

DATED

1st September -

2017

THE COUNCIL OF THE BOROUGH OF AMBER VALLEY (1)

and

FUTURES HOMESCAPE LIMITED (2)

and

PH INVESTMENTS (NO. 2) LIMITED (3)

and

MR G G HOUSLEY

and

MR J G HOUSLEY (4)

PLANNING AGREEMENT

under Section 106 of the Town and Country Planning Act, 1990
relating to land at Coasthill, Crich, Derbyshire

Setfords
Solicitors,
Jenner House,
1a Jenner Road,
Guildford,
Surrey GU1 3PH

THIS DEED is made the 18th day of September 2017

BETWEEN:-

1. **THE COUNCIL OF THE BOROUGH OF AMBER VALLEY** of Town Hall, Market Place, Ripley, Derbyshire DE5 3BT ("the Council"); and
2. **FUTURES HOMESCAPE LIMITED** (Company Registration No: 04380728) with registered office at Asher Lane Business Park, Ripley, Derbyshire DE5 3SW ("the First Owner"); and
3. **PH INVESTMENTS (NO 2) LIMITED** (Company Registration No: 07248998) with registered office at 4 Sandridge Park, Porters Wood, St Albans, Hertfordshire AL3 6PH ("the Second Owner"); and
4. **GORDON GERARD HOUSLEY and JONATHAN GEORGE HOUSLEY** of 2 The Dale, Wirksworth, Derbyshire DE4 4EJ ("the Third Owner")

(the First Owner, the Second Owner and the Third Owner hereinafter where applicable collectively referred to as "the Owners")

WHEREAS:

- (1) The Council is the local planning authority for the purposes of the 1990 Act in respect of the area within which the Application Site is situated.
- (2) The First Owner is a Registered Provider and is the registered proprietor of land at Coasthill, Crich registered under title numbers DY295066 and DY353509
- (3) The Second Owner is the registered proprietor of land on the north side of Oakwell Drive, Crich under title number DY456416 and also land on the south side of Stones Lane, Crich registered under title number DY400418

- (4) The Third Owner is the registered proprietor of land lying to the south of Stones Lane, Crich under title numbers DY312351, DY425691, DY431414 and DY439790
- (5) The First Owner has submitted the Planning Application to the Council for the proposed development of the Application Site.
- (6) The Council has resolved to grant the Planning Permission subject to a condition precedent that the Owners enter into this Agreement.
- (7) The Owners by entering into this Agreement do so to create planning obligations in respect of the Application Site in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Agreement insofar as the same affects the Owners respective ownerships of the Application Site

NOW THIS DEED WITNESSES as follows:

WORDS AND EXPRESSIONS

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

- 1.1 **"Affordable Housing"** means

- (a) housing provided to eligible households whose needs are not met by the market and eligibility is determined with regard to local incomes and local house prices in accordance with Annex 2 of the National Planning Policy Framework (or 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

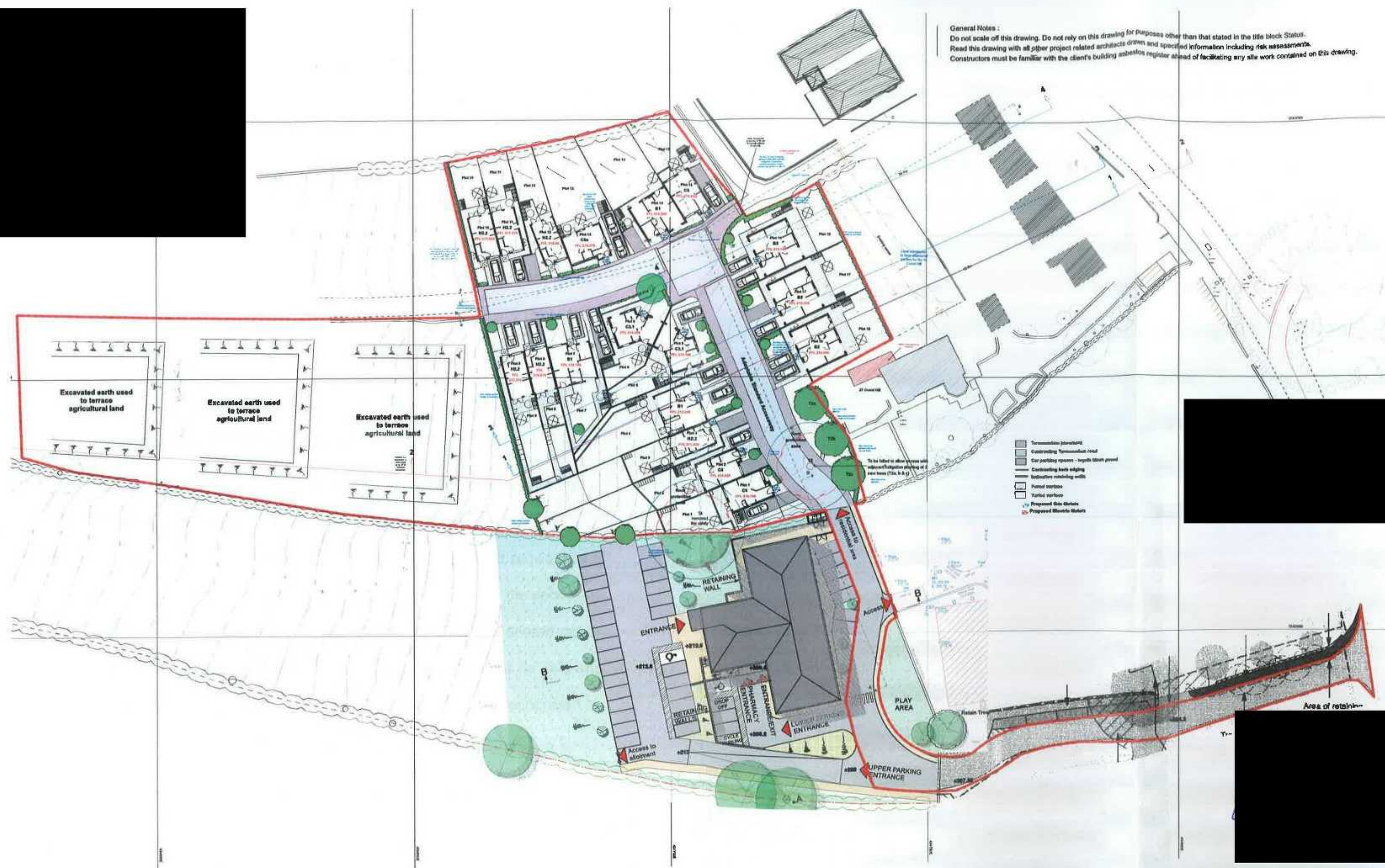
"Affordable Housing Dwellings" mean those units of Social Rented Housing and Intermediate Housing to be provided on the Application Site in accordance with the provisions of Schedule 3.

"the Application Site" means the land shown for the purposes of identification only edged red on the Plan.

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

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

General Notes :
 Do not scale off this drawing. Do not rely on this drawing for purposes other than that stated in the title block Status.
 Read this drawing with all other project related architects drawn and specified information including risk assessments.
 Constructors must be familiar with the client's building asbestos register ahead of facilitating any site work contained on this drawing.



Halsall Lloyd Partnership ARCHITECTS & DESIGNERS

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Client Futures Housing Group	Dwg. Title Site Plan (S106)	Revisions
Job Coast Hill, Crich	Dwg. Status Planning	Dwn. RM Chil. MJ
Job No. N894	Scale 9A3 1:500	Date May '17
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“the Drainage Authority” means Derbyshire County Council in its capacity as Drainage Authority.

“the Drainage Management Company” means a properly constituted company already in existence or formed by the Third Owner as set out in Schedule 4.

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

“Homes and Communities Agency” means the body of that name established by statute or any equivalent or successor body.

“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) other low cost homes for sale and intermediate rent, or similar future initiatives promoted or recognised by the Homes and Communities Agency

“the Land Drainage Scheme” means the scheme as set out in Schedule 4.

“Market Dwellings” means dwellings constructed on the Application Site as part of the Development for sale on the open market which are not Affordable Housing.

"National Rent Regime" means the regime under which the rents for tenants of Social Rented Housing are set by the Homes and Communities Agency.

"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.

"the Off-Site Open Space Contribution" means the financial contribution set out in Schedule 2 to be used towards the enhancement of recreational open space in the vicinity of the Application Site;

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

"the Plan" means the plan annexed hereto.

"the Planning Application" means an application submitted by the First Owner to the Council under reference AVA/2014/0678.

"the Planning Permission" means the planning permission for the Development to be granted by the Council pursuant to the Planning Application.

"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 Owners and approved by the Council and **"Registered Providers"** shall be construed accordingly.

"Social Rented Housing" means housing that is owned by local authorities and/or Registered Providers as defined in Section 80 of the Housing and Regeneration Act 2008 for which 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.

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

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"**, and **"the Owners"** 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;
- (c) any covenant by the Owners 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:

- (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) is a planning obligation for the purposes of the Section 106 of the 1990 Act;
- (3) is given with intent to bind the Third Owner's freehold interest in the Application Site;
- (4) shall be enforceable by the Council as a local planning authority; and
- (5) is executed by the parties hereto as a Deed.

COVENANTS

3. (1) The Owners covenants that they will comply with the obligations contained in this Agreement, insofar as the same affect their respective freehold ownerships of the Application Site
- (2) This Agreement takes effect from the date hereof **SAVE THAT** (except where otherwise specifically stated in this Agreement) the covenants contained in this Agreement on behalf of the Owners are conditional upon the issue by the Council of the Planning Permission.
- (3) The Council covenants with the Owners to comply with the covenants contained in Schedule 5.

AGREEMENTS AND DECLARATIONS

4. (a) 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 their respective interests (and for the avoidance of doubt including the freehold interest) in the Application Site or that part of the Application Site or the relevant part of the same in respect of which the breach occurs but without prejudice to their liability for any subsisting breach committed prior to such parting with such interest
- (b) No owner of an interest in any part of the Application Site who occupies that part as their residence shall be treated as a person deriving title from the Owners for the purposes of Section 106(3) of the 1990 Act.
- (c) 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.

- (d) Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- (e) In this Agreement the expressions "**the Owners**" shall where the context so admits be deemed to include their respective successors in title and assigns and the expression "**the Council**" shall include its respective successors as local planning authority.
- (f) If the Planning Permission shall expire before the Commencement of Development or shall at any time be modified (without the consent of the Owners), quashed or revoked this Agreement shall terminate and cease to have effect.
- (g) Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights, powers, duties and obligations in any capacity as a local or public authority.
- (h) Wherever this Agreement requires the approval agreement determination or consent of the Council or the Owners such approval agreement determination or consent is not to be unreasonably withheld or delayed.
- (i) 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.
- (j) This Agreement constitutes the entire agreement between the parties in respect of the Planning Permission.

CHANGE IN OWNERSHIP

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

INDEXATION

6. The Off-Site Open Space Contribution shall be increased by the amount by which the Index for the month preceding the date on which each such contribution is paid exceeds the Base Figure where:

(1) "Index" means the "all items" figures of the All Items Index of Retail Prices and;

(2) "Base Figure" is the Index Figure at the date of this Agreement.

PROVIDED THAT if the basis of computation of the Index is changed or if publication of the Index is permanently discontinued an alternative method of fixing the sum of each such contribution shall be agreed between the Council and the Third Owner 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.

INTEREST

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

REGISTRATION

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

NOTICES

9. 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.

ARBITRATION

10. (a) Any dispute or difference which cannot be resolved by prior agreement between the parties relating to any matter arising out of or in connection with this Agreement shall be referred to arbitration in accordance with the Arbitration Act 1996 except to the extent that it provides otherwise.
- (b) If the parties do not agree upon the appointment of the arbitrator within 28 days of the service of an arbitration notice, the arbitrator shall be nominated upon the application of either party by the President or Vice President for the time being of the Royal Institution of Chartered

Surveyors which arbitrator shall be an independent person who is professionally qualified for a minimum period of 10 years in respect of the subject matter of the dispute.

- (c) Unless the arbitrator shall direct to the contrary:
 - (i) not more than 28 days after the arbitrator's appointment the claimant shall send to the arbitrator and respondent a summary of its case together with a bundle of key documents relied upon;
 - (ii) not more than 28 days after the receipt of the claimant's submission the respondent shall send the arbitrator and the claimant a summary of its case together with a bundle of key documents relied upon;
- (d) The arbitrator shall be at liberty to visit the Application Site.
- (e) The arbitrator may call for such written evidence from the parties as he may require.
- (f) The arbitrator shall use all reasonable endeavours to issue his decision and the reasons for it in writing as quickly as possible and in any event within 90 days of his appointment followed by within 21 days of the receipt of the arbitrator's decision either party being able to apply to the arbitrator for further written clarification of his decision and the reasons including details of the methodology of any calculation and the arbitrator shall provide such clarification within 21 days of the application.
- (g) The arbitrator's costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

SCHEDULE 1

GENERAL COVENANTS

- (1) In addition to the specific covenants set out in the following schedules the Third Owner covenants with the Council that it will:
- (a) notify the Council in writing fourteen (14) days prior to the following:
 - (i) the date of the Commencement of the Development;
 - (ii) the date of first Occupation of the first Dwelling;
 - (iii) the date of completion of construction of 80% of the Market Dwellings.
 - (b) observe all restrictions and perform all obligations contained in this Agreement.
 - (c) pay to the Council upon the Commencement of the Development an amount for the monitoring of this Agreement in the sum of **ONE HUNDRED POUNDS (£100.00)**
- (2) The First Owner covenants with the Council that it will pay to the Council on completion of this Agreement an amount for its reasonable legal costs properly and reasonably incurred in the negotiation, preparation, execution and registration of this Agreement.

SCHEDULE 2

OPEN SPACE MATTERS

The Third Owner shall prior to first Occupation of the first Dwelling pay to the Council the Off-Site Open Space Contribution calculated as a multiple of the sum of **ONE THOUSAND SEVEN HUNDRED AND SEVENTY FIVE POUNDS EIGHTY PENCE (£1775.80)** per each Dwelling as adjusted in accordance with clause 6.

SCHEDULE 3

AFFORDABLE HOUSING MATTERS

The First Owner and the Third Owner covenant with the Council that

- (1) The Development shall not be Commenced until:
 - (i) the First Owner or the Third Owner have submitted to the Council and the Council has approved in writing for implementation a scheme to provide:-
 - (ii) a minimum of 30% of the Dwellings as Affordable Housing;
 - (iii) at least 90% of the Affordable Housing Dwellings to be Social Rented Housing;
 - (iii) the remainder of the Affordable Housing Dwellings to be Intermediate Housing
 - (iv) not more than 80% of the Market Dwellings to be constructed before completion of construction of the Affordable Housing Dwellings.
- (2) The Third Owner shall not dispose of the Affordable Housing Dwellings other than by way of transfer to a Registered Provider.
- (3) The Third Owner shall ensure that the transfer of the freehold of all of the Affordable Housing Dwellings to a Registered Provider shall be subject to the following:-
 - (i) the grant by the Third 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 Housing Dwellings subject to the terms thereof being agreed between the parties

- (ii) a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Affordable Housing Dwellings;
 - (iii) a covenant by the Registered Provider not to use or dispose of the Affordable Housing Dwellings otherwise than as Affordable Housing but subject to the provisions of paragraph (5) of this Schedule
- (4) In the event that the Registered Provider referred to at paragraph (2) of this Schedule declines or is unable to accept the transfer of some or all of the Affordable Housing Dwellings on the terms of this Agreement or if in the Third Owner's or the Council's opinion (acting reasonably) insufficient progress is being made towards exchange of contracts with the Registered Provider for the transfer of some or all of the Affordable Housing Dwellings within a period of six months from the date of an offer to the Registered Provider
- (i) the Third Owner or the Council shall give written notice of such to the other and the Third Owner may nominate an alternative Registered Provider or Registered Providers for the Council's approval with any such nomination to be made within 14 days of the service of such notice;
 - (ii) immediately upon receiving confirmation of the Council's approval of the nominated alternative Registered Provider or Registered Providers the Third Owner shall enter into negotiations with the alternative Registered Provider or Registered Providers for the transfer to it of the Affordable Housing Dwellings (or any individual Affordable Housing Dwellings that have not been transferred or may not have been

contracted to be sold to a Registered Provider).

(5) The provisions of this Schedule shall not be binding on or enforceable against

- (i) 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 Housing Dwellings or any persons or bodies deriving title through such mortgagee or chargee or receiver
- (ii) any person acquiring an interest in an Affordable Housing Dwelling under a statutory right to buy or acquire the said Affordable Housing Dwelling/s or their mortgagee, chargee or receiver
- (iii) a person who has acquired a 100% interest in an Affordable Housing Dwelling under the provisions of a model form of shared ownership lease (where appropriate) as regulated by the Homes and Communities Agency from time to time and which shall accord with the requirements to be consistent with any such model shared ownership lease from time to time prescribed by the Homes and Communities Agency (or replacement or successor body) or a mortgagee or chargee (or receiver appointed by them) of such Affordable Housing Dwellings;

- (iv) any person who is a tenant or leaseholder of Intermediate Housing (where appropriate) and (where applicable) has subsequently purchased all the remaining equitable shares so that the said tenant or leaseholder owns the entire equity of the Intermediate Housing or their mortgagee or chargee (or receiver appointed by them)
- (v) any statutory undertakers who purchase (including by way of lease) or otherwise become proprietor of any land or obtain the benefit of any right wayleave covenant or easement in on over under and across the Application Site for the construction or installation of any structure or other apparatus (including without prejudice to the generality of the foregoing electricity substations poles stays gas governor stations or pumping stations) required to provide services or facilities in connection with the development of the Application Site
- (vi) any person deriving title from any such person or persons as are specified in paragraphs (5)(i) to (5)(v) (inclusive) above

SCHEDULE 4

DRAINAGE MATTERS

- (1) The Third Owner shall prior to the Commencement of the Development:
 - (i) submit to the Council the Land Drainage Scheme with details including:
 - flood alleviation;
 - surface and ground water drainage
 - provision of On-Site Sustainable Drainage Features by reference to a plan; and
 - any other matters reasonably required by the Council.
 - (ii) submit to the Council a 100 year management and maintenance plan in respect of the On-Site Sustainable Drainage Features and include projected costs to enable the effective maintenance and management of the On-Site Sustainable Drainage Features.
 - (iii) provide details of the Drainage Management Company to the Council with a copy of the certificate of incorporation, its structure and funding plans.
- (2) The Third Owner shall ensure that the On-Site Sustainable Drainage Features are constructed prior to the Occupation of the first Dwelling to the reasonable satisfaction of the Drainage Authority.
- (3) The Third Owner shall ensure that the On-Site Sustainable Drainage Features from the time of construction are maintained and shall keep them maintained to the reasonable satisfaction of the Drainage Authority until such time as they are transferred to the Drainage Management Company.

SCHEDULE 5

COUNCIL'S COVENANTS

- (1) The Council covenants with the Owners 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) The Council shall pay to the payors 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 ten years of the date of receipt by the Council of such payment together with Interest accrued from time to time for the period from the date of payment to the date of refund.
- (3) The Council will following receipt of the written request of the Owners at any time or times after any of the obligations in this Agreement have been discharged upon confirmation of same issue written confirmation thereof as soon as reasonably practicable and/or at any time after all of the obligations in this Agreement have been discharged or at any time after this Agreement ceases to have effect or if the Council receives notice from the Owners that the Planning Permission has expired or been quashed or revoked will upon confirmation of same thereafter cancel all relevant entries in the Register of Local Land Charges as soon as reasonably practicable.

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

EXECUTED AS A DEED by affixing the)

Common Seal of **THE COUNCIL OF**)

THE BOROUGH OF AMBER VALLEY)

in the presence of:-)



Mayor



Executive Director (Resources)



EXECUTED as a deed by affixing the

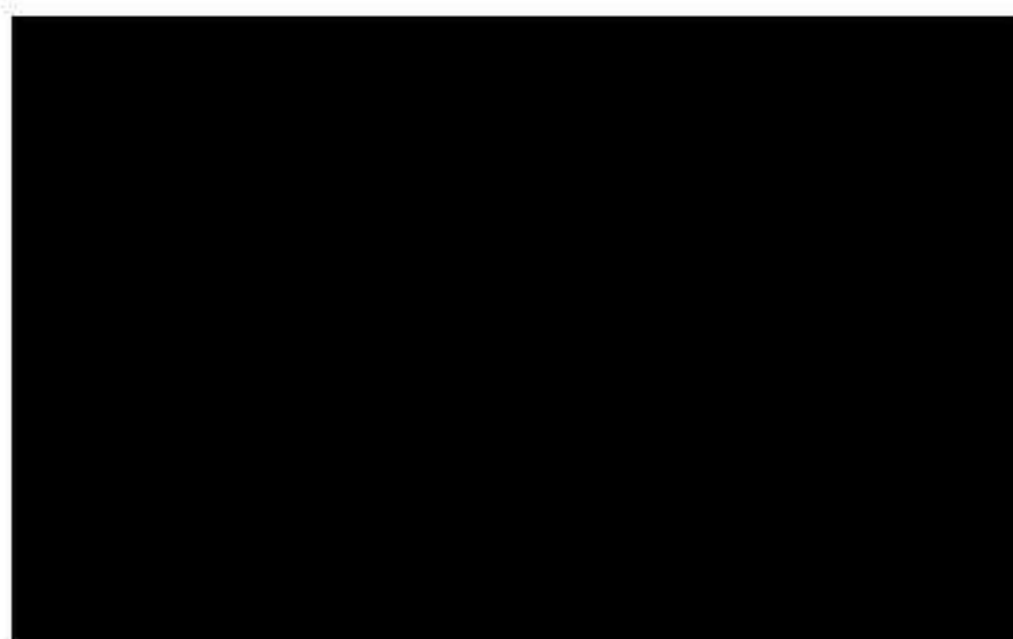
Common Seal of **FUTURE HOMESCAPES**

LIMITED in the presence of :-



Director

Secretary



EXECUTED as a deed by affixing the
Common Seal of PH INVESTMENTS
(NO. 2) LIMITED in the presence of :-

Director

Secretary
Director

SIGNED AS A DEED by the said)

GORDON GERARD HOUSLEY)

in the presence of:-)

Name:

Address

SIGNED AS A DEED by the said)

JONATHAN GEORGE HOUSLEY)

in the presence of:-)

Name:

Address