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ASHFIELD DISTRICT COUNCIL**Internal Memorandum****TO: Land Charges****FROM: Assistant Chief Executive
(Governance)****YOUR REF:****OUR REF: JA/TP.21 (319)****SUBJECT: SECTION 106 AGREEMENT – UNWIN ROAD, SUTTON IN
ASHFIELD – THE CO-OPERATIVE GROUP LIMITED****DATE: 19th January, 2014**

The Section 106 Agreement in respect of the above has now been completed and accordingly I attach a copy for your records.

I shall be pleased if you will register this as a land charge forthwith.

I would be grateful if you could acknowledge receipt by returning a signed copy of this memorandum.

R. L. Dennis

R. L. Dennis
Assistant Chief Executive (Governance)

RECEIVED ON

20 JAN 2014 (9.22 AM)

LAND CHARGES

Dated 13th January 2014

Ashfield District Council
and
The Co-operative Group Limited

Section 106 Agreement relating to land at Unwin Road Sutton in Ashfield, NG17 4PP

THIS AGREEMENT is made on 13th January 2013

BETWEEN:

- (1) ASHFIELD DISTRICT COUNCIL of Urban Road, Kirkby in Ashfield, Nottinghamshire NG17 8DA ("the Council")
- (2) CO-OPERATIVE GROUP LIMITED (Industrial and Provident Society No1P525R) of Angel Square Manchester M60 0HG ("the Owner")

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.

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

On the 25th September 2013 the Council's Planning Committee resolved to grant outline planning permission subject to, amongst other things, the prior completion of this Agreement securing all matters herein referred to, without which the Development would not have been acceptable.

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.

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 Contribution"

means the sum of £64,363.00 to be used by the Council towards the provision of Affordable Housing within the District of Ashfield in accordance with Schedule 2 of this Agreement

"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 any 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:

- 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

"County Council"

means the Nottinghamshire County Council

being the local highway authority and local
education authority for the purposes of the
1990 Act and the Education Acts
respectively for the area within which the
Site is located

"Completed" "Complete"

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

"Completion"

"Development"

means the construction of up to 18 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 £45,820 to be used by the
County Council towards the increased
education provision at local schools as set
out in Schedule 3 of this Agreement

"Index"	means as set out in Schedule 5 of this Agreement
"Interest"	means interest to be calculated at the rate of 2% above London Interbank Offered Rate
"Occupation"	means occupation of the Development for 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 Space Contribution"	means the sum of £2500.00 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 towards the maintenance and improvement of open space within the District of Ashfield in accordance with Schedule 1 of this Agreement
"Planning Application"	an application for outline planning permission for the carrying out of the Development made by the Owner validated on 18 th February 2013 carrying reference V/2013/0094
"Planning Permission"	the planning permission that may be granted in pursuance of the Planning Application
"Public Transport Works"	means the works to the bus stop located on the frontage to the Site on Unwin Road to be procured by the Owner in accordance with Schedule 4
"Registered Provider"	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

"Shared Ownership Housing"

means an Affordable Housing Unit which is provided by a Registered Provider in which the occupier initially owns a percentage of the unit 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 at Unwin Road Sutton in Ashfield , NG17 4PP registered with other property at Land Registry under title number NT427392 and shown for identification purposes only edged red on the plan appended to this Agreement

"Social Rented Housing"

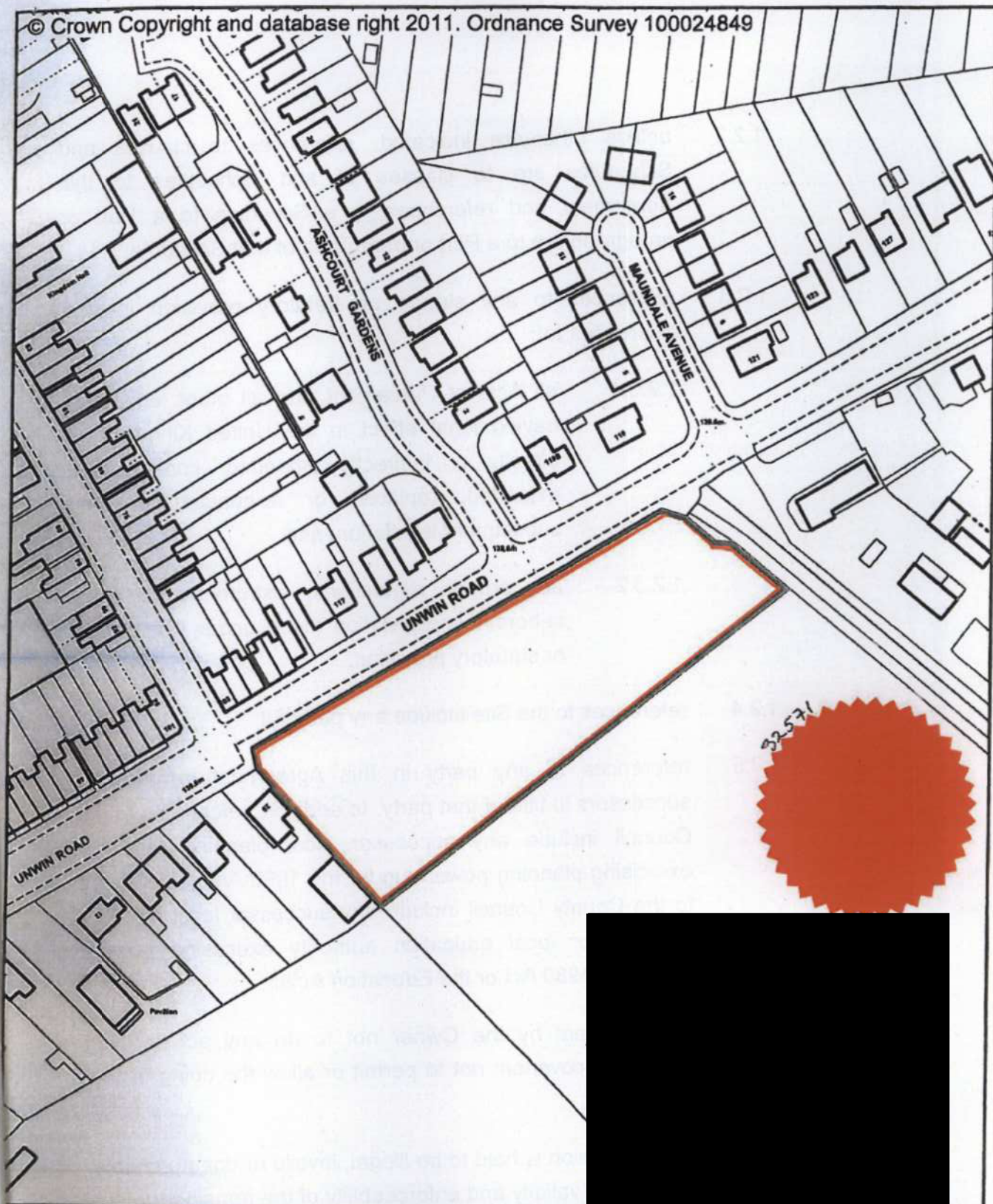
means housing owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008) for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above as agreed with the local authority or with the Homes and Community Agency

"Specialist"

has the meaning in clause 6.2

1.2 In this Agreement:

1.2.1 the clause headings do not affect its interpretation;



Section 106 Plan
Land at Unwin Road, Sutton in Ashfield
V/2013/0094



Ashfield

Scale: 1 to 1,250

Date: 15 August 2013



- 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****Error! Bookmark not defined.**
- 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

- 3.4 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.

- 3.5 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.

3.6 No person will be liable for any breach of the terms of this Agreement 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 3.6.

3.7 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 Highway Contribution and the Education Contribution and the Affordable Housing 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**Error! Bookmark not defined.

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 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 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**Error! Bookmark not defined.

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 Principal Development Control Officer 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****Error! Bookmark not defined.**
- 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**Error! Bookmark not defined.**

- 7.1 All monies payable pursuant to clause 3 and Schedules 1 to 4 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 5.

8. COSTS

The Owner shall pay to the Council its legal costs for preparing this Agreement in accordance with Schedule 6.

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. 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

1. The Owner shall not Complete more than 50% of the Dwellings until it has paid 50% of the Open Space Contribution to the Council
2. The Owner shall pay 50% of the Open Space Contribution to the Council prior to the Completion of 50% of the Dwellings
3. The Owner shall not Complete more than 75% of the Dwellings until it has paid the remaining 50% of the Open Space contribution to the Council

[REDACTED]

4. The Owner shall pay the remaining 50% of the Open Space contribution to the Council prior to the Completion of 75% of the Dwellings

5 The Council hereby covenants with the Owner pursuant to Section 106 of the 1990 Act to apply the Open Space Contribution only towards the provision of maintenance and improvement of open space within the District of Ashfield

6. *

SCHEDULE 2

Affordable Housing Contribution

1. The Owner hereby covenants to pay the Affordable Housing Contribution to the Council in accordance with the following:

1.1. 50% of the Affordable Housing Contribution shall be payable before Completion of 50% of the Dwellings to be constructed pursuant to the Development; and

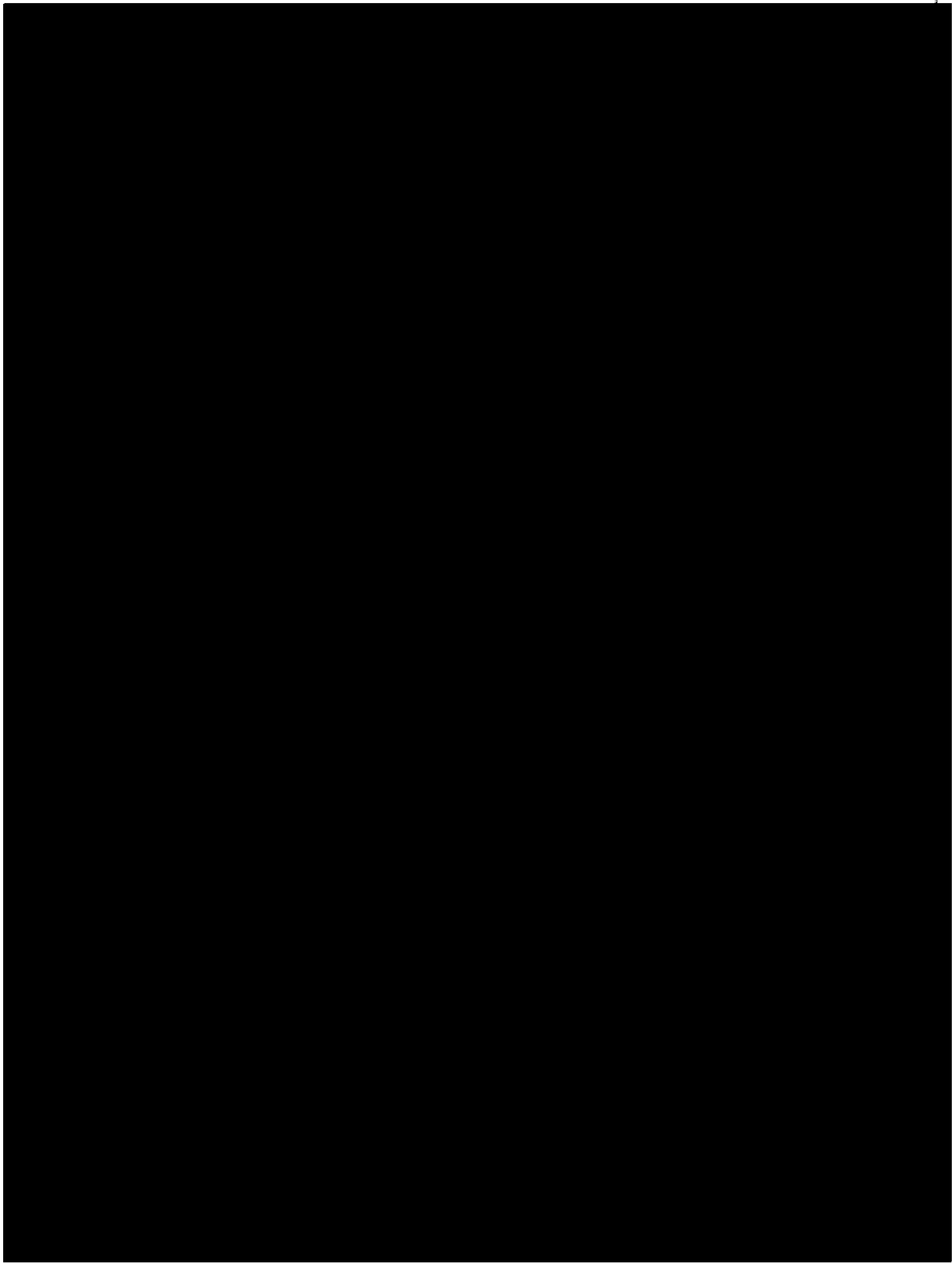
1.2. the remaining 50% of the Affordable Housing Contribution shall be payable before Completion of 75% of the Dwellings to be constructed pursuant to the Development.

2. The Council hereby covenants with the Owner pursuant to section 106 of the 1990 Act as follows:

2.1. to apply the Affordable Housing Contribution only towards the provision of Affordable Housing within the District of Ashfield and

2.2. to provide full details of the expenditure of the Affordable Housing Contribution on demand to the Owner.

3. In the event of an application of the Affordable Housing Contribution in breach of the Council's obligations under paragraph 2.1 above, the



amount of the Affordable Housing Contribution so applied shall be deemed to be an 'unspent part' of the Affordable Housing Contribution, and shall be repayable to the Owner in the exact same manner as any other unspent parts under clause 3.7 of this Agreement.

SCHEDULE 3
Education Contribution

1. The Owner covenants with the Council to pay the Education Contribution to the Council in accordance with the following:
 - 1.1. 50% of the Education Contribution shall be payable before Occupation of the first Dwelling to be constructed pursuant to the Development; and
 - 1.2. the remaining 50% of the Education Contribution shall be payable before Occupation of the last Dwelling to be constructed pursuant to the Development.
2. The Council covenants with the Owner that any Education Contribution received by the Council shall be ring fenced and shall be applied only towards the increased education provision at the appropriate catchment primary schools which will serve the Development and for no other purpose whatsoever.

SCHEDULE 4
PUBLIC TRANSPORT WORKS

The Owner covenants with the Council as follows:

1. To submit and secure the written approval of the County Council for the Public Transport Works prior to the Commencement of the Development

2. Prior to Occupation of the first Dwelling to be constructed pursuant to the Development to carry out the Public Transport Works to upgrade the existing bus-stop located on the Site frontage to comprise the provision of solar lit shelters with fully lit bus stop poles with $\frac{3}{4}$ timetable cases and bus stop flags, raised kerbed bus boarders, dropped kerbed wheelchair and pushchair access, real time displays and bus stop clearways/cages

PROVIDED ALWAYS THAT the Owner's obligation to carry out the Public Transport Works shall not exceed £8,000 (eight thousand pounds) inclusive of VAT.

SCHEDULE 5

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 6

MISCELLANEOUS PAYMENTS TO COUNCIL

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

