
Dated: 30th March 2021

- (1) Bellway Homes Limited
- (2) Nottinghamshire County Council
- (3) Ashfield District Council

Planning Agreement

section 106 of the Town and Country Planning Act 1990 relating to proposed residential development on land at Broomfield Farm, Nottingham NG15 7QE

THIS AGREEMENT is made on

30th March

2021

BETWEEN

- (1) **Bellway Homes Limited** (Company Registration Number 00670176) whose registered office is at Woosington House, Woosington, Newcastle Upon Tyne, NE13 8BF (the "Developer");
- (2) **Nottinghamshire County Council** of County Hall, West Bridgford, Nottingham NG2 7QP (the "Owner"); and
- (3) **Ashfield District Council** of Urban Road, Kirkby in Ashfield, Nottingham NG17 8DA (the "District Council").

BACKGROUND

- (A) By means of the Planning Application (reference V/2019/0483) planning permission is sought by the Developer from the District Council to carry out the Development.
- (B) The District Council is the Local Planning Authority for the purposes of the Act for the area within which the Application Land is situated.
- (C) The District Council is a Principal Council within the meaning of the Local Government Act 1972.
- (D) The Owner is the freehold owner of the Application Land registered at the Land Registry with title absolute under title numbers P183123 and NT466771.
- (E) The Owner and the Developer have entered into a sale contract in respect of the sale and purchase of the Application Land and the Developer is the beneficiary of a restriction in the registers against Title Number P183123 and Title Number NT466771.
- (F) The District Council has resolved to grant the Planning Permission for the Development subject to certain conditions and the completion of this Agreement.
- (G) The Owner has agreed to enter into this Agreement with the intent that its interest in the Application Land shall be subject to the covenants and obligations contained herein and with the intention that those covenants and obligations should create planning obligations pursuant to section 106 of the Act.
- (H) The Developer has agreed to enter into this Agreement to give its consent to the terms of this Agreement in respect of the Application Land.
- (I) The District Council is satisfied that the provisions of this Agreement and the planning obligations contained herein comply with their respective policies in relation to section 106 of the Act and are sufficient in respect thereof.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions have the following meanings:

"A611 Improvements"	the proposed amendments to the roundabout junction with associated signing at the A611 Hucknall Bypass / Nottingham Road as shown for indicative purposes on drawing number T19022/SK11 and amendments to the existing pedestrian refuge on Nottingham Road
"A611 Improvements Programme"	a programme to be submitted to and approved by the District Council in consultation with the County Council as Highways Authority setting out the A611 Improvements and the timescales for completing the works
"Act"	the Town and Country Planning Act 1990 as amended
"Affordable Dwellings"	means 18.5% of the total number of Dwellings to be constructed as part of the Development as Affordable Housing to be provided in accordance with the Tenure Mix
"Affordable Housing"	means housing provided to eligible households whose needs are not met by the market in accordance with the definition set out in the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it)
"Affordable Housing Contribution"	means the sum to be agreed between the District Council and the Owner and which shall represent the difference between the sum of the Open Market Value of the relevant Affordable Dwellings at the time the relevant dwellings were to be transferred and the estimated lump-sum that would have been paid to the Owner by an Affordable Housing Provider for the relevant Affordable Dwellings (to be calculated having regard to market conditions at the time the Affordable Housing Contribution is to be paid and the transfer values of similar affordable dwellings that have been or would be acquired by other Affordable Housing

Providers within Ashfield District at or around this time), which may be payable by the Owner to the District Council in accordance with the provisions of paragraph 11 of Part 1 to Schedule 1 for use by the District Council towards the provision of Affordable Housing within the District of Ashfield

"Affordable Housing Provider"

means: -

- i. a non-profit registered provider of social housing under the Housing and Regeneration Act 2008 and registered with Homes England (or such successor authority) as a registered provider; or
- ii. any other housing provider approved in writing by the District Council

as shall be approved by the District Council and dependent upon the Affordable Housing Provider being able to demonstrate to the District Council its ability to deliver the Affordable Housing on the Application Land in accordance with the terms of this Agreement

"Affordable Housing Scheme"

means the scheme for the provision of Affordable Dwellings which shall specify:

- (i) the location of the Affordable Dwellings within the Development;
- (ii) the intended Affordable Housing Provider; and
- (iii) the Tenure Mix

"Affordable Rented Dwelling"

means those Affordable Dwellings to be let at an affordable rent being up to 80% of the open market rental value for the unit type, such rent to be in accordance the National Planning Policy Framework (June 2019) or such successor framework

"Application Land"

the land shown edged red on the Plan

"Bus Stop Contribution"

means the sum of £29,000 (Twenty Nine Thousand Pounds) Index Linked towards the provision of real

time bus stop poles & display including associated electrical connections, extended hardstand, polycarbonate bus shelter & solar lighting at AS0776 Shelton Avenue and real time bus stop poles & display including associated electrical connections, extended hardstand, polycarbonate bus shelter & solar lighting at AS0777 Shelton Avenue

"Commencement of Development"

the earliest date on which any of the material operations (as defined by section 56(4) of the Act) pursuant to the implementation of the Development is begun save that irrespective of the provisions of section 56(4) of the Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development:

- (a) trial holes or other operations to establish the ground conditions of the Application Land, site survey work, or works of remediation;
- (b) archaeological investigations on the Application Land;
- (c) any works of demolition or site clearance;
- (d) any structural planting or landscaping works;
- (e) ecological or nature conservation works associated with the Development;
- (f) construction of site compounds boundary fencing or hoardings;
- (g) construction of access or highway works or provision of services (including drainage and media);
- (h) any other preparatory works agreed in writing with the District Council,

and **"Commencement Date"** shall be interpreted accordingly

"Development" means the development described in the Planning Application and to be carried out pursuant to the Planning Permission

"Discounted Market Dwellings" means a Dwelling to be sold by the Owner at eighty per cent (80%) of its Open Market Value

"Dwelling(s)" a dwelling built pursuant to the Planning Permission whether or not an Affordable Housing Unit

"Habitat Improvement Contribution" the sum of £35,000 (Thirty Five Thousand Pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of paragraphs 1.9 and 1.10 of Part 4 to Schedule 1, to be used by the District Council as follows:

£20,000 (Twenty Thousand Pounds) Index Linked towards the planting of trees in the district of Ashfield; and

£15,000 (Fifteen Thousand Pounds) Index Linked towards the provision of other habitat improvements within the district of Ashfield (at the discretion of the District Council)

"Healthcare Authority" means the NHS Mansfield and Ashfield Clinical Commission Group

"Healthcare Contribution" the sum of £117,695.25 (One Hundred and Seventeen Thousand Six Hundred and Ninety Five Pounds and Twenty Five Pence) Index Linked payable by the Owner to the District Council in accordance with the provisions of paragraphs 1.4 and 1.5 of Part 4 to Schedule 1 towards the enhancement of capacity and/or infrastructure in local practices

"Housing Need" means living in unsuitable housing conditions and either unable to afford to rent at market rent or unable to buy suitable housing at open market prices

"Index Linked"	the application to the sum concerned of the indexation set out in Schedule 0 hereto
"Lighting Maintenance Contribution"	means the sum of £380 (Three Hundred and Eighty Pounds) Index Linked per annum for a period of 15 years (being a total of £5,700.00 (Five Thousand and Seven Hundred Pounds) Index Linked) which shall be payable by the Owner to the District Council in accordance with paragraph 3.7 of Part 2 of Schedule 1 towards the cost of maintaining the lighting to be provided on the On Site Open Space pursuant to planning condition 21 of the Planning Permission
"Management Company"	means a management company elected by the Owner and approved in writing by the District Council (such approval not to be unreasonably withheld or delayed) to be responsible for the long-term management and maintenance of the Parcel A On Site Open Space and/or the Parcel B On Site Open Space and/or any private drives serving more than 6 or more Dwellings and/or the on-site lagoon shown on the approved drawings
"Market Dwelling"	means Dwellings for sale on the open market which is constructed as part of the Development and which is not an Affordable Dwelling
"MOVA Contribution"	means the sum of £33,000 (Thirty Three Thousand Pounds) Index Linked payable by the Owner to the District Council in accordance with paragraph 1.13 of Part 4 of Schedule 1 towards the provision of a Microprocessor Optimised Vehicle Actuation ("MOVA") at the junction of Portland Street and Station Road
"Monitoring Contribution"	means the sum of £2,500 (Two Thousand Five Hundred Pounds) Index Linked payable by the Owner to the District Council towards the District Council's costs of monitoring compliance with the obligations contained in this Agreement
"Nominations Agreement"	means an agreement in a form to be agreed by the District Council and the Affordable Housing Provider

(both acting reasonably) relating to the nominations procedure and local lettings plans for the Affordable Rented Dwellings

"Occupation"

in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include:

- (a) daytime occupation by workmen involved in the erection fitting out or decoration of any part of the Development;
- (b) the use of any Dwelling for the marketing of the Development; or
- (c) the storage of plant and materials,

and **"Occupy"** and **"Occupied"** shall be construed accordingly

"On Site Open Space"

means together the Parcel A On Site Open Space and the Parcel B On Site Open Space

"On Site Open Space Plan"

means the plan carrying reference 10010POSP-01 Rev B, which is appended to this Deed

"On Site Open Space Scheme"

means the scheme for the provision, laying out and long term maintenance of the On Site Open Space to be submitted by the Owner to the District Council in accordance with the provisions of Part 2 to Schedule 1

"Open Market Value"

means the value of a Dwelling to be sold on the open market based on the following assumptions:

- a) a willing seller;
- b) a reasonable period for the proper marketing of the Dwelling; and
- c) market conditions at the time of the valuation

"Parcel A Maintenance Contribution"	means the sum of £11,871 (Eleven Thousand Eight Hundred and Seventy One Pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of paragraph 2.8 of Part 2 to Schedule 1 towards the ongoing maintenance costs of the Parcel A On Site Open Space
"Parcel B Maintenance Contribution"	means the sum of £25,887 (Twenty Five Thousand Eight Hundred and Eighty Seven Pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of paragraph 3.8 of Part 2 to Schedule 1 towards the ongoing maintenance costs of the Parcel B On Site Open Space
"Parcel A On Site Open Space"	means that part of the communal on-site open space including all structural landscaping and vegetation to be improved and provided as part of the Development shown for identification purposes only shaded dark green on the On Site Open Space Plan and excluding the Parcel B On Site Open Space
"Parcel B On Site Open Space"	means that part of the communal on-site open space including all structural landscaping, and vegetation to be improved and provided as part of the Development shown for identification purposes only shaded light green on the On Site Open Space Plan and excluding the Parcel A On Site Open Space
"Plan"	the plan attached hereto (drawing number 17026-04)
"Planning Application"	the planning application submitted to the District Council and allocated reference number V/2019/0483 applying for planning permission for 217 no. dwellings and associated infrastructure and works, including the removal of two groups and three individual TPO trees included in the Ashfield District Council Tree Preservation Order, TPO 168
"Planning Permission"	means a planning permission granted pursuant to the Planning Application
"POS Contribution"	means the sum of £75,000 (Seventy Five Thousand Pounds) Index Linked payable by the Owner to the

District Council towards the off-site provision of a neighbourhood young people's area within the district of Ashfield

"Practical Completion"

means the stage of construction or conversion of any Dwelling or other building comprising the Development such that it is capable of beneficial Occupation and "**Practically Complete**" shall be construed accordingly

"Primary Education Contribution"

means the sum of £801,596 (Eight Hundred and One Thousand and Five Hundred and Ninety Six Pounds) Index Linked (based on a calculation of need of 46 primary places at £17,426 (Seventeen Thousand Four Hundred and Twenty Six Pounds) per place) payable by the Owner to the District Council in accordance with the provisions of paragraphs 1.1 to 1.3 of Part 4 to Schedule 1 towards the cost of primary education provision in the Hucknall Primary Planning Area

"Protected Tenant"

means any tenant who:

- i. 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 a particular Affordable Dwelling;
- ii. has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling;
- iii. has been granted a shared ownership lease by an Affordable Housing Provider (or similar arrangement where a share of the Affordable Dwelling is owned by the tenant and a share is owned by the Affordable Housing Provider) in respect of a particular Affordable Dwelling and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Dwelling; or

- iv. has otherwise obtained full ownership of a single Affordable Dwelling.

"Residents Travel Information Pack"

means a travel information pack to be submitted to and approved by the Council (in consultation with the County Council as Highway Authority) and to be issued to each Dwelling on the Development prior to first Occupation of such Dwelling

"Residential Travel Plan"

means a plan or plans with the aims and objectives set out for the residential areas for the Development to include the provision of a Residents Travel Information Pack for each Dwelling

"Secondary Education Contribution"

means the sum of £835,625 (Eight Hundred and Thirty Five Thousand and Six Hundred and Twenty Five Pounds) Index Linked (based on a calculation of need of 35 secondary places at £23,875 (Twenty Three Thousand Eight Hundred and Seventy Five Pounds) per place) payable by the Owner to the District Council in accordance with the provisions of paragraphs 1.6 to 1.8 of Part 4 to Schedule 1 towards the cost of secondary education provision at Holgate Academy, Hucknall

"Section 73 Consent"

a planning permission granted pursuant to Section 73 of the Act which varies and/or removes any condition to which the Planning Permission and/or to which such planning permission granted pursuant to Section 73 of the Act was granted subject to

"Shared Ownership Housing"

Affordable Dwellings for sale on a shared ownership basis whereby not more than 75% and not less than 25% of the dwelling is initially sold to the purchaser by the Affordable Housing Provider and rent is paid on the remaining share of the Affordable Dwelling in accordance with Homes England's Model Lease (as amended from time to time by Homes England) which remains in the ownership of the Affordable Housing Provider until 100% staircasing is agreed

"Tenure Mix"

means the provision of:

- 10 (Ten) x Affordable Rented Dwellings
- 10 (Ten) x Shared Ownership Housing
- 20 (Twenty) x Discount Market Dwellings

or any other tenure mix as may be agreed in writing by the Owner and the Council

“Travel Plan Co-ordinator”

such person as is appointed in relation to the Development in accordance with the provisions of paragraph 1.20 of Part 5 of Schedule 1

“Travel Plan Monitoring Fee”

means the total sum of £7,700 (seven thousand seven hundred pounds) Index Linked payable by the Owner in accordance with the provision of paragraph 1.24 of Part 5 of Schedule 1

- 1.2 Words in this Agreement importing the singular meaning shall where the context so admits include the plural meaning and vice versa.
- 1.3 Words in this Agreement of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa.
- 1.4 References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force.
- 1.5 Where in this Agreement reference is made to a clause Schedule or plan such reference (unless the context otherwise requires) is a reference to a clause or Schedule of or in the case of a plan attached to this Agreement.
- 1.6 Covenants made hereunder on the part of the District Council shall be enforceable against the District Council and any statutory successor to it as Planning Authority.
- 1.7 The expression “the Owner” shall where the context so admits include its respective successors and assigns.

2. GENERAL PROVISIONS

Statutory Authority

2.1 This Agreement and each of the covenants given by the Owner contained herein is a planning obligation and is made pursuant to section 106 of the Act.

2.2 The covenants by the Owner contained herein shall be enforceable by the District Council.

Liability

2.3 The covenants given by the Owner contained herein are made with the intent that the covenants will bind its interest in the Application Land and be binding on and enforceable against its respective successors in title or assigns and subject to **clause 2.5** those deriving title under the Owner provided that without prejudice to the enforcement of covenants against successors in title no person shall be liable for any breach or non-performance of the covenants contained herein or for the performance of any obligations which arise from the carrying out of the Development on and in respect of any land of which he is no longer seised save in respect of any prior subsisting breach.

2.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof or amendment and/or variation thereto including a Section 73 Consent) granted (whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply provided that the obligations in this Agreement can be applied to any planning permission granted subsequent to the grant of the Planning Permission as herein defined by agreement between the Owner and/or the Developer and the District Council as evidenced by a memorandum endorsed on this Agreement.

2.5 The covenants contained in this Agreement shall not be enforceable against:

2.5.1 individual purchasers or lessees of Dwellings on the Application Land constructed pursuant to the Planning Permission, SAVE for the provisions of paragraphs 12 – 15 inclusive of Part 1 of Schedule 1 hereto which shall be enforceable against subsequent purchasers of the Discounted Market Dwellings; or

2.5.2 statutory undertakers in relation to any parts of the Application Land acquired by them for electricity sub-stations gas governor stations or pumping stations; or

2.5.3 anyone whose only interest in the Application Land or any part of it is in the nature of the benefit of an easement or covenant; or

2.5.4 a chargee, mortgagee or Receiver (as defined in paragraph 8 Schedule 1 Part 1) of an Affordable Housing Provider; or

2.5.5 save for the provisions of paragraphs 7-10 of Schedule 1 Part 1, an Affordable Housing Provider unless all or part of the Application Land is transferred to an Affordable Housing Provider and the Affordable Housing Provider builds out the Development pursuant to the Planning Permission in which case the covenants and obligations in this Agreement shall apply in full to the Affordable Housing Provider as successor in title to the Owner.

2.6 In the event that the Owner disposes of its interest in the Application Land any part thereof (other than a disposal to a purchaser of a Dwelling) it shall within 28 days of such disposal give written notice of the name and address of its successors in title to the District Council together with sufficient details of the land included in the disposal to allow its identification.

Contingencies

2.7 The obligations in this Agreement shall be conditional upon the issuing of the Planning Permission and the Commencement of Development and save for this clause and **clauses 2.8, 2.12, 2.13, 2.16, 2.17, 2.18, 2.19, 2.20, 2.21, 2.23, 2.25 and 2.26** which shall come in to effect upon completion of this Agreement then until such time all other provisions not herein specified shall be of no effect.

2.8 In the event of the Planning Permission expiring or in the event of the revocation of the Planning Permission the obligations under this Agreement shall cease absolutely and the District Council shall upon written request from the Owner procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith upon request of the Owner.

2.9 Where this Agreement is released in part by a future agreement, the District Council shall upon written request from the Owner place a note against the entry made in the Register of Local Land Charges stating which obligations no longer have effect.

2.10 If the Owner makes a request in writing for the District Council to place a note against the entry made in the Register of Local Land Charges stating which obligations under this Agreement have been discharged and complied with, the District Council will place such a note against the entry to the extent which such obligations are deemed by the District Council to have been discharged and complied with under the terms of this Agreement.

2.11 Following the performance and satisfaction of all covenants and obligations contained in this Agreement the District Council shall upon written request from the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

Commencement of Development

- 2.12 The Owner shall give the District Council seven days' notice in advance of the Commencement of Development and the date on which Commencement of Development has taken place shall be confirmed by exchange of correspondence between the Owner and the District Council provided that default in giving notice or confirming the date by exchange of correspondence shall not prevent Commencement of Development occurring.

Determination by Expert

- 2.13 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owner and the District Council concerning this Agreement including any dispute as to whether or not an obligation has been performed or matter to be agreed under any of the provisions of this Agreement the matter may at the written option of any relevant party (notice of which shall be given to the other party or parties) be referred to such expert as they may agree or (in default of agreement within 20 working days of the date of giving of the notice) appointed by the Chairman for the time being of the Planning and Environment Bar Association whose appointment shall be conducted on the following terms:

- 2.13.1 the person to be appointed pursuant to clause 2.13 shall if possible be a person having ten years or more relevant post-qualification experience of the issue in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute; and
- 2.13.2 the reference to the expert shall be on terms that:
- 2.13.2.1 the expert shall afford the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;
 - 2.13.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
 - 2.13.2.3 the expert shall be bound to have regard to the said submissions and representations;
 - 2.13.2.4 the expert shall have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the expert shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;
 - 2.13.2.5 the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and

- 2.13.2.6 the findings of the expert shall save in the case of manifest material error be final and binding on the Owner and the District Council save that the parties retain the right to refer to the Courts on a matter of law.

Time Periods

- 2.14 It is agreed between the parties that any of the periods specified in the Agreement may be extended by mutual agreement in writing between the Owner and the District Council.

Approvals

- 2.15 For the purposes of this Agreement where a party is required to make a request, give confirmation, approval or consent, express satisfaction with, agree to vary, or to give notice of any matter, such request, confirmation, approval, consent, expression of satisfaction, agreement to vary, or notice shall be deemed to have not been given or expressed unless given or expressed in writing and shall not be unreasonably withheld or delayed.

Notices

- 2.16 The service of notices and communications pursuant to this Agreement shall be sent to the addressee at the address stated in this Agreement or at such other address as the addressee shall have notified to the others in writing.
- 2.17 Notices and communications under this Agreement may be sent by personal delivery or by first class post (recorded delivery) and any notice or communication sent by first class post (recorded delivery) and correctly addressed shall be conclusively deemed to have been received by the addressee on the second business day following the date of posting.

Exclusion of the Contracts (Rights of Third Parties) Act 1999

- 2.18 Nothing herein contained or implied shall give or be construed as giving rights, privileges, powers or enforceability other than to the specific parties executing this document and their successors (if any) as defined herein and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained.

Void Provisions

- 2.19 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of

this Agreement on such terms as may in all the circumstances be reasonable if the effect of the forgoing provisions would be to defeat the original intention of the parties.

Application of this Agreement

- 2.20 If any Section 73 Consent is granted after the date of this deed:
- 2.20.1 the obligations in this deed shall relate to and bind such Section 73 Consent; and
 - 2.20.2 the definitions of Planning Application, Development and Planning Permission (other than for the purpose of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent, the development permitted by the Section 73 Consent and the Section 73 Consent itself.

PROVIDED THAT in the event of a different section 106 obligation agreed by the District Council being binding on any Section 73 Consent, this obligation shall not apply to that Section 73 Consent if that separate section 106 obligation expressly states that it is in substitution for the obligations in this obligation.

No Fetter of Discretion

- 2.21 Save as permitted by law in equity nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the District Council in its rights powers duties and obligations under all public and private statutes bylaws and regulations which may be as fully and effectually exercised as if the District Council were not a party to this Agreement.

Effect of any Waiver

- 2.22 No waiver (whether express or implied) by the District Council of any breach or default by the Owner in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the District Council (as relevant) from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner.

General Requirement to Co-operate

- 2.23 Without prejudice to its statutory duties the District Council and the Owner and the Developer (where applicable) shall act in good faith and shall co-operate with each other to facilitate the discharge and performance of the obligations of the other contained within this Agreement within the timescales specified.

Interest

- 2.24 If any payment due to the District Council under this Agreement is paid late interest will be payable from the date the payment is due to the date of payment at 8% above the Bank of England base lending rate prevailing at the time.

Developer's Consent

- 2.25 The Developer acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Application Land shall be bound by the obligations contained in this Agreement PROVIDED THAT the Developer shall otherwise have no liability under this Agreement unless it acquires an interest (being more than a conditional contract or option to purchase) in the Application Land or part thereof in which case it too will be bound by the obligations as if it were a person deriving title from the Owner in respect of any part which it has so acquired.

Jurisdiction

- 2.26 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

SCHEDULE 1

THE OWNER'S AND THE DEVELOPER'S OBLIGATIONS TO THE DISTRICT COUNCIL

The Owner covenants with the District Council as follows:

Part 1 – Affordable Housing

1. To submit to the District Council for approval (such approval not to be unreasonably withheld or delayed) prior to the Commencement of Development the Affordable Housing Scheme and not to Commence Development unless and until the Affordable Housing Scheme has been approved by the District Council.
2. To provide 18.5% of the total number of Dwellings constructed as part of the Development as Affordable Dwellings and in accordance with the Affordable Housing Scheme approved pursuant to paragraph 1 above or any approved variation thereto.
3. The Owner covenants with the District Council not to dispose of any interest in the Affordable Rented Dwellings or the Shared Ownership Housing save to an Affordable Housing Provider or the District Council in accordance with this Part 1 to this Schedule or allow the same to be disposed of otherwise than in accordance with this Part 1 to this Schedule.
4. The Owner covenants with the District Council not to Occupy or permit or suffer or allow the Occupation of more than 50% of the Market Dwellings until:-
 - 4.1 5 (five) of the Affordable Rented Dwellings, 5 (five) of the Shared Ownership Housing and 10 (ten) of the Discount Market Dwellings have achieved Practical Completion and are ready for Occupation; and
 - 4.2 the freehold of 5 (five) of the Affordable Rented Dwellings and 5 (five) of the Shared Ownership Housing has been transferred to an Affordable Housing Provider or the District Council or binding contracts to transfer such units to an Affordable Housing Provider or the District Council have been exchanged; and
 - 4.3 the freehold of 10 (ten) of the Discounted Market Dwellings has been sold to a person or persons in Housing Need by the Owner and the transfer of such dwellings shall contain a provision to ensure that future transfers shall be restricted in perpetuity so that the sale price does not exceed 80% of the Open Market Value at the time of such sale, such provision to require a restriction to be inserted to the title register at HM Land Registry.
5. The Owner covenants with the District Council not to Occupy or permit or suffer or allow the Occupation of more than 80% of the Market Dwellings until:-

- 5.1 the remaining 5 (five) of the Affordable Rented Dwellings, 5 (five) of the Shared Ownership Housing and 10 (ten) of the Discount Market Dwellings have achieved Practical Completion and are ready for Occupation; and
 - 5.2 the freehold of the remaining 5 (five) of the Affordable Rented Dwellings and 5 (five) of the Shared Ownership Housing has been transferred to an Affordable Housing Provider or the District Council or binding contracts to transfer such units to an Affordable Housing Provider or the District Council have been exchanged; and
 - 5.3 the freehold of the remaining 10 (ten) of the Discounted Market Dwellings has been sold to a person or persons in Housing Need by the Owner and the transfer of such dwellings shall contain a provision to ensure that future transfers shall be restricted in perpetuity so that the sale price does not exceed 80% of the Open Market Value at the time of such sale, such provision to require a restriction to be inserted to the title register at HM Land Registry.
6. The transfer or binding contract, as the case may be, referred to in paragraphs 4.2 and 5.2 above shall provide inter alia for:
 - 6.1 the transfer of the freehold title to be with full title guarantee with such rights of access and passage of other rights reasonably necessary for the beneficial enjoyment of the relevant Affordable Dwellings and the provision of roads and services rendering them suitable for immediate Occupation; and
 - 6.2 the imposition of such covenants as the Owner shall reasonably require as are consistent with the sale of any Dwellings within the Development; and
 - 6.3 where the Affordable Dwellings are being transferred to an Affordable Housing Provider, evidence to the District Council of such transfer or contract has been provided.
7. Subject to paragraph 8 below, the Owner covenants with the District Council not to use or allow or suffer the Affordable Dwellings to be used for any purpose other than for Affordable Housing in accordance with the terms of this Agreement.
8. The parties agree that the restriction referred to in paragraph 7, the Nominations Agreement referred to in paragraph 9 and paragraph 10 below shall not apply to:
 - 8.1 a Protected Tenant or any person deriving title under a Protected Tenant; or
 - 8.2 any mortgagee or chargee of the Affordable Dwellings or any of them nor to any receiver appointed by any such mortgagee or chargee to the intent that any such mortgagee, chargee or receiver may deal with or dispose of the Affordable Dwellings or any of them free from the provisions and restrictions of this

Agreement relating to Affordable Housing and on the basis that any person deriving title through or under such mortgagee, chargee or receiver shall not be bound by the provisions in this Agreement; or

- 8.3 any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of an Affordable Housing Provider in the event of a default under a mortgage or charge or any successors in title to such mortgagee or chargee or Receiver and it is further acknowledged that any mortgagee or chargee exercising its powers in relation to any Affordable Dwellings shall be entitled to dispose of the Affordable Dwellings on the open market free from the restrictions within this Agreement.
9. The Owner covenants with the District Council not to transfer the Affordable Rented Dwellings and/or the Shared Ownership Housing to an Affordable Housing Provider without first procuring that the transfer includes:
 - 9.1 a provision that the Affordable Housing Provider shall undertake to enter into a Nominations Agreement with the District Council; and
 - 9.2 a provision that the Affordable Rented Dwellings and/or the Shared Ownership Housing shall not be used for any purpose other than for Affordable Housing save where clause 2.5 and paragraph 8 of Schedule 1 Part 1 of this Agreement applies.
10. The Owner covenants with the District Council to procure that the Affordable Housing Provider permits the District Council or its agent to nominate 100% of the first occupiers and 50% of the second occupiers of the Affordable Rented Dwellings and/or the Shared Ownership Housing, such occupier being someone who is in Housing Need PROVIDED THAT on each nomination request this paragraph 10 shall not apply where the District Council has failed to respond to the Affordable Housing Provider within 15 working days requesting such nomination for an Affordable Rented Dwelling and/or Shared Ownership Housing and the Affordable Housing Provider shall be free to select their own occupiers provided that they are in Housing Need.
11. In the event the Owner has not entered into a binding contract with an Affordable Housing Provider within twelve months of Commencement of Development pursuant to this Part 1 to this Schedule or binding contract with a prospective purchaser (in respect of any Discounted Market Dwellings) within twelve months of when the relevant Discounted Market Dwelling was first marketed (satisfactory evidence of first marketing the relevant Discounted Market Dwellings to be provided to the District Council) to notify the District Council (such notification to include evidence of the Owner's reasonable endeavours to

enter into a binding contract with an Affordable Housing Provider or prospective purchaser) and:

- 11.1 If the District Council (acting reasonably) is satisfied that the notification provided pursuant to paragraph 11 demonstrates that the Owner has used reasonable endeavours to enter into a binding contract with an Affordable Housing Provider or prospective purchaser, it shall determine whether to take a transfer of all or part of the Affordable Dwellings or to accept an Affordable Housing Contribution and:
 - 11.1.1 In the event the District Council determines pursuant to Part 1 of Schedule 2 that an Affordable Housing Contribution shall be payable in lieu of provision of all or part of the Affordable Dwellings on the Application Land then the Owner shall pay the Affordable Housing Contribution prior to the first Occupation of eighty per cent (80%) of the Market Dwellings AND the Owner shall be entitled to dispose of the Dwellings that would have been Affordable Dwellings as Market Dwellings and the provisions relating to Affordable Housing in this Agreement shall no longer apply to such dwellings.
 - 11.1.2 In the event that the District Council elects pursuant to Part 1 of Schedule 2 to take a transfer of the Affordable Dwellings the Owner shall offer to transfer the Affordable Dwellings to the District Council for a sum to be agreed between the Owner and the District Council such sum to represent the build cost provision of services infrastructure and land as part of the Development and to use reasonable endeavours to exchange legally binding contracts with the District Council (such contracts to be on the terms contained in paragraph 6 above) within 3 months of the Owner receiving written acceptance of the offer.
 - 11.1.3 If within 3 months of the Owner receiving written acceptance of the offer from the District Council, legally binding contracts have not been exchanged with the District Council or the District Council has provided written confirmation of its withdrawal from acceptance of the offer the Owner shall be entitled to withdraw the offer from negotiations PROVIDED THAT the Dwellings that would have been Affordable Rented Dwellings and / or Shared Ownership Housing shall be provided as Discounted Market Dwellings (and the transfer of all such dwellings shall contain a provision to ensure that future transfers shall be restricted in perpetuity so that the sale price does not exceed 80% of the Open Market Value at the time of such sale, such provision to require a restriction to be inserted to the title register at HM Land Registry).

- 11.2 If the District Council (acting reasonably) is not satisfied that the notification provided pursuant to paragraph 11 demonstrates that the Owner has used reasonable endeavours to enter into a binding contract with an Affordable Housing Provider or prospective purchaser, the District Council shall serve written notice on the Owner that the Owner shall be required to use reasonable endeavours to enter into such a contract within six months from the date of notification by the District Council and if at the end of that six month period the Owner has not been able to enter into a binding contract with an Affordable Housing Provider the provisions of paragraph 11.1 shall apply PROVIDED THAT at the conclusion of the six month period under this paragraph 12 the District Council shall not be entitled to again serve a notice under this paragraph and the provisions of paragraphs 11.1.1 to 11.1.3 shall apply.
12. In respect of the Affordable Dwellings to be sold as Discounted Market Dwellings pursuant to this Part of this Schedule, in order that the future ownership and selling price of all and any Discounted Market Dwelling shall be controlled so as to ensure that each such dwelling remains a Discounted Market Dwelling available to persons in Housing Need in perpetuity, on the first disposal of each Discounted Market Dwelling the Owner shall secure the registration at HM Land Registry of the following restriction (or in such other form as the Chief Land Registrar shall deem appropriate) against the title to the Discounted Market Dwelling and shall provide the District Council with a copy of such title (showing the restrictions unless otherwise agreed in writing):-
- "no disposition of the registered estate other than a charge by the proprietor of the registered estate, or by the proprietor of a charge, not being a charge registered before the entry of this restriction shall be completed by way of registration without a certificate signed by Ashfield District Council that the provisions of the Deed dated [insert date of this s106 Agreement] 2020 between Bellway Homes Limited, Nottinghamshire County Council and Ashfield District Council have been complied with"*
13. On each subsequent disposal of any Discounted Market Dwelling the new owner (the **"Subsequent Owner"**) shall procure the registration at the Land Registry of a restriction in the same form as set out above at **paragraph 12** against the title to the Discounted Market Dwelling in which they have acquired an interest and supply a copy of such title (showing the restriction) to the District Council.
14. It is hereby agreed that if a Subsequent Owner of a Discounted Market Dwelling who wishes to dispose of the dwelling is not able to locate a prospective purchaser who is a person or persons in Housing Need after a period of 3 months of first advertising the Discounted Market Dwelling for sale then the Subsequent Owner may sell the Discounted Market Dwelling at a price which is representative of the open market value (evidence of such sum to be provided to the District Council as being the average sum of three independent valuations) and the Subsequent Owner shall pay to the District Council upon completion of

the sale of the Discounted Market Dwelling as an open market dwelling the sum which is 20% (Twenty Percent) of the open market value and the obligations in this Part of this Schedule shall no longer apply to that dwelling.

15. Prior to entering into a contract for the sale of the Discounted Market Dwelling with a prospective purchaser, the Owner shall provide the District Council with the following information:

15.1 evidence that the prospective purchaser is a person or persons that has/have a Housing Need;

15.2 evidence as to the local market value of the Discounted Market Dwelling; and

15.3 details as to the proposed sale price.

and the Owner shall not enter into a contract for sale of a Discounted Market Dwelling unless and until the District Council has provided it with a letter (such letter not to be unreasonably withheld or delayed and in any event to be provided within 10 working days of written request) confirming that the District Council accepts the evidence provided to it pursuant to this paragraph 15 or, where the District Council does not accept the evidence provided, the full reasons as to why it does not accept the evidence.

Part 2 – On Site Open Space

1. The Owner covenants with the District Council:

1.1 to submit to the District Council for approval the On Site Open Space Scheme within 3 calendar months of the Commencement of Development (such approval not to be unreasonably withheld or delayed).

1.2 to provide the On Site Open Space in accordance with the On Site Open Space Scheme or any variation thereto approved in advance by the District Council.

1.3 not to allow or permit the Occupation of more than 50% of the Dwellings unless and until the Parcel A On Site Open Space has been laid out and made available for use by the residents of the Development in accordance with the approved On Site Open Space Scheme or any variation thereto approved in advance by the District Council

1.4 not to allow or permit the Occupation of more than 80% of the Dwellings unless and until the Parcel B On Site Open Space has been laid out and made available for use by the residents of the Development in accordance with the approved On Site Open Space Scheme or any variation thereto approved in advance by the District Council.

2. Following completion of the Parcel A On Site Open Space pursuant to the provisions of paragraph 1.3 of Part 2 of Schedule 1 :
 - 2.1 the Owner covenants to:
 - 2.1.1 serve notice on the District Council inviting it to inspect the Parcel A On Site Open Space and issue a certificate confirming that such works have been completed in accordance with the approved On Site Open Space Scheme;
 - 2.1.2 pay to the District Council an inspection fee of £325 (three hundred and twenty five pounds)
 - 2.2 subject to payment of the inspection fee pursuant to paragraph 2.1.2 of this Part 2 above, the District Council covenants to inspect the Parcel A On Site Open Space within thirty days of receiving notice pursuant to paragraph 2.1 above and may identify remedial works necessary to comply with the approved Parcel A On Site Open Space Scheme and shall serve notice of any remedial works on the Owner, to complete such notified remedial works in accordance with the approved Parcel A On Site Open Space Scheme within 45 days (or such reasonable longer period as is agreed in writing with the District Council);
 - 2.3 upon completion of any such remedial works, the Owner covenants to
 - 2.3.1 serve notice on the District Council inviting it to inspect those remedial works and issue a certificate confirming that such works have been completed in accordance with the approved On Site Open Space Scheme; and
 - 2.3.2 pay to the District Council a further inspection fee of £325 (three hundred and twenty five pounds)
 - 2.4 the provisions of paragraphs 2.3 and 2.4 shall continue to apply until the District Council is satisfied that the Parcel A On Site Open Space has been provided to a satisfactory standard.
 - 2.5 to maintain the Parcel A On Site Open Space for a period of 12 months following the issue of the certificate pursuant to paragraph 2.3.1 above and if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period to reinstate or replace it as necessary and in the case of any tree shrub or any other planted material the replacement should be the same size and species or such other size and species as may be agreed with the District Council.

- 2.6 at the end of the maintenance period referred to in paragraph 2.5 to serve written notice on the District Council that the 12 month period for maintenance has expired and subject to the District Council being reasonably satisfied on an inspection that all requirements of paragraphs 3.1 to 3.5 have been satisfactorily carried out and the covenants performed the District Council shall issue a certificate to such effect provided that if the District Council is not so satisfied the Owner shall remain responsible for the proper maintenance of the area of open space in question as the case may be and the maintenance period for such land shall be extended until such time as the District Council certifies in writing that the outstanding work has been completed or the defects have been remedied as the case may be.
- 2.7 If the District Council elect to accept a transfer of the Parcel A On Site Open Space pursuant to paragraph 1.16 of Schedule 2 the Owner shall transfer the freehold interest in the Parcel A On Site Open Space to the District Council for the sum of £1.00 such transfer to be in accordance with the relevant provisions of the Fourth Schedule AND FOR THE AVOIDANCE OF DOUBT the Owner shall maintain the Parcel A On Site Open Space in accordance with the On Site Open Space Scheme and in a clean and tidy condition until the transfer to the District Council has been completed.
- 2.8 Upon completion of the transfer of the Parcel A On Site Open Space to the District Council in accordance with paragraph 2.7 above, the Owner shall pay to the District Council the Parcel A Maintenance Contribution.
- 2.9 If the District Council elect not to accept a transfer of the On Site Open Space the Owner may transfer the Parcel A On Site Open Space to the Management Company on terms that ensure that the public shall continue to have access to the Parcel A On Site Open Space as set out in the approved On Site Open Space Scheme and for the avoidance of doubt if the Parcel A On Site Open Space is transferred to a Management Company then the Parcel A Maintenance Contribution will not be payable.
3. Following completion of the Parcel B On Site Open Space pursuant to the provisions of paragraph 1.4 of this Part 2 of this Schedule 1 :
- 3.1 the Owner covenants to :
- 3.1.1 serve notice on the District Council inviting it to inspect the On Site Open Space and issue a certificate confirming that such works have been completed in accordance with the approved On Site Open Space Scheme; and

- 3.1.2 pay to the District Council an inspection fee of £325 (three hundred and twenty five pounds)
- 3.2 subject to payment of the inspection fee pursuant to paragraph 3.1.2 above, the District Council covenants to inspect the Parcel B On Site Open Space within thirty days of receiving notice pursuant to paragraph 3.1 above and may identify remedial works necessary to comply with the approved On Site Open Space Scheme and shall serve notice of any remedial works on the Owner, to complete such notified remedial works in accordance with the approved On Site Open Space Scheme within 45 days (or such reasonable longer period as is agreed in writing with the District Council);
- 3.3 upon completion of any such remedial works, the Owner covenants to:
- 3.3.1 serve notice on the District Council inviting it to inspect those remedial works and issue a certificate confirming that such works have been completed in accordance with the approved On Site Open Space Scheme; and
- 3.3.2 pay to the District Council a further inspection fee of £325 (three hundred and twenty five pounds)

the provisions of paragraphs 3.2 and this 3.3 shall continue to apply until the District Council is satisfied that the Parcel B On Site Open Space has been provided to a satisfactory standard.

- 3.4 The Owner covenants to maintain the Parcel B On Site Open Space for a period of 12 months following the issue of the certificate pursuant to paragraph 3.3 above and if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period to reinstate or replace it as necessary and in the case of any tree shrub or any other planted material the replacement should be the same size and species or such other size and species as may be agreed with the District Council.
- 3.5 At the end of the maintenance period referred to in paragraph 3.4 to serve written notice on the District Council that the 12 month period for maintenance has expired and subject to the District Council being reasonably satisfied on an inspection that all requirement of paragraphs 3.1 to 3.4 have been satisfactorily carried out and the covenants performed the District Council shall issue a certificate to such effect provided that if the District Council is not so satisfied the Owner shall remain responsible for the proper maintenance of the area of open space in question as the case may be and the maintenance period for such land shall be extended until such time as the District Council certifies in writing that

the outstanding work has been completed or the defects have been remedied as the case may be.

- 3.6 If the District Council elect to accept a transfer of the Parcel B On Site Open Space pursuant to paragraph 1.16 of Schedule 2 the Owner shall transfer the freehold interest in the Parcel B On Site Open Space to the District Council for the sum of £1.00 such transfer to be in accordance with the relevant provisions of the Fourth Schedule AND FOR THE AVOIDANCE OF DOUBT the Owner shall maintain the Parcel B On Site Open Space in accordance with the On Site Open Space Scheme and in a clean and tidy condition until the transfer to the District Council has been completed
- 3.7 Upon completion of the transfer of the Parcel B On Site Open Space to the District Council in accordance with paragraph 3.6 above, the Owner shall pay to the District Council the Parcel B Maintenance Contribution and the Lighting Maintenance Contribution.
- 3.8 If the District Council elect not to accept a transfer of the Parcel B On Site Open Space the Owner may transfer the Parcel B On Site Open Space to the Management Company on terms that ensure that the public shall continue to have access to the Parcel B On Site Open Space as set out in the approved On Site Open Space Scheme and for the avoidance of doubt if the Parcel B On Site Open Space is transferred to a Management Company then the Parcel B Maintenance Contribution and the Lighting Maintenance Contribution will not be payable.

Part 3 – A611 Improvements

1. The Owner covenants with the District Council:
 - 1.1 Not to Commence the Development unless and until the Owner has submitted the A611 Improvements Programme for the approval of the District Council in consultation with the County Council in its capacity as Highways Authority and the District Council has approved the same.
 - 1.2 To complete the A611 Improvements in complete accordance with the A611 Improvements Programme approved pursuant to Paragraph 1.1 of Part 3 of this Schedule 1 unless the Owner and the District Council in consultation with the County Council in its capacity as Highways Authority agree an alternative timeframe for the A611 Improvements in writing.

Part 4 – Financial Contributions

1. The Owner covenants with the District Council to pay to the District Council the following contributions in accordance with the following timescales:

Primary Education Contribution

- 1.1 The Primary Education Contribution as follows:
 - 1.1.1 50% of the Primary Education Contribution prior to Commencement of Development;
 - 1.1.2 the remaining 50% of the Primary Education Contribution prior to the sooner of:
 - 1.1.2.1 Practical Completion of 50% of the total number of Dwellings; or
 - 1.1.2.2 the third anniversary of Commencement of Development.
- 1.2 The Owner covenants with the District Council not to Commence Development unless and until 50% of the Primary Education Contribution has been paid to the District Council.
- 1.3 The Owner covenants with the District Council not to permit or allow the Practical Completion of more than 50% of the Dwellings unless and until all of the Primary Education Contribution has been paid to the District Council.

Healthcare Contribution

- 1.4 The Healthcare Contribution on Commencement of Development.
- 1.5 The Owner covenants with the District Council that it shall not Commence Development unless and until it has paid the Healthcare Contribution to the District Council.

Secondary Education Contribution

- 1.6 The Secondary Education Contribution as follows:
 - 1.6.1 50% of the Secondary Education Contribution prior to Commencement of the Development;
 - 1.6.2 the remaining 50% of the Secondary Education Contribution prior to the sooner of:
 - 1.6.2.1 Practical Completion of 50% of the total number of Dwellings; or
 - 1.6.2.2 the third anniversary of Commencement of Development
- 1.7 The Owner covenants with the District Council not to Commence Development unless and until 50% of the Secondary Education Contribution has been paid to the District Council.
- 1.8 The Owner covenants with the District Council not to permit or allow the Practical Completion of more than 50% of the Dwellings unless and until all of the Secondary Education Contribution has been paid to the District Council.

Habitat Improvement Contribution

- 1.9 The Habitat Improvement Contribution on Commencement of Development.
- 1.10 The Owner covenants with the District Council that it shall not Commence Development unless and until it has paid the Habitat Improvement Contribution to the District Council.

POS Contribution

- 1.11 The Owner covenants with the District Council to pay the POS Contribution prior to the Occupation of 50% of Dwellings.
- 1.12 The Owner covenants with the District Council that it shall not permit or suffer the Occupation of 50% of Dwellings unless and until it has paid the POS Contribution to the District Council.

MOVA Contribution

- 1.13 The Owner covenants with the District Council to pay the MOVA Contribution prior to the Occupation of 50% of Dwellings
- 1.14 The Owner covenants with the District Council that it shall not permit or suffer the Occupation of more than 50% of the Dwellings unless and until it has paid the MOVA Contribution to the District Council.

District Council's Legal Costs

- 1.15 The Developer covenants with the District Council to pay the District Council's reasonable legal costs in respect of the preparation of this Agreement on its execution.

Monitoring Contribution

- 1.16 The Owner covenants with the District Council to pay the Monitoring Contribution prior to the completion of this Agreement.

Bus Stop Contribution

- 1.17 The Owner covenants with the District Council to pay the Bus Stop Contribution prior to first Occupation of the first Dwelling.
- 1.18 The Owner covenants with the District Council that it shall not permit or suffer first Occupation of the first Dwelling unless and until it has paid the Bus Stop Contribution to the District Council.

Part 5 – Travel Plan

RESIDENTIAL TRAVEL PLAN

- 1.19 The Owner covenants to:

- 1.19.1 within 6 months of the Commencement of Development, to submit to and obtain the District Council's approval (in consultation with the County Council in its capacity as Highway Authority) of the Residential Travel Plan and the Residents Travel Information Pack
- 1.19.2 Not to permit first Occupation of any Dwelling until the Residential Travel Plan has been implemented in its approved form including the provision to the first occupant(s) of each Dwelling of a Residents Travel Information Pack on the completion of the transfer of that Dwelling subject to such variations as may be agreed from time to time between the Owner and the District Council in consultation with the County Council in its capacity as Highways Authority.
- 1.19.3 The Residential Travel Plan will set out:
 - 1.19.3.1 the measures to be adopted to encourage non-car travel;
 - 1.19.3.2 the programme for implementing such measures;
 - 1.19.3.3 the process for review and monitoring;
 - 1.19.3.4 the steps that will be taken if targets are not met; and
 - 1.19.3.5 such other matters that are agreed between the Owner and the District Council (in consultation with the County Council as Highway Authority).

TRAVEL PLAN CO-ORDINATOR

- 1.20 No later than 6 (six) months prior to the first Occupation of the Development a Travel Plan Co-ordinator shall be appointed by the Owner who shall be employed in relation to the Development throughout the life of the Residential Travel Plan on a part time basis for such hours which may vary from week to week and for such period as is necessary to perform the roles and functions set out in the Residential Travel Plan
- 1.21 Comply with the process for review and monitoring set out in the Residential Travel Plan and the Travel Plan Co-ordinator shall submit reports to update the TRIGS database in accordance with the Standard Assessment Methodology (SAM) or similar to be approved and submit to the District Council in accordance with the monitoring periods identified within the Residential Travel Plan. The monitoring reports submitted to the District Council shall summarise the data collected over the monitoring period and propose revised initiatives and measures where travel plan targets are not being met including implementation dates to be approved in writing by the District Council
- 1.22 In the event that the target for modal shift for the Development is not met by the end of the Residential Travel Plan monitoring period, the Owner, the Travel Plan Co-ordinator and

the District Council (in consultation with the County Council in its capacity as Highway Authority) shall meet to identify the failure to reach such target

- 1.23 Following the arrangements referred to in paragraph 1.24 above the Owner and/or the Travel Plan Co-ordinator shall propose to the District Council reasonable corrective measures necessary (in accordance with the approved Residential Travel Plan) to remedy such failure together with a programme for the implementation of such measures for the conditional approval of the District Council (in consultation with the Nottinghamshire County Council in its capacity as Highway Authority) and thereafter the Owner shall comply with such approval and which shall include the provision of parking restrictions and associated signage and lining at the discretion of the District Council (in consultation with County Council in its capacity as Highway Authority) acting reasonably
- 1.24 Pay the Travel Plan Monitoring Fee in four equal instalments to the District Council, the first instalment being prior to first Occupation of any Dwelling and then annually prior to the anniversary of the payment of the first instalment for a period of 3 (three) years.
- 1.25 In the event that the freehold interest in the whole or any part of the Application Land is transferred by the Owner to another party then the requirements to liaise with, obtain approval from, report to and meet with the District Council and the requirements to appoint a Travel Plan Co-ordinator in this Part 5 shall be deemed instead to be requirements to liaise with, obtain approval from, report to and meet with the Nottinghamshire County Council as local highways and transport authority

Part 7 - General

- 1.26 The Owner covenants to give the District Council not less than 21 (twenty one) days prior written notice of:
- 1.26.1 the Commencement of Development;
 - 1.26.2 Occupation of the first (1st) Dwelling;
 - 1.26.3 Practical Completion of 50% of the Dwellings;
 - 1.26.4 Occupation of 50% of the Dwellings;
 - 1.26.5 Occupation of 80% of the Dwellings.
- 1.27 To give the District Council written notice upon:
- 1.27.1 Occupation of 50% of the Market Dwellings; and
 - 1.27.2 Occupation of 80% of the Market Dwellings.

SCHEDULE 2

DISTRICT COUNCIL'S COVENANTS TO THE OWNER

1. The District Council covenants with the Owner as follows:

Part 1 – Affordable Housing

- 1.1 In the event that the Owner serves notice on the District Council pursuant to paragraph 11 of Part 1 of Schedule 1 above confirming that the Owner has been unable to enter into a binding contract with an Affordable Housing Provider for the Affordable Dwellings the District Council shall determine whether to take a transfer of the Affordable Dwellings or whether an Affordable Housing Contribution shall be payable in lieu of provision of the Affordable Dwellings on site and shall notify the Owner of that election within 6 months of the notification pursuant to paragraph 11 of Part 1 of Schedule 1.
- 1.2 In the event the District Council determines that an Affordable Housing Contribution is payable, the District Council shall use such contribution solely for the provision of Affordable Housing within the District of Ashfield and for no other purpose whatsoever.
- 1.3 In the event that a Subsequent Owner pays to the District Council any sum under paragraph 14 of Part 1 of Schedule 1 the District Council shall use such sum solely for the provision of Affordable Housing within the District of Ashfield and for no other purpose whatever

Part 2 – Financial Contributions

Primary Education Contribution

- 1.4 To pass to the County Council (in its capacity as Education Authority) the Primary Education Contribution or any part thereof following receipt of written confirmation from Nottinghamshire County Council that:
 - 1.4.1 such monies shall be used solely towards the provision of primary education at within the Hucknall Primary Planning Area and for no other purposes whatsoever; and
 - 1.4.2 if all or any part of the monies shall remain unexpended after the period of five (5) years from the date of receipt by the County Council of the final payment pursuant to paragraph 1.1.2 of Part 4 of Schedule 1 by the Owner to the District Council it shall following receipt of a request from the District Council or the Owner repay such unexpended monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.
- 1.5 To forward to the Owner any monies received from the County Council (in its capacity as Education Authority) pursuant to paragraph 1.4.2 above.

Healthcare Contribution

- 1.6 To pass to the Healthcare Authority the Healthcare Contribution following receipt of written confirmation from the Healthcare Authority that:
- 1.6.1 Such monies shall be used solely for the enhancement of capacity and/or infrastructure in local practices and for no other purpose whatsoever; and
 - 1.6.2 If all or any part of the monies shall remain unexpended after the period of five years from the date of payment by the Owner to the District Council it shall following receipt of a request from the District Council or the Owner repay such unexpended monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.
- 1.7 To forward to the Owner any monies received from the Healthcare Authority pursuant to paragraph 1.6.2 above.

Secondary Education Contribution

- 1.8 To pass to the County Council (in its capacity as Education Authority) the Secondary Education Contribution or any part thereof following receipt of written confirmation from the County Council (in its capacity as Education Authority) that:
- 1.8.1 such monies shall be used solely towards the provision of secondary education at Holgate Academy, Hucknall and for no other purposes whatsoever; and
 - 1.8.2 if all or any part of the monies shall remain unexpended after the period of five (5) years from the date of receipt by the County Council of the final payment pursuant to paragraph 1.6.2 of Part 4 of Schedule 1 by the Owner to the District Council it shall following receipt of a request from the District Council or the Owner repay such unexpended monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.
- 1.9 To forward to the Owner any monies received from the County Council (in its capacity as Education Authority) pursuant to paragraph 1.8.2 above.

Bus Stop Contribution MOVA Contribution and Travel Plan Monitoring Fee

- 1.10 To pass to the County Council (in its capacity as the Highways Authority) each of the Bus Stop Contribution MOVA Contribution and Travel Plan Monitoring Fee following receipt of written confirmation from the County Council (in its capacity as the Highways Authority) that:
- 1.10.1 Such monies shall be used solely for the purposes stated in this agreement and for no other purpose whatsoever; and

1.10.2 If all or any part of the monies shall remain unexpended after the period of five years from the date of receipt by the County Council of the payment by the Owner to the District Council it shall following receipt of a request from the District Council or the Owner repay such unexpended monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.

1.11 To forward to the Owner any monies received from the County Council in its capacity as Highways Authority pursuant to paragraph 1.10.2 above.

Habitat Improvement Contribution

1.12 To use the Habitat Improvement Contribution solely for the purposes set out in this Agreement and for no other purpose whatsoever.

1.13 If all or any part of the monies shall remain unexpended after the period of five years from the date of payment by the Owner to the District Council it shall following receipt of a request from the Owner repay such unexpended monies to the Owner together with interest thereon calculated from the date of payment to the date of repayment.

POS Contribution

1.14 To use the POS Contribution solely for the purposes set out in this Agreement and for no other purpose whatsoever.

1.15 If all or any part of the monies shall remain unexpended after the period of five years from the date of payment by the Owner to the District Council it shall following receipt of a request from the Owner repay such unexpended monies to the Owner together with interest thereon calculated from the date of payment to the date of repayment.

Part 3 – On Site Open Space

1.16 To notify the Owner in writing within 6 months of submission of the On Site Open Space Scheme to paragraph 1.1 of Part 2 of Schedule 1 whether the District Council is willing to accept a transfer of the On Site Open Space or whether the On Site Open Space can be managed by a Management Company

Part 4 - Monitoring

1.17 Following receipt of a written request from the Owner to produce full details of the expenditure of all monies paid pursuant to paragraph 1.14 of Part 4 to Schedule 1 of this Agreement.

SCHEDULE 3

INDEXATION PROVISIONS

1. In this Schedule:

"Base Index Date"	means the date of this Agreement
"Base Index Figure"	the figure published in respect of the Index immediately prior to the Base Index Date
"Final Index Figure"	the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the relevant contribution is paid
"Index"	the Retail Prices Index ("RPI") as published by the Office for National Statistics or any successor body or such other index as shall be agreed between the Owner and the District Council except for the Bus Stop Contribution the MOVA Contribution the Primary Education Contribution and the Secondary Education Contribution in respect of which the applicable index shall be the BCIS All-in Tender Price Index produced by the Building Cost Information Service on behalf of the Department for Business, Energy and Industrial Strategy or in the event of discontinuance any replacement thereof or such alternative index as may be agreed in writing between the Owner and the County Council in its capacity as Highways Authority and/or Education Authority.

2. The relevant contribution shall be increased by such sum, if any, in pounds sterling as shall be equal to the sum calculated according to the following formula:

$$\text{Increased Sum} = \frac{A \times C}{B}$$

where:

- 2.1 "A" equals the relevant contribution;
- 2.2 "B" equals the Base Index Figure; and
- 2.3 "C" equals the Final Index Figure.

3. If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made.

4. If any substitution for the said Index or any index previously substituted therefore shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the RPI or any index previously substituted therefore on the other hand.

SCHEDULE 4

TRANSFER OF ON SITE OPEN SPACE

1. GENERAL

The following provisions shall apply to all transfers of On Site Open Space pursuant to this Agreement ("the Transfer") AND FOR THE AVOIDANCE OF DOUBT the transfer of the On Site Open Space may be in the form of more than one transfer and reference in this Schedule to "the Transfer" shall mean any one of those transfers.

1.1 The Transfer shall be in accordance with the Law Society's Standard Conditions of Sale (5th Edition) "Standard Conditions" in so far as they are not inconsistent with the terms of this Agreement.

1.2 Standard Conditions 2.1, 2.2, 2.3, 4.3, 5.2 and 6.1 shall not apply to the Transfer.

1.3 The Transferor granting all reasonable easements and rights to allow the development and use of the land for the purposes specified in this Agreement.

1.4 The Transferor making such reservations of rights as are reasonable in favour of the remainder of the Development including but not limited to

1.4.1 rights of way;

1.4.2 rights of way to carry out work on the On Site Open Space;

1.4.3 the right to lay, retain, maintain, repair, alter, renew, remove and use new services; and

1.4.4 the right to develop the remainder of the Development even if the passage of light and air to the land transferred is affected.

1.5 The inclusion of a covenant on the part of the Transferee providing that the Transferee shall not suffer or permit to be done any act or thing which may be or become a nuisance to the Owner or occupiers of the remainder of the Development.

1.6 No unduly restrictive or burdensome covenant or clause being imposed upon the Transferee in addition to the provisions contained in this Schedule.

1.7 The land will be transferred subject to:

(a) all local land charges;

(b) all notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this Agreement;

- (c) all actual or proposed orders, directions, notices, charges, restrictions, conditions, agreements and other matters arising under any statute affecting the land;
- (d) all rights of way, drainage, watercourses, light or other easements, or quasi or reputed easements, and rights of adjoining Owner affecting the land, and all liability to repair or covenants to repair paths, ways, passages, fences, and other like matters; and
- (e) any interests overriding the title to the land.

1.8 An indemnity from the Transferee to observe and perform the covenants affecting the title to the land as at the date of the Transfer will be included in the Transfer.

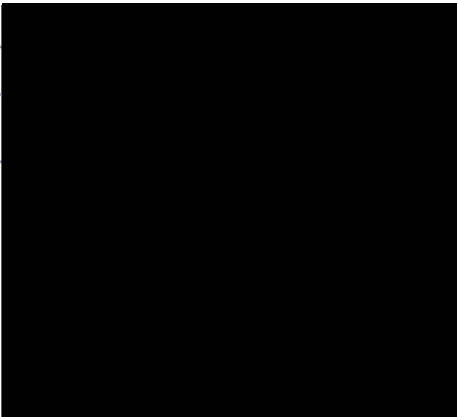
1.9 The following restrictive covenants will be included in the Transfer for the benefit of the Owner of retained land (being the remainder of the Development): -

- (a) restriction preventing use of the On Site Open Space for any purpose other than public open space;
- (b) not to be used for a trade or business;
- (c) not to be used for residential purposes;
- (d) to keep land in good repair and condition;
- (e) not to obstruct public highway;
- (f) to keep and properly maintain the boundaries in good repair and condition;
- (g) to properly keep and maintain any landscaping;
- (h) to keep and maintain the land in a clean and tidy condition;
- (i) not to cause or knowingly permit any nuisance on the land;
- (j) on any transfer of the On Site Open Space or any part thereof to procure that any transferee shall simultaneously enter into a direct covenant with the owner/developer or the whole or relevant parts of the retained land to observe and perform these covenants; and
- (k) not to erect any buildings or other erections except buildings or other erections which are ancillary to the purpose for which the land is transferred.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed on the date first above written



EXECUTED as a DEED by BELLWAY HOMES LIMITED acting by its attorney *NIGEL CLASBY* under a power of attorney dated in the presence of: *15 JANUARY 2021*

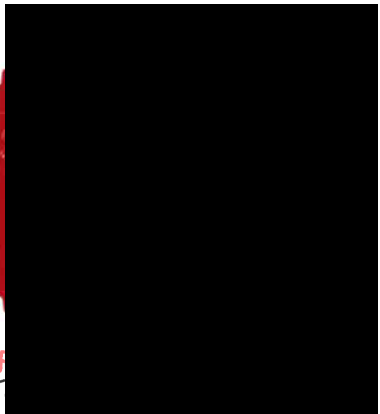


Witness' Signature:

Witness' Name:

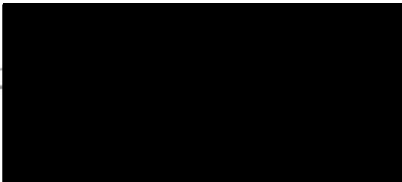
Witness' Address:

THE COMMON SEAL OF THE **NOTTINGHAMSHIRE COUNTY COUNCIL** was hereunto affixed in the presence of:-



SEAL REGISTER NO: 4859

Authorised Signatory



EXECUTED AS A DEED by **ASHFIELD DISTRICT COUNCIL** having affixed its common seal to this deed in the presence of:-



Chairman / Vice Chairman



Chief Executive / Deputy Chief Executive

