

Dated

2nd MARCH

2023

CHARNWOOD BOROUGH COUNCIL

and

LEICESTERSHIRE COUNTY COUNCIL

and

MARK ANDREW BARBER

and

GLADMAN DEVELOPMENTS LIMITED

Agreement pursuant to Section 106 of the Town and Country Planning Act 1990

relating to

Land north of Barnards Drive

Sileby

(Application number P/21/0738/2)



Gladman House
Alexandria Way
Congleton Business Park
Congleton, Cheshire
CW12 1LB
Tel: 01260 288800

THIS AGREEMENT is made the 2nd day of MARCH 2023

BETWEEN:

- 1) **CHARNWOOD BOROUGH COUNCIL** of Southfield Road Loughborough LE11 2TX ('the Council')
- 2) **LEICESTERSHIRE COUNTY COUNCIL** of County Hall Leicester Road Glenfield Leicester LE3 8RA ('the County Council') and
- 3) **MARK ANDREW BARBER** of Highgate Farm Ratcliffe Road Sileby Leicestershire LE12 7PY ('the Owner')

WITH THE CONSENT OF:

- 4) **GLADMAN DEVELOPMENTS LIMITED** (company registration number 3341567) whose registered office is at Gladman House Alexandria Way Congleton Business Park Congleton CW12 1LB ('the Promoter')

RECITALS

- 1) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 2) The County Council is the local highway authority and responsible for the provision of education civic amenity and library facilities for the area in which the Site is situated.
- 3) The Owner is the freehold owner of the Site as set out in Schedule 1.
- 4) The Promoter submitted the Application to the Council on 30 March 2021 and seeks to promote the development of the Site.
- 5) The Council resolved on 1 December 2021 to grant planning permission in respect of the Application subject to conditions and subject to the prior completion of this deed.
- 6) The Owner is prepared to enter into this deed in order to secure the planning obligations it creates.

NOW THIS DEED WITNESSES as follows:

1. Definitions and interpretation

1.1 Definitions

For the purposes of this deed the following expressions shall have the following meanings:

- 1.1.1 'the 1990 Act' means the Town and Country Planning Act 1990 (as amended)
- 1.1.2 'Affordable Housing' means Affordable Rented Housing Social Rented Housing and Dwellings made available as Shared Ownership Units provided to eligible households whose needs are not met by the market, where eligibility is determined with regard to local incomes and local house prices and for Affordable Rented Housing eligibility is determined by the Council's Housing Allocation Policy and in all cases remain at an affordable price for future eligible households
- 1.1.3 'the Affordable Housing Land' means the land within the Site upon which the Affordable Housing Units are to be constructed
- 1.1.4 'the Affordable Housing Notice' means a written notice to be served by the Owner upon the Council pursuant to paragraph 5.1 of Schedule 2 setting out (including providing evidence of) the efforts which have been undertaken by the Owner in an attempt to secure the transfer of the Affordable Rented Units and/or the Social Rented Housing and/or the Shared Ownership Units to a Registered Provider in accordance with the Affordable Housing Scheme approved by the Council pursuant to paragraph 4.1 of Schedule 2
- 1.1.5 'the Affordable Housing Scheme' means the scheme submitted and approved in writing by the Council in accordance with the Planning Permission which shall include details of: (i) the numbers, type, tenure and location on the Site of the Affordable Housing Units which is in line with identified housing need and may include a proportion of wheelchair accessible homes built to M4(3) Building Regulations 2010 (as amended) with a level access shower provision in situ, and (ii) the layout of the Affordable Housing Units to be provided in clusters of no more than 10 Dwellings and include access to a garden wherever possible and minimal communal unadopted spaces in accordance with Council's policies, and (iii) timing of the construction of the Affordable Housing Units and its phasing in relation to the occupancy of the Market Housing Units, and (iv) in relation to the Affordable Rented Housing the Social Rented Housing and any Shared Ownership Units that are to be transferred to a Registered Provider the arrangements for the transfer of the Affordable Housing Units to a Registered Provider, and (v) for any Shared Ownership Units to be transferred to Qualifying Persons the

arrangements for the identification of such persons and the transfer, and (vi) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing Units, and (vii) the occupancy criteria to be used for determining the identity of the occupiers of the Affordable Housing Units and the means by which such occupancy criteria shall be enforced in accordance with the Nomination Agreement, and (viii) provides for the Affordable Housing Units being in accordance with the Affordable Housing Standard

- 1.1.6 'Affordable Housing Standard' means to a standard which is no less than that of the Market Housing Units and the Affordable Rented Housing and Social Rented Housing meet NDSS standards and are designed to accommodate the following number of people:
- 1 bed Dwelling accommodates 2 people;
 - 2 bed Dwelling accommodates 4 people;
 - 3 bed Dwelling accommodates a minimum of 5 people;
 - 4 bed Dwelling accommodates a minimum of 7 people
- 1.1.7 'the Affordable Housing Units' means that part of the Development comprising no less than 30% (thirty percent) of the Dwellings which shall be constructed for Affordable Housing in accordance with the approved Affordable Housing Scheme, 66% (sixty six percent) of which shall be Affordable Rented Housing and/or Social Rented Housing and 34% (thirty four percent) of which shall be Shared Ownership and 'an Affordable Housing Unit' shall be construed accordingly
- 1.1.8 'Affordable Rented Housing' means Affordable Housing for rent as described in paragraph a) to the definition of 'Affordable Housing' in Annex 2: Glossary to the NPPF where the rent is set in accordance with the Government's rent policy for affordable rent or is at least 20% (twenty percent) below local market rents (including service charges where applicable)
- 1.1.9 'the Allotment Contribution' means the sum of **£25,746** (twenty five thousand seven hundred and forty six pounds) payable towards the cost of allotment provision in Sileby
- 1.1.10 'the Application' means the application for outline planning permission for the Development dated 17 December 2020 submitted to the Council and allocated reference number P/21/0738/2

- 1.1.11 'Approval of Details Fee' means the sum of **£292** (two hundred and ninety two pounds) for each submission and payable to the Council for the costs of considering and approving any details, document or scheme required to be submitted to the Council under the terms of this deed
- 1.1.12 'Approval (Reserved Matters)' means approval of reserved matters which establishes the Composition of the Development
- 1.1.13 'Biodiversity Baseline Assessment' means a calculation to measure the biodiversity value of the Site as at the date of that assessment to be carried out in accordance with the Warwickshire Calculator and to be submitted for the written approval of the Council
- 1.1.14 'Biodiversity Impact Compensation' means a cash payment for biodiversity offsetting payable by the Owner to the Council calculated using the Warwickshire Calculator to compensate any residual ecological impacts of the Development
- 1.1.15 'Biodiversity Completion Assessment' means a calculation to measure the biodiversity value of the Site upon the completion of the Development to be carried out in accordance with the Warwickshire Calculator
- 1.1.16 'Biodiversity Mitigation Strategy' means a scheme to be submitted by the Owner for the written approval of the Council which details any measures or compensation required to mitigate the impact of the Development based on the Biodiversity Baseline Assessment and the Biodiversity Completion Assessment, which measures shall provide for the enhancement of biodiversity in the Charnwood area by and at the expense of the Owner and which shall be provided in the following order of preference; (i) the On-Site Biodiversity Scheme, (ii) where the provision of an On-Site Biodiversity Scheme is impractical, or where the Parties (acting reasonably) agree that the provision of an On-Site Biodiversity Scheme would result in adverse impacts on the Development or the developable area of the Site, provision of the Off-Site Biodiversity Scheme, and (iii) where neither the On-Site Biodiversity Scheme or the Off-Site Biodiversity Scheme are practicably deliverable in their entirety payment by the Owner of the Biodiversity Impact Compensation
- 1.1.17 'the Bus Pass Contribution' means the sum derived by multiplying the Composition of Development by **£720** (seven hundred and twenty pounds) to provide each Dwelling with up to 2 (two) 6 (six) month bus passes to encourage new residents to use bus services but only

where such bus passes are sought by the first Occupier of such Dwelling within 6 (six) months of their first Occupation of that Dwelling

- 1.1.18 'the Civic Amenity Contribution' means the sum derived by multiplying the Composition of the Development by **£51.67** (fifty one pounds and sixty seven pence) payable towards the costs of increasing capacity at the Mountsorrel Household Waste Recycling Centre to serve the Development
- 1.1.19 'the Commencement of Development' means the commencement of any material operation (as defined in the 1990 Act section 56(4)) forming part of the Development 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, the temporary display of site notices or advertisements and 'Commence Development' and 'Commencement' shall be construed accordingly
- 1.1.20 'the Composition of the Development' means the aggregate number of Dwellings comprised in the Development to be determined by the Approval (Reserved Matters)
- 1.1.21 'the Construction Traffic Routing Scheme' means a scheme to be submitted to and approved in writing by the County Council showing the route to be taken to and from the Site by all construction traffic during the construction of the Development
- 1.1.22 'the County Council Monitoring Contribution' means the sum of **£300** (three hundred pounds) per planning obligation owed to the County Council herein or 0.5% of the value of any contribution due to the County Council (whichever is the greater) payable by the Owner to the County Council as a contribution towards the costs of the County Council in monitoring compliance with obligations owed to it contained herein
- 1.1.23 'CPI' means the consumer price index issued by the Office for National Statistics or any replacement publication or index agreed by the Council in the event that it is no longer maintained
- 1.1.24 'the Date of Practical Completion' means the date of issue of a certificate of practical completion by the Owner's architect or such other person with an appropriate professional

- qualification or, if the Development is constructed by a party other than the Owner, by that other party's architect or such other person with an appropriate professional qualification
- 1.1.25 'the Development' means the development of the Site pursuant to the Planning Permission and the Approval (Reserved Matters) with residential development of up to 228 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point with all matters reserved except for means of access
- 1.1.26 'a Dwelling' means a dwelling (including a house, flat, maisonette or bungalow) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly
- 1.1.27 'the Early Years Contribution' means the sum derived by applying the formula $(A+B) \times 0.085$ x **£8,907** (eight thousand nine hundred and seven pounds)
- Where
- A is the number of Qualifying Houses and
- B is the number of Qualifying Flats
- payable towards the costs of early years education provision to serve the Development
- 1.1.28 'the Education Contribution' means the Early Years Contribution the Primary Education Contribution the Secondary Education Contribution and the Special Education Contribution together
- 1.1.29 'Expert' means an independent and fit person holding professional qualifications appropriate in light of the subject matter of the dispute, to be appointed (in the absence of agreement) by the president (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications
- 1.1.30 'Flat' means a Dwelling that occupies a single floor and/or does not benefit from the private open space for the exclusive use of the residents of that Dwelling and no other persons, and which is not a bedsit or a studio
- 1.1.31 'the Healthcare Contribution' means the sum of **£167,911.60** (one hundred and sixty seven thousand nine hundred and eleven pounds and sixty pence), 57% of which shall be payable towards the costs of increasing capacity at the Banks Surgery, 9 The Banks, Sileby, LE12 7RD and 43% of which shall be payable towards the costs of increasing capacity at the Highgate Medical Centre, 5 Storer Close, Sileby, LE12 7UD

- 1.1.32 'the Highways Contribution' means the sum of **£8,000** (eight thousand pounds) payable towards the costs of raised kerb provision at the nearest appropriate bus stops to encourage new residents to use bus services and to support modern bus fleets with low floor capabilities
- 1.1.33 'Homes England' means the successor body to the Homes and Communities Agency created pursuant to the Housing and Regeneration Act 2008 exercising functions in relation to the funding of affordable housing and being the regulator of social housing providers in England and includes any successor body exercising similar functions
- 1.1.34 'House' means a Dwelling that does not meet the definition of a Flat
- 1.1.35 'Housing Allocations Policy' means the Council's Housing Allocation Policy dated April 2020 or any revision thereof or successor policy.
- 1.1.36 'Implementation' means the date upon which the Development shall begin by the carrying out of a material operation in accordance with the provisions of section 56(4) of the 1990 Act and "Implementation" and "Implement" shall be construed accordingly
- 1.1.37 'the Index' means for all contributions and payments pursuant to this deed (save for those noted below) the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the Parties hereto shall agree or in default of agreement such Index as shall be determined by an arbitrator appointed by the President of the RICS for the purposes of this deed in all cases to ensure as nearly as possible that the sums of money involved shall fluctuate in accordance with the general level of the building industry costs and Index means for the monitoring contributions pursuant to paragraphs 2.13 and 2.14 of Schedule 2 the CPI
- 1.1.38 'Interest' means interest at 4% above the base lending rate of National Westminster Bank plc from time to time
- 1.1.39 'the Library Contribution' means the sum derived by applying the formula $(L \times \text{£}15.09 \text{ (fifteen pounds and nine pence)}) + (M \times \text{£}30.18 \text{ (thirty pounds and eighteen pence)})$
- Where
- L is the number of Dwellings having one bedroom
- M is the number of Dwellings having two or more bedrooms

payable towards the costs of providing additional materials for loan or reference use, associated equipment or the reconfiguration of library space to account for additional usage at Sileby Library

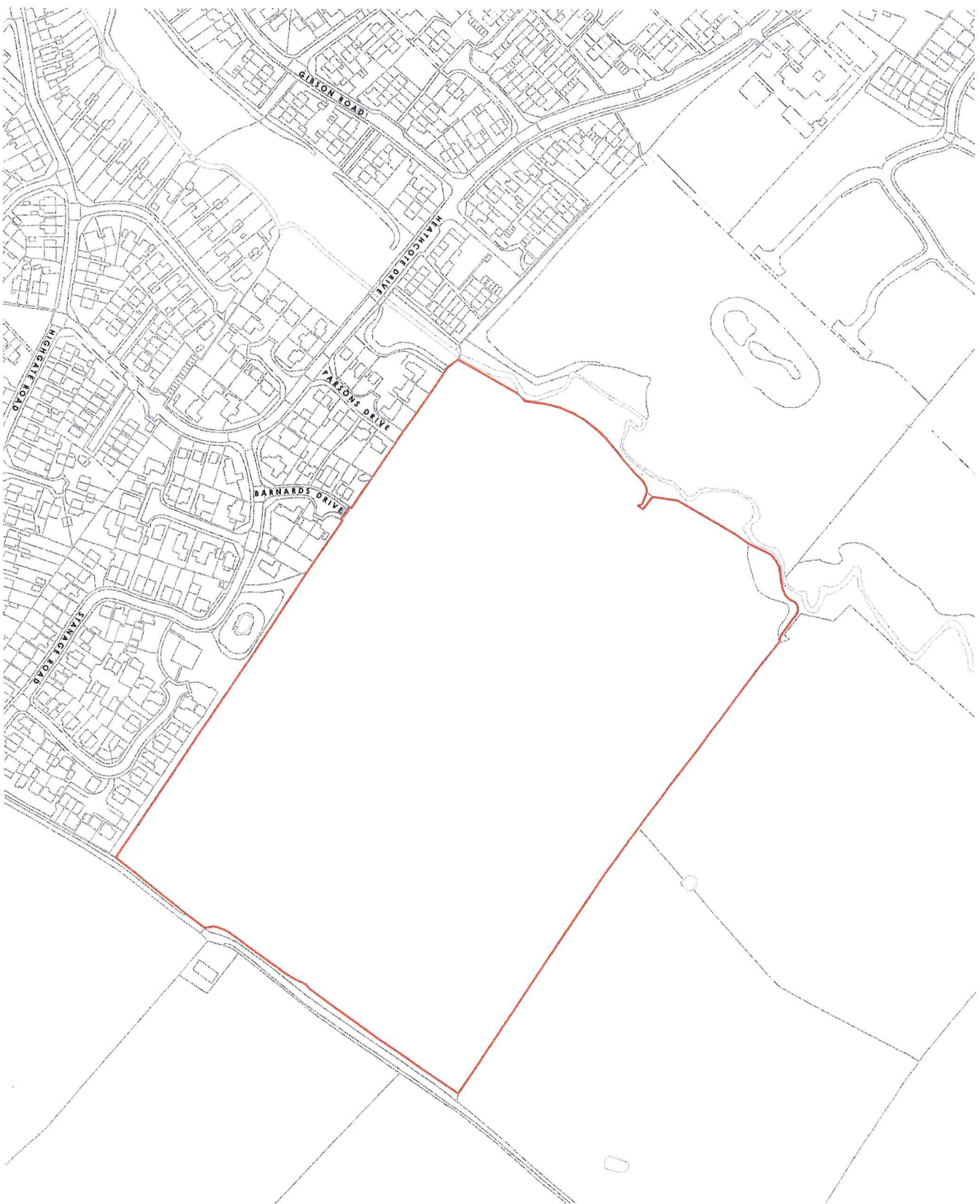
- 1.1.40 'Management Company' means a private limited company which is incorporated in and which has its registered office in the United Kingdom of Great Britain and Northern Ireland and whose primary objects require it to maintain and renew the Open Space for the lifetime of the Development
- 1.1.41 'Management Plan' means a scheme to be submitted to and approved in writing by the Council, which identifies:
- (i) the future management and maintenance requirements of the Open Space and where applicable step in rights for the Council
 - (ii) the proposed ongoing maintenance operations for the Open Space, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space
 - (iii) the proposed means of funding the ongoing maintenance and management of the Open Space in accordance with the Management Plan by the Owner and the Management Company
 - (iv) a mechanism for the periodic review with the Council and where necessary amendment of the Management Plan
- 1.1.42 'the Market Housing Units' means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing
- 1.1.43 'Monitoring Fee' means the sum of **£3,560** (three thousand five hundred and sixty pounds) payable by the Owner to the Council towards the Council's monitoring of this deed and the Development
- 1.1.44 'NDSS' Means the nationally described space standard issued by the government in March 2015 (or any successor standard)
- 1.1.45 'New School Places' means 105 (one hundred and five) new primary school places to be provided by the expansion of Cossington Primary School, Main Street, Cossington, LE7 4UU
- 1.1.46 'Nomination Agreement' means an agreement between the Council and a Registered Provider establishing a process for nominating Qualifying Persons as tenants for a percentage

of the Affordable Rented Housing and/or the Social Rented Housing and the Shared Ownership Units which entitles the Council to seek 100% nomination rights for initial lets of the Affordable Rented Housing and the Social Rented Housing and 75% nomination rights for relets

- 1.1.47 'the NPPF' means the National Planning Policy Framework issued by the Department for Housing, Communities and Local Government and dated July 2021 or any successor provisions which may be introduced from time to time including for the avoidance of doubt changes in policy or legislative changes
- 1.1.48 'to Occupy' means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and 'Occupation' 'Occupier' and 'Occupied' shall be construed accordingly
- 1.1.49 'the Off-Site Biodiversity Area' means any area of land identified in the approved Off-Site Biodiversity Scheme and expressed to be for the purpose of facilitating the delivery of the Off-Site Biodiversity Scheme
- 1.1.50 'the Off- Site Biodiversity Scheme' means a scheme to be submitted as part of the Biodiversity Mitigation Strategy and which provides for;
- 1.1.50.1 the identification of the Off-Site Biodiversity Area;
- 1.1.50.2 the management and maintenance arrangements for the Off-Site Biodiversity Area for not less than 30 years from the date of the implementation of the Biodiversity Mitigation Strategy; and
- 1.1.50.3 arrangements for the implementation of the scheme including timetables for provision of the Off-Site Biodiversity Area.
- 1.1.51 'the On-Site Biodiversity Area' means any areas of land within the Site identified by the approved On- Site Biodiversity Scheme to be provided for the purposes of biodiversity mitigation
- 1.1.52 'the On- Site Biodiversity Scheme' means a scheme to be submitted as part of the Biodiversity Mitigation Strategy and which provides for:
- 1.1.52.1 the identification of the On-Site Biodiversity Area;

- 1.1.52.2 the management and maintenance arrangements for the On-Site Biodiversity Area for not less than 30 years from the date of the implementation of the Biodiversity Mitigation Strategy;
- 1.1.52.3 arrangements for the implementation of the approved On-Site Biodiversity Scheme including timetables for provision of the On-Site Biodiversity Area; and
- 1.1.52.4 the arrangements for monitoring the approved On-Site Biodiversity Area
- 1.1.53 'the Open Space' means the informal public open space and landscaping including the Play Area for use by the general public to be provided on the Site in accordance with the Planning Permission and the Open Space Works Specification
- 1.1.54 'the Open Space Completion Certificate' means a certificate issued by the Council confirming that the Open Space has been laid out in accordance with the approved Open Space Works Specification
- 1.1.55 the Open Space Works Specification' means a specification for the design, laying out and landscaping of the Open Space to be approved in writing between the Owner and the Council before the Commencement of Development
- 1.1.56 'the Outdoor Sports Facilities Contribution' means the sum of **£75,068** (seventy five thousand and sixty eight pounds) payable towards the provision of new and/or improvement of existing outdoor sports facilities in Sileby
- 1.1.57 'Party' means any of the parties to this deed and 'Parties' shall be construed accordingly
- 1.1.58 'Persons in Housing Need' means such people as those who have been identified as being in housing need in accordance with the Council's policy or any such replacement adopted Council policy, other than where an existing policy between the Council and the Registered Provider exists or is agreed from time to time
- 1.1.59 'Phase of Development' means a phase of development which shall be in accordance with the approved Phasing Plan and 'Phases of Development' and 'Phase' shall be construed accordingly
- 1.1.60 'Phasing Plan' means a plan detailing how the Development will be built out by Phases of Development to be submitted prior to the Commencement of Development for the approval of the Council

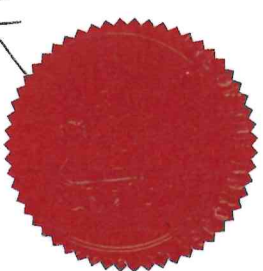
- 1.1.61 'Places Generated' means the number derived by applying the calculation (Qualifying Houses x 0.3) + (Qualifying Flats x 0.043)
- 1.1.62 'the Plan' means the plan attached to this deed
- 1.1.63 'the Planning Permission' means outline planning permission subject to conditions to be granted by the Council
- 1.1.64 'the Play Area' means a local equipped area for play (LEAP) for use by the general public to be provided on the Site in accordance with the Planning Permission and the Open Space Works Specification
- 1.1.65 'the Primary Education Contribution' means the sum derived by applying the formula $C = (A \div B) \times 100$ x **£25,000** (twenty five thousand pounds) where:
 $C = (A \div B) \times 100$
 A = the number of Places Generated
 B = the number of New School Places
 payable towards the costs of the provision of the New School Places
- 1.1.66 'Protected Tenant' means any tenant who:
- 1.1.66.1 has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of an Affordable Housing Unit, or
- 1.1.66.2 has exercised any statutory right to buy (or any equivalent contractual right) in respect of an Affordable Housing Unit, or
- 1.1.66.3 was granted a Shared Ownership Lease (or similar arrangement where a share of an Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) by the Registered Provider in respect of an Affordable Housing Unit and has subsequently purchased all the remaining shares from the Registered Provider so that the tenant owns the entire Affordable Housing Unit
- 1.1.67 'the Provision for Young People Contribution' means the sum of **£217,510** (two hundred and seventeen thousand five hundred and ten pounds) payable towards the provision of new and/or improvement of existing young peoples' facilities in Sileby
- 1.1.68 'Qualifying Flats' means the total number of Dwellings that meet the definition of a Flat and that shall have two (2) or more rooms that may by design be used as bedrooms



 Site Boundary: 11.55ha

CD 1.02

Sharon
add date
for client



2022/23-121

Rev	Date	By	Description
A	07.03.18	RC	Amended to reflect client's comments



environmental
Dices Bents, High Street,
Ashwell, Hertfordshire SG7 5HT
01423 75547
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csaenvironmental.co.uk

Project	Barnards Drive, Sleby		
Title	Site Location Plan		
Client	Cladman Developments Ltd		
Scale	1:2500 @ A3	Drawn	RC
Date	March 2018	Checked	SE
Drawing No	CSA/3536/108	Rev	A

- 1.1.69 'Qualifying Houses' means the total number of Dwellings that meet the definition of a House and that shall have two (2) or more rooms that may by design be used as bedrooms
- 1.1.70 'Qualifying Person' means a person or persons or households who prior to Occupation have been identified by the Council, or Registered Provider as in need of an Affordable Housing Unit and "Qualifying Persons" shall be construed accordingly
- 1.1.71 'Reasonable Endeavours' means that the party under such an obligation will not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject thereto has diligently pursued the following matters to the standard required of the relevant party acting with all reasonable due care and skill over a reasonable period of time (which may either be specified in the relevant obligation or in the absence of this such period of time as is reasonable in all the circumstances) in order to achieve the desired result, purpose and/or objective and shall endeavour to take all methods commercially and reasonably prudent and likely to achieve the desired result including the exploration of alternatives and further attempts
- 1.1.72 'Registered Provider' means a registered provider of social housing within the meaning of Section 80(2) of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with Homes England or any other body who may lawfully provide or fund affordable housing from time to time
- 1.1.73 'the Revised Affordable Housing Scheme' means a written statement to be submitted in the event the cascade provisions set out in paragraph 5 of the Second Schedule are triggered by failure of the Owner to contract with a Registered Provider and which sets out the Owner's proposals for the revised provision of Affordable Housing which may include:-
- 1.1.73.1 The numbers, type, size and location of the Affordable Housing Units;
- 1.1.73.2 Arrangements for the marketing of the Affordable Housing Units;
- 1.1.73.3 Details of arrangements that the Council may reasonably require to ensure that the Affordable Housing Units are retained as Affordable Housing Units to first and all subsequent Occupiers including (but not limited to) details of any restrictions on title to secure affordable housing provisions in perpetuity;
- 1.1.73.4 The basis on which any of the Affordable Housing Units may be occupied;
- and in the following sequential order: -

- (i) In the first instance, an alternative tenure mix or reduction in the number of units to make the Affordable Housing package more attractive to a Registered Provider or the local housing authority;
- (ii) A proposal for the gifting of the Affordable Housing Units or an agreed proportion of them to the Council;
- (iii) A financial contribution for the provision of Affordable Housing in the Council's administrative area in lieu of Affordable Housing Units being provided on the Site;
- (iv) As a last resort any proposal for the Affordable Housing Units to be sold on the open market to a Person in Housing Need at 60% of their open market value with legal safeguards attached ensuring that the discount remains in perpetuity and for the clarification of doubt more than one iteration of the Revised Affordable Housing Scheme may be produced and approved by the Council in writing to facilitate the sequential order at (i) to (iv) above.

1.1.74 'the Secondary Education Contribution' means the sum of **£33,292.26** (thirty three thousand two hundred and ninety two pounds and twenty six pence) payable towards the costs of improving remodelling or enhancing existing facilities at the Humphrey Perkins School or any other secondary school within the locality of the Development

1.1.75 'Shared Ownership Lease' means the form of lease in respect of the Shared Ownership Units which shall be in accordance with the Homes England model form of shared ownership lease or such other successor bodies' model form of lease as may be from time to time in place and on terms that permit the part purchase of the open market value of the equity in a unit with an initial interest of between 10-75% of market value together with rent payable for the open market rack rental value of the un-purchased percentage of the equity in the unit up to a value which does not exceed the rent set by Homes England from time to time (or such other rent or form of lease approved in writing by the Council) and to acquire an additional share from time to time so as to increase their ownership to 100% of the full market value of the Shared Ownership Unit

1.1.76 'Shared Ownership Unit' means a unit of Affordable Housing Unit which is to be transferred to a Registered Provider or transferred to a Qualifying Person and made available for occupation on the basis of a Shared Ownership Lease in accordance with the Affordable

Housing Scheme approved pursuant to paragraph 4.1 of Schedule 2 of this deed and 'Shared Ownership Units' shall be construed accordingly

- 1.1.77 'the Site' means the land against which this deed may be enforced shown edged red on the Plan and described in Schedule 1
- 1.1.78 'Site Inspection Fee' means the sum of **£195** (one hundred and ninety five pounds)) for each site inspection required by this deed and payable to the Council towards its costs of preparing for attending such visit or site inspection
- 1.1.79 'Social Rented Housing' means Affordable Housing for rent as described in paragraph a) to the definition of 'Affordable Housing' in Annex 2: Glossary to the NPPF where the rent is set in accordance with the Government's rent policy for social rent
- 1.1.80 'the Special Education Contribution' means the sum of **£91,736.91** (ninety one thousand seven hundred and thirty six pounds and ninety one pence) payable towards the costs of providing special educational needs school places for special educational needs pupils generated by the Development
- 1.1.81 'the Sustainable Travel Accreditation and Recognition Scheme (STARS) Monitoring Fee' means the sum of **£6,000** (six thousand pounds) payable towards the costs of monitoring the travel plan approved pursuant to the Planning Permission
- 1.1.82 'the Travel Pack' means a pack of information provided by the County Council containing details of local walking and cycling routes, local bus services/stops/timetables, bus pass application forms, shops and other local amenities and details of any community transport, car sharing or car club scheme operating in the vicinity of the Site
- 1.1.83 'the Travel Pack Contribution' means the sum derived by multiplying the Composition of the Development by **£52.85** (fifty-two pounds and eighty five pence) payable towards the costs of provision of a Travel Pack to each Dwelling
- 1.1.84 'Travel Plan Co-ordinator' means a suitably experienced person appointed and funded by the Owner from Commencement of Development until 5 years after first occupation of the final Dwelling with the role of implementing measures monitoring and introduction of remedial measures in accordance with the travel plan approved by the Planning Permission
- 1.1.85 'the Warwickshire Calculator' means the Warwickshire County Council Biodiversity Impact Assessment Calculator version 19.1

1.1.86 'Working Day(s)' means a day other than a Saturday or Sunday or public holiday in England

1.2 Interpretation

- 1.2.1 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.
- 1.2.2 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.
- 1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 1.2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.2.6 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of the deed.

2 Legal basis

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the 1990 Act.
- 2.2 The terms of this deed create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council as the local planning authority and the County Council as a planning authority for the Leicestershire area and which has the benefit of obligations pursuant to this Agreement.

- 2.3 To the extent that any obligations in this deed are not planning obligations for the purposes of section 106 of the 1990 Act they are entered into and are enforceable by the Council and the County Council pursuant to section 1 of the Localism Act 2011 (as amended), Section 111 of the Local Government Act 1972 (as amended) and any other enabling powers.

3 Conditions, duration and enforcement

3.1 Conditions precedent

This deed is conditional upon:

3.1.1 the grant of the Planning Permission, and

3.1.2 Implementation

save for the provisions of clause 6, (Provisions of Immediate Effect) which shall come into effect immediately upon completion of this deed and save in respect of any obligations in this deed expressly requiring compliance prior to Implementation, which shall come into effect immediately upon the grant of Planning Permission.

3.2 Duration

3.2.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or expires before the Commencement of Development.

3.2.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his entire interest in the Site or his interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.

3.3 Other development

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

3.4 Non-enforcement

3.4.1 This deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission, nor against those deriving title from such owner-occupiers or tenants or their mortgagees, except in respect of:

3.4.1.1 any obligation to pay a contribution set out in Schedule 2 and Schedule 3 of this deed where the due date for payment is prior to the first Occupation of the Development;

3.4.1.2 Schedule 2 paragraph 4.6 which shall remain enforceable against owner-occupiers and/or tenants of Affordable Housing Units and those deriving title from them to the extent permitted by the terms of this deed; and

3.4.1.3 Schedule 2 paragraph 3.8(ii) which shall remain enforceable against the owner of a Dwelling in so far as there is a breach of that provision in relation to the Dwelling in which such person has an interest.

3.4.2 The obligations contained in this deed shall not be binding upon or enforceable against 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, telecommunications services or public transport services, or discharging any other statutory undertaking.

4 The Owner's covenants, the Council's covenants and the County Council's covenants

4.1 The Owner covenants with the Council as set out in Schedule 2.

4.2 The Owner covenants with the County Council as set out in Schedule 3.

4.3 The Council covenants with the Owner as set out in Schedule 4.

4.4 The County Council covenants with the Owner as set out in Schedule 5.

5 The Promoter's Consent

5.1 The Promoter acknowledges and declares that:

5.1.1 this deed has been entered into by the Owner with its consent, and

5.1.2 the Site shall be bound by the obligations contained in this deed.

5.2 No obligation in this deed shall be enforceable against any future mortgagee or chargee of the Site unless and until they exercise any right to take possession of the Site pursuant to the terms of their mortgage or charge.

6 Provisions of immediate effect

- 6.1 On completion of this deed the Promoter shall pay to the Council and the County Council their reasonable legal costs incurred in the negotiation, preparation and execution of this deed.
- 6.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999 (as amended).
- 6.3 The Owner agrees with the Council and the County Council to give the Council and the County Council prompt written notice of any change in ownership of their respective interests in the Site occurring before all the obligations under this deed have been discharged such notice to contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not be applicable to the disposal of individual Dwellings to individual purchasers.
- 6.4 The Owner confirms that it is the owner of the Site with full power to enter into this deed and that, other than the Promoter, there is no person or body with an interest in the Site whose consent is necessary to make this deed binding on all interests in the Site.

7 Notices

- 7.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.
- 7.2 The address for any notice or other written communication shall be within the United Kingdom.
- 7.3 A notice or communication shall be served or given:
 - 7.3.1 on the Owner at the address set out above, or such other address as shall be notified in writing to the Council and the County Council from time to time, marked for the attention of the persons whose details have been so notified, and
 - 7.3.2 on the Promoter at its registered office from time to time, or such other address as shall be notified in writing to the Council and the County Council from time to time, marked for the attention of Gladman Legal Department, and

- 7.3.3 on the Council at the address set out above or such other address as shall be notified in writing to the Parties from time to time marked for the attention of Head of Planning and Regeneration, and
- 7.3.4 on the County Council at the address set out above or such other address as shall be notified in writing to the Parties from time to time marked for the attention of the Team Manager, Planning Obligations Team, Chief Executive's Department.

8 Local land charge

This deed shall be registered by the Council as a local land charge as soon as practicable after the completion of this deed.

9 Jurisdiction and legal effect

- 9.1 This deed shall be governed by and interpreted in accordance with the law of England and subject to the non-exclusive jurisdiction of the English courts.
- 9.2 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.
- 9.3 No waiver (whether expressed or implied) by the Council (or the County Council) 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 the County Council) from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 9.4 The provisions of this deed (other than this clause 9.4 which shall be effective in any event) shall be of no effect until this deed has been dated.

10 Indexation, interest and VAT

- 10.1 Any sum to be paid to the Council under Schedule 2 or the County Council under Schedule 3 shall be increased by an amount equivalent to the increase in the Index from the date of this deed (save for the Education Contribution which shall be increased by an amount equivalent to the increase in the Index from 1 July 2021) until the date on which such sum is paid.

- 10.2 If any payment due under this deed is paid late, Interest shall be payable from the date payment is due to the date of actual payment.
- 10.3 All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax properly payable.

11 Mortgage Protection

- 11.1 For the avoidance of doubt, this clause 11 applies only to a mortgagee or chargee or Receiver whose security is binding on an Affordable Housing Unit.
- 11.2 The provisions of paragraph 4 of Schedule 2 of this deed shall not be binding on a mortgagee or chargee (or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any securing 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 Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
- 11.2.1 such mortgagee, chargee or Receiver shall first given written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units(s) to a Registered Provider nominated by or approved by the Council or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 11.2.2 if such disposal has not completed within the three month period, the mortgagee, chargee and Receiver shall be entitled to dispose of the Affordable Housing Unit(s) free from the provisions of paragraph 4 of Schedule 2 of this deed which provisions shall determine absolutely.

12 Dispute Resolution

- 12.1 In the event of any dispute or difference arising between the Parties arising out of this deed such dispute or difference may be referred to the Expert.

- 12.2 In the absence of agreement between the Parties as to the appointment or suitability of the expert to be appointed pursuant to clause 12.1, or as to the appropriate professional body, within 10 (ten) Working Days after any Party has given to the other Parties to the dispute a written request to concur in the professional qualifications of the expert to be appointed pursuant to clause 12.1 then that question shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any Party to the dispute or difference. Such solicitor shall act as an expert and his decision shall be final and binding on the Parties save in the case of manifest error and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares.
- 12.3 The Expert shall act as an expert and not as an arbitrator.
- 12.4 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 46 (forty six) Working Days from the date of his appointment to act.
- 12.5 The Expert shall be required to give notice to each of the said Parties inviting them to submit to him within 20 (twenty) Working Days of his appointment written submissions and supporting material and shall afford to each of the said Parties an opportunity to make counter submissions within a further 15 (fifteen) Working Days in respect of any such submission and material. The Expert's decision shall be given in writing within 20 (twenty) Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 21 (twenty one) Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest material error the Expert's decision shall be final and binding on the said Parties.
- 12.6 The Expert may award the costs of the dispute resolution in such proportions as he sees fit but in the absence of an express award to this effect the costs of the dispute resolution shall be borne by the Parties to the dispute in equal shares.

IN WITNESS of which the Council the County Council the Owner and the Promoter have executed this deed as a deed and delivered it the day and year first before written.

SCHEDULE 1

The Owner's Title and Site Description		
Title Number	Description of Site	Owner
LT186371	Land on the north east side of Barnards Drive, Sileby, Loughborough	Mark Andrew Barber
LT497337	Land on the north west side of Paynes Barn, Ratcliffe Road, Sileby, Loughborough, LE12 7PY	Mark Andrew Barber

SCHEDULE 2

The Owner's Covenants with the Council

1. Progress of development

The Owner shall notify the Council:

- 1.1 upon the Implementation of Development,
- 1.2 upon the Commencement of Development,
- 1.3 upon the first Occupation of the Development, and
- 1.4 upon reaching any of the triggers specified herein relating to obligations to the Council

2. Payment of contributions

- 2.1 To pay to the Council the Healthcare Contribution in the following instalments:
 - 2.1.1 50% (fifty percent) upon Commencement of Development, and
 - 2.1.2 the balance prior to the first Occupation of 50% (fifty percent) of the Dwellings.
- 2.2 Not to Commence Development until the payment referred to at paragraph 2.1.1 has been made.
- 2.3 Not to Occupy nor permit the first Occupation of more than 50% (fifty percent) of the Dwellings until the payment referred to at paragraph 2.1.2 has been made.
- 2.4 To pay the Outdoor Sports Facilities Contribution to the Council in the following instalments:
 - 2.4.1 50% (fifty percent) prior to the first Occupation of 25% (twenty five percent) of the Dwellings;
and
 - 2.4.2 the balance prior to the first Occupation of 50% (fifty percent) of the Dwellings.
- 2.5 Not to Occupy nor permit the Occupation of any more than 25% (twenty five percent) of the Dwellings until the payment referred to at paragraph 2.4.1 above has been made.
- 2.6 Not to Occupy nor permit the Occupation of any more than 50% (fifty percent) of the Dwellings until the payment referred to at paragraph 2.4.2 above has been made.
- 2.7 To pay the Allotment Contribution to the Council prior to the first Occupation of 25% (twenty five percent) of the Dwellings.

- 2.8 Not to Occupy nor permit the Occupation of any more than 25% (twenty five percent) of the Dwellings until the payment referred to at paragraph 2.7 above has been made.
- 2.9 To pay the Provision for Young People Contribution to the Council in the following instalments:
- 2.9.1 50% (fifty percent) prior to the first Occupation of 25% (twenty-five percent) of the Dwellings,
and
- 2.9.2 the balance prior to the first Occupation of 50% (fifty percent) of the Dwellings.
- 2.10 Not to Occupy nor permit the Occupation of more than 25% (twenty five percent) of the Dwellings until the payment referred to at paragraph 2.9.1 above has been made.
- 2.11 Not to Occupy nor permit the Occupation of any more than 50% (fifty percent) of the Dwellings until the payment referred to at paragraph 2.9.2 above has been made.
- 2.12 To pay to the Council the Monitoring Fee prior to the Commencement of Development and not to Commence Development until the total Monitoring Fee has been paid to the Council in full.
- 2.13 The Owner covenants to pay the Approval of Details Fee to the Council with each submission of details for the Council's approval pursuant this deed.
- 2.14 The Owner covenants to pay the Site Inspection Fee to the Council on booking any site visit or inspection required by the Council pursuant this deed.
- 3. Open space transfer and works**
- 3.1 Prior to Commencement of Development to submit to the Council for the Council's written approval the Open Space Works Specification and the Management Plan.
- 3.2 Prior to Commencement of Development to submit to the Council for the Council's prior approval details of the Management Company which the Owner proposes to appoint for the purpose of managing and maintaining the Open Space, and having obtained such approval, to appoint (and if necessary, incorporate) that Management Company for such purpose.
- 3.3 Not to permit or allow the Occupation of more than 60% (sixty percent) of the Dwellings until the Open Space has been provided and/or constructed (as appropriate) to the satisfaction of the Council in accordance with paragraphs 3.4 and 3.5 of this Schedule 2, and in complete accordance with the approved Open Space Works Specification, the Planning Permission, and any Approval (Reserved Matters).

- 3.4 Upon completion of the laying out of the Open Space in accordance with the approved Open Space Works Specification to notify the Council of completion and to request that the Council inspects the Open Space within thirty Working Days of such notification and not to Occupy or permit or cause Occupation of more than 60% (sixty percent) of the Dwellings until the Council has issued the Open Space Completion Certificate.
- 3.5 If upon inspection of the Open Space the Council identifies any remediation works which are necessary to bring the Open Space up to the standard required by the approved Open Space Works Specification to complete such works as soon as reasonably practicable and paragraphs 3.4 and 3.5 of this Schedule 2 shall be repeated until the Open Space has been laid out to the satisfaction of the Council and the Council has issued the Open Space Completion Certificate.
- 3.6 To maintain the Open Space in accordance with the approved Management Plan until the date upon which the transfer described in paragraph 3.7 below has been completed.
- 3.7 Not to permit the Occupation of more than 95% (ninety five percent) of the Dwellings until the Open Space has been transferred to the Management Company in accordance with the details approved by the Council under the approved Management Plan and on the terms set out in Schedule 6.
- 3.8 To procure that the buyer of each Dwelling comprised in the Development enters into the following covenants direct with the Management Company:
- (i) to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the Open Space in accordance with the approved Management Plan; and
 - (ii) that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 3.8 (i) and 3.8 (ii) of Schedule 2.
- 3.9 Not to amend the approved Management Plan without the Council's written consent.
- 3.10 Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council have otherwise first agreed in writing.

4. Affordable housing

- 4.1 To submit the Affordable Housing Scheme to the Council prior to or together with the submission of the first application for Approval (Reserved Matters) and not to permit or allow the Commencement of Development until the Affordable Housing Scheme has been approved in writing by the Council ("the Approved Affordable Housing Scheme") and thereafter to implement and carry out the Approved Affordable Housing Scheme
- 4.2 In the event that the first application for Approval (Reserved Matters) is refused to resubmit the Affordable Housing Scheme to the Council prior to or together with the submission of the next application for Approval (Reserved Matters) and these requirements shall continue to apply until an Approval (Reserved Matters) application has been approved.
- 4.3 No more than 50% (fifty percent) of the Market Housing Units shall be Occupied until written notice has been given to the Council that 50% (fifty percent) of the Affordable Housing Units have:
- 4.3.1 been constructed in accordance with the Planning Permission;
 - 4.3.2 been made ready for residential occupation;
 - 4.3.3 been transferred to the Registered Provider or in the case of Shared Ownership Units that are not to be transferred to a Registered Provider the Council has been provided with evidence that those Shared Ownership Units have been transferred to an Occupier in accordance with the Approved Affordable Housing Scheme.
- 4.4 No more than 70% (seventy percent) of the Market Housing Units shall be Occupied until written notice has been given to the Council that all of the Affordable Housing Units have:
- 4.4.1 been constructed in accordance with the Planning Permission;
 - 4.4.2 been made ready for residential Occupation;
 - 4.4.3 been transferred to the Registered Provider (or in the case of Shared Ownership Units that are not to be transferred to a Registered Provider the Council has been provided with evidence that those Affordable Housing Units have been transferred to an Occupier in accordance with the Approved Affordable Housing Scheme.
- 4.5 The transfer of the Affordable Housing Units referred to at paragraphs 4.3.3 and 4.4.3 above shall include the following:
- 4.5.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land;

- 4.5.2 full and free rights to the passage of water, soil, electricity, gas and other services through the pipes, drains, channels, wires, cables and conduits in the adjoining land up to and abutting the boundary to the Affordable Housing Land, all such services to be connected to the mains; and
 - 4.5.3 a reservation of all rights of access and passage of services and rights of entry necessary for the purposes of the Development.
- 4.6 From the Date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing in accordance with the Approved Affordable Housing Scheme, save that this obligation shall not be binding on:
 - 4.6.1 any Protected Tenant, any mortgagee or chargee of a Protected Tenant or any person deriving title from a Protected Tenant, or any successor in title to a Protected Tenant and their respective mortgagees and chargees, or
 - 4.6.2 a mortgagee chargee or Receiver of a Registered Provider where clause 11.2.2 of this deed applies, or
 - 4.6.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
- 5. Affordable Housing Cascade**
- 5.1 Where despite having used Reasonable Endeavours to transfer the Affordable Housing Units to a Registered Provider as provided for by paragraphs 4.3.3 or 4.4.3 of this Schedule on terms which include the provisions and restrictions set out in paragraph 4.4 above (as relevant) and otherwise on terms acceptable to the Owner (acting reasonably) the Owner has been unable to dispose of all or any number of the Affordable Housing Units to a Registered Provider within 18 (eighteen) months of the Commencement of Development, then the Owner shall be entitled to serve the Affordable Housing Notice upon the Council and shall provide the Council with written evidence of the use of such Reasonable Endeavours to enter into a sale and purchase agreement with Registered Providers.
- 5.2 Upon the date of service of the Affordable Housing Notice on the Council pursuant to paragraph 5.1 above the restriction on Occupation of more than 50% (fifty percent) and 70% (seventy percent)

of the Market Housing Units set out in paragraphs 4.3 and 4.4 respectively of this Schedule shall cease to apply.

- 5.3 Following service of the Affordable Housing Notice upon the Council, the Owner must use all Reasonable Endeavours to co-operate with the Council to secure the transfer of the Affordable Housing Units to a Registered Provider (or the local housing authority) proposed by the Council on terms which include the provisions and restrictions set out in paragraph 4.5 above (as relevant) and otherwise on terms acceptable to the Owner (acting reasonably).
- 5.4 Following the service of the Affordable Housing Notice and having cooperated with the Council to secure a Registered Provider pursuant to paragraph 5.3 above, if the Owner has been unable to secure the transfer of the Affordable Housing Units to a Registered Provider (or the local housing authority) proposed by the Council within three (3) months of the date of service of the Affordable Housing Notice on the Council, the Owner shall submit a Revised Affordable Housing Scheme for the approval of the Council (which subject to the provisions below at paragraphs 5.5 to 5.6 below shall not be unreasonably withheld or delayed).
- 5.5 The Owner and the Council shall as a first solution seek to agree a Revised Affordable Housing Scheme with an alternative tenure mix or reduction in units to make the Affordable Housing package more attractive to a Registered Provider or the local housing authority. Following the Council's approval of the Revised Affordable Housing Scheme with an alternative tenure mix or reduction in units, the Owner shall for a further period of three (3) months use all Reasonable Endeavours to enter into a sale and purchase agreement with a Registered Provider (or the local housing authority) for the disposal of the Affordable Housing Units in accordance with the Revised Affordable Housing Scheme.
- 5.6 In the event that at the end of the three (3) month period referred to under paragraph 5.5 above (or such longer period as may be agreed between the Owner and the Council), the Owner remains unable to enter into a sale and purchase agreement with a Registered Provider (or the local housing authority) in accordance with the terms of this Schedule and deed, the Owner will submit for the approval of the Council a further Revised Affordable Housing Scheme which shall include obligations in respect of the Affordable Housing in the following sequential order:-
- 5.6.1 the gifting of a reasonable proportion of the Affordable Housing Units to the Council;

- 5.6.2 the provision of a commuted sum to the Council in lieu of the number of Affordable Housing Units forfeited; or
- 5.6.3 as a last resort disposal or assignment of an agreed proportion of the Affordable Housing Units on the open market to a Person in Housing Need at 60% of their open market value with all appropriate surveying and legal safeguards necessary to ensure that the discount remains in perpetuity.
- 5.7 The Owner shall implement the Revised Affordable Housing Scheme approved pursuant to paragraph 5.6 above in accordance with the details set out therein.

6. Biodiversity Mitigation

- 6.1 The Owner covenants with the Council
 - 6.1.1 prior to the submission of the first application for Approval (Reserved Matters) to submit the Biodiversity Baseline Assessment to the Council for its written approval and not to submit the first application for Approval (Reserved Matters) until the Council has approved the Biodiversity Baseline Assessment.
 - 6.1.2 upon the first application for Approval (Reserved Matters) to submit the Biodiversity Mitigation Strategy to the Council for its written approval, and not to cause or permit the Commencement of Development until the Council has approved the Biodiversity Mitigation Strategy ("the Approved Biodiversity Mitigation Strategy").
 - 6.1.3 thereafter to implement and comply with the Approved Biodiversity Mitigation Strategy and to provide the mitigation required by the Approved Biodiversity Mitigation Strategy.
- 6.2 In the event that the application for Approval (Reserved Matters) is refused to resubmit the Biodiversity Baseline Assessment to the Council prior to the submission of the next application for Approval (Reserved Matters) and to submit the Biodiversity Mitigation Strategy with the next application for Approval (Reserved Matters) and these requirements shall continue to apply until an Approval (Reserved Matters) application has been approved.
- 6.3 If the Owner is to provide the On-Site Biodiversity Area the Owner shall not Occupy or permit Occupation of more than 50% of the Dwellings (or such other number of Dwellings as may be agreed in writing by the Council in accordance with the Approved Biodiversity Mitigation Strategy) until the

On-Site Biodiversity Scheme has been implemented in full and provided in accordance with the Approved Biodiversity Mitigation Strategy.

6.4 If the Owner is to provide the Off-Site Biodiversity Area the Owner shall not Commence Development or permit Commencement until the Off-Site Biodiversity Scheme has been implemented in full and provided in accordance with the Approved Biodiversity Mitigation Strategy.

6.5 If the Biodiversity Impact Compensation is to be paid to the Council by the Owner in lieu of provision of or in addition to the On -Site Biodiversity Scheme and/or the Off-Site Biodiversity Scheme, it shall be paid prior to Commencement of Development and the Owner shall not Commence Development or permit Commencement until the Biodiversity Impact Compensation has been paid in full in accordance with the Approved Biodiversity Mitigation Strategy.

7. Phasing Plan

7.1 Not to Commence Development or permit or allow the Commencement of Development until the Phasing Plan has been approved in writing by the Council and thereafter to carry out the Development in accordance with the approved Phasing Plan.

7.2 In the event that any application for Approval (Reserved Matters) for any Phase necessitates any amendment to any plan or details in respect of the Development previously approved by the Council pursuant to this deed ("the Original Approved Plan"), the Owner shall submit the details of such changes and revised plan or details ("Revised Plan") for the written approval of the Council together with such application for Approval (Reserved Matters) and shall not Commence Development or permit or allow Commencement on that Phase until the Council has approved the Revised Plan ("the Approved Revised Plan") and thereafter shall carry out the Development in accordance with the Approved Revised Plan and the applicable references in this deed to the Original Approved Plan shall be construed as references to the Approved Revised Plan.

SCHEDULE 3

The Owner's Covenants with the County Council

1. Progress of development

The Owner shall notify the County Council:

- 1.1 upon the Commencement of Development, and
- 1.2 upon first Occupation of any part of the Development
- 1.3 upon reaching any of the triggers specified herein relating to obligations to the County Council.

2. Payment of contributions

- 2.1 To pay to the County Council the Highways Contribution prior to the first Occupation of any Dwelling.
- 2.2 Not to Occupy nor permit the Occupation of any Dwelling until the payment referred to at paragraph 2.1 above has been made.
- 2.3 To pay to the County Council the Travel Pack Contribution prior to the first Occupation of any Dwelling.
- 2.4 Not to Occupy nor permit the Occupation of any Dwelling until the payment referred to at paragraph 2.3 above has been made.
- 2.5 To pay to the County Council the Library Contribution prior to the first Occupation of any Dwelling.
- 2.6 Not to Occupy nor permit the Occupation of any Dwelling until the payment referred to at paragraph 2.5 above has been made.
- 2.7 To pay 25% (twenty five percent) of the Bus Pass Contribution to the County Council prior to the first Occupation of any Dwelling and thereafter to pay further tranches of 25% (twenty five percent) of the Bus Pass Contribution (up to a maximum of 100% thereof) within 14 (fourteen) Working Days of receipt of confirmation in writing from the County Council that the previous tranche has been spent or is about to be expended on the provision of bus passes.
- 2.8 Not to Occupy nor permit the Occupation of any Dwelling until the payment referred to at paragraph 2.7 above has been made.
- 2.9 To pay the Education Contribution to the County Council in the following instalments:
 - 2.9.1 25% (twenty five percent) prior to the Commencement of Development,

- 2.9.2 25% (twenty five percent) prior to the first Occupation of any of the Dwellings,
- 2.9.3 50% (fifty percent) prior to the first Occupation of more than 50% (fifty percent) of the Dwellings.
- 2.10 Not to permit or allow the Commencement of Development until the payment referred to at paragraph 2.9.1 above has been made.
- 2.11 Not to Occupy nor permit the Occupation of any of the Dwellings until the payment referred to at paragraph 2.9.2 above has been made.
- 2.12 Not to Occupy nor permit the Occupation of more than 50% (fifty percent) of the Dwellings until the payment referred to at paragraph 2.9.3 above has been made.
- 2.13 To pay to the County Council the Civic Amenity Contribution prior to the first Occupation of any Dwelling.
- 2.14 Not to Occupy nor permit the first Occupation of any Dwelling until the payment referred to at paragraph 2.13 above has been made.
- 2.15 To pay to the County Council the STARS Monitoring Fee prior to the first Occupation of any Dwelling.
- 2.16 Not to Occupy nor permit the Occupation of any Dwelling until the payment referred to at paragraph 2.15 has been made.
- 2.17 To pay to the County Council the County Council Monitoring Contribution prior to the first Occupation of any Dwelling.
- 2.18 Not to Occupy nor permit the Occupation of any Dwelling until the payment referred to at paragraph 2.17 has been made.
- 2.19 If after the due date for payment of any of the contributions referred to in this Schedule 3 that are calculated by reference to the Composition of the Development ('the Contribution(s)') the Composition of the Development is varied which results in higher Contribution(s) than has/have been paid to the County Council pursuant to this Schedule 3 then there shall be calculated the difference between the amount of the Contribution(s) paid and the amount that the Contribution(s) would have been if it/they had been calculated by reference to the revised Composition of the Development and the difference shall be paid to the County Council within 14 (fourteen) Working Days of the grant of the Approval (Reserved Matters) which revises the Composition of the Development.

3. Construction Traffic Routing Scheme

- 3.1 Not to Commence Development until a Construction Traffic Routing Scheme has been submitted to and agreed in writing by the County Council to ensure that the construction traffic coming to or leaving the Site in the course of construction of any part of the Development causes minimum disruption to the surrounding area upon entering or leaving the Site.
- 3.2 To implement and monitor the approved Construction Traffic Routing Scheme for the duration of the construction work at the Site.
- 3.3 To comply at all times with the agreed Construction Traffic Routing Scheme.
- 3.4 To use all reasonable endeavours to ensure that all construction traffic travelling to or from the site whether laden or not laden and whether or not owned or operated by or on behalf of the Owner shall use only the routes agreed in the Construction Traffic Routing Scheme.
- 3.5 Without prejudice to the obligation at paragraph 3.4 above to include within every contract into which the Owner shall enter into with any operator bringing construction traffic to the Site such provisions as will require the said operator to comply with the agreed Construction Traffic Routing Scheme, and will enable the Owner to impose sanctions against such operator in the event that they fail without good reason to comply with the agreed Construction Traffic Routing Scheme, which sanctions will include the ability of the Owner to terminate such contract.
- 3.6 In the event that the County Council (acting reasonably) serves written notice on the Owner that (i) it considers that an operator bringing construction traffic to the Site has failed without reasonable cause to comply with the agreed Construction Traffic Routing Scheme and (ii) specifying such actions against the said operator as are reasonable and necessary (taking into consideration the circumstances of such failure) to prevent further failure that it requires the Owner to take, the Owner shall forthwith comply with the terms of such notice.

4. Travel Plan Co-Ordinator

Not to permit or allow the Commencement of Development until the Travel Plan Co-ordinator has been appointed.

SCHEDULE 4

The Council's Covenants with the Owner

The Council covenants with the Owner as follows:

1 Issue of Permission

It will issue the Planning Permission as soon as is reasonably practicable and in any event no later than five Working Days after the date of this deed.

2 Contributions

2.1 Where any contribution referred to this Schedule 2 of this deed ('a **Contribution**') is stated to be payable for a particular purpose it will not be used otherwise than towards that purpose without the written consent of the Owner.

2.2 Where any Contribution paid by the Owner in accordance with this deed has not been used or committed by the Council within ten years after the date of receipt of the final instalment of the relevant Contribution it will be repaid to the paying party within 20 Working Days of a written demand together with all accrued interest calculated from the date of receipt of the relevant sum (and for the purposes of this paragraph the repayment will be to the original paying party and not to that party's successor in title).

3 Acting Reasonably and Deemed Approvals

3.1 The Council will at all times act reasonably and in particular (without prejudice to generality) where any approval or expression of satisfaction is required by this deed it will not be unreasonably withheld or delayed.

3.2 Within 30 (thirty) Working Days of receipt of a written request from the Owner pursuant to paragraph 3.4 of Schedule 2 and payment of the Site Inspection Fee to inspect the Open Space and within a further 30 (thirty) Working Days of such inspection to either issue the Open Space Completion Certificate or notify the Owner in writing of the works required to bring the Open Space up to the standard required by the approved Open Space Works Specification.

3.3 For the avoidance of doubt nothing in this paragraph is to be construed in a manner so as to fetter the Council's discretion in determining any application for Approval (Reserved Matters).

4 Biodiversity Mitigation

- 4.1 To comply with any duty imposed by the approved Biodiversity Mitigation Strategy.
- 4.2 In the event that the Biodiversity Mitigation Strategy provides that biodiversity mitigation is to be secured by means of payment of Biodiversity Impact Compensation, to ensure that such payment is applied towards projects which are designed to enhance biodiversity within the Council's administrative area or elsewhere in accordance with any Council policy and guidance.

SCHEDULE 5

The County Council's covenants with the Owner

The County Council covenants with the Owner as follows:

1 Contributions

- 1.1 Where any contribution referred to in Schedule 3 of this deed ('a Contribution') is stated to be payable for a particular purpose it will not be used otherwise than towards that purpose.
- 1.2 Where any Contribution paid by the Owner in accordance with this deed has not been used or committed by the County Council within 10 (ten) years after the date of receipt of the final instalment of the relevant Contribution it will be repaid to the paying party within 20 (twenty) Working Days of a written demand together with all accrued interest calculated from the date of receipt of the relevant sum (and for the purposes of this paragraph the repayment will be to the original paying party and not to that party's successor in title).

SCHEDULE 6

Provisions relating to the transfer of the Open Space

The transfer of the Open Space to the Management Company shall:

- i. be a transfer of the entire freehold interest of the Open Space
- ii. be free from any pre-emption or option agreement
- iii. be free from any mortgage, charge, lien or other such incumbrance
- iv. be free from any lease, licence or any other third party interests
- v. be subject to a covenant which requires the Open Space to be retained as public open space and which prohibits the use of the Open Space for any purpose other than for public recreation and amenity for the lifetime of the Development subject to the right of the Management Company to construct any buildings or other structures ancillary to such use
- vi. include all usual and necessary rights of way with or without vehicles for the benefit of the Open Space
- vii. reserve in favour of the Owner any usual and necessary rights and easements to enable the proper construction, maintenance and use of the Development and to use existing services in so far as they are necessary based upon the final approved layout of the Development and location of the Open Space
- viii. reserve in favour of the Owner the right to lay and use new services subject to the prior written agreement of the Management Company together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- ix. declare that boundary structures shall belong to and be maintained by the owners of the Dwellings which adjoin the Open Space
- x. not require consideration in excess of one pound (£1)
- xi. contain a covenant for the benefit of the Council that the Management Company will manage and maintain the Open Space in accordance with the approved Management Plan for the lifetime of the Development

The common seal of

CHARNWOOD BOROUGH COUNCIL

was affixed to this deed in the presence of:



Authorised signatory



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The common seal of

LEICESTERSHIRE COUNTY COUNCIL

was affixed to this deed in the presence of:



Authorised signatory



39887

SIGNED AS A DEED by

MARK ANDREW BARBER

as a deed

In the presence of:

Witness name:

I MASSEY

Witness address:

127 MANCHESTER RD
WARRINGTON

Occupation:

COURIER

[Signature]

EXECUTED as a deed by

GLADMAN DEVELOPMENTS LIMITED

Acting by a director

[Signature]

Director

in the presence of:

Witness name:

I MASSEY

L Anderson

Witness address:

127 MANCHESTER
WARRINGTON

Occupation:

COURIER

[Signature]

Name LYNETTE ANDERSON

Gladman Legal Department
Gladman House Alexandria Way
Congleton Cheshire CW12 1LB

SOLICITOR