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- email: planning.admin@ashfield.gov.uk
- telephone: 01623 457 388

MEMORANDUM

TO: Service Director – Economy
Land Charges Section

FROM: Assistant Chief Executive
(Governance)

YOUR REF: F.a.o Jane Lester

OUR REF: Legal/MO/TP/21(331)

SUBJECT: REGISTRATION OF A SECTION 106 AGREEMENT – LAND OFF
STONEYFORD ROAD, SUTTON-IN-ASHFIELD NOTTINGHAMSHIRE

DATE: 13th March 2013

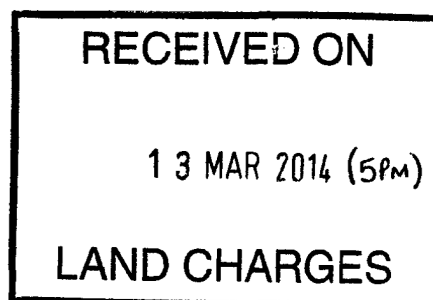
A section 106 Agreement for the above development has today been completed and in accordance with provisions in the Town and Country Planning Act 1990 I would be grateful if you would register the same as a local land charge.

Please find enclosed a certified copy of the section 106 agreement dated the 13th March 2014 and made between Ashfield District Council and Angela Joan Caulton and Emma Louise Wass and Arthur Gordon Sugg and Peter John Wass and A. Wass Funeral Directors Limited and Paul Andrew Brown in relation to land off Stoneyford Road, Sutton-In-Ashfield Nottinghamshire.

If you require any further information please do not hesitate to contact me.



R.L. Dennis
Assistant Chief Executive (Governance)



Dated 13th March

2014

Ashfield District Council

And

Angela Joan Caulton and Emma Louise Wass and Arthur Gordon Sugg
and Peter John Wass

and

A. Wass Funeral Directors Limited and Paul Andrew Brown

Section 106 Agreement

Relating to land off Stoneyford Road, Sutton in Ashfield,

Ashfield District Council,
Legal Services,
Council Offices,
Urban Road,
Kirkby-In-Ashfield
Nottingham
NG17 8DA

THIS AGREEMENT is made on 13th March

2014

BETWEEN:

- (1) ASHFIELD DISTRICT COUNCIL of Urban Road, Kirkby in Ashfield, Nottinghamshire NG17 8DA ("the Council")
- (2) ANGELA JOAN CAULTON of Elm Tree Farm, Elmtun, Worksop, Nottinghamshire, S80 4LS, EMMA LOUISE WASS of 144 Huthwaite Road, Sutton-In-Ashfield Nottinghamshire NG17 2EX and ARTHUR GORDON SUGG of 50 Skegby Lane, Mansfield, Nottinghamshire, NG19 6QR and PETER JOHN WASS of 20 Hollybush Lane, Amblecote, Stourbridge, DY8 4HH ("the Owner")
- (3) A. WASS FUNERAL DIRECTORS LIMITED (company registration number 07099497) of 106 Carter Lane, Mansfield Nottinghamshire NG18 3DH ("the Lessee")
- (4) PAUL ANDREW BROWN of 3 Pavilion Gardens, Skegby, Sutton-In-Ashfield, Nottinghamshire NG17 3LG ("the Lessee's Guarantor")

BACKGROUND

For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located.

The Owner is the freehold owner of the whole of the Site free from encumbrances that would prevent the Owner entering into this Agreement.

The Lessee is the lessee of part of the Site pursuant to a lease dated the 31st May 2011 and registered at HM Land Registry under title number NT473508.

The Lessee's Guarantor is the guarantor under the lease dated the 31st May 2011 and registered at HM Land Registry under title number NT473508

Pursuant to the Planning Application the Owner has applied to the Council for outline planning permission for the Development.

The parties have agreed to enter into this Agreement under Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and Section 1 of the Localism Act 2011 and all other enabling powers with the intention that the obligations contained herein may be enforced by the Council against the Owner and its successors in title.

A.G. Sugg
R.H. Coulton

Cherry
Plum



Playground

Recreation Ground

QUARRYDALE ROAD

STONEYFORD ROAD

The Quarry

Pond

MOUNT PLEASANT

The Edge

AUTHORISED OFFICER

Section 106 Plan
Land off Stoneyford Road, Sutton in Ashfield
V/2013/0486



Ashfield

Scale: 1 to 1,250

Date: 14 November 2013



OPERATIVE PROVISIONS

1. INTERPRETATION

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

"1990 Act"

the Town and Country Planning Act 1990

"Affordable Housing"

means Social Rented Housing, Affordable Rented Housing, Shared Ownership Housing to be provided to eligible households whose needs are not met by the market. Eligibility is to be determined with regard to local incomes and local house prices

"Affordable Housing Dwellings" and

Means subsidised housing comprising 10% of the gross number of dwellings permitted by Planning Permission that will be available to persons who cannot afford to rent or buy housing generally available on the open market

"Affordable Housing Dwelling"

"Affordable Rented Housing"

means rented housing provided by a Registered Provider that has the same characteristics as Social Rented Housing except it is outside the national rent regime but it is subject to other rent controls that require it to be offered to eligible households at an initial rent of up to 80% of local market rent and which may be increased by no more than the Index plus 0.5% annually

"Commencement of Development"	means the earliest date on which a material operations (as defined by Section 56(4) of the 1990 Act) pursuant to the Planning Permission is begun on the Site with the exception of:
	<ul style="list-style-type: none"> 1.1.1 site investigations or surveys; 1.1.2 site decontamination; 1.1.3 construction of haul roads, access and service roads; 1.1.4 the clearance of the Site; 1.1.5 works connected with ground profile remodelling of the Site ; or 1.1.6 works for the provision of drainage or mains services to prepare the Site for development
"Completed" "Complete" "Completion"	means a dwelling which is in the reasonable opinion of the Owner fit for and capable of being occupied and used for residential purposes with the minimum amount of finishing required including the final fix of bathroom and kitchen
"County Council"	means the Education Authority for the area in which the Site is situated
"Development"	means the construction of up to 50 Dwellings on the Site
"Dwelling" "Dwellings"	means the residential units to be constructed on the Site as part of the Development pursuant to the Planning Permission
"Education Acts"	has the meaning given to it in section 578 of the Education Act 1996

"Education Contribution"	means the sum of £126005.00 inclusive of VAT (as established in the evidence base contained in the Nottinghamshire County Council Planning Contributions Strategy) to be used by the County Council towards the increased education provision at local schools as set out in Schedule 2 of this Agreement
"Homes and Community Agency"	means the non-departmental public body established by the Housing and Regeneration Act 2008 or any subsequent or successor body able to demonstrate it operates on the same basis
"Index"	means as set out in Schedule 4 of this Agreement
"Interest"	means interest to be calculated at the rate of the London Interbank Offered Rate
"Intermediate Housing Dwellings"	means homes for sale and rent provided at a cost above Social Rent but below market levels subject to the criteria in the Affordable Housing definition set out in clause 1 of this Agreement and Intermediate Housing can include shared equity (shared ownership and equity loans) other low cost homes for sale and intermediate rent but not Affordable Rented Housing.
"Lease"	means a lease of part of the Site dated the 31 st May 2011 and registered at HM Land Registry under title number NT473508
"Market Housing Dwellings"	means the Dwellings comprised in the Development other than the Affordable Housing Dwellings

"Occupation"	means occupation of the Development the purposes permitted by the Planning Permission but shall not include occupation for the purposes of construction stocking fitting out or decoration, marketing or display or occupation in relation to security and Occupy and Occupied shall be construed accordingly
"Open Market Value"	means the highest price a willing buyer would pay and a willing seller would accept for a dwelling comprising one of the Market Housing Dwellings, both being fully informed and the Dwelling being exposed for sale for a reasonable period of time
"Open Space Contribution"	means the sum of £2500.00 inclusive of VAT per dwelling to be built in accordance with the Planning Permission and to be paid in accordance with Schedule 1 to be used by the Council in accordance with Schedule 1 of this Agreement
"Planning Application"	an application for outline planning permission for the carrying out of the Development was made and validated on 10 th December 2013 carrying reference v/2013/0647
"Planning Permission"	the planning permission that may be granted in pursuance of the Planning Application
"Registered Provider" and "RP"	means a registered provider of Affordable Housing as listed on the register held by the Homes and Communities Agency pursuant to Chapter 3 of Part 2 of the Housing and Regeneration Act 2008 or any subsequent or successor body able to demonstrate it operates on the same basis

"Shared Ownership Housing"	means an Affordable Housing Dwelling which is provided by a Registered Provider in which the occupier initially owns a percentage of the dwelling ranging from 25% - 75% and the remainder is owned by the Registered Provider in respect of which the occupier pays rent with the option to increase their percentage of ownership through a process of stair casing up to outright ownership
"Site"	the freehold property known as land off Stoneyford Road Sutton in Ashfield , Nottinghamshire registered with other property at Land Registry as to the greater part under title number NT252488 and as to the lesser part under title number NT252489 and shown for identification purposes only edged red on the plan appended to this Agreement
"Social Rented Housing"	means housing owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008) for which guidelines targets rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above as agreed with the local authority or with the Homes and Communities Agency
"Social Rent"	
"Specialist"	has the meaning in clause 6.2

1.2 In this Agreement:

1.2.1 the clause headings do not affect its interpretation;

- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Site include any part of it;
- 1.2.5 references to any party in this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act. References to the County Council include any successor local highway authority or local education authority exercising powers under the 1980 Act or the Education Acts;
- 1.2.6 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.7 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected; and
- 1.2.8 where the context so admits the masculine feminine and neuter genders include each of the other genders and the singular includes the plural and vice versa.

- 1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. EFFECT OF THIS AGREEMENT

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 2 Local Government Act 2000 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 This Agreement will be registered as a local land charge by the Council
- 2.5 The obligations in this Agreement will not be enforceable against:
- 2.5.1 the buyers of an individual dwelling; or
 - 2.5.2 a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker.
- 2.6 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning

Application, granted after the date of this Agreement, whether or not pursuant to an appeal.

- 2.7 The obligations in this Agreement (save for clause 1.3) shall (unless otherwise specified) be conditional upon the grant of Planning Permission.

3. OBLIGATIONS OF THE PARTIES

- 3.1 The Owner agrees with the Council to comply with its obligations set out in this Agreement
- 3.2 The Council agrees with the Owner to comply with its obligations set out in this Agreement
- 3.3 The Owner agrees with the Council that it will act reasonably, properly and diligently in discharging its obligations under this Agreement. In particular, where any notice or agreement or other similar affirmation is required under the terms of this Agreement time shall be of the essence and the Owner will not unreasonably withhold or delay such notice agreement or other similar affirmation and shall use reasonable endeavours to provide such notice agreement or other similar affirmation promptly and without delay.
- 3.4 The Council agree with the Owner to act reasonably, properly and diligently in exercising their discretion and discharging their obligations under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement, issue of Certificates or other similar affirmation is required under the terms of this Agreement time shall be of the essence and the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement, Certificate or other similar affirmation and shall use reasonable endeavours to provide such notice, consent, approval, authorisation, agreement, Certificate or other similar affirmation promptly and without delay.

3.5 No person (including the Lessee and the Lessee's Guarantor) will be liable for any breach of the terms of this Agreement

3.5.1 To the extent that such breach relates to any part of the Site in which that person has no interest and/or

3.5.2 occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause 3.5.

3.6 Any contributions or fees which are payable pursuant to the terms of this Agreement or any part or parts of any such contribution or fee which have not been committed for their intended purpose within the period of five years or spent within the period of seven years in relation to the off site Open Space Contribution and the Education Contribution from and including the final date of the last payment shall be repaid to the party that made payment of the final instalment of such contribution together with accrued Interest thereon within 28 days.

4. TERMINATION OF THIS AGREEMENT

4.1 This Agreement will come to an end if:

4.1.1 subject to clause 4.2 the Planning Permission is quashed, revoked otherwise ceases to have effect at any time so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

4.1.2 the Planning Permission expires before the Commencement of Development without having been implemented;

- 4.2 Clause 4.1.1 will not apply in respect of any minor modifications to the Planning Permission or the Development under Section 96A of the 1990 Act.
- 4.3 Where this Agreement comes to an end under clause 4.1 the Council shall upon written request from the Owner immediately vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise record the fact that it has come to an end and no longer affects the Site.
- 4.4 Where the Agreement is released in part by a future agreement, the Council will upon written request from the Owner place a note against the entry made in the Local Land Charges Register stating which obligations no longer have effect.
- 4.5 If the Owner makes a request in writing for the Council to place a note against the entry made in the Local Land Charges Register stating which obligations under this Agreement have been discharged and complied with, the Council will immediately place such a note against the entry only to the extent to which such obligations are deemed by the Council to have been discharged and complied with under the terms of this Agreement.
5. NOTICES
- 5.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 5.2 Any notice, demand or any other communication served on the Owner is to be sent to the address of the Owner set out at the beginning of this Agreement or to such other address as the Owner may notify the Council in writing as its address for service.
- 5.3 Any notice, demand or any other communication served on the Council is to be sent to the address of the Council set out at the beginning of this Agreement marked for the attention of the Development Team Manager or to such other address as the Council may notify the parties in writing as its address for service.

5.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

5.4.1 if delivered by hand, at the time of delivery;

5.4.2 if sent by post, on the second working day after posting; or

5.4.3 if sent by recorded delivery, at the time delivery was signed for.

5.5 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.

5.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

6. DETERMINATION OF DISPUTES

6.1 Subject to clause 6.7, if any dispute arises relating to or arising out of the terms of this Agreement, any party may give to the other written notice requiring the dispute to be determined under this clause 6. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

6.2 For the purposes of this clause 6 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development.

6.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 6.4.

- 6.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 6.5 The Specialist is to act as an independent expert and:
- 6.5.1 each party may make written representations within ten working days of his appointment and will copy the written representations to the other parties;
 - 6.5.2 each party is to have a further ten working days to make written comments on the others' representations and will copy the written comments to the other parties;
 - 6.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - 6.5.4 the Specialist is not to take oral representations from the parties without giving the parties the opportunity to be present and to give evidence and to cross-examine each other;
 - 6.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
 - 6.5.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment.
- 6.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 6, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

- 6.7 This clause 6 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

7. INDEXATION

- 7.1 All monies payable pursuant to clause 3 and Schedules 1 and 2 of this Agreement shall be adjusted by reference to the Index from the date of the Planning Permission until the date(s) payment is actually made in accordance with Schedule 4.

8. COSTS

The Owner shall pay to the Council its legal costs for preparing this Agreement in accordance with Schedule 5.

9. CESSATION PRIOR TO COMPLETION

Where the Development ceases before Completion of the total number of Dwellings to be constructed pursuant to the Development, then following the expiry of six months of the date of Development ceasing, any outstanding contributions, adjusted downwards in direct proportion to the number of Dwellings that have not been Completed, shall be paid within 28 days to the Council.

10. LESSEE'S CONSENT

- 10.1 The Lessee consents to the completion of this Agreement and declares that its interest in the part of the Site comprised in the Lease shall be bound by the terms of this Agreement as if it had been executed and registered as a local land charge prior to the creation of the Lessee's interest in that part of the Site comprised in the Lease
- 10.2 The Lessee shall not be personally liable for any breach of the

obligations in this Agreement unless committed or continuing by the Lessee at a time when the Lessee was or is in possession of all or any part of the Site comprised in the Lease.

11. LESSEE'S GUARANTOR'S CONSENT

11.1 The Lessee Guarantor consents to the completion of this Agreement and declares that its interest in the part of the Site comprised in the Lease shall be bound by the terms of this Agreement as if it had been executed and registered as a local land charge prior to the creation of the Lessee's interest in that part of the Site comprised in the Lease

11.2 The Lessee's Guarantor shall not be personally liable for any breach of the obligations in this Agreement unless committed or continuing by the Lessee's Guarantor at a time when the Lessee was or is in possession of all or any part of the Site comprised in the Lease.

12. EXECUTION

The parties have executed this Agreement as a deed and it is delivered on the date set out above

SCHEDULE 1

Public Open Space

The Owner hereby covenants to pay the Open Space Contribution to the Council in accordance with the following;

1. The Owner shall pay 50% of the Open Space Contribution to the Council prior to the Commencement of the Development and the Owner shall not permit the Commencement of the development or any part of it whilst the Open Space Contribution as provided for to be paid in this sub-clause remains unpaid
2. The Owner shall pay the remaining 50% of the Open Space Contribution to the Council prior to the first Occupation of any Dwelling to be constructed on the Site pursuant to the Development and the Owner shall not permit the first occupation of any dwelling or any other dwelling of the Development or any part of it whilst the Open Space Contribution as provided for to be paid in this sub-clause remains unpaid
- 3 The Council hereby covenants with the Owner pursuant to Section 106 of the 1990 Act to apply the Open Space Contribution only as follows:-
 - 1) £834.00 per Dwelling towards improvements to public open space within the District of Ashfield and
 - 2) £1666.00 per Dwelling towards Sutton Town market square regeneration scheme

PROVIDED ALWAYS that if the Open Space Contributions or any part thereof shall not be paid as provided for in paragraph 1 and paragraph 2 of this Schedule the respective payments shall carry interest of 8% per annum from, as to the payment in paragraph 1 of this Schedule, the date of Commencement of Development until actual payment and as to the payment in paragraph 2 of this Schedule from the date of the first Occupation of any dwelling to be constructed on the Site until actual payment and the Owner shall not permit the Occupation of any Dwelling to be built upon the Site whilst the Open space Contribution or any part of it (including interest as aforesaid) remains unpaid.

SCHEDULE 2

Education Contribution

1. The Owner covenants with the Council to pay 100% of the Education Contribution to the Council before the first Occupation of any dwelling to be constructed pursuant to the Development before the first Occupation of any Dwelling to be constructed pursuant to the Development
2. The Council shall apply the Education Contribution towards the increased education provision at the appropriate catchment primary schools which will serve the Development and for no other purpose whatsoever.

PROVIDED ALWAYS that if the Education Contribution or any part thereof shall not be paid as provided for in paragraph 1 of this Schedule the payment shall carry interest of 8% per annum from the date of the first Occupation of any dwelling to be constructed on the Site until actual payment and the Owner shall not permit the Occupation of any Dwelling to be built upon the Site whilst the Education Contribution or any part of it (including interest as aforesaid) remains unpaid.

SCHEDULE 3

AFFORDABLE HOUSING

The Owner covenants with the Council:

- 1 To construct and provide on the Site the Affordable Housing Dwellings which shall be constructed in accordance with and

comply with the standards and provisions of the Housing Quality Indicators system or equivalent legislation or standards of which:

(a) 75% by number of Affordable Housing Dwellings will be

Social Rented Dwellings

and

(b) 25% by number of Affordable Housing Dwellings will be Intermediate Housing Dwellings

- 2 Not to Commence Development until a plan showing the position and type of Affordable Housing Dwelling has been submitted to and approved of by the Council
- 3 Not to Complete more than 55% by number of the Market Housing Dwellings until such time as not less than 65% of the Affordable Housing Dwellings have been Completed in accordance with the Planning Permission and written notice of such Completion has been issued to the Council
- 4 Not to Complete more than 80% of the Market Housing Dwellings prior to the Completion of the last Dwelling of Affordable Housing to be built in accordance with the Planning Permission and written notice of such Completion has been issued to the Council
- 5 Not to Complete or cause or allow to be Completed more than 80% by number of the Market Housing Dwellings until such time as the Owner has transferred to a RP or RPs the Affordable Housing Dwellings at a price or prices to be agreed with such RP(s) and on terms that accord with the relevant RP funding requirements current at the date of construction of the Affordable Housing Dwellings
- 6 That the Affordable Housing Dwellings shall be transferred:
 - (i) with vacant possession and with full title guarantee;
 - (ii) subject to any rights affecting the land at the date of the transfer;

- (iii) free from any charge or restriction which would prevent the use of such Dwellings for Affordable Housing;
- (iv) together with full rights of access drainage and services; and
- (v) subject to conditions which provide that:
 - (a) the Intermediate Housing Dwellings shall only be used to meet the Council's identified targets for local affordable housing need to be disposed of only by way of and occupied pursuant to a shared ownership lease or intermediate housing agreement in accordance with the definition of "Intermediate Housing Dwelling" contained in this Agreement provided that this covenant shall cease to apply in relation to any Intermediate Housing Dwelling in the event that the part owner of the Intermediate Housing Dwelling who is not the RP staircases to full ownership or the occupier under an intermediate housing agreement exercises his right to purchase the Dwelling or in the event that any mortgagee of the Intermediate Housing Dwelling disposes of such dwelling under a power of sale contained in a mortgage or legal charge secured against the dwelling provided (as a condition precedent) that the mortgagee has given the Council not less than three months' written notice of its intention to exercise its power of sale and has used its reasonable endeavours in the meantime to secure the transfer of the Intermediate Housing Dwelling to another RP or such other person corporation or body as may be approved by the Council as being willing and able to comply with the terms of this Schedule 3.
 - (b) the Social Rented Dwellings shall only be used to meet the Council's identified targets for local affordable housing need to be disposed of and occupied only by

way of an assured tenancy agreement complying with the guidance given by the Homes and Communities Agency under the Housing Act 1996 Section 36 provided that this covenant shall cease to apply in relation to a Social Rented Dwelling in the event that any tenant has exercised a statutory right to buy the dwelling or in the event that any mortgagee of the Social Rented Dwelling disposes of such dwelling under a power of sale contained in a mortgage or legal charge secured against the unit provided (as a condition precedent) that the mortgagee has given the Council not less than three months' written notice of its intention to exercise its power of sale and has used its reasonable endeavours in the meantime to secure the transfer of the Social Rented Dwelling to another RP or such other person corporation or body as may be approved by the Council as being willing and able to comply with the terms of this Schedule 3

- (c) the RP will give the Council ten weeks written notification of future availability on the first occasion that any Affordable Housing Dwelling becomes available for occupation and five weeks written notification of future availability on the second and subsequent occasions that the Dwelling becomes available and during such period of ten or five weeks (as appropriate) the Council may nominate to the RP a prospective tenant from the Council's housing waiting list or register or who is in identified housing need and who is a person who
 - (i) was born in the District of Ashfield and/or
 - (ii) lives in the District of Ashfield; and/or

- (iii) has lived in the District of Ashfield but has been forced to move away because of lack of Affordable Housing; and/or
 - (iv) whose work provides important services and who needs to work closer to the local community; and
 - (v) who meets the RPs letting criteria as notified from time to time to the Council
- (d) the RP will either offer to grant to any nominee put forward by the Council pursuant to paragraph 6.(v).(c) above a shared ownership lease or intermediate housing agreement or offer a tenancy of the Affordable Housing Dwelling in question (as applicable) to any such nominee or (if the Council fails to make any such nomination or the nominee does not accept the offer or accept the tenancy within 5 working days of the RP's offer) then to a person whom the RP believes is in need of accommodation and who
- (i) was born in the District of Ashfield; and/or
 - (ii) lives in the District of Ashfield; and/or
 - (iii) has lived in the District of Ashfield but has been forced to move away because of lack of Affordable Housing; and/or
 - (iv) whose work provides important services and who needs to work closer to the local community; and
 - (v) who meets the RP's letting criteria as notified from time to time to the District Council or if no person qualifies under the above requirements then to a person living within the District of Ashfield whom the RP believes is in need of accommodation
- (e) if any RP wishes to dispose of an interest in an Affordable Housing Dwelling then (so far as it is lawful)

the RP will not dispose of such interest except to another RP or such other person as may be approved by the Council as being willing and able to comply with the terms of this Schedule

- (f) in the event that legislation relating to RPs shall at any time prohibit the RP from letting any Affordable Housing Dwelling and/or impose upon it an obligation to sell the freehold or a leasehold estate in any such Dwelling other than as provided for in this Schedule then the obligations in this Schedule shall cease to have effect save that the RP will submit alternative proposals to and use all reasonable endeavours to agree suitable alternative proposals with the Council and in any event all capital receipts received by the RP in respect of such sale shall be spent within a reasonable period for the provision of Affordable Housing within the District of Ashfield

- 7 To deliver notice in writing to the Council as soon as reasonably practicable after completion of the transfer of the freehold interest in any Affordable Housing Dwelling to an RP giving the name of the purchaser and the price at which the Affordable Housing Dwelling was disposed of
- 8 If after a period of 12 months from the Commencement of Development in the relevant Phase no RPs has accepted the transfer of some or all of the Affordable Housing Dwellings pursuant to paragraph 5 above the Owner shall notify the Council in writing providing written evidence to the Council of the marketing strategy for the Affordable Housing Dwellings which have not been transferred including negotiations with any RP and the reasons why the negotiations with the RP have not progressed to a transfer
- 9 Following the written notification provided pursuant to paragraph 8 above the Council shall have a further period of 6 months from

the date of receipt of the written notification to assist the Owner in finding a RP to take a transfer of the Affordable Housing Dwellings

- 10 If after the further period set out in paragraph 9 above a RP has not been identified who is willing to take a transfer of the Affordable Housing Dwellings and the Council is satisfied that the Owner have taken all reasonable steps to comply with its obligations under paragraph 8 above the Owner may dispose of the Affordable Housing Dwellings on the open market at the Open Market Value free from the restrictions contained in this Schedule 3
- 11 Following a disposal of an Affordable Housing Dwelling at Open Market Value pursuant to paragraph 10 above the Owner shall pay to the Council a sum equivalent to 75% of the Open Market Value per Affordable Housing Dwelling within 28 days of completion of each sale of an Affordable Housing Dwelling such sum to be used by the Council in its discretion to facilitate the provision of affordable housing within the local area

SCHEDULE 4

INDEXATION PROVISIONS

"Index" means the All Items Retail Prices Index published by the Office for National Statistics contained in the monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore or in the case of the Primary Education Contribution the BIS Tender Price Index of Public Sector Building or such other index as may from time to time be published in substitution therefore.

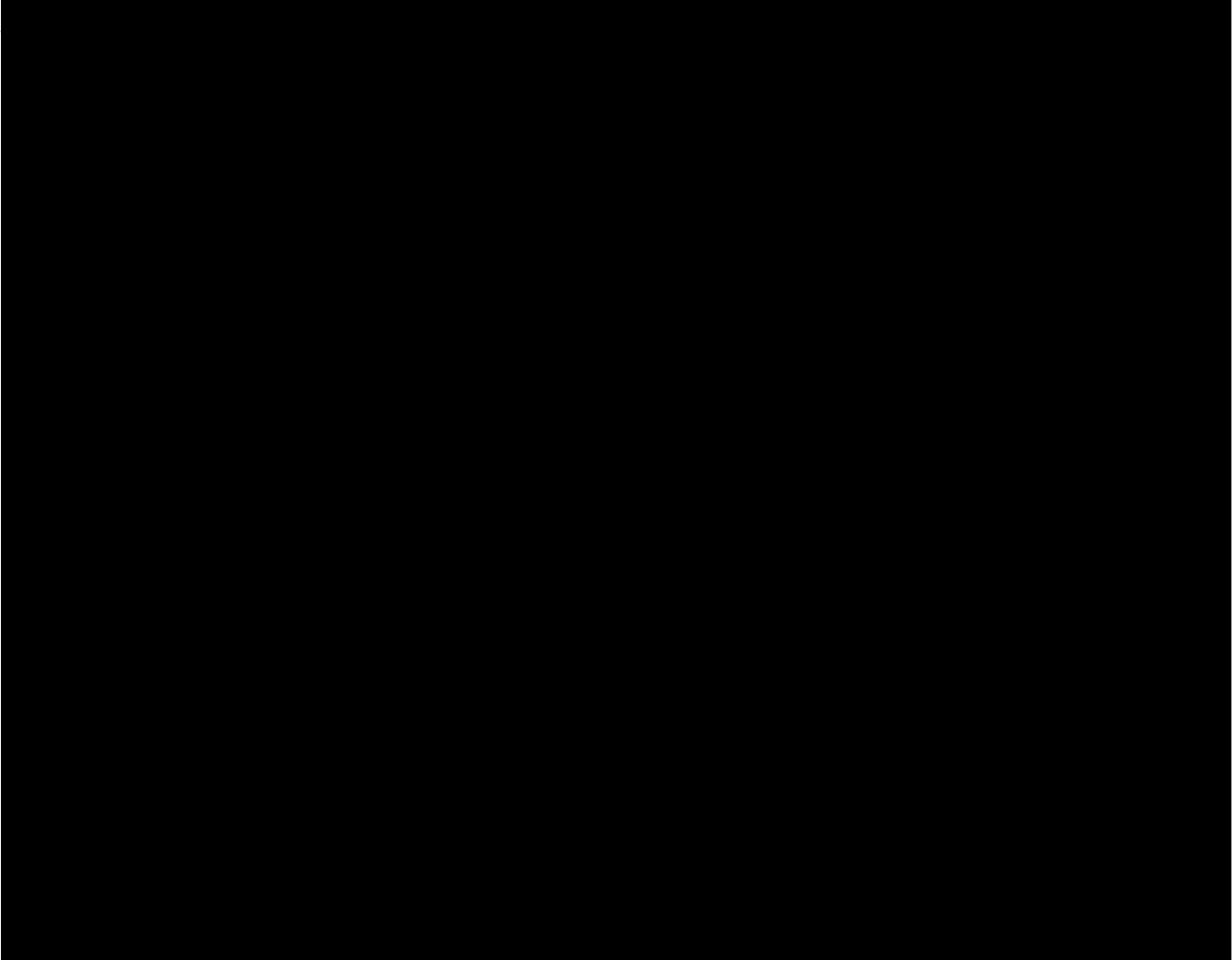
"Index Linked" means such increase or decrease to sums payable to the Council as the case may be under this Agreement on an annual basis or

pro rata per diem from the date of grant of the Planning Permission until such time that payment of any sums in this Agreement are made such index linking to be equivalent to any inflationary increase or decrease on such sums in proportion to the increase or decrease taking as the measure of inflation the Index last published before the date of the Planning Permission or any publication issued in substitution for it PROVIDED no contribution shall carry Interest and also be Indexed Linked

SCHEDULE 5

MISCELLANEOUS PAYMENTS TO COUNCIL

On completion of this Agreement the Owner shall pay to the Council the sum of £ 495.00 inclusive of VAT towards the Council's legal costs in preparation of this Agreement.



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