight pounds and twenty pence); or
- (b) in the event that Reserved Matters Approval is granted for a total of less than 40 (forty) Dwellings a sum calculated in accordance with the following formula:

$$A \times B = C$$

where:

A = the number of dwellings to be constructed in accordance with the Reserved Matters Approval

B = £2,023.46 (Two Thousand and Twenty Three Pounds and Forty Six Pence)

C = Education Contribution

such sum to be paid to the County Council and used by the County Council in accordance with Schedule 3 to this Agreement;

"Eligible Person"

means a person and (where relevant) their household who are in need of Affordable Housing as may be further defined by the Affordable Housing Scheme and "**Eligible Persons**" shall be construed accordingly;

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|------------------------------------|--|
| "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); |
| "Inspection Fee" | means the reasonable and proper costs incurred by the Council for inspecting the On Site Public Open Space in accordance with paragraphs 3 and 5 of Schedule 4 to this Agreement; |
| "Interest" | means interest at 4 per cent above the base lending rate of the Bank of England from time to time; |
| "Intermediate Housing" | means homes for sale and rent provided at a cost above social rent but below market levels subject to the criteria as set out in the definition of Affordable Housing to include shared equity (shared ownership and equity loans) starter homes for first time buyers other low cost homes for sale and intermediate rent and "Intermediate Housing Unit(s)" shall be construed accordingly; |
| "Land" | means the land to the south of Wingfield Road, Alfreton shown for the purposes of identification only edged red on the Plan; |
| "Maintenance Period" | means a period of not less than 12 months which commences upon the issue of the Certificate of Practical Completion |
| "Maintenance Specification" | means a detailed written scheme for the future long-term management and maintenance of the On Site Public Open Space (including the Children's Play Area) which shall include the following: |

- (a) frequency of maintenance;
- (b) measures to replace any trees shrubs or turf which may die or become diseased following implementation of the Maintenance Specification;
- (c) measures to maintain and repair hardstanding, facilities, equipment and means of enclosure and the standard of maintenance and repair to be achieved; and
- (d) public access arrangements

"Market Dwellings"

means those Dwellings constructed on the Land as part of the Development which comprise general market housing for sale on the open market and which are not Affordable Dwellings and **"Market Dwelling"** shall be construed accordingly;

"Market Value"

means a figure to be agreed between the Owner and the Council calculated having regard to the estimated amount for which a relevant Dwelling should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion and based upon evidence of sales of Market Dwellings of a similar type/size to those on the Land;

"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 Public Open Space Contribution"

means (in the event that paragraph 9 of Schedule 4 is applicable) a financial contribution to be calculated in accordance with the formula set out in paragraph 10 of Schedule 4 to this Agreement

"On Site Public Open Space"

means the areas of the Land which are to be provided as public open space as part of the Development which shall comprise 56 square metres of open space per Dwelling including the Children's Play Area of 500 sq.m (unless paragraph 9 of Schedule 4 and/or paragraph 12 of Schedule 4 apply)

"On Site Public Open Space Scheme"

means a written scheme to be submitted by the Owner to the Council and approved by the Council which shall set out, *inter alia*, details of the laying out and landscaping of the On Site Public Open Space, the timetable for such works, the Maintenance Specification and the details of the proposed Open Space Management Company which shall include:

- (a) full details of its memorandum and articles of association so that any profits are retained and applied to the maintenance of the On Site Public Open Space in accordance with the Maintenance Specification; and
- (b) details on the mechanisms that will be used by the Open Space Management Company to ring fence any funds paid to the Open Space Management Company for use solely in relation to the management and maintenance of the On Site Public Open

Space in accordance with the Maintenance Specification

"Open Space Management Company"

means a limited company registered at Companies House and formed for the purposes of carrying out maintenance of the On Site Public Open Space and which has been approved by the Council;

"Plan"

means the plan marked "Plan" annexed hereto;

"Planning Permission"

means a planning permission to be granted by the Council pursuant to the Application and shall include any Section 73 Permission and any non-material amendments pursuant to Section 96A of the 1990 Act;

"Play Area Contribution"

means (in the event that paragraph 12 of Schedule 4 is applicable) the sum of £18,236.40 (eighteen thousand two hundred and thirty six pounds and forty pence) to be paid by the Owner to the Council in lieu of an on-site equipped play area within the Development to be used by the Council towards procuring improvements to Watchorn Recreation Ground Equipped Play Area, Ewart Lane, Alfreton;

"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 Owner and approved by the Council;

"Reserved Matters"

means appearance, landscaping, layout and scale as defined by Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 and "Reserved Matter" shall be construed accordingly;

| | |
|--------------------------------------|--|
| "Reserved Matters Approval" | means the approval or approvals pursuant to the Planning Permission of the Reserved Matters for the Development; |
| "Section 73 Permission" | means a planning permission granted pursuant to an application under Section 73 of the 1990 Act and made in respect of the Development and the Planning Permission; |
| "Sub-Market Price" | means the price equal to the Market Value of a Market Dwelling less a discount equal to 20% of the Market Value at the date an Affordable Dwelling is transferred to an Eligible Person; |
| "SuDs Management Company" | means a limited company registered at Companies House formed for the purposes of carrying out ongoing maintenance of the Sustainable Drainage System and which has been approved by the Council; |
| "Sustainable Drainage Scheme" | means a scheme which has been approved in accordance with Paragraph 1 to Schedule 5 of this Agreement |
| "Sustainable Drainage System" | means a system for the provision of sustainable drainage for the Development which has been approved as part of the Sustainable Drainage Scheme |
| "Utilities" | means gas water electricity telephone foul drainage surface water drainage (including such legal rights as the County Council considers necessary for the discharge of surface water over adjoining land) and ducting for broadband with appropriate rights to use all relevant delivery infrastructure; |

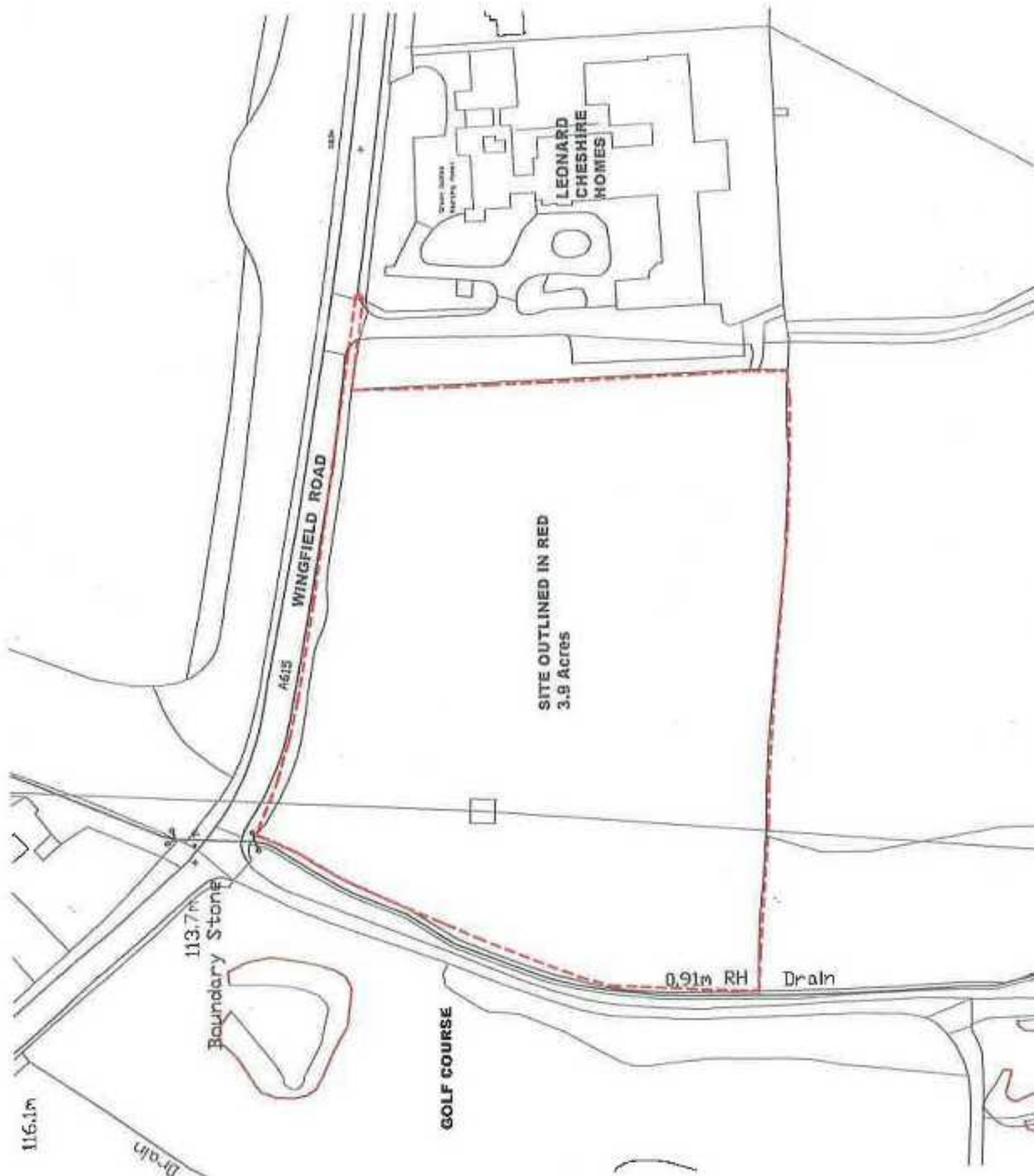
CDM Regulations 2015

It is the client's duty to make suitable arrangements for managing a project, including the allocation of sufficient time and other resources.

The client must:

- Provide a clear brief including how H&S will be managed, the project, budget, timescale & contractual requirements.
- Appoint Principal Designer (PD) & ensure they provide a pre-construction HSE file. The client must also ensure the appropriate PD duties are allocated to the PD.
- Appoint a Principal Contractor (PC). The client must take reasonable steps to ensure the PC complies with any other PD duties.
- Ensure the Construction H&S file is provided to every designer and contractor throughout the works & is reviewed regularly & available for inspection.
- Ensure suitable welfare facilities are available throughout the construction phase & that the principal contractor's construction phase plan is in place prior to construction phase and is maintained throughout construction work.

FOR THE OUTSTANDING RISKS PLEASE SEE "P.D.'S DESIGNER'S RISK ASSESSMENT REGISTER" WITHIN THE PRE-CONSTRUCTION HSE FILE.



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Revision / Date / Notes

Pelham Architects

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T: 020 7463 1234, F: 020 7463 1235
www.pelhamarchitects.co.uk

Scale

Page

WINGFIELD ROAD

WATERS HOMES ALFRETON- DESS TAN

SITE O.S. Existing

2445/P100

DATE 1:1250 @ A3

DATE 21/07/17

DESIGNED BY SH

DRAWN BY MP

Design submitted to Planning Authority for approval. The design is subject to the Planning Authority's decision. The design is not to be used for any other purpose without the written consent of Pelham Architects.

| | |
|----------------------|---|
| "Working Day" | means any day except a Saturday, Sunday or any public holiday in England and Wales; |
| "1990 Act" | means the Town and Country Planning Act 1990 (as amended). |

1.2 Where the context so requires:

- 1.2.1 clause and paragraph headings and any 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 County Council" and "the Owner", 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 Owner 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 Owner in respect of the Land (subject to clauses 5.1 and 5.3) and the Owner's freehold interest in the Land;

2.1.4 shall be enforceable by the Council and the County Council as the relevant local authorities; and

2.1.5 is executed by the Parties as a deed.

2.2 In this Agreement the expression "*Owner*" shall where the context so admits include and bind the Owner's successors in title and assigns and those deriving title from the Owner.

3 COVENANTS

3.1 The Owner hereby covenants with the Council that it will comply with the obligations contained in Schedules 1, 2, 4 and 5.

3.2 The Owner hereby covenants with the County Council that it will comply with the obligations contained in Schedule 3.

3.3 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 Owner are conditional upon the grant of the Planning Permission.

3.4 The Developer hereby covenants with the Council and the County Council that it will comply with the covenant contained in clause 4.2.

3.5 The Council covenants with the Owner to comply with the covenants contained in Schedule 6.

3.6 The County Council covenants with the Owner to comply with the covenants contained in Schedule 7.

4 THE DEVELOPER

4.1 The Developer is entering into this Agreement for the purposes of binding any legal interest it has in the Land by virtue of the option agreement referred to in Recital 6 but for the avoidance of doubt save for the covenant contained in Clause 4.2 the Developer will not incur any liability for any breach of the obligations contained in this Deed unless and until it acquires an interest in the Land not being only an option or conditional contract

4.2 The Developer covenants to:

4.2.1 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

4.2.2 pay to the County Council on completion of this Agreement its reasonable and proper costs of £1000.00 (one thousand pounds).

5 AGREEMENTS AND DECLARATIONS

5.1 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 in the Land 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 of an interest in, or an occupier of, any part of the Land who occupies that part as their residence 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 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.

5.4 This Agreement shall not be binding on any statutory undertaker, service utility companies or providers that shall have or shall acquire an interest in the Land for the

purpose of providing the supply of gas, electricity, water, drainage, telecommunication services or public transport services

5.5 This Agreement shall not be binding on a Chargee PROVIDED THAT:

5.5.1 the Chargee prior to seeking to dispose of the Affordable Housing pursuant to any default under the terms of its mortgage or charge give not less than 3 months prior notice to the Council of its intention to dispose and;

5.5.2 in the event that the Council responds within two months from receipt of the notice served pursuant to clause 5.5.1 indicating that arrangements for the transfer of the Affordable Housing can be made in such a way as to safeguard the units or dwellings as Affordable Housing in accordance with this Deed then the Chargee shall co-operate with such arrangements and use reasonable endeavours to secure such transfer;

5.5.3 if the Council does not serve its response to the notice served under clause 5.5.1 within two months from receipt of the notice then the Chargee shall be entitled to dispose free of the restrictions set out in this Deed

AND FURTHER PROVIDED THAT at all times the rights and obligations in this clause 5.5 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

5.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission or a Section 73 Permission) granted (whether or not on appeal) after the date of this Agreement.

5.7 In this Agreement the expressions "*the Council*" and "*the County Council*" shall include their respective successors as local planning authority or other public authority.

5.8 This Agreement shall cease to have effect (insofar only as it has not 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 other than a non-material amendment under section 96A of the 1990 Act or expires prior to Commencement of Development.

- 5.9 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 or as prejudicing or affecting the Council's rights, powers, duties and obligations in any capacity as a local or public authority.
- 5.10 Wherever this Agreement requires the approval, agreement, determination or consent of the Council or the County Council or the Owner such approval, agreement, determination or consent must be in writing and shall not be unreasonably withheld or delayed.
- 5.11 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.
- 5.12 Insofar as any clause or 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 of this Agreement.
- 5.13 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.

6 CHANGE IN OWNERSHIP

- 6.1 The Owner agrees with the Council and the County Council to give the Council and the County Council written notice within 5 (five) Working Days of any change in ownership in any of its interests in the Land 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 Land by reference to a plan PROVIDED THAT the provisions of this Clause will not apply to individual disposals of Dwellings.

7 INDEXATION

- 7.1 The Education Contribution the Off Site Public Open Space Contribution and the Play Area 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:

7.1.1 "*Index*" means the "all items" figures of the All Items Index of Retail Prices and;

7.1.2 "*Base Figure*" is the Index Figure at the date of the Planning Permission

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 contribution shall be agreed between the Council and the Owner in respect of the Off Site Public Open Space Contribution and/or the Play Area Contribution and between the County Council and the Owner in respect of the Education 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.

8 INTEREST

8.1 If any payment due to the Council or the County 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.

9 REGISTRATION

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

10 NOTICES

10.1 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.

10.2 Notices or other written communication to be served on the County Council in respect of education matters should be addressed to the Strategic Director of Children's Services.

11 DISPUTE RESOLUTION

- 11.1 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 parties such dispute or difference shall be referred to an independent and suitable person (the "Expert") holding appropriate professional qualifications 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 such person 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.
- 11.2 In the absence of an agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 10.1 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.
- 11.3 Any Expert howsoever appointed 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 28 (twenty-eight) Working Days after the conclusion of any hearing that takes place or 28 (twenty-eight) Working Days after he has received any file or written representation.
- 11.4 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 (ten) 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 (ten) Working Days.

12 WAIVER

- 12.1 No waiver (whether expressed or implied) by the Council the County Council or the Owner 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 the County Council or the Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default

13 JURISDICTION

- 13.1 This Agreement is governed by and interpreted in accordance with the law of England

14 DELIVERY

- 14.1 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 Owner covenants that it will pay to the Council upon the Commencement of Development an amount for the monitoring of this Agreement in the sum of £500.00 (five hundred pounds)

SCHEDULE 2 AFFORDABLE HOUSING

The Owner hereby covenants with the Council as follows:

1. No part of the Development shall be Commenced unless and until an Affordable Housing Scheme has been submitted to and approved by the Council.
2. The Owner shall construct the Affordable Dwellings in accordance with the Planning Permission and the terms of the approved Affordable Housing Scheme.
3. The Affordable Dwellings shall be Completed before the Occupation of no more than 50% of the Market Dwellings.
4. The Affordable Dwellings shall not be used for any purpose other than Affordable Housing and in accordance with the Affordable Housing Scheme.
5. No more than 50% of the Market Dwellings shall be Occupied unless and until the Owner has transferred the Affordable Dwellings to a Registered Provider, such transfer to include the following:
 - 5.1 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 purposes of the Affordable Dwellings;
 - 5.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Affordable Dwellings; and
 - 5.3 a covenant by the Registered Provider with the Owner not to use or dispose of the Affordable Dwellings otherwise than in accordance with the provisions of this Schedule

PROVIDED THAT in the event that the Registered Provider declines or is unable to accept the transfer of the Affordable Dwellings on the terms of this Agreement THEN no more than 75% of the Market Dwellings shall be Occupied unless and until all the Affordable Dwellings shall have been sold and transferred at the Sub-Market Price.

6. The covenants in this Schedule shall not be binding upon:

- 6.1 a tenant of an individual Affordable Dwelling 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;
- 6.2 any mortgagee in possession exercising a power of sale over any of the individual Affordable Dwelling under their mortgage or any purchaser from or successor to such mortgagee or any receiver appointed by such mortgagee in possession; or
- 6.3 any person who has acquired an Affordable Dwelling by staircasing up to 100% equity in respect of the relevant Affordable Dwelling including any mortgagee of any such Affordable Dwelling.

**SCHEDULE 3
EDUCATION MATTERS**

The Owner hereby covenants with the County Council as follows:

1. To pay 50% of the Education Contribution to the County Council prior to Occupation of the first Dwelling.
2. No part of the Development shall be Occupied unless and until 50% of the Education Contribution has been paid to the County Council.
3. To pay the remaining 50% of the Education Contribution to the County Council on Occupation of the 20th Dwelling.
4. Not more than 20 Dwellings shall be Occupied unless and until all of the Education Contribution has been paid to the County Council.
5. The Education Contribution shall be used towards the creation of additional teaching and support space at Woodbridge Junior School.

**SCHEDULE 4
PUBLIC OPEN SPACE**

1. Not to Commence Development until the On Site Public Open Space Scheme has been submitted to and approved in writing by the Council.
2. The Owner shall lay out the On Site Public Open Space in accordance with the specification and timetable approved under the On Site Public Open Space Scheme.
3. Upon completion of the laying out of the On Site Public Open Space the Owner shall notify the Council in writing that such works have been completed and pay to the Council the Inspection Fee. The Council shall inspect the On Site Public Open Space as soon as reasonably possible and in any event within two weeks of such notification and payment and shall issue a Certificate of Practical Completion either forthwith or following the making good by the Owner of any defects reasonably identified by the Council and notified to the Owner following such inspection
4. Following the issue of the Certificate of Practical Completion the Owner shall maintain the On Site Public Open Space throughout the Maintenance Period (and until such time as responsibility for the management and maintenance of the On Site Public Open Space is transferred to the Open Space Management Company) and keep the same at all times clean cultivated and fed and watered and shall replace as necessary any dead or diseased planting or any defective equipment and surfacing all of which maintenance shall be carried out to the reasonable satisfaction of the Council and fully in accordance with the On Site Public Open Space Scheme
5. At the end of the Maintenance Period the Owner shall notify the Council in writing and pay to the Council the Inspection Fee. The Council shall inspect the On Site Public Open Space as soon as reasonably possible and in any event within two weeks of such notification and payment and shall issue a Certificate of Final Completion either forthwith or following the making good by the Owner of any defects reasonably identified by the Council and notified to the Owner following the said inspection
6. Following the issue of the Certificate of Final Completion the Owner shall execute a formal transfer to the Open Space Management Company of the On Site Public Open Space and such transfer shall contain covenants by the transferee:

- (a) restricting the use of the land conveyed/transferred to the purpose for which it is laid out or transferred for and for no other use whatsoever; and
 - (b) requiring the On Site Public Open Space to be managed and maintained in accordance with the provisions of this Deed
7. The Open Space Management Company shall thereafter manage and maintain the On Site Public Open Space for the lifetime of the Development in accordance with the On Site Public Open Space Scheme and the Maintenance Specification
 8. The Owner or the Open Space Management Company may temporarily close or deny access to such part of the On Site Public Open Space as may be necessary for emergency works, maintenance, repair, cleansing, renewal and any other necessary works including fitting out or structural or non-structural works
 9. In the event that the Reserved Matters Approval does not provide a minimum of 56 square metres per Dwelling of On Site Public Open Space for the Development the Owner shall pay to the Council the Off Site Public Open Space Contribution prior to the Occupation of no more than 10 Dwellings.
 10. The Off Site Public Open Space Contribution shall be calculated as follows:

$$A \times B = C$$

$$(C - D) \times E = \text{Off Site Public Open Space Contribution}$$

Where:

- A = the number of Dwellings to be constructed in accordance with the Reserved Matters Approval
- B = 56
- C = the On Site Public Open Space (in square metres) which the Council requires to be provided as part of the Development
- D = the amount of On Site Public Open Space (in square metres) to be provided as part of the Reserved Matters Approval
- E = £12.01

11. No more than 20 Dwellings shall be Occupied until the Children's Play Area has been laid out and equipped unless the Owner has paid to the Council the Play Area Contribution pursuant to paragraph 12 of this Schedule 4.
12. In the event that the Reserved Matters Approval does not include the Children's Play Area within the Development the Owner shall pay to the Council the Play Area Contribution prior to the Occupation of more than 10 Dwellings.

**SCHEDULE 5
SUSTAINABLE DRAINAGE SYSTEM**

1. No part of the Development shall be Commenced unless and until the Owner has submitted to the Council and the Council has approved in writing the Sustainable Drainage Scheme which scheme shall include particulars of the Sustainable Drainage System and of the future management and maintenance of the Sustainable Drainage System
2. No part of the Development shall be Occupied unless and until the Sustainable Drainage System has been installed in accordance with the Sustainable Drainage Scheme and to the satisfaction of the Council
3. The Owner shall carry out and discharge the requirements of the Sustainable Drainage Scheme at all times provided that the Owner's responsibilities may be discharged by a SuDs Management Company approved by the Council
4. The Council's approval of the SuDs Management Company may be withheld (without limitation) where the Council determines:
 - 4.1 that the structure or Memorandum or Articles of Association of the proposed SuDs Management Company not to be fit for purpose;
 - 4.2 details of any proposed service contract or deed of covenant to be entered into between occupiers of Dwellings and the SuDs Management Company and/or proposed arrangements for the levying of service charges on such occupiers are inequitable or otherwise unsatisfactory; or
 - 4.3 the Owner has failed to demonstrate that the proposed SuDs Management Company will be adequately funded (and, in making this determination, the Council may require, or have regard to, financial guarantee or bonding arrangements or the absence of them)
5. If the Council notifies the Owner that the SuDs Management Company is failing to comply with the Sustainable Drainage Scheme, then the Owner shall carry out all actions as may be necessary to ensure that the requirements of the Sustainable Drainage Scheme are discharged or complied with

SCHEDULE 6 COUNCIL'S COVENANTS

The Council covenants with the Owner as follows:

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 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. To pay to the Owner (or the payer if not the Owner) 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 five years of the date of receipt, or if applicable the date of receipt of the final instalment, by the Council of such payment.
3. That it will following receipt of the written request of the Owner at any time or times after any of the obligations in this Agreement have been discharged issue written confirmation thereof as soon as reasonably practicable or if the Planning Permission has expired or been quashed or revoked will cancel all relevant entries in the Register of Local Land Charges as soon as reasonably practicable.

SCHEDULE 7
COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owner as follows:

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 and not to expend the sums for any other purposes EXCEPT THAT it is agreed that the County Council may use public funds to carry out the purposes specified in this Agreement in advance of receiving the sums from the Owner and may then apply the sums received towards offsetting the amount spent from public funds and the County Council shall (on the reasonable request of the payer or the payer's nominee) provide evidence that the monies have been so applied.
2. To pay to the Owner (or the payer if not the Owner) such amount of any payment made to the County Council under this Agreement which has not been expended or allocated in accordance with the provisions of this Agreement within five years of the date of receipt, or if applicable the date of receipt of the final instalment, by the County Council of such payment together and for the avoidance of doubt monies shall be deemed to have been committed if the County Council has entered into any contract or given an undertaking (whether enforceable in law or otherwise) the performance or fulfilment of which will require the County Council to expend funds in the future.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day
and year first before written

The Common Seal of

AMBER VALLEY BOROUGH COUNCIL



[Redacted]
Mayor
~~Authorised Officer~~

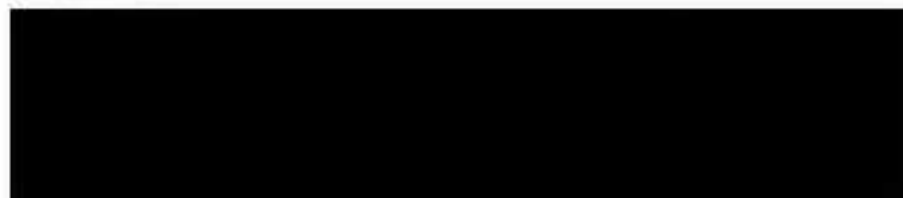
[Redacted]
Executive Director (Resources)

The Common Seal of

DERBYSHIRE COUNTY COUNCIL

was hereunto affixed in the presence of:

.....
Authorised Officer



Number in Seal
Book

2020/119

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day
and year first before written

The Common Seal of

AMBER VALLEY BOROUGH COUNCIL



[Redacted signature]

Authorised Officer

[Redacted signature]

Executive Director (Resources)

The Common Seal of

DERBYSHIRE COUNTY COUNCIL

was hereunto affixed in the presence of:

.....
[Redacted signature]
Authorised Officer

[Redacted signature] Director of Legal Services

Number in Seal
Book

2020/119

SIGNED as a DEED by

JOHN MOSLEY

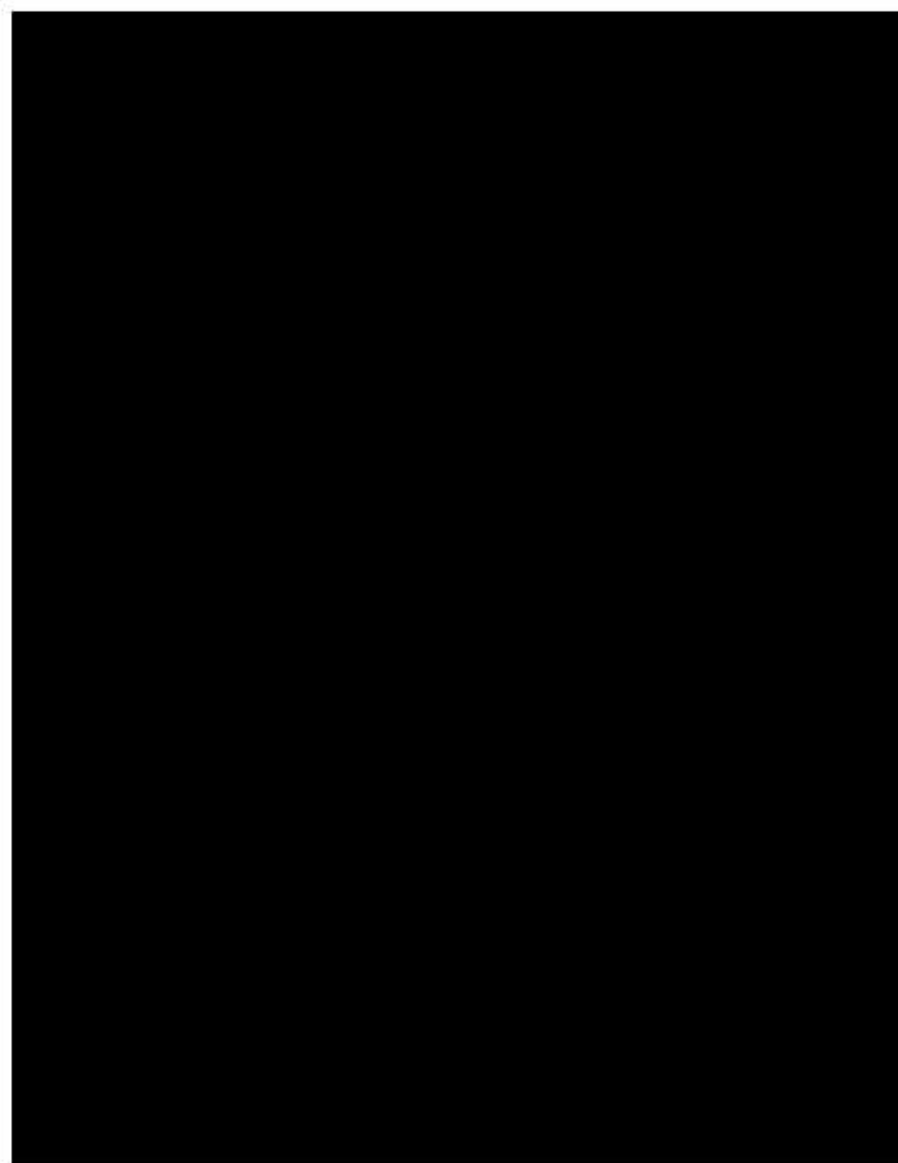
in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:



SIGNED as a DEED by

VALERIE ELIZABETH MOSLEY

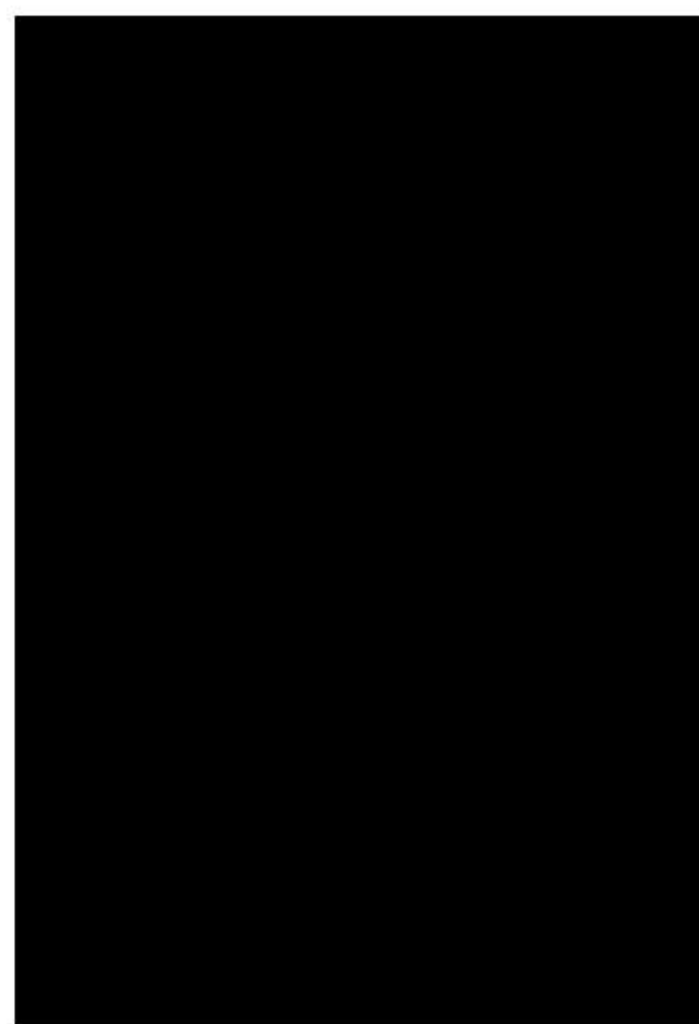
in the presence of:

Witness Signature:

Witness Name:

Witness Address:

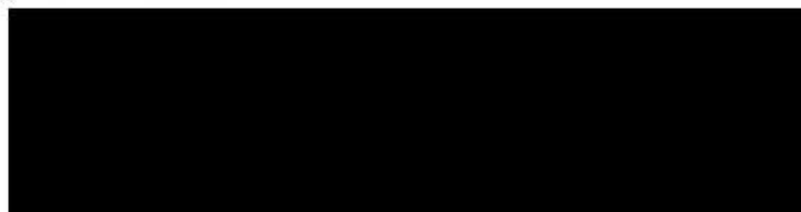
Witness Occupation:



EXECUTED as a DEED by

WATERS HOMES LIMITED

acting by a Director:



in the presence of:

Witness signature

Witness Name:

Witness Address

Witness Occupat

