

DATED 24 March 2020

AMBER VALLEY BOROUGH COUNCIL

- and -

DERBYSHIRE COUNTY COUNCIL

- and -

IVYGROVE DEVELOPMENTS LIMITED

- and -

NATIONAL WESTMINSTER BANK PLC

PLANNING OBLIGATION BY WAY OF AGREEMENT

**under Section 106 of the Town and Country
Planning Act 1990 (as amended) relating to
former Derbyshire County Council Depot
Derby Road, Duffield
AVA/2019/0424**

THIS DEED is made the 24 day of March 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, Derbyshire DE4 3AG ("the County Council");
as Security agent
- (3) **IVYGROVE DEVELOPMENTS LIMITED** (Company No. 01279304) whose registered office is at Racecourse Industrial Park, Mansfield Road, Derby DE21 4SX ("the Owner"); and
as Security agent
- (4) **NATIONAL WESTMINSTER BANK PLC** (Company No. 929027) of PO Box 339, Manchester M60 2AH ("the Mortgagee")
250 Bishopsgate London EC2M 4AA

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 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 Site 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 within which the Site 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 Site is situated.
- (5) The Owner is the freehold owner of the Application Site which is registered at HM Land Registry under title number DY433351.
- (6) The Owner is the freehold owner of the Off-Site Affordable Housing Land which is registered at HM Land Registry under title number DY440899.
- (7) The Mortgagee is the mortgagee of the Application Site subject to a legal charge dated 6 September 2019.
- (8) The Application has been submitted to the Council for the Development.
- (9) The Council has resolved to grant the Planning Permission subject to the prior completion of this Agreement.
- (10) The Owner agrees that upon Commencement of Development the Original Permission shall not be implemented and the parties agree that the Original S106 Agreement shall no longer be of effect.
- (11) The parties have agreed to enter into this Agreement so as to create planning obligations 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. DEFINITIONS

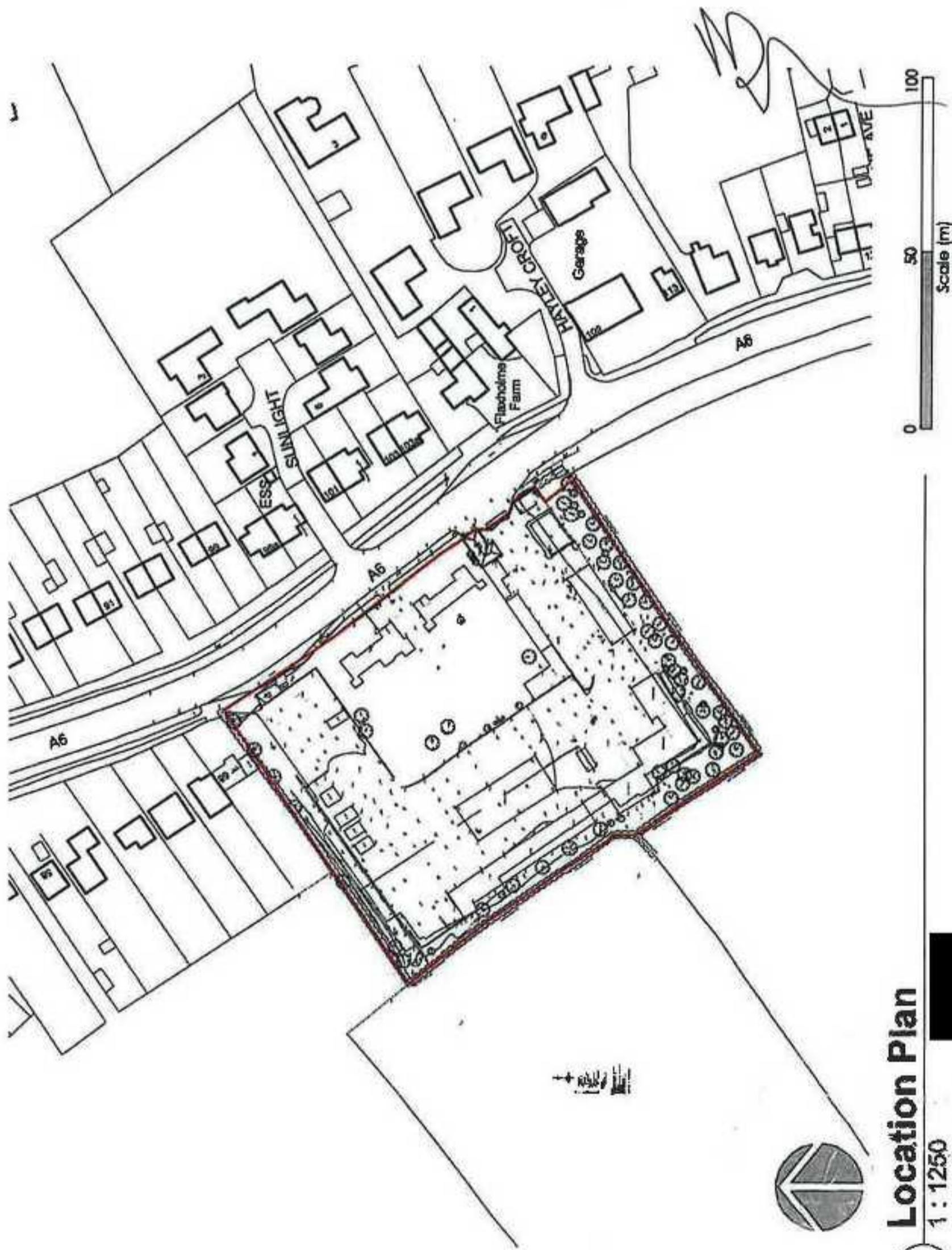
In this Agreement the following words and expressions shall where the context so requires or admits have the following meaning:

"1990 Act"	means the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	has the meaning given to it in Annex 2 of the NPPF
"Affordable Dwellings"	means the 5 dwellings to be provided as Affordable Housing for the Development on the Off-Site Affordable Housing Land (unless the provisions of paragraph 8 of Schedule 8 apply) for use as either Affordable Rented Housing or Social Rented Housing in accordance with Schedule 8 of this Agreement
"Affordable Rented Housing"	has the meaning given to it in Annex 2 of the NPPF for which guideline target rents are determined through the national rent regime and "Affordable Rent" shall be construed accordingly
"Application"	means the application for planning permission for the Development made by or on behalf of the Owner and registered by the Council on 26 April 2019 under reference AVA/2019/0424
"Application Site"	means the land at former Derbyshire County Council Depot, Derby Road, Duffield shown for identification purposes edged red on Plan 1
"Badger Sett Protection Area"	means the badger sett protection area shown hatched black on Plan 2 annexed to this Agreement
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological

	investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly
"Communal Areas"	means areas of unadopted road, pavement and private drains within the Development
"Contributions"	means the Healthcare Contribution, the Post-16 Education Contribution, the Public Open Space Contribution and the Secondary Education Contribution
"Development"	means the development of the Application Site for 15 new dwellings comprising of 14 new build dwellings and the conversion and extension of the former Gate House and the associated change of use to C3 pursuant to the Planning Permission
"Dwellings"	means all dwellings to be constructed on the Application Site as part of the Development pursuant to the Planning Permission and "Dwelling" shall be construed accordingly
"Healthcare Contribution"	means the sum of £5,782.08 (five thousand seven hundred and eighty two pounds and eight pence) to be paid to the Council towards improving capacity at Appletree Surgery, Duffield
"Interest"	means interest at 4 per cent above the base lending rate of the Bank of England from time to time
"Management Company"	means a properly constituted company which may already be in existence or which may be formed by the Owner for the purposes of carrying out the ongoing maintenance of the Communal Areas, the Badger Sett Protection Area and the drainage systems associated with the Development
"NPPF"	means the National Planning Policy Framework 2019 or any amendment or supplemental guidance issued thereto
"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 purposes or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly
"Off-Site Affordable Housing Land"	means such part or parts of the land within the land shown edged red on Plan 3 on which the Affordable Dwellings shall be constructed pursuant to the Ripley Development (unless the provisions of paragraph 8 of Schedule 8 apply) to provide Affordable Housing in respect of the Development
"Original Permission"	means the extant planning consent for the Application Site approved under planning reference AVA/2016/1257
"Original S106 Agreement"	means an agreement made under Section 106 of the Town and Country Planning Act 1990 dated 27 April 2018 and made between (1) Derbyshire Developments Limited (2) Derbyshire County Council and (3) Amber Valley Borough Council
"Plan 1"	means the plan annexed to this Agreement and marked "Plan 1"
"Plan 2"	means the plan annexed to this Agreement and marked "Plan 2"
"Plan 3"	means the plan annexed to this Agreement and marked "Plan 3"
"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
"Post-16 Education Contribution"	means the sum of £26,046.60 (twenty six thousand and forty six pounds and sixty pence) to be paid to the County Council for the provision of additional teaching and support space at The Ecclesbourne School
"Public Open Space Contribution"	means the sum of £26,637.00 (twenty six thousand six hundred and thirty seven pounds) to be paid to the Council towards the upgrade of Eyes Meadows playing fields

PLAN



Clevley
King
Architects
A. M. Clevley Head
Lancaster
Cumbria
LA1 5RS
01524 810188
www.clevleyking.com

A3
Original Sheet Size
Framming

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photocopying, the two dimensions must be correctly stated and any descriptive
matter must be included before the work is put in hand.
Any dimensions given are approximate, all levels are in metres, unless shown otherwise.
Any dimensions given in millimetres or centimetres are in thousandths of a Metre.
Architects and/or the engineer shall be answerable for the dimensions of the Building.
Dimensions given in millimetres or centimetres are to be taken from the exterior of the Building.
Architects and/or the engineer shall be answerable for the size of object, as stated in text, box, and so on.
Drawing prepared solely for the use of client, as stated in text box, and is not to
be copied, lent or used by any third party without written permission.

ARCHITECTS

Project: Residential Development
Former Darlington County Council Depot
Dobson Road
Darlington
DL2 8QF
Drawing No: 1634-011
Scale: 1:1250
Date: 17/07/19
Drawing No: 1634-011
Rev: 0
Status: A
Planned: X
Actual: X
Drawing: X
Description: X

PLAN 3



"Reasonable Endeavours"

means it is agreed by the parties that the party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court, public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable but bearing in mind that party's own commercial interests, the likelihood of success and the fact that such effort or efforts need not be exhaustive

"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

"Ripley Application"

means the application for planning permission for the Ripley Development registered by the Council on 17 October 2019 under reference AVA/2019/0974

"Ripley Development"

means the development of land at The Willows, Slack Lane, Ripley pursuant to the Ripley Permission comprising the demolition of existing building and erection of 10 dwellings which shall include the provision of the Affordable Dwellings for the Development

"Ripley Permission"

means a planning permission to be granted by the Council pursuant to the Ripley Application and shall include any Section 73 Permission and any non-material amendments pursuant to Section 96A of the 1990 Act or such other planning permission as may be granted for the Off-Site Affordable Housing Land which has been approved (in writing) by the Council as being suitable for the delivery of the provisions in Schedule 8 to this Deed

"Secondary Education Contribution"

means the sum of £52,093.21 (fifty two thousand and ninety three pounds and twenty one pence) to be paid to the County Council for the provision of additional teaching and support space at The Ecclesbourne School

"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 and/or the Ripley Development and the Ripley Permission
"Site"	means together the land at former Derbyshire County Council Depot, Derby Road, Duffield shown for identification purposes edged red on Plan 1 and land at The Willows, Slack Lane, Ripley shown for identification purposes edged red on Plan 3
"Social Rented Housing"	has the meaning given to it in Annex 2 of the NPPF for which guideline target rents are determined through the national rent regime and "Social Rent" shall be construed accordingly
"SUDS"	means the sustainable urban drainage system to be provided within the Application Site for the Development
"SUDS Scheme"	means a scheme for the provision of SUDS
"SUDS Management Plan"	means a plan for the future management and maintenance of the SUDS that identifies the ongoing and long-term maintenance
"Working Days"	means any day except a Saturday, Sunday or any public holiday in England and Wales

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council any successor to its statutory functions.
- 2.7 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

3. LEGAL BASIS

- 3.1 This Agreement is made pursuant to section 106 of the 1990 Act section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers to the intent that it is enforceable against any person deriving title to the Site from through or under the Owner.
- 3.2 Subject to clause 6.10, the covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the 1990 Act which bind the Site and are enforceable by the Council and the County Council as local planning authorities against the Owner.
- 3.3 From the date of Commencement of Development the Owner covenants that it will not implement the Original Permission and as a consequence the Original S106 Agreement shall be of no further legal effect.

4. CONDITIONALITY

This Agreement shall take effect upon the date hereof but the covenant from the Owner in clause 5 of this Agreement is conditional upon:

- (a) the grant of the Planning Permission and the Ripley Permission; and
- (b) the Commencement of Development

5. COVENANTS

- 5.1 The Owner hereby covenants with the Council that it will comply with the obligations contained in Schedules 1, 2, 4, 5, 6, 7 and 8.
- 5.2 The Owner hereby covenants with the County Council that it will comply with the obligations contained in Schedules 1 and 3.
- 5.3 The Council covenants with the Owner to comply with the obligations contained in Schedule 9.
- 5.4 The County Council covenants with the Owner to comply with the obligations contained in Schedule 10.

6. AGREEMENTS AND DECLARATIONS

- 6.1 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 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.
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 Where any agreement, approval, consent or expression of satisfaction is required under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 6.6 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.
- 6.7 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.
- 6.8 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.
- 6.9 The provisions of this Agreement shall not be binding on any individual purchasers and occupiers of the Dwellings nor their successors in title mortgagees in possession nor their successors in title nor on statutory undertakers or providers of water, gas, electricity or telecommunications to the Site.
- 6.10 The provisions of this Agreement (save for those contained in Schedule 8) shall not bind the Off Site Affordable Housing Land

7. CHANGE IN OWNERSHIP

7.1 The Owner agrees with the Council and the County Council to give the Council and the County Council immediate written notice of any change in ownership in any of its interests in the Site occurring before all the obligations under this 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 by reference to a plan PROVIDED THAT the provisions of this Clause will not apply to individual disposals of Dwellings.

8. CHARGEE EXEMPTION CLAUSE

8.1 The Affordable Housing provisions at Schedule 8 of this Agreement shall not be binding on any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

8.1.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

8.1.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the Affordable Housing provisions in this Agreement which provisions shall determine absolutely

9. INDEXATION

9.1 The Contributions 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:

9.1.1 "Index" means in respect of the Post-16 Education Contribution and the Secondary Education Contribution the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors and in respect of all other Contributions the "all items" figures of the All Items Index of Retail Prices and;

9.1.2 "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 each such contribution shall be agreed between the Council and the Owner in respect of the Healthcare Contribution and the Public Open Space Contribution and between the County Council and the Owner in respect of the Post-16 Education Contribution and the Secondary 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 13.

10. INTEREST

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.

11. REGISTRATION

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

12. NOTICES

- 12.1 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.
- 12.2 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.

13. DISPUTE RESOLUTION

- 13.1 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.
- 13.2 In the absence of an agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 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.

- 13.3 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.
- 13.4 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.

14. WAIVER

- 14.1 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 for acting upon any subsequent breach or default.

15. JURISDICTION

- 15.1 This Agreement is governed by and interpreted in accordance with the law of England and Wales.

16. DELIVERY

- 16.1 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.

17. MORTGAGEE CONSENT

- 17.1 The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Application Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Application Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall otherwise have no liability under this Agreement unless it takes possession of the Application Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

SCHEDULE 1
GENERAL COVENANTS

1. In addition to the specific covenants set out in the following Schedules the Owner covenants that it will:
 - 1.1 Notify the Council in writing 14 (fourteen) days prior to the following:
 - (i) the date of the Commencement of Development
 - (ii) the date of the first Occupation of the first Dwelling
 - (iii) the date of the first Occupation of the 8th Dwelling
 - (iv) the date of the first Occupation of the 13th Dwelling
 - 1.2 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);
 - 1.3 pay to the Council on completion of this Agreement an amount for its legal costs properly and reasonably incurred in the negotiation, preparation, execution and registration of this Agreement; and
 - 1.4 pay to the County Council on completion of this Agreement its reasonable and proper costs of £1,000 (one thousand pounds).

SCHEDULE 2
PUBLIC OPEN SPACE

The Owner covenants with the Council in the following terms:

1. To pay the Public Open Space Contribution to the Council prior to Occupation of the 13th Dwelling.
2. Not more than 12 Dwellings shall be Occupied unless and until the Public Open Space Contribution has been paid to the Council.
3. The Public Open Space Contribution shall be used towards the improvement of Eyes Meadows playing fields by the Duffield Parish Council.

SCHEDULE 3 EDUCATION

The Owner covenants with the County Council in the following terms:

1. Secondary Education Contribution

- 1.1 To pay the Secondary Education Contribution to the County Council prior to the Occupation of the 8th Dwelling.
- 1.2 Not more than 7 Dwellings shall be Occupied unless and until the Secondary Education Contribution has been paid to the County Council.
- 1.3 The Secondary Education Contribution shall be used for the provision of additional teaching and support space at The Ecclesbourne School.

2. Post-16 Education Contribution

- 2.1 To pay the Post-16 Education Contribution to the County Council prior to the Occupation of the 8th Dwelling.
- 2.2 Not more than 7 Dwellings shall be Occupied unless and until the Post-16 Education Contribution has been paid to the County Council.
- 2.3 The Post-16 Education Contribution shall be used for the provision of additional teaching and support space at The Ecclesbourne School.

SCHEDULE 4 HEALTHCARE

The Owner covenants with the Council in the following terms:

1. To pay the Healthcare Contribution to the Council prior to the Occupation of the 8th Dwelling.
2. Not more than 7 Dwellings shall be Occupied unless and until the Healthcare Contribution has been paid to the Council.
3. The Healthcare Contribution shall be used by the Council towards improving capacity at Appletree Surgery, Duffield.

SCHEDULE 5
MANAGEMENT COMPANY

The Owner covenants with the Council in the following terms:

1. Not to Occupy any Dwellings until the Owner has submitted details of the Management Company to the Council for approval together with a copy of the certificate of incorporation, its structure and long-term funding plans.
2. The Management Company shall ensure that sufficient funding is in place to be responsible for the following:
 - 2.1 the long-term future maintenance of the Communal Areas, Badger Sett Protection Area and SUDS
 - 2.2 to ensure so far as is reasonably possible that the access and rights of way to the Communal Areas located on the Application Site are kept free and unobstructed.
3. Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council has otherwise first agreed in writing.

SCHEDULE 6 SUDS

The Owner covenants with the Council in the following terms:

1. Prior to the Commencement of Development the Owner shall submit to the Council for approval the SUDS Scheme and the SUDS Management Plan.
2. The Owner shall not Commence Development until the Council has approved the SUDS Scheme and the SUDS Management Plan in writing.
3. The Owner shall ensure that the SUDS are constructed in accordance with the SUDS Scheme prior to the Occupation of any Dwellings (unless the Owner and the Council agree in writing an alternative timeframe for the construction of the SUDS).
4. The Owner shall ensure that the SUDS from the time of construction are maintained in accordance with the SUDS Management Plan and shall keep them maintained until such time as they are transferred to the Management Company PROVIDED THAT it is agreed that it shall be a term of the appointment of the Management Company that the transfer is on the condition that they shall manage and maintain the SUDS in accordance with the SUDS Management Plan.
5. The SUDS Scheme and the SUDS Management Plan may each be amended at any time with the written consent of the Council.

SCHEDULE 7
BADGER SETT PROTECTION AREA

The Owner covenants with the Council in the following terms:

1. Upon Commencement of Development the Owner shall mark out the Badger Sett Protection Area in accordance with Plan 2.
2. The Owner shall not permit any development within the Badger Sett Protection Area.
3. The Badger Sett Protection Area shall be maintained by the Management Company.

SCHEDULE 8
OFF-SITE AFFORDABLE HOUSING LAND

The Owner covenants with the Council in the following terms:

1. To provide or procure that a Registered Provider provides the Affordable Dwellings on the Off-Site Affordable Housing Land (unless the provisions of paragraph 8 of this Schedule apply).
2. To construct the Affordable Dwellings in accordance with the Ripley Permission and approved plans (unless the provisions of paragraph 8 of this Schedule apply).
3. Not to Commence Development until the Owner has exchanged a contract for the sale and purchase of the Off-Site Affordable Housing Land with a Registered Provider or entered into a contract with a Registered Provider for the provision of the Affordable Dwellings and the Owner shall notify the Council in writing within 14 (fourteen) days of such contract being exchanged.
4. Not to Occupy more than 8 Dwellings until the Owner has transferred the Affordable Dwellings to a Registered Provider or (if the Registered Provider is constructing the Affordable Dwellings) the Owner has transferred the Off-Site Affordable Housing Land to a Registered Provider.
5. The Owner shall not dispose of the Off-Site Affordable Housing Land other than by way of transfer to a Registered Provider.
6. Any agreement to sell the Off-Site Affordable Housing Land to a Registered Provider shall contain the following provisions:
 - 6.1 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 to the beneficial enjoyment of the Affordable Dwellings
 - 6.2 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 Agreement.
7. The Affordable Dwellings shall not be used for any purpose other than Affordable Housing.
8. In the event that the Registered Provider referred to in paragraph 3 of this Schedule declines or is unable to accept the transfer of the Off-Site Affordable Housing Land or the Affordable Dwellings (as the case may be) within a period of 6 (six) months from the date of the contract referred to in paragraph 3 of this Schedule the Owner may give written notice to the Council and the Owner shall then provide the Affordable Dwellings on the Application Site.
9. In the event that paragraph 8 of this Schedule applies the Owner shall enter into negotiations with a Registered Provider for the transfer of the Affordable Dwellings.

10. Following the offer of the Affordable Dwellings to a Registered Provider for transfer in accordance with paragraphs 8 and 9 of this Schedule the Owner shall thereafter use Reasonable Endeavours to dispose of the Affordable Dwellings to a Registered Provider.
11. None of the obligations and restrictions referred to in this Schedule 8 will be enforceable in respect of any Affordable Dwelling against:
 - 11.1 a tenant exercising a statutory right to acquire that Affordable Dwelling or any similar or substitute right applicable
 - 11.2 any person who has staircased to 100% ownership of an Affordable Dwelling provided for shared ownership.
 - 11.3 any mortgagee or chargee of a shared ownership lease or underlease nor their successor in title or any receiver or manager (including an administrative receiver) appointed pursuant to applicable legislation or otherwise by a party who has provided loan facilities to the shared ownership leaseholder
 - 11.4 any person deriving title from any such person as is mentioned in 11.1 to 11.3 inclusive above

SCHEDULE 9
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 10 (ten) years of the date of receipt 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 10
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 10 (ten) years of the date of receipt by the County Council of such payment.
3. For the avoidance of doubt, for the purposes of paragraph 1 of this Schedule, the funds 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.

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
was hereunto affixed in the presence of:

[REDACTED]
Authorised Officer
(Executive Director - Resources)



The Common Seal of
DERBYSHIRE COUNTY COUNCIL
was hereunto affixed in the presence of:

.....
Authorised Officer [REDACTED]
.....
Number in Seal
EXECUTED as a DEED by Book 2020 1276
IVYGROVE DEVELOPMENTS LIMITED
acting by:

Director [REDACTED]

Director / Secretary [REDACTED]

SIGNED and DELIVERED as a Deed
for and on behalf of **NATIONAL WESTMINSTER**
BANK PLC by a duly authorised Attorney
in the presence of:

[REDACTED]
.....
Witness' Signature - Bank Employee [REDACTED]