

FREETHS

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(1) THE COUNCIL OF THE BOROUGH OF AMBER VALLEY

(2) DERBYSHIRE COUNTY COUNCIL

(3) NOTTINGHAM COMMUNITY HOUSING ASSOCIATION LIMITED

relating to the

land lying North East off Whysall Street, Heanor, Derbyshire

AVA/2018/0661

Ref: 1607/LAB/99903/4160
Direct Tel: +44 (0)845 050 3674
Fax No: +44 (0)845 050 3270
Email: louise.burnett@freeths.co.uk

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THIS DEED is made on the 29 day of March 2019

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")
- (3) **NOTTINGHAM COMMUNITY HOUSING ASSOCIATION LIMITED** (Co. Ref No. RS007104) of 12 – 14 Pelham Road, Nottingham, NG5 1AP ("the Owner")

INTRODUCTION

- 1. The Council is the Local Planning Authority for the purposes of Section 106 of the Act for the area in which the Site is situated.
- 2. The County Council is the Education Authority and a Local Planning Authority for the area in which the Site is situated.
- 3. The Owner is the freehold owner of the Site and is the registered proprietor thereof under Title Numbers DY451653 and DY490669.
- 4. The Owner has submitted the Application to the Council for the proposed Development of the Site and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

5. The Council has resolved to grant the Planning Permission for the Site subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

- 1.1. For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	means the Town and Country Planning Act 1990 (as amended)
"Affordable Dwelling(s)"	means the Dwellings to be constructed to Design and Quality Standards on the Site as Affordable Housing and "Affordable Dwelling" shall be construed accordingly
"Affordable Housing"	means housing provided by a Registered Provider to meet local housing needs which will be allocated to Eligible Persons as either Affordable Housing for Rent or Shared Ownership Housing;
"Affordable Housing Scheme"	<p>means a scheme submitted and approved pursuant to the provisions of Schedule 5 for the construction and provision of 7 Affordable Dwellings shown coloured red on Plan 1 on the Site to comprise (unless otherwise agreed in writing between the Owner and the Council) of the following tenure mix:</p> <p>(a) 7 Affordable Housing for Rent; and</p> <p>(b) 1 Shared Ownership Housing</p>

"Affordable Housing for Rent"	means rented housing let by Registered Providers to Eligible Persons under tenancies not subject to the national rent regime but which are subject to other rent controls that require a rent of no more than 80% of the local market rent;
"Application"	means the application for planning permission dated 19 June 2018 submitted to the Council for the Development and allocated reference number AVA/2018/0661
"Chargee"	means any mortgagee or charge of a Registered Provider or administrator, receiver including a fixed charge receiver, any receiver appointed under the Law of Property Act 1925, administrative receiver, manager or any other person appointed under any security documentation.
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed 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 and the temporary display of site notices or advertisements and "Commencement", "Commence Development" and "Commenced" shall be construed accordingly
"Complete" and "Completion"	means a stage of construction such that a Dwelling has a complete roof and all windows and external doors installed and where further works do not ordinarily amount to "development" for the purposes of section 55(1) of the Act and "Completed" shall be construed accordingly

"Design and Quality Standards"	means the appropriate standards as specified by Homes England
"Development"	means the development of the Site by the provision of 20 number new dwelling houses and associated works as set out in the Application
"Dwelling"	means a dwelling (including a house, flat, bungalow or maisonette and an Affordable Dwelling) to be constructed pursuant to the Planning Permission and used for private domestic residential purposes and "Dwellings" shall be construed accordingly
"Education Contribution"	means the contribution as set out in Schedule 4
"Eligible Person"	means a person and (where relevant) their household in need of Affordable Housing as may be further defined by the Affordable Housing Scheme and "Eligible Persons" shall be construed accordingly
"Index"	means the Royal Institution of Chartered Surveyors Building Cost Information Service All in Tender Index published by the Royal Institution of Chartered Surveyors (or if any of such indices ceases to be published such other index as the Council shall reasonably determine)
"Index-Linked"	means proportionately increased equivalent to the proportionate increase or decrease in the Index as set out in Clause 8 of this Deed and "Index Linking" shall be construed accordingly
"Interest"	means interest at 4% per cent above the base lending rate of the Bank of England from time to time

"Management Company"	<p>means a company registered at Companies House which is approved by the Council and may already be in existence or which may be formed by the Owner for the purposes of carrying out future maintenance of the Open Space and:</p> <ul style="list-style-type: none"> - which is incorporated in England and Wales; - which has its registered office in England and Wales; <p>and</p> <ul style="list-style-type: none"> - whose primary objects permit it to maintain and renew the Open Space
"Market Dwelling"	<p>means any dwelling constructed as part of the Development for sale on the open market which is not Affordable Housing;</p>
"Occupation" and "Occupied" and "Occupy"	<p>means occupation of the Site for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out, decoration, marketing or display or occupation in relation to security operations</p>
"Open Space Contribution"	<p>means the contribution set out in Schedule 5</p>
"Open Space"	<p>means the areas of open space within the Site that do not fall within the curtilages of the Dwellings including dense shrub planting, grass verges, perimeter fence and natural pond</p>
"Open Space Scheme"	<p>means the scheme submitted and approved in accordance with Schedule 6 to secure the long term maintenance and management of the Open Space</p>
"Party"	<p>means a party to this Deed</p>

"Parties"	means collectively the Council, the County Council and the Owner
"Plan 1"	means the plan attached hereto and marked Plan 1 at Appendix 1
"Planning Permission"	means the planning permission subject to conditions to be granted by the Council pursuant to the Application
"Registered Provider(s)"	means as defined in the Housing and Regeneration Act 2008
"Shared Ownership Housing"	means those Affordable Dwellings to be made available on an equity shared basis to the first purchaser of such Affordable Dwellings where the purchaser pays for a percentage of the equity with the remaining percentage being retained by the Registered Provider and where the purchaser shall be entitled to acquire 100% of the equity from the Registered Provider over time
"Site"	means the land against which this Deed may be enforced as shown edged red on Plan 1 and as described in Schedule 1
"Working Days"	Monday to Friday (inclusive) except a day which is declared to be a bank holiday or day of public thanksgiving or mourning in England

2. CONSTRUCTION OF THIS DEED

- 2.1. Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.

- 2.2. Clause, paragraph or schedule headings shall not affect the interpretation of this Deed.
- 2.3. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4. Words of the masculine gender include the feminine and neutral genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.5. Wherever there is more than one person named as a Party to this Deed 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.
- 2.6. 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.
- 2.7. References to any Party to this Deed shall include the successors in title to that Party and to any party deriving title through or under that Party and in the case of the Council and County Council any successor to its statutory functions.
- 2.8. The schedules to this Deed are incorporated in and form part of this Deed.

3. LEGAL BASIS

3.1. This Deed:

- 3.1.1. is made pursuant to the provisions of the Act;

3.1.2. is a planning obligation for the purposes of the Act;

3.1.3. is given with the intent to bind the Owner's freehold interest in the Site;

3.1.4. shall be enforceable by the Council and County Council as Local Planning Authorities;
and

3.1.5. is executed by the Parties hereto as a deed.

4. CONDITIONALITY

4.1. This Deed is conditional upon:

4.1.1. the grant of the Planning Permission; and

4.1.2. the Commencement of Development

save for this clause and the provisions of Clauses 6.1, 6.2, 7.1 and 12.1 which shall come into effect immediately upon completion of this Deed.

5. THE COVENANTS

5.1. The Owner covenants with the Council and the County Council:

5.1.1. as set out in the Schedule 2;

- 5.1.2. save in respect of individual Dwellings to give the Council and County Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company) or usual or principal address (if not) together with the area of the Site or unit of occupation purchased or transferred by reference to a plan.
- 5.1.3. to notify the Council of the reaching of any of the Occupation, Commencement, Completion or other thresholds contained in Schedule 2 of this Deed, such notification to be given within 10 Working Days of reaching such threshold.
- 5.2. The Owner further covenants with the Council as set out in Schedule 3, Schedule 5 and Schedule 6.
- 5.3. The Owner further covenants with the County Council as set out in Schedule 4.
- 5.4. The Council covenants with the Owner as set out in Schedule 3.
- 5.5. The County Council covenants with the Owner as set out in Schedule 4

6. MISCELLANEOUS

- 6.1. The Owner shall pay to the Council before completion of this Deed the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of ONE THOUSAND POUNDS [£1000.00]

- 6.2. The Owner shall pay to the County Council before completion of this Deed the legal costs of the County Council incurred in the negotiation and execution of this Deed the sum of ONE THOUSAND POUNDS [£1000.00]
- 6.3. No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.4. This Deed shall be registered as a local land charge by the Council.
- 6.5. Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 6.6. Any notices required to be served in accordance with the terms of this Deed shall be deemed to have been properly served if sent by recorded delivery to the registered office (if a company) or the usual or principal address (if not) of the relevant Party, as appropriate.
- 6.7. Following the performance and satisfaction of all the obligations contained in this Deed the Council may, upon the written request of the Owner, effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 6.8. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Deed.
- 6.9. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they shall have parted with their entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 6.10. Other than the provisions of Schedule 5 (which shall apply solely to the Affordable Housing) no owner of an interest in any part of the Site who occupies that part as their residence nor their lessees, tenants, lenders, mortgagees, administrator, receivers, managers or successors in title shall be treated as a person deriving title from the Owner for the purposes of Section 106(3) of the Act (and against whom this Deed can be enforced).
- 6.11. The covenants and restrictions contained in this Deed (other than the provisions of Schedule 5) do not bind any Chargee and shall cease to apply to any part of the Site which is transferred or leased by a Chargee.
- 6.12. The Council shall not be liable to any person under this Deed after that person has parted with their entire interest in the Site but without prejudice to any liability for any subsisting breach arising prior to parting with such interest.
- 6.13. In the event of the Planning Permission being quashed, revoked or otherwise withdrawn or, without the consent of the Owner, being modified by any statutory procedure before the Commencement of Development or expiring and not being renewed without the Development having Commenced or in the event of the revocation of the Planning Permission the obligations under this Deed shall cease absolutely.
- 6.14. The obligations in this Deed shall not be binding upon or enforceable against an individual purchaser of any Market Dwelling or any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services.

7. WAIVER

- 7.1. No waiver (whether express or implied) by the Council or County Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or

County Council or the Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

8. INDEXATION

8.1. The sums specified as the Open Space Contribution and Education 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:

8.1.1. "Index" means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors and;

8.1.2. "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 as an alternative method of fixing the sum of each such contribution shall be agreed between the Council (in respect of the Open Space Contribution) or County Council (in respect of the Education Contribution) 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 construction materials 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 the Council or County Council (as the case may be) and the costs of such arbitration shall be borne by the Council.

9. INTEREST

9.1. If any sum required to be paid in accordance with the terms of this Deed is paid late, Interest will be payable on the outstanding sum from the date payment is due to the date of payment.

10. VAT

- 10.1. All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

11. DISPUTE RESOLUTION

- 11.1. The parties to this Deed will attempt in good faith to resolve any dispute or claim arising out of or relating to this Deed promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.
- 11.2. If the matter is not resolved through negotiation the parties to this Deed shall refer to a chartered surveyor of not less than 10 years standing agreed between the Council, the County Council and the Owner.
- 11.3. Should the Council, the County Council and the Owner not agree they will refer the matter to the President at the time of the Royal Institute of Chartered Surveyors.
- 11.4. The President of the Chartered Surveyors shall appoint a chartered surveyor and this chartered surveyor 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 cost of the expert and of his appointment shall be in his award.

12. JURISDICTION

- 12.1. This Deed is governed by and interpreted in accordance with the law of England

IN WITNESS of which the parties to this Deed have executed this document as a Deed on the date first before written.

SCHEDULE 1

Details of the Owner's Title, and description of the Site

All that piece or parcel of freehold land situated at land to the north-east off Whysall Street, Heanor, Derbyshire which is shown edged red for identification purposes only on Plan 1 and which comprises part of the land registered at the Land Registry under title numbers DY451653 and DY490669.

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SCHEDULE 2

GENERAL COVENANTS

1. The Owner covenants with the Council and the County Council as follows:
 - 1.1. To notify the Council and the County Council in writing:
 - 1.1.1. of the date of the Commencement of Development; and
 - 1.1.2. of the first occupation of the first Market Dwelling on the Site,

in each event within 14 days of that event occurring.
 - 1.2. To pay to the Council the Open Space Contribution.
 - 1.3. To pay to the County Council the Education Contribution.
 - 1.4. To make the payments provided for by this Deed within the times stipulated in this Deed.
 - 1.5. To observe all restrictions and perform all obligations contained in this Deed.

SCHEDULE 3

OPEN SPACE CONTRIBUTION

1. The Owner covenants with the Council as follows:

1.1 Prior to Occupation of the first Market Dwelling the Owner shall pay to the Council the Open Space Contribution in the sum of THIRTY-FIVE THOUSAND FIVE HUNDRED AND SIXTEEN POUNDS (£35,516.00) adjusted in accordance with Clause 8.

2. The Council covenants with the Owner as follows:

2.1 The Open Space Contribution shall be used by the Council towards development of an existing recreational open space at Berle Avenue Recreation Ground.

2.2 If the Open Space Contribution is not fully expended within 5 years of the date of payment by the Owner then the Council shall repay the remaining unexpended balance of the Open Space Contribution to the Owner.

2.3 For the purposes this Schedule, the Open Space Contribution shall be deemed to have been expended if the 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 Council to expend funds in the future.

SCHEDULE 4

EDUCATION CONTRIBUTION

1. The Owner shall pay to the County Council the Education Contribution in the sum of NINETY-NINE THOUSAND SIX HUNDRED AND TWENTY-EIGHT POUNDS AND FIFTY-ONE PENCE (£99,628.51) adjusted in accordance with Clause 8.
2. The Education Contribution shall be used by the County Council towards Project A: additional teaching accommodation at Heanor Gate Science College.
3. The Education Contribution shall be paid to the County Council upon occupation of the first Market Dwelling on the Site.
4. If the Education Contribution is not spent within 5 years of the date of payment by the Owner then the County Council shall repay the Education Contribution to the Owner.
5. For the avoidance of doubt, for the purposes of paragraph 4 of this Schedule, the Education Contribution shall be deemed to have been committed if the County Council has entered into any contract or given any undertaking (whether enforceable in law or otherwise) the performance or fulfilment of which will require the County Council to expend funds in the future.

SCHEDULE 5

AFFORDABLE HOUSING

1. The Development shall not be Commenced unless and until the Owner has submitted to the Council and the Council has approved in writing (the approval not to be unreasonably withheld or delayed) an Affordable Housing Scheme which:
 - 1.1. identifies by reference to plot numbers on Plan 1 the Affordable Dwellings to be constructed on the Development;
 - 1.2. demonstrates that the Owner has selected a Registered Provider;
 - 1.3. demonstrates that a scheme has been reached with the selected Registered Provider to provide 6 Affordable Dwellings as Affordable Housing for Rent such scheme to be approved by the Council (the approval not to be unreasonably withheld or delayed);
 - 1.4. demonstrates that agreement has been reached with the selected Registered Provider that no more than 1 Affordable Dwelling shall be disposed of by way of Shared Ownership Housing; and
 - 1.5. demonstrates that agreement has been reached with the selected Registered Provider to transfer the freehold of all of the Affordable Dwellings to the Registered Provider the transfer being subject to the following:-
 - 1.5.1. 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.
 - 1.5.2. a reservation of all rights and passage of services and rights of entry reasonably necessary for the purpose of the Development.
 - 1.5.3. a covenant by the acquiring Registered Provider with the Owner not to use or dispose of the Affordable Dwellings otherwise than in accordance with this Schedule.
2. The Affordable Dwellings shall be Completed and available for Occupation before 80% of the Market Dwellings are Completed.

3. Subject always to the provisions of paragraphs 5 and 6 of this Schedule 5 the Dwellings identified in the approved Affordable Housing Scheme as Affordable Dwellings shall be used for no other purpose than Affordable Housing.
4. 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 for resolution pursuant to clause 11 of this Deed.
5. Any Chargee shall prior to seeking to dispose of any Affordable Dwelling pursuant to any default under the terms of its mortgage, charge or other security documentation give not less than 20 Working Days prior notice to the Council of its intention to dispose of that Dwelling and:
 - 5.1. in the event that the Council responds within 20 Working Days from receipt of the notice indicating that arrangements for the transfer of the Affordable Dwelling can be made in such a way as to safeguard it as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer;
 - 5.2. if the Council does not serve its response to the notice served under this paragraph 5.2 within the 20 Working Day period then the Chargee shall be entitled to dispose of the Affordable Dwelling free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply to the Affordable Dwelling; and
 - 5.3. if the Council or any person cannot within 40 Working Days of the date of service of its response under paragraph 5.2 secure such transfer then provided that the Chargee shall have complied with its obligations under this Schedule the Chargee and any successors in title to such Chargee shall be entitled to dispose of the Affordable Dwelling free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply to the Affordable Dwelling

PROVIDED THAT at all time the rights and obligations in this Schedule shall not require the Chargee to act contrary to its duties under the charge, mortgage or other security

documentation and that the Chargee shall not be required to complete a transfer unless the consideration payable is sufficient to repay the outstanding amount due under the charge, mortgage or other security documentation plus all interest and costs incurred.

6. The covenants and restrictions contained in this Schedule shall:

- 6.1. cease to apply to any completed Affordable Dwelling where a Registered Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right under Section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable including any voluntary right to buy agreement, arrangement or scheme;
- 6.2. cease to apply to any completed Affordable Dwelling here a Registered Provider sells to a tenant through Social Homebuy funded pursuant to Section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof or any similar or substitute right, agreement, arrangement or scheme;
- 6.3. not bind any leaseholder or owner of any Dwelling which is Shared Ownership Housing or any other purchaser, tenant or occupier of a completed Dwelling or any successor in title to such person;
- 6.4. not bind any mortgagee of any leaseholder or owner of any Shared Ownership Housing or any purchaser, tenant or occupier referred to in paragraph 6.3 above or any administrator, administrative receiver, manager, fixed charge receiver, including any receiver appointed under the Law of Property Act 1925 or any other person appointed under any security documentation by such mortgagee or charge or any person deriving title through such persons;
- 6.5. cease to apply to any completed Affordable Dwelling referred to in 6.3 and 6.4 above in respect of which a shared ownership lease or equity mortgage has been granted or which has otherwise been disposed of as Shared Ownership Housing and where:

6.5.1.a Registered Provider shall have disposed of 100% of the equity in such unit(s) under the terms of any such lease, equity loan or other arrangement;
or

6.5.2.the leaseholder or owner is acting in accordance with its rights and obligations under that lease, equity mortgage or other relevant arrangement.

SCHEDULE 6

OPEN SPACE

1 PROVISION OF OPEN SPACE

- 1.1 No part of the Development shall be Commenced unless and until the Owner has submitted an Open Space Scheme to the Council for approval.
- 1.2 The Open Space Scheme shall include details of the following:
 - 1.2.1 the detailed design of the Open Space to be provided as part of the Development;
 - 1.2.2 planting plans and specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants and proposed numbers / densities;
 - 1.2.3 any play equipment (if applicable); and
 - 1.2.4 details of arrangements for the future management and ownership of the Open Space (which may provide for the Owner to maintain the Open Space or for the transfer of the Open Space to a Management Company for the purposes of its future management) and in the event of a proposed transfer to a Management Company:
 - 1.2.4.1 the details of the Management Company to whom the Open Space will be transferred upon its completion;
 - 1.2.4.2 the proposals for the future maintenance of the Open Space by the Management Company including the estimates costs to be applied by the Management Company for the maintenance of the Open Space and details of future funding arrangements; and
 - 1.2.4.3 details of any proposals for the levying of service charges on future occupiers of the Dwellings.
- 1.3 The Owner may invite the Council to (within 25 Working Days of the date of receipt of the Open Space Scheme from the Owner) notify the Owner in writing of its approval to the Open Space Scheme proposed by the Owner or provide in writing its proposed amendments to the Open Space Scheme pursuant to which the Owner acting reasonably shall submit a revised Open Space Scheme

incorporating those amendments that are reasonable and accepted **PROVIDED THAT** if the Council does not notify the Owner of its approval or proposed amendments to the Open Space Scheme within the said period of 25 Working Days it shall be deemed that the Council has approved the Open Space Scheme submitted by the Owner.

- 1.4 In the event that (after a period of not less than 25 Working Days following receipt from the Owner of a revised Open Space Scheme submitted pursuant to paragraph 1.1 of this Schedule 6) the Council serves further written notice upon the Owner stating that the Council does not approve the revised Open Space Scheme:
- 1.4.1 the Owner may collaboratively seek to agree a timetable with the Council for resubmission by the Owner of a further revised Open Space Scheme; and/or
 - 1.4.2 either the Owner or the Council may invoke the provisions of Clause 11 of this Deed in respect of the acceptability or otherwise of the relevant revised Open Space Scheme.
- 1.5 Upon receipt of the Council's approval or deemed approval to an Open Space Scheme pursuant to paragraph 1.3 of this Schedule or upon receipt of a determination in accordance with clause 11 of this Deed (as the case may be) the Owner shall thereafter provide the Open Space in accordance with the approved Open Space Scheme (as may be varied from time to time) and the Owner shall:
- 1.5.1 (subject to paragraphs 2.2 and 2.3 of this Schedule 6) allow access to the Open Space on foot only (and where applicable on foot and cycle only) at all times;
 - 1.5.2 ensure that that the Open Space is kept in a clean and tidy state and properly maintained.

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2 MANAGEMENT AND MAINTENANCE OF THE OPEN SPACE

2.1 The Owner shall not permit the Occupation of more than 80% of the Dwellings until the Open Space has been completed to the Council's reasonable satisfaction in accordance with the approved Open Space Scheme and the Owner has either:

2.1.1 transferred title for the Open Space to a Management Company approved by the Council (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) on the terms agreed between the Owner and the Management Company in consultation with 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:

2.1.1.1 maintain and manage in perpetuity the Open Space in accordance with the Open Space Scheme or any variations that may be agreed from time to time in writing by the Council; and

2.1.1.2 only allow the use of the Open Space for access and recreation and for no other purpose; or

2.1.2 provided the Council with a written undertaking in a form approved by the Council (such approval not to be unreasonably withheld or delayed) to maintain and manage in perpetuity the Open Space in accordance with the approved Open Space Scheme (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 Open Space and recover the proper and reasonable costs and expenses involved from the Owner.

2.2 The Owner shall allow access to the Open Space **SUBJECT ALWAYS** to the following provisions:

2.2.1 access to the Open Space shall be subject to such 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; and

2.2.2 the Owner may erect notices on the Open Space and access to the Open Space may be denied by the Owner for one day each year in order to prevent rights of way or common rights coming into being.

2.3 The Owner may close the Open Space or any part thereof for reasonable periods by reason of:

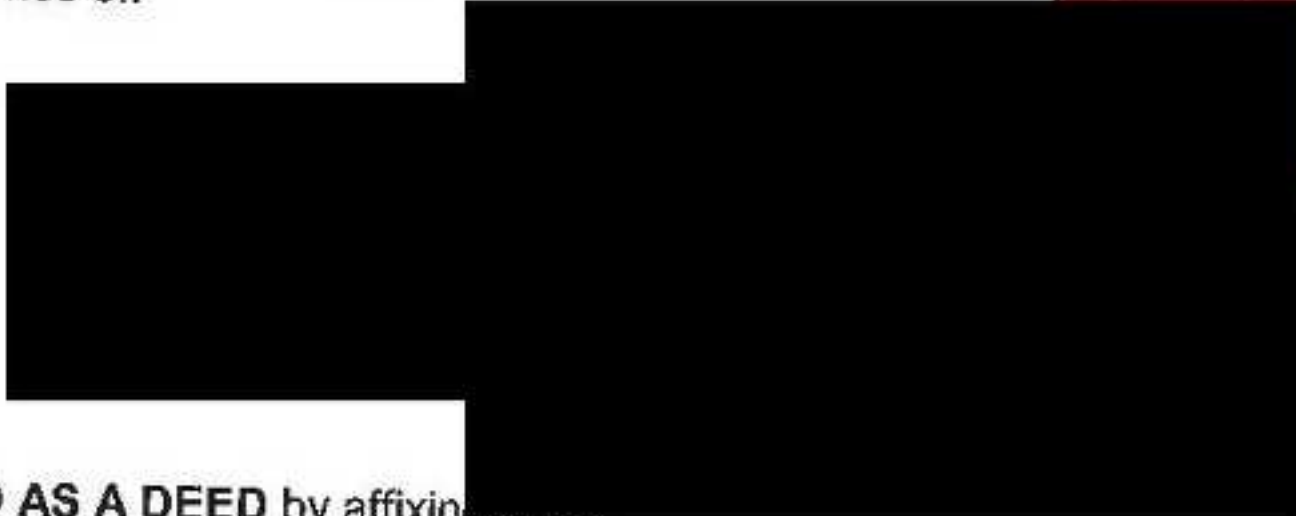
2.3.1 emergency;

2.3.2 cleansing, maintenance and repair;

2.3.3 at the direction of the emergency services or other lawful authority; and

2.3.4 construction activities whilst the Development is being carried out.

EXECUTED AS A DEED by affixing the)
COMMON SEAL OF THE COUNCIL OF)
THE BOROUGH OF AMBER VALLEY)
in the presence of:



EXECUTED AS A DEED by affixing the)
COMMON SEAL OF DERBYSHIRE)
COUNTY COUNCIL)
in the presence of:



Director of Legal Services

Number in Seal
Book

2019/309

Director of Legal Services

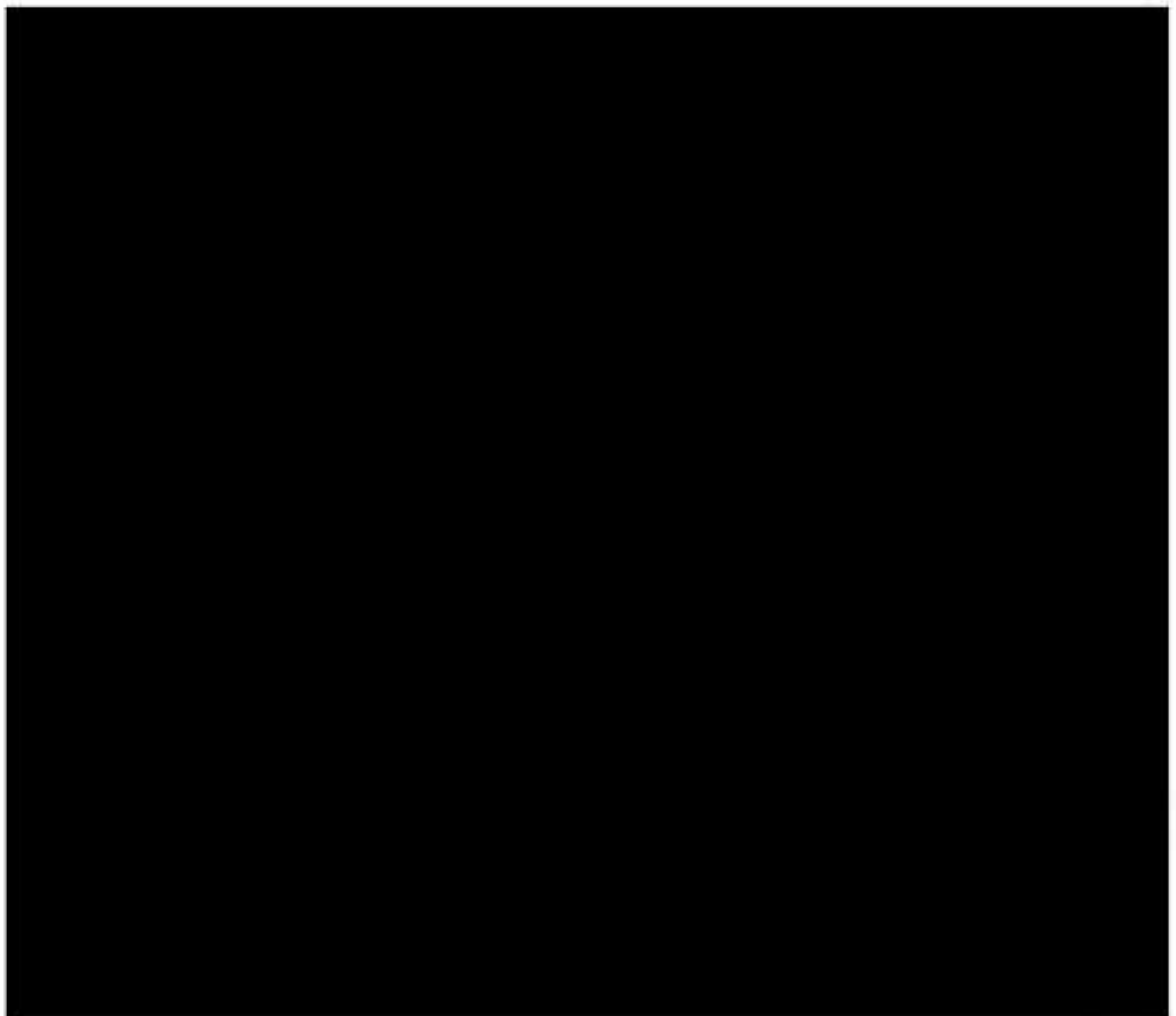
EXECUTED AS A DEED)
on behalf of)
NOTTINGHAM COMMUNITY)
HOUSING ASSOCIATION LIMITED)
by affixing its Common Seal under the)
Power of Attorney dated 1 August 2018)
and in the presence of :

Sign:

Print Name

Sign:

Print Name



Appendix 1

Plan 1

TENURE AND ALLOCATION OF
S106 PROPERTIES

Plot no	House Type	Tenure
1	2B4P	SO
9	3B5P	AR
10	2B4P	AR
11	2B4P	AR
12	3B5P	AR
13	2B4P	AR
14	2B4P	AR

A 21 01 19 note change.
 B 31 01 19 boundary line change.
 C 31 01 19 boundary line change.
 D 25 02 19 drawing title change.

Revision / Date / Notes

Pelham Architects

12, 14 Pelham Road, Sherwood Rise, Nottingham NG5 1AP
 T: 0115 814 3338 E: info@pelhamarchitects.co.uk
 www.pelhamarchitects.co.uk

STAGE INFORMATION

PROJECT
 Land to the north-east off Whysall Street,
 HEANOR DERBYSHIRE

DRAWING TITLE
TENURE PLAN

DRAWING NUMBER
2430 / SK108 / D

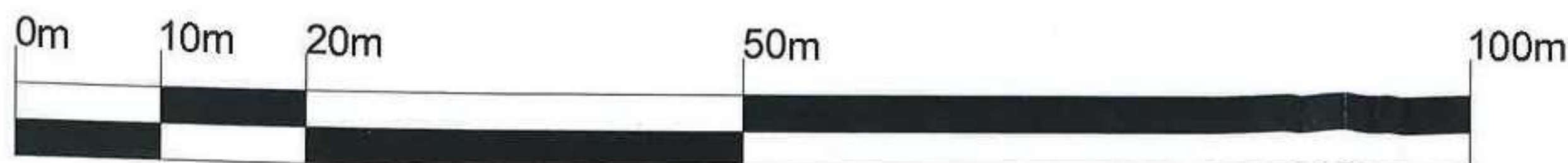
SCALE
1:500 @ A3

DATE
21 01 19

DRAWN BY
DW

CHECKED BY
MP

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Scale 1:500

