

**DATED**

1st October

**2013**

**AMBER VALLEY BOROUGH COUNCIL**

- and -

**PEVERIL SECURITIES LIMITED**

**AGREEMENT AND PLANNING OBLIGATION**

**under Section 106 of the Town and Country Planning Act 1990 (as amended)**  
relating to land West of Holborn View, Codnor, Ripley, Derbyshire

**WALKER MORRIS**

Kings Court  
12 King Street  
LEEDS  
LS1 2HL  
Tel: 0113 2832500  
Fax: 0113 2459412  
Ref: CAS/PEV.2-17

THIS DEED is made the 1st day of October 2013

BETWEEN:-

1. THE COUNCIL OF THE BOROUGH OF AMBER VALLEY of Town Hall Market Place Ripley Derbyshire DE5 3BT ("the Council")
2. PEVERIL SECURITIES LIMITED (Co. Regn. No. 00516739) of High Edge Court Church Street Heage Belper Derbyshire DE56 2BW ("the Owner")

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 Owner is the owner of the fee simple of the Application Site and is registered proprietor thereof under Title Number DY454433.
- (3) Peveril Homes Limited (Company Number 01888444), which is a wholly owned subsidiary of the Owner, has submitted to the Council an outline planning application for the proposed Development of the Application Site.
- (4) The Appeal was lodged on behalf of the Owner against the Council's refusal to grant planning permission.
- (5) The Owner by entering into this Agreement does so to create planning obligations in respect of the Application Site in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Agreement.

NOW THIS DEED WITNESSES as follows:

#### 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 (i) **"The Council"** and **"the Owner"** respectively include their successors in title and assigns.

(ii) **"Affordable Housing"** means Social Rented Housing Affordable Rented Housing and Intermediate Housing to be provided in accordance with Schedule 4 which is:

(a) housing 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);

(b) within Amber Valley, housing which can be accessed by households with an income that is on or below the median income of all households within Amber Valley. Households who fall into this category should not spend over 25% of their income on housing

and reference to an **"Affordable Housing Unit"** and cognate expressions shall be construed accordingly".

(iii) **"Affordable Rented Housing"** means housing that is let by local authorities or private Registered Providers of social housing to households who are eligible for Social Rented Housing. Affordable rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges where applicable).

(iv) **"Appeal"** means the appeal (PINS Reference No. APP/AP/M1005/A/13/2199128) lodged on behalf of the Owner against the Council's refusal of the Planning Application.

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

(vi) **"Commencement of Development"** means the carrying out of a material operation pursuant to the Planning Permission in accordance

with the provisions of Section 56 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 investigation site archaeological investigation and soil surveys erection of contractors work compound erection of fencing to site boundary and reference to "**Commence Development**" shall be construed accordingly.

- (vii) "**Development**" means the development authorised by the Planning Permission including works required by or pursuant to the conditions thereof.
- (viii) "**Dwelling**" means a residential unit that may be built on the Application Site as part of the Development and reference to "**Dwellings**" shall be construed accordingly.
- (ix) "**Homes and Communities Agency**" means the Homes and Communities Agency 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.
- (x) "**Interest**" means interest at 4 per cent above the base lending rate of The Bank of England from time to time.
- (xi) "**Intermediate Housing**" means homes for sale and rent provided at a cost above social rent but below market levels subject to the criteria in the Affordable Housing definition contained in this Agreement. These can include share equity (shared ownership and equity loans) other low cost homes for sale and intermediate rent that meets the definition in Annex 2 of the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it) but not Affordable Rented Housing.

- (xii) **"Management Company"** means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes carrying out future maintenance of the Public Open Space Area.
- (xiii) **"Market Dwelling"** means any dwelling constructed as part of the Development for sale on the open market which is not Affordable Housing and reference to **"Market Dwellings"** shall be construed accordingly.
- (xiv) **"Occupation"** means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in the construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and reference to **"Occupy"** shall be construed accordingly.
- (xv) **"Off-Site Open Space Contribution"** means the sum of £630.03 per Dwelling to be paid to the Council by the Owner and used by the Council towards the enhancement of recreational open space within the vicinity of the Application Site the need for which directly arises from the Development.
- (xvi) **"Phase"** means a phase of the Development and which shall either: -
1. be of the same extent of each Reserved Matters Approval granted by the Council; or
  2. be detailed in any phasing plan, approved by the Council in relation to a condition to the Planning Permission; or
  3. be such other phasing that may be agreed in writing between the Owner and the Council
- and reference to **"Phases"** shall be construed accordingly.
- (xvii) **"Plan"** means the plan annexed hereto.



**SITE LOCATION PLAN**  
Land off Holborn View, Codnor

Drawing Ref: HG2041/PMF01  
Date: Jan 2013  
Scale 1:2500 @ A4



SACRET PLANNING  
PLANNING & DESIGN

*SACRET PLANNING AS WCA*

- (xviii) **"Planning Application"** means an application submitted on behalf of the Owner to the Council under reference AVA/2012/0965 and any subsequent planning applications made in respect of the whole or part of the Application Site.
- (xix) **"Planning Obligations"** means the obligations, conditions and stipulations set out in the First Schedule the Second Schedule the Third Schedule and the Fourth Schedule and reference to **"Planning Obligation"** shall be construed accordingly.
- (xx) **"Planning Permission"** means a planning permission granted by the Secretary of State pursuant to the Planning Application and the Appeal.
- (xxi) **"Practical Completion"** means the stage when an Affordable Housing Unit has been constructed and fitted out and is ready for Occupation.
- (xxii) **"Public Open Space Area"** means all that land comprising 4.5 hectares or thereabouts the precise boundaries of which shall be ascertained in accordance with the conditions of the Planning Permission relating thereto.
- (xxiii) **"Public Open Space Maintenance Contribution"** means if applicable the sum calculated in accordance with paragraph 4 of Schedule 3 to be paid to the Council by the Owner and used by the Council for the future maintenance of the Public Open Space Area.
- (xxiv) **"Public Open Space Management Plan"** means a plan detailing a scheme for the maintenance, management, enhancement and improvement of the Public Open Space Area to include the Public Open Space Works for the benefit of wildlife located on the Public Open Space Area.
- (xxv) **"Public Open Space Works"** means the works set out in paragraph 2 of Schedule 3.
- (xxvi) **"Registered Provider"** means a registered provider registered in accordance of Part 1 Chapter 1 of the Housing Act 1996 (or as

redefined by any amendment, replacement or re-enactment of such Act) who is on the Council's list for the time being of approved registered providers which may be amended from time to time or any company or other body as may be proposed by the Owner and approved by the Council and reference to **"Registered Providers"** shall be construed accordingly.

- (xxvii) **"Reserved Matters Approval(s)"** means approval by the Council of one or more matters reserved for approval by the Planning Permission.
- (xxviii) **"Secretary of State"** means the Secretary of State within the Department for Communities and Local Government or any substitute or any Inspector appointed by him.
- (xxix) **"Social Rented Housing"** means housing that is owned by local authorities and private Registered Providers as defined in Section 80 of the Housing and Regeneration Act 2008 for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to local authorities and Registered Providers as agreed with the local authority or with the Homes and Communities Agency.
- (xxx) **"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 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;

- (c) 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;
- (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 an Act of Parliament refers to the Act and 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;
- (f) 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
- (g) 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 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 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 Owner and the Council covenant that they will comply with the Covenants contained in this Agreement.
- (2) The covenants contained in this Agreement on behalf of the Owner are conditional upon:-
  - (a) the issue of the Planning Permission by the Secretary of State; and
  - (b) the Secretary of State deciding that the Planning Obligation is compliant with Regulation 122(2)(a) – (c) of the Community Infrastructure Levy Regulations 2010 in that the Planning Obligation is –
    - (i) necessary to make the Development acceptable in planning terms;
    - (ii) directly related to the Development; and
    - (iii) fairly and reasonably related in scale and kind to the Developmentand that it is necessary to overcome a legitimate planning objection and to make the Development acceptable; and
- (c) except where otherwise stated in this Agreement the Commencement of Development.

### AGREEMENTS AND DECLARATIONS

- 4. (a) No person shall be liable for a breach of the restrictions and obligations contained in this Agreement after that person has parted with all interest (and for the avoidance of doubt including the freehold interest) in the Application Site or the part in respect of which the breach occurs but

without prejudice to any liability for any breach committed prior to such parting.

- (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 Developer 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 one relating to the Development as specified in the Planning Application) granted after the date of this Agreement.
- (e) In this Agreement the expressions "the Owner" 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 successor 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 Owner) or revoked this Agreement shall terminate and cease to have effect and the Council upon receiving notice from the Owner that the Planning Permission has expired or been revoked shall as soon as is reasonably practicable remove any entry relating to this Agreement from the Register of Local Land Charges.
- (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 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 Owner 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 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.
- (j) The Council will upon receipt of reasonable written request of the Owner at any reasonable time or times after any of the planning obligations in this Agreement have been fulfilled issue written confirmation thereof and/or at any reasonable time after all of the planning obligations in this Agreement have been fulfilled or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.

#### CHANGE IN OWNERSHIP

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

#### INDEXATION

- 6. The sums specified as the Off-Site Open Space Contribution and the Public Open Space Maintenance Contribution respectively 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 Index of Retail Prices and;
  - (2) "Base Figure" is the Index Figure at the date of this Deed.

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 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 referred to a single arbitrator appointed by the then President of the Royal Institution of Chartered Surveyors on the application of either the Owner or the Council and the costs of such arbitration shall be borne equally between them.

#### INTEREST

7. If any payment due to the Council under this Agreement is paid late Interest will be payable from the date payment is due 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 relating to any matter or thing 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. The Arbitrator shall be an independent person who is professionally qualified in respect of the subject matter of the dispute for minimum period of 10 years.
- (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;
  - (iii) the Arbitrator shall not hear oral evidence or representations.
- (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 make his award and the reasons for it in writing as quickly as possible and in any event within 90 days of his appointment. Within 21 days of the receipt of the Arbitrator's award either party may apply to the Arbitrator for further written clarification of his award and the reasons including details of the methodology of any calculation and the arbitrator shall provide such clarification within 21 days of the application.

## SCHEDULE 1

### GENERAL COVENANTS

1. The Owner covenants that it will:
  - (a) notify the Council in writing:
    - (i) of the date of the Commencement of Development within 14 days of that event occurring;
    - (ii) of the first Occupation of a Market Dwelling on the Application Site within 14 days of that event occurring;
    - (iii) of the trigger for payment referred to in paragraph 3.2 of Schedule 2 10 days prior to that event occurring.
  - (b) pay to the Council: -
    - (i) the Off-Site Open Space Contribution in accordance with the provisions paragraph 3 of Schedule 2; and
    - (ii) if applicable the Public Open Space Maintenance Contribution in accordance with the provisions paragraph 7 of Schedule 3;
  - (c) make the payments provided for by this Agreement within the times stipulated in this Agreement;
  - (d) pay to the Council on completion of this Agreement an amount of not more than ONE THOUSAND £1,000.00 for the legal costs reasonably incurred for the negotiation preparation and execution of this Agreement;
  - (e) pay to the Council upon Commencement of Development an amount for the monitoring of this Agreement in the sum of ONE HUNDRED POUNDS (£100.00) plus VAT; and
  - (f) observe all restrictions and perform all obligations contained in this Agreement.

2. The Council covenants with the Owner that it will use: -

- (a) the Off-Site Open Space Contribution towards the purposes specified in paragraph 2 of Schedule 2; and
- (b) if applicable the Public Open Space Maintenance Contribution towards the purposes specified in paragraph 8 of Schedule 3.

## SCHEDULE 2

### RECREATIONAL OPEN SPACE MATTERS

1. The Owner shall pay to the Council an Off-Site Open Space Contribution adjusted in accordance with clause 6.
2. The Off-Site Open Space Contribution shall be used towards the enhancement of recreational open space within the vicinity of the Application Site the need for which directly arises from the Development and the Council will not apply the Off-Site Open Space Contribution for any other purpose and the Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied.
3. The Off-Site Open-Space Contribution shall be paid to the Council as follows:
  - 3.1 upon Occupation of the first Market Dwelling on the Application Site to pay to the Council £24,886.37 of the Off-Site Open-Space Contribution and not Occupy more than the first Market Dwelling on the Application Site until £24,886.37 of the Off-Site Open-Space Contribution has been paid to the Council; and
  - 3.2 upon Occupation of 50% of the Market Dwelling on the Application Site to pay to the Council the balance of £24,886.00 of the Off-Site Open-Space Contribution and not Occupy more than the 50% of the Market Dwelling on the Application Site until the balance of £24,886.00 of the Off-Site Open-Space Contribution has been paid to the Council.
4. If the Off-Site Open Space Contribution is not spent within 5 years of the date of payment by the Owner then the Council shall repay the Off-Site Open Space Contribution (plus interest accrued thereon) to the Owner or the Owner's nominee.

### SCHEDULE 3

#### PUBLIC OPEN SPACE MATTERS

1. Prior to the Commencement of Development the Owner shall submit to the Council a 10 year Public Open Space Management Plan for approval in writing.
2. The Public Open Space Works comprise:
  - 2.1 the laying out fencing and landscaping of the Public Open Space Area in accordance with the Planning Permission and the details approved thereunder;
  - 2.2 a programme relating to the implementation and completion of the Public Open Space Works; and
  - 2.3 the ongoing maintenance of the Public Open Space Area (until the time of transfer to the Council if applicable).
3. Within 20 working days (or within such other time period of not more than an additional 20 working days that the Council may reasonably require and which may be agreed in writing between the Council and the Owner within the initial 20 working day period) of the Council receiving from the Owner the Public Open Space Management Plan the Council will notify the Owner in writing of its approval to the Public Open Space Management Plan proposed by the Owner or will acting reasonably provide in writing its proposed amendments to the Public Open Space Management Plan pursuant to which the Owner acting reasonably shall submit a revised Public Open Space Management Plan incorporating those amendments as are reasonable and accepted **PROVIDED THAT** if the Council does not notify the Owner of its approval or proposed amendments to the Public Open Space Management Plan within the 20 working days of receiving the Public Open Space Management Plan from the Owner (or such other period of time of not more than an additional 20 working days that may be agreed) it shall be deemed that the Council has approved the Public Open Space Management Plan submitted by the Owner **AND FURTHER PROVIDED THAT** if agreement cannot be reached between

the Council and the Owner within 40 working days of receipt of the Public Open Space Management Plan by the Council (or such other period of time that may be agreed) then the provisions of clause 10 relating to expert determination can be invoked by any party in relation to only those matters that are in dispute.

4. Upon acceptance of the Public Open Space Management Plan the Council will provide a figure for the Public Open Space Maintenance Contribution to be paid by the Owner to the Council in the event that the Owner transfers to the Council the Public Open Space Area in accordance with paragraph 6.3 of this Schedule, the calculation of such Public Open Space Maintenance Contribution to be based on the areas to be adopted by the Council and management details contained in the Public Open Space Management Plan and in accordance with the Council's Supplementary Planning Document Development and Recreational Open Space dated October 2007.
5. Upon receipt of the Council's approval or deemed approval to the Public Open Space Management Plan pursuant to paragraph 3 of this Schedule (or upon receipt of expert determination in relation to the Public Open Space Management Plan if applicable) the Owner shall implement and carry out the Public Open Space Works in accordance with the Public Open Space Management Plan.
6. Upon completion of the Public Open Space Works to the reasonable satisfaction of the Council the Owner shall either:
  - 6.1 maintain and manage in perpetuity the Public Open Space Area in accordance with the approved Public Open Space Management Plan (or any variations that may be agreed in writing between the Owner and the Council from time to time) **IN DEFAULT OF WHICH** the Council shall be entitled upon giving reasonable prior written to the Owner to carry out any maintenance works reasonably required to the Public Open Space Area and recover the proper and reasonable costs and expenses involved from the Owner or;

- 6.2 transfer title for the Public Open Space Area to a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) on terms to be agreed between the Owner, the Management Company and the Council and all further maintenance shall be thereafter carried out by the Management Company **PROVIDED THAT** it shall be a term of the transfer that the Management Company will only allow the use of the Public Open Space Area for public access and recreation and for no other purpose and will maintain the Public Open Space Area in accordance with the approved Public Open Space Management Plan (or any variations that may be agreed in writing from time to time); or
- 6.3 transfer the freehold ownership of the Public Open Space Area to the Council free of charge together with the benefit of such rights of way as may be necessary for the Council to obtain vehicular and pedestrian access thereto.
7. In the event that paragraph 6.3 of this Schedule is applicable, at the time of transfer of the Public Open Space Area the Owner shall pay to the Council a Public Open Space Maintenance Contribution adjusted in accordance with Clause 6.
8. If applicable, the Public Open Space Maintenance Contribution shall be used by the Council for the future maintenance of the Public Open Space Area following transfer and the Council will not apply the Public Open Space Contribution for any other purpose and the Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied.
9. The Owner hereby declare that pursuant to Section 31(6) Highways Act 1980 that the Public Open Space Area have not been dedicated to the public nor is any use by the public of any part of the Public Open Space Area to be taken in any way as an intention by the Owner to dedicate the same as highway.

10. The Owner shall allow public access to the Public Open Space Area (up until the time of transfer of the Public Open Space Area to the Council if applicable) but subject to the following provisions: -
  - 10.1 access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management **PROVIDED THAT** such requirements and regulations shall not be imposed without the Council's prior approval;
  - 10.2 the Owner may erect notices on the Public Open Space Area and access to them will be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being;
  - 10.3 access may be denied by the Owner for the maintenance, repair, cleansing or renewal of the Public Open Space Area or any building or land abutting it subject to the Council's prior approval;
11. The Owner may close the Public Open Space Area or any part thereof for reasonable periods by reason of: -
  - 11.1 emergency;
  - 11.2 cleansing, maintenance and repair;
  - 11.3 at the direction of the emergency services or other lawful authority; or
  - 11.4 construction activities whilst the Development is being built.

## SCHEDULE 4

### AFFORDABLE HOUSING MATTERS

1 Not to Commence Development or not to Commence Development of each Phase if applicable until the Owner has submitted to the Council and the Council has approved in writing a scheme identifying in relation to the Development or a Phase if applicable:

- (a) by reference to plot numbers 30% of the total number of Dwellings to be constructed as part of the Development or within a Phase if applicable as Affordable Housing;
- (b) the Registered Provider the Owner has selected to provide (within a Phase if applicable);
  - (i) at least 90% of the Affordable Housing Units for Affordable Rented Housing at a rent of no more than 80% of the local market rent (including service charges where applicable) and / or Social Rented Housing at the current Homes and Communities Agency rental levels;
  - (ii) no more than 10% of the Affordable Housing shall be disposed of by way of Intermediate Housing; and

such scheme to be approved in writing by the Council **PROVIDED THAT** it is agreed that if the Council does not approve or notify the Owner of its comments on the scheme within 25 working days of receipt of the scheme from the Owner (or such other period of time that may be agreed in writing between the Council and the Owner) it shall be deemed that the Council has approved the scheme submitted by the Owner.

2 Not to allow the Occupation of more than 80% Market Dwellings until the Practical Completion of the Affordable Housing Units on the Application Site or within a Phase if applicable in accordance with the Planning Permission together with any application for Reserved Matters Approval(s) (unless otherwise agreed in writing by the Council).

- 3 To offer to contract to transfer the freehold of all of the Affordable Housing Units to the Registered Provider identified in accordance with the provisions of paragraph 1(b) of this Schedule the transfer being subject to the following:
- (a) The grant by the Owner to the acquiring Registered Provider of all rights of access and passage of services and other rights of entry reasonably necessary for the purpose of the Development.
  - (b) A reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development.
  - (c) A covenant by the acquiring Registered Provider with the Owner not to use or dispose of the Affordable Housing otherwise than in accordance with paragraphs 1(b)(i) and (ii) of this Schedule.
- 4 Subject to paragraph 7 of this Schedule the Owner shall ensure that the housing identified in paragraph 1(a) of this Schedule shall not be used for any purpose other than Affordable Housing.
- 5 In the event that the Registered Provider identified in accordance with the provisions of paragraph 1(b) of this Schedule declines or is unable to accept the transfer of some or all of the Affordable Housing Units on the terms of this Agreement or if in the 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 Units within a period of six months from the date of the offer referred to in paragraph 3 of this Schedule either the Owner or the Council shall give written notice to the other ("**Notice**") and the Owner may nominate an alternative Registered Provider(s) for the Council's approval any such nomination to be made within 14 days of the service of the Notice **PROVIDED THAT** if the Council does not notify the Owner within 10 working days of receipt of nomination (or such longer period if agreed between the Council and the Owner) of its approval or disapproval of the alternative Registered Provider(s) nominated by the Owner it shall be deemed that the Council has approved the alternative Registered Provider(s) nominated by the Owner.

- 6 Immediately upon receiving confirmation of the Council's approval or deemed approval of the nominated alternative Registered Provider(s) in accordance with paragraph 5 of this Schedule the Owner shall offer to enter into negotiations with the alternative Registered Provider(s) for the transfer to it of the Affordable Housing Units (or any individual unit or units comprised in the units of Affordable Housing that has/have not been transferred or may not have been contracted to be sold to a Registered Provider) in accordance with the terms of paragraph 3 and 4 of this Schedule.
- 7 The covenants in this Schedule shall not be binding upon:
- (a) a tenant of an individual Affordable Housing Unit exercising a right to buy or right to acquire pursuant to any statutory right to acquire or any purchaser from or successor acquiring from such tenant; or
  - (b) any mortgagee in possession exercising a power of sale under their mortgage or any purchaser from or successor to such mortgagee or any receiver appointed by such mortgagee in possession; or
  - (c) any person who has acquired by staircasing 100% of a freehold or leasehold of an individual Affordable Housing Unit including any mortgagee of any such Affordable Housing Unit.
- 8 Any dispute under or arising out of the failure to agree with the Council a scheme and specifications pursuant to this Schedule shall be referred to a chartered surveyor of not less than 10 years standing agreed between the Council and the Owner or in default of agreement nominated by the President for the time being of the Royal Institution of Chartered Surveyors and the chartered surveyor so appointed shall act as an expert and not as an arbitrator and his decision shall be binding on the parties save in the case of manifest error. The costs of the expert and of his appointment shall be in his award.

IN WITNESS whereof this Deed 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)



SIGNED AS A DEED by the said )  
PEVERIL SECURITIES LIMITED )  
in the presence of:- )

Authorised Signatory



Authorised Signatory

