

DATED 10th April 2024

LESLIE LUTHER WILSON & ANN WILSON (1)

-and-

PEVERIL HOMES LIMITED (2)

-and-

ASHFIELD DISTRICT COUNCIL (3)

Under Section 106 of the Town and Country Planning Act 1990
relating to proposed residential development on land off Main Road, Jacksdale, Nottinghamshire

Planning Application Reference: V/2022/0066

WALKER MORRIS LLP
33 Wellington Street
LEEDS
LS1 4DL
Tel: 0113 2832500
Fax: 0113 2459412
Ref: CAS/PEV00006.56

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THIS AGREEMENT is made as a Deed the 10th day of April Two Thousand and Twenty Four

BETWEEN:

- (1) **LESLIE LUTHER WILSON** and **ANN WILSON** of Oak Tree Farm, Main Road, Westwood, Nottinghamshire NG16 5HU (“**Owner**”); and
- (2) **PEVERIL HOMES LIMITED** (Company Registration Number 01888444) of High Edge Court, Church Street, Heage, Belper, Derbyshire DE56 2BW (“**Developer**”); and
- (3) **ASHFIELD DISTRICT COUNCIL** of Urban Road, Kirkby in Ashfield, Nottingham NG17 8DA (“**District Council**”);

together the “**Parties**” and reference to “**Party**” shall be construed accordingly.

RECITALS:

- A. By means of the Planning Application 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 and the Footpath Land are 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:
 - (1) Application Land registered at HM Land Registry with title absolute under title number NT192482;
 - (2) Footpath Land registered at HM Land Registry with title absolute under title number NT100332.
- E. The District Council has resolved to grant the Planning Permission for the Development subject to certain conditions and the completion of this Agreement.
- F. The Owner has agreed to enter into this Agreement with the intent that its interest in the Application Land and the Footpath 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.

G. 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 expressions shall have the following meanings:

“Act” means the Town and Country Planning Act 1990 (as amended);

“Additional First Homes Contribution” means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with **paragraphs 2.8.8, 2.8.9 or 2.10 of the First Schedule**, the lower of the following two amounts:

(a) 30% (thirty percent) of the proceeds of sale; and

(b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home;

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the

disposal of the First Home other than as a First Home;

“Affordable Dwellings”

means 8 (eight) of the Dwellings to be provided and Occupied as Affordable Rented Dwellings, First Homes and Shared Ownership Dwellings in accordance with the Affordable Housing Scheme and “Affordable Dwelling” shall be construed accordingly and for the avoidance of doubt any references to “Affordable Dwelling(s)” in **paragraphs 1.3 to 1.15 (inclusive) of the First Schedule** excludes First Homes;

“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;

“Affordable Housing Contribution”

means if applicable 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 Rented Dwellings and Shared Ownership 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 Rented Dwellings and Shared Ownership 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 1.10 of the First Schedule** 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;

as shall be approved in writing 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; and
- (ii) the intended Affordable Housing Provider (excluding the First Homes);

“Affordable Rented Dwellings”

means 4 (four) 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;

“Application Land”

means the land shown edged red on Plan 1;

“Armed Service Member”

means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the 5

(five) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service;

“Bus Stop Infrastructure Contribution”

means the sum of £32,100.00 (thirty two thousand one hundred pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of **paragraph 3 of the First Schedule** towards procuring with the County Council improvements to the bus stop within the vicinity of the Application Land denoted as AS0038 (Brinsley Hill) and AS0729 (Brinsley Hill) such improvements to include installation of real time bus stop poles and displays including associated electrical connections, extended hardstands, polycarbonate bus shelters and solar lighting;

“Commencement of Development”

means 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:

- (i) trial holes or other operations to establish the ground conditions of the Application Land, site survey work, or works of remediation
- (ii) archaeological investigations on the Application Land
- (iii) any works of demolition or site clearance
- (iv) any structural planting or landscaping works

- (v) ecological or nature conservation works associated with the Development
- (vi) construction of site compounds boundary fencing or hoardings
- (vii) construction of off-site access or highway works or provision of services (including drainage and media)
- (viii) any other preparatory works agreed in writing with the District Council

and reference to "**Commence**" shall be construed accordingly;

“Compliance Certificate”	means the certificate issued by the District Council confirming that a Dwelling is being disposed of as a First Home to a purchaser unless paragraph 2.8.2 of the First Schedule applies;
“County Contributions”	means the Bus Stop Infrastructure Contribution and the Sustainable Transport Contribution
“County Council”	means Nottinghamshire County Council of County Hall, West Bridgford, Nottingham NG2 7QP who is the highway authority for the area within which the Application Land is situated;
“Creation Agreement”	means an agreement for the dedication of the Footpath as a public path pursuant to Section 25 of the Highways Act 1980;
“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 75% (seventy five percent) of its Open Market Value;

“Disposal”

means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- (i) a letting or sub-letting in accordance with **paragraph 2.9 of the First Schedule**;
- (ii) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner;
- (iii) an Exempt Disposal;

and **“Disposed”** and **“Disposing”** shall be construed accordingly;

“Dwelling(s)”

means a dwelling built pursuant to the Planning Permission;

“Eligibility Criteria (Local)”

means criteria (if any) published by the District Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

- (a) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (Local); and
- (b) any or all of criteria (i) (ii) and (iii) below are met:
 - (i) the purchaser meets the First Homes Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the First

Homes Local Connection Criteria);
and/or

- (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or
- (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker;

**“Eligibility Criteria
(National)”**

means criteria which are met in respect of a purchase of a First Home if:

- (i) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (ii) the purchaser’s annual gross income (or in the case of a joint purchaser, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (National);

“Exempt Disposal”

means the Disposal of a First Home in one of the following circumstances:

- (i) a Disposal to a spouse or civil partner upon the death of the First Homes Owner; or
- (ii) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner; or
- (iii) a Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement

or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order; or

- (iv) a Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt **paragraph 2.10 of the First Schedule** shall apply to such sale);

PROVIDED THAT in each case other than (iv) the person to whom the disposal is made complies with the terms of **paragraph 2.9 of the First Schedule**;

“First Homes”

means 2 (two) of the Affordable Dwellings to be provided on the Application Land as first homes as defined in the Department for Levelling Up, Housing and Communities 'First Homes' guidance published in May 2021 (or any future guidance or initiative that replaces or supplements it) and which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the First Home Sale Price and which on its first Disposal does not exceed the Price Cap such units to be provided in accordance with an approved Affordable Housing Scheme and the provisions of the First Schedule and reference to **“First Home”** shall be construed accordingly;

“First Time Buyer”

means a prospective purchaser as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003 who has not been the owner of any other housing (whether as outright owner or with mortgages or other loan finance) either in whole or part at any previous time within the United Kingdom and who cannot otherwise afford to rent or buy housing generally available on the open market

within Cumberland and reference to "**First Time Buyers**" shall be construed accordingly;

"First Homes Owner"

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (i) the Owner or the Developer; or
- (ii) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (iii) a tenant or sub-tenant of a permitted letting under **paragraph 2.9 of the First Schedule**;

"First Home Sale Price"

means the price of the First Homes to be agreed with the District Council prior to the disposal of any of the First Homes but that shall be a price equal to the Open Market Value of an equivalent Market Dwelling less a discount equal to at least 30% (thirty percent) of the Open Market Value;

"Footpath"

means a new pedestrian footpath to be created within the Footpath Land (which for the purposes of identification is shown by a green line from points A to B to C on Plan 1) to be provided in accordance with the provisions of **paragraph 4 of the First Schedule**;

"Footpath Land"

means the land upon which the Footpath is situated shown edged blue on Plan 1;

"Healthcare Contribution"

means the sum of £43,891.99 (forty three thousand eight hundred and ninety one pounds and ninety nine

pence) payable in accordance with the provisions of **paragraph 3 of the First Schedule** towards enhancements to the capacity and infrastructure at either Jacksdale Medical Centre, Selston Surgery or Ashfield Centre the need for which is to mitigate the effects of the Development;

“Homes England”

means the Homes and Communities Agency trading as Homes England or any body or bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008;

“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;

“ICB”

means the NHS Nottingham and Nottinghamshire Integrated Care Board (or any successor body or bodies undertaking the existing functions of NHS Nottingham and Nottinghamshire Integrated Care Board);

“Income Cap (Local)”

means £80,000.00 (eighty thousand pounds) or such other local income cap as may be published from time to time by the District Council and is in force at the time of the relevant disposal of the First Home;

“Income Cap (National)”

means £80,000.00 (eighty thousand pounds);

or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home;

“Index Linked”

means the application to the sum concerned of the indexation set out in the Third Schedule;

“Key Worker”

means a person employed or with a confirmed job offer in one of the following categories of employment:

- (i) NHS staff;
- (ii) police officers;
- (iii) firefighters;
- (iv) transport workers; and
- (v) teachers;

or such other categories of employment as may be published by the District Council from time to time as the “First Homes Key Worker criteria” and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “**Key Worker**” criteria which shall apply to that disposal;

“Local Connection Criteria”

means either (a) or (b) below:

- (a) local connection means:
 - (i) normally resident in the administrative area of the District Council for at least six (6) out of the last 12 (twelve) months or 3 (three) out of the last 5 (five) years; or
 - (ii) by virtue of family association normally meaning that the applicant has parents, grandparents, adult children, grandchildren, a brother or a sister currently living within the administrative area of the District Council who have been normally

resident within the administrative area of the District Council for at least 5 (five) years; or

(iii) in the administrative area of the District Council secured employment for at least 1 (one) year and a minimum of 20 (twenty) hours per week; or

(b) such other local connection criteria as may be published by the District Council from time to time as its “First Homes Local Connection Criteria” and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Local Connection Criteria”, which shall apply to that disposal;

“Management Company” means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes of carrying out future maintenance of the Open Space and, if applicable, the Footpath and:

- (a) which is incorporated in England and Wales or Scotland; and
- (b) which has its registered office in England or Scotland; and
- (c) whose primary objects permit it to maintain and renew areas of public open space and footpaths; and

(d) its officers have prior experience of carrying out the maintenance of public open space, play areas, footpaths and planting;

“Market Dwelling(s)” means Dwellings for sale on the open market which is constructed as part of the Development and which is not an Affordable Dwelling;

“Monitoring Contribution” means the sum of £6,579.84 (six thousand seven hundred and seventy nine pounds and eighty four pence) Index Linked payable in accordance with the provisions of **paragraph 3 of the First Schedule** towards the District Council’s costs of monitoring compliance with this Agreement;

“Mortgagee” means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire First Home including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a First Home;

“National Planning Policy Framework” means the National Planning Policy Framework published by the Department for Levelling Up, Housing and Communities in December 2023 (or any future guidance or initiative that replaces or supplements it);

“Nominations Agreement” means an agreement in a form specified by the District Council relating to the nominations procedure and local lettings plans for the Affordable Dwellings;

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

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

and **“Occupy”** and **“Occupied”** shall be construed accordingly;

“Open Market Value”

means the value agreed between the District Council and the Owner of a Dwelling to be sold on the open market based on the following assumptions:

- (i) a willing seller and a willing buyer in an arm's length transaction; and
- (ii) a reasonable period for the proper marketing of the Dwelling; and
- (iii) market conditions at the time of the valuation; and
- (iv) the parties had each acted knowledgeably, prudently and without compulsion;

“Open Space”

means the parts of the Development shown on Plan 2 and labelled:

- (i) P.O.S. AREA '1';
- (ii) P.O.S. AREA '2';
- (iii) P.O.S. AREA '3';
- (iv) P.O.S. AREA '4';

to be laid out as open space to include any play area (and for the avoidance of doubt being outside of any

plot curtilage) in accordance with a condition(s) annexed to the Planning Permission;

- “Open Space Management Plan”** means the Landscape & Ecological Management Plan prepared by Golby & Luck Landscape Architects (Ref.: GL1387), dated 27th July 2023, attached hereto at **Annex 3**;
- “Open Space Works”** means the works to be carried out on the Development for the laying out of the Open Space in accordance with a condition(s) annexed to the Planning Permission;
- “Plan 1”** means the plan marked "Plan 1" attached hereto at Annex 1;
- “Plan 2”** means the plan marked "Plan 2" attached hereto at Annex 2;
- “Planning Application”** means the planning application submitted to the District Council and allocated reference number V/2022/0066 applying for the construction of 81 dwellings and associated highways, drainage and landscaping infrastructure;
- “Planning Permission”** means a planning permission granted pursuant to the Planning Application;
- “Practical Completion”** means the stage of construction or conversion of any Dwelling or other building comprising the Development such that it is capable of Occupation;
- “Price Cap”** means the amount for which the First Home is sold after the application of the First Home Sale Price which on its first Disposal shall not exceed £250,000.00 (two hundred and fifty thousand pounds) or such other amount as may be published from time to time by the Secretary of State;

“Protected Tenant”	<p>means any tenant who:</p> <ul style="list-style-type: none"> (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 has otherwise obtained full ownership of a single Affordable Dwelling;
“Public Open Space Contribution”	<p>means the sum of £162,000.00 (one hundred and sixty two thousand pounds) Index Linked payable in accordance with the provisions of paragraph 3 of the First Schedule towards play and young persons’ provision and general open space improvements at Main Road Recreation Ground and Westwood Recreation Ground inclusive of 15 (fifteen) years maintenance;</p>
“Public Realm Contribution”	<p>means £81,000.00 (eighty one thousand pounds) Index Linked payable in accordance with the provisions of paragraph 3 of the First Schedule towards active travel associated to the improvements of Footpaths FP24, BW23 and FP59;</p>
“Regulator of Social Housing”	<p>means the Regulator of Social Housing being the body corporate undertaking the functions of the Regulator of Housing within the meaning of Part 1 of the Housing and Regeneration Act 2008 as amended by the Legislative Reform (Regulator of Social Housing (England) Order 2018 (or as redefined by any amendment replacement or re-enactment of such Act);</p>

“SDLT”	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;
“Secretary of State”	means the Secretary of State for The Department for Levelling Up, Housing and Communities or any substitute or any Inspector appointed by him;
“Shared Ownership Lease”	means a lease to be granted for each Shared Ownership Unit for a term of not less than 125 (one hundred and twenty five) years which shall accord with the requirements of, and be consistent with any model shared ownership lease from time to time, of the Regulator of Social Housing (or any statutory successor);
“Shared Ownership Dwellings”	means 2 (two) the Affordable Dwellings to be provided on the Application Land to be provided by an Affordable Housing Provider by way of a Shared Ownership Lease in accordance with paragraph d) of Annex 2 of the National Planning Policy Framework where the percentage equity share to be marketed and the percentage rent payable on the retained equity is agreed in writing between the District Council and the Affordable Housing Provider before the units are marketed to the public or by way of shared equity, discounted sale, sub-market/intermediate rent, rent to buy, or any other sub-market/intermediate type/model and which complies with the definition of Affordable Housing within Annex 2 of the National Planning Policy Framework and to be provided in accordance with the Planning Permission, an approved Affordable Housing Scheme and the provisions of paragraph 1 of the First Schedule and “ Shared Ownership Unit ” shall be construed accordingly;

“Sustainable Transport Contribution” means the sum of £10,000.00 (ten thousand pounds) Index Linked payable by the Owner to the District Council in accordance with the provisions of **paragraph 3 of the First Schedule** towards procuring with the County Council sustainable travel measures for residents of the development which may include, but not exclusively, the use of taster tickets for public transport and/or bus service enhancements the need for which is to mitigate the effects of the Development.

- 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 expressions “the Owner” and "the Developer" shall where the context so admits include 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 and all other powers so enabling.
- 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, in relation to the planning obligations contained in **paragraph 4 of the First Schedule**, the Application Land and the Footpath Land and be binding on and enforceable against their 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 or the Footpath Land in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof or specified in a section 73 permission to which **clause 2.24** below applies) 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 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 (or their mortgagees) of Dwellings on the Application Land; nor
- 2.5.2 (other than the provisions of **paragraph 1 of the First Schedule**) against 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; or
- 2.5.3 against 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 against anyone whose only interest in the Application Land and/or the Footpath Land or any part of it is in the nature of the benefit of an easement or covenant.

- 2.6 In the event that the Owner disposes of its interest in the Application Land and/or the Footpath Land or any part thereof (other than a disposal to a purchaser of a Dwelling) it shall within 28 (twenty-eight) 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 by the District Council and the Commencement of Development and save for this clause and **clauses 2.8, 2.12, 2.15, 2.16, 2.17, 2.18, 2.19, 2.20 and 3.2, and paragraphs 1.1, 4.1 and 6.1 of the First Schedule** 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 withdrawal, revocation or quashing 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 7 (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 (twenty) 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 15 (fifteen) 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.

2.13.2 The reference to the expert shall be on terms that:

- (a) 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; and
- (b) the expert shall be able to stipulate periods of time for the making of such submissions and representations; and
- (c) the expert shall be bound to have regard to the said submissions and representations; and
- (d) 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; and
- (e) the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and

- (f) 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 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.

No Fetter of Discretion

- 2.20 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

- 2.21 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

- 2.22 Without prejudice to its statutory duties the District Council and the Owner 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

- 2.23 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% (eight percent) above the Bank of England base lending rate prevailing at the time.

Future Permissions

- 2.24 In the event that an application is made pursuant to Section 73 of the Act for an amendment to the Planning Permission and planning permission is granted (whether or not on appeal) in respect of the application (and the District Council is satisfied in its absolute discretion that no revised planning obligations are required as a result of such amendment) references to Planning

Permission in this Agreement shall be to the new planning permission granted pursuant to Section 73 of the Act and this Agreement shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the Act, unless requested by the District Council.

Jurisdiction

- 2.25 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.

3 OWNER'S COVENANTS TO THE DISTRICT COUNCIL

- 3.1 The Owner covenants with the District Council so as to bind its interest in the Application Land and the Footpath Land and each and every part thereof to observe and perform the covenants set out in the First Schedule and the Developer acknowledges that its interest in the Application Land shall be bound by the covenants set out in the First Schedule.

- 3.2 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.

4 DISTRICT COUNCIL'S COVENANTS TO THE OWNER

- 4.1 The District Council covenants with the Owner to fulfil the covenants on its behalf contained in the Second Schedule and where applicable in the First Schedule.

FIRST SCHEDULE
(Owner's Covenants)

The Owner covenants with the District Council as follows:

1 Affordable Housing

- 1.1 To submit to the District Council for approval 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.
- 1.2 To provide 8 (eight) of the Dwellings constructed as part of the Development as Affordable Dwellings in accordance with the Affordable Housing Scheme approved pursuant to **paragraph 1.1 of this Schedule** or any approved variation thereto.
- 1.3 Not to dispose of any interest in the Affordable Dwellings save to an Affordable Housing Provider or the District Council in accordance with this **paragraph 1** or allow the same to be disposed of otherwise than in accordance with this **paragraph 1**.
- 1.4 Not to Occupy or permit or suffer or allow the Occupation of more than 50 (fifty) of the Market Dwellings (or such other number of Market Dwellings that may be agreed in writing by the District Council) until:
 - 1.4.1 the Affordable Dwellings have achieved Practical Completion and are ready for Occupation; and
 - 1.4.2 the freehold of the Affordable Dwellings 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.
- 1.5 The transfer or binding contract, as the case may be, referred to in **paragraph 1.4.2 of this Schedule** shall provide inter alia for:
 - 1.5.1 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 Affordable Dwellings and the provision of roads and services rendering them suitable for immediate Occupation; and
 - 1.5.2 the imposition of such covenants as the Owner shall reasonably require as are consistent with the sale of any Dwellings within the Development; and

- 1.5.3 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.
- 1.6 Subject to **paragraph 1.7 of this Schedule** not to use or allow the Affordable Dwellings to be used for any purpose other than for Affordable Housing in accordance with the terms of this Agreement.
- 1.7 The restriction referred to in **paragraph 1.6 of this Schedule** shall not apply to:
- 1.7.1 a Protected Tenant or any person deriving title under a Protected Tenant; or
- 1.7.2 a 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 the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver.
- 1.8 Not to transfer the Affordable Dwellings to an Affordable Housing Provider without first procuring that the transfer includes:
- 1.8.1 a provision that the Affordable Housing Provider shall undertake to enter into a Nominations Agreement with the District Council; and
- 1.8.2 a provision that the Affordable Dwellings shall not be used for any purpose other than for Affordable Housing save where **clause 2.5** and **paragraph 1.7 of the First Schedule** of this Agreement applies.
- 1.9 To procure that the Affordable Housing Provider permits the District Council or its agent to nominate 100% (one hundred percent) of the first occupiers and 50% (fifty percent) of the second occupiers of the Affordable Dwellings, such occupier being someone who is in Housing Need.
- 1.10 In the event the Owner has not entered into a binding contract with an Affordable Housing Provider within 12 (twelve) months of Commencement of Development pursuant to **this paragraph 1** of this Schedule 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) and:

1.10.1 If the District Council (acting reasonably) is satisfied that the notification provided pursuant to **paragraph 1.10 of this Schedule** demonstrates that the Owner has used reasonable endeavours to enter into a binding contract with an Affordable Housing Provider, it may determine whether to take a transfer of the Affordable Dwellings or to accept an Affordable Housing Contribution and:

- (a) In the event the District Council determines that an Affordable Housing Contribution shall be payable in lieu of provision of the Affordable Dwellings on the Application Land then the Owner shall pay the Affordable Housing Contribution prior to the first Occupation of 28 (twenty eight) of the Market Dwellings **AND** the Owner shall be entitled to dispose of the Dwellings that would have been Affordable Dwellings as Market Dwellings free from the restrictions in this **paragraph 1**.
- (b) In the event that the District Council elects 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 1.5 of this Schedule**) within 3 (three) months of the Owner receiving written acceptance of the offer.
- (c) If within 3 (three) 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 and shall be released from the requirement to comply with the provisions of this Agreement in relation to the provision of Affordable Housing **PROVIDED THAT** the Dwellings that would have been Affordable Dwellings shall be provided as Discounted Market Dwellings (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 75% (seventy-five percent) 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 the Land Registry).

1.11 If the District Council (acting reasonably) is not satisfied that the notification provided pursuant to **paragraph 1.10 of this Schedule** demonstrates that the Owner has used reasonable endeavours to enter into a binding contract with an Affordable Housing Provider, the District Council shall serve written notice on the Owner that he shall be required to use reasonable endeavours to enter into such a contract within 6 (six) months from the date of notification by the District Council and if at the end of that 6 (six) month period the Owner has not been able to enter into a binding contract with an Affordable Housing Provider the provisions of **paragraph 1.10 of this Schedule** shall apply **PROVIDED THAT** at the conclusion of the 6 (six) month period under this **paragraph 1.11 of this Schedule** the District Council shall not be entitled to again serve a notice under this paragraph and the provisions of **paragraph 1.10.1 of this Schedule** shall apply.

1.12 In respect of any Affordable Dwellings to be sold as Discounted Market Dwellings pursuant to **paragraph 1.10.1(c) 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 to 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] 2023 between (1) Leslie Luther Wilson and Ann Wilson, (2) Pevenil Homes Limited and Ashfield District Council have been complied with”

1.13 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 1.12** 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.

1.14 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 (three) 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 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 25% (twenty-five percent) of the open market value and the obligations in this **paragraph 1 of this Schedule** shall no longer apply to that dwelling.

1.15 Prior to entering into a contract for the sale of the Discounted Market Dwelling with a prospective purchaser to provide the District Council with the following information:

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

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

1.15.3 details as to the proposed sale price.

and not to 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) confirming that the District Council accepts the evidence provided to it pursuant to this **paragraph 1.15** or, where the District Council does not accept the evidence provided, the full reasons as to why it does not accept the evidence.

2 First Homes

Unless otherwise agreed in writing by the District Council, the Owner for and on behalf of itself and its successors in title to the Application Land with the intention that the following provisions shall bind the Application Land and every part of it into whosoever's hands it may come covenants with the District Council as below save that:

2.1 **paragraphs 2.4, 2.5, 2.6 and 2.7 of this Schedule** shall not apply to a First Homes Owner; and

2.2 **paragraphs 2.8 and 2.9 of this Schedule** apply as set out therein, save that where a First Home is owned by a First Homes Owner they shall apply to a First Homes Owner, but only in respect of the relevant First Home owned by that First Homes Owner; and

2.3 **paragraph 2.10 of this Schedule** applies as set out therein.

2.4 Quantum

2.4.1 2 (two) of the Affordable Dwellings as identified as First Homes in accordance with

the Planning Permission, approved plans and the approved Affordable Housing Scheme have been reserved and set aside as First Homes and shall be provided and retained as First Homes in perpetuity subject to the terms of **paragraph 2 of this Schedule**.

2.5 **Appearance**

2.5.1 The First Homes shall not be visually distinguishable from the Market Dwellings based upon their external appearance.

2.5.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Market Dwellings but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted.

2.6 **Type & Distribution**

2.6.1 The mix and distribution of First Homes provided within the Application Land shall be in accordance with the Planning Permission, approved plans and the approved Affordable Housing Scheme.

2.7 **Development Standard**

2.7.1 All First Homes shall be constructed:

2.7.1.1 in accordance with the Planning Permission and approved plans or such other standard as may be agreed in writing by the District Council; and

2.7.1.2 to no less than the standard applied to the Market Dwellings.

2.8 **First Homes – Delivery Mechanism**

2.8.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

2.8.1.1 the Eligibility Criteria (National); and

2.8.1.2 the Eligibility Criteria (Local) (if any).

2.8.2 If after a First Home has been actively marketed for 3 (three) months (such period to expire no earlier than 3 (three) months prior to Practical Completion) it has not been

possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), **paragraph 2.8.1.2 of this Schedule** shall cease to apply.

2.8.3 Subject to **paragraphs 2.8.6 to 2.8.10 of this Schedule**, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% (fifty percent) of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.

2.8.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

2.8.4.1 The District Council has been provided with evidence that:

(a) the intended purchaser meets the First Homes Eligibility Criteria (National) and unless **paragraph 2.8.2 of this Schedule** applies meets the First Homes Eligibility Criteria (Local) (if any); and

(b) the Dwelling is being Disposed of as a First Home at the First Home Sale Price; and

(i) a definition of the "District Council" which shall be "Ashfield District Council";

(ii) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs 2.8.1 to 2.8.9 of the First Schedule to the Section 106 Agreement;"

(iii) a definition of "Section 106 Agreement" in the following terms:

"means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated. [] made between (1) Leslie Luther Wilson and Ann Wilson; (2) Peveril Homes Limited; and (3) Ashfield District Council;"

(iv) a provision that the property is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or

otherwise Dispose of the property or any part of it other than in accordance with the First Homes Provisions;

- (v) a copy of the First Homes Provisions are attached to the transfer as an Annexure.

2.8.4.2 The District Council has issued the Compliance Certificate and the District Council hereby covenants that it shall issue the Compliance Certificate within 28 (twenty eight) days of being provided with evidence sufficient to satisfy it that the requirements of **paragraphs 2.8.3 and 2.8.4.1** of this Schedule have been met.

2.8.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Ashfield District Council of Urban Road, Kirkby in Ashfield, Nottingham NG17 8DA or a conveyancer that the provisions of [clause/paragraph] XX (the First Homes Provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

A copy of the restriction shall be supplied to the District Council within 56 (fifty-six) days of entry on the Register.

2.8.6 The owner of a First Home (which for the purposes of this paragraph shall include the Owner, the Developer and any First Homes Owner) may apply to the District Council to Dispose of it other than as a First Home on the grounds that either:

2.8.6.1 the Dwelling has been actively marketed as a First Home for 6 (six) months in accordance with **paragraphs 2.8.1 and 2.8.2 of this Schedule** (and in the case of a first Disposal the 6 (six) months shall be calculated from a date no earlier than 6 (six) months prior to Practical Completion) and reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with **paragraphs 2.8.3 and 2.8.4.1 of this Schedule**; or

2.8.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in **paragraph 2.8.6.1 of this Schedule** before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.

2.8.7 Upon receipt of an application served in accordance with **paragraph 2.8.6 of this Schedule** the District Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the First Home Sale Price.

2.8.8 If the District Council is satisfied that either of the grounds in **paragraph 2.8.6 of this Schedule** have been made out it shall confirm in writing within 28 (twenty eight) days of receipt of the written request made in accordance with **paragraph 2.8.6 of this Schedule** that the relevant Dwelling may be Disposed of:

2.8.8.1 to the District Council at the First Home Sale Price; or

2.8.8.2 (if the District Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home;

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from **paragraph 2.8.10 of this Schedule** which shall cease to apply on receipt of payment by the District Council where the relevant Dwelling is disposed of other than as a First Home.

2.8.9 If the District Council does not wish to acquire the relevant Dwelling itself and is not satisfied acting reasonably that either of the grounds in **paragraph 2.8.6 of this Schedule** have been made out then it shall within 28 (twenty eight) days of receipt of the written request made in accordance with **paragraph 2.8.6 of this Schedule** serve notice on the Owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than 6 (six) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the District Council in accordance with **paragraph 2.8.6 of this Schedule** following which the District Council must within 28 (twenty eight) days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.

2.8.10 Where a Dwelling is Disposed of other than as a First Home or to the District Council at the First Home Sale Price in accordance with **paragraphs 2.8.8 or 2.8.9 of this**

Schedule the owner of the First Home shall pay to the District Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

- 2.8.11 Upon receipt of the Additional First Homes Contribution the District Council shall:
- 2.8.11.1 within 28 (twenty eight) working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in **paragraph 2.8.5 of this Schedule** where such restriction has previously been registered against the relevant title;
- 2.8.11.2 apply all monies received towards the provision of Affordable Housing.
- 2.8.12 Any person who purchases a First Home free of the restrictions in this First Schedule pursuant to the provisions in **paragraphs 2.8.9 and 2.8.10 of this Schedule** shall not be liable to pay the Additional First Homes Contribution to the District Council.

2.9 **First Homes – Use**

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed **PROVIDED THAT** letting or sub-letting shall be permitted in accordance with **paragraphs 2.9.1 – 2.9.4 of this Schedule:**

- 2.9.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than 2 (two) years, provided that the First Homes Owner notifies the District Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed 2 (two) years.
- 2.9.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the District Council and the District Council consents in writing to the proposed letting or sub-letting. The District Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances of **paragraphs 2.9.2.1 to 2.9.2.6 of this Schedule:**
- 2.9.2.1 the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment; or

- 2.9.2.2 the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting; or
 - 2.9.2.3 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm; or
 - 2.9.2.4 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown; or
 - 2.9.2.5 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; or
 - 2.9.2.6 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 2.9.3 A letting or sub-letting permitted pursuant to **paragraph 2.9.1 or 2.9.2 of this Schedule** must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 2.9.4 Nothing in **this paragraph 2.9** prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

2.10 **First Homes – Mortgagee Exclusion**

The obligations in **paragraphs 2.8 and 2.9 of this Schedule** in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (**each a Receiver**)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver **PROVIDED THAT:**

- 2.10.1 such Mortgagee or Receiver shall first give written notice to the District Council of its intention to Dispose of the relevant First Home; and
- 2.10.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the District Council the Mortgagee or Receiver shall be free

to sell that First Home at its full Open Market Value and subject only to **paragraph 2.10.3 of this Schedule**;

2.10.3 following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the District Council the Additional First Homes Contribution;

2.10.4 following receipt of notification of the Disposal of the relevant First Home the District Council shall:

2.10.4.1 as soon as reasonably practicable issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in **paragraph 2.8.5 of this Schedule**; and

2.10.4.2 apply all such monies received towards the provision of Affordable Housing.

3 Contributions

3.1 To pay the Public Open Space Contribution to the District Council as follows:

3.1.1 50% (fifty percent) prior to the Commencement of the Development; and

3.1.2 the remaining 50% (fifty percent) prior to the Occupation of the 40th (fortieth) Dwelling.

3.2 Not to Commence the Development unless and until 50% (fifty percent) of the Public Open Space Contribution has been paid to the District Council in accordance with paragraph 3.1.1 of this Schedule.

3.3 Not to Occupy the 40th (fortieth) Dwelling unless and until all of the Public Open Space Contribution has been paid to the District Council in full accordance with paragraph 3.1.2 of this Schedule.

3.4 To pay the Public Realm Contribution to the District Council as follows:

3.4.1 50% (fifty percent) prior to the Commencement of the Development; and

3.4.2 the remaining 50% (fifty percent) prior to the Occupation of the 40th (fortieth) Dwelling.

3.5 Not to Commence the Development unless and until 50% (fifty percent) of the Public Realm Contribution has been paid to the District Council in accordance with paragraph 3.4.1 of this Schedule.

3.6 Not to Occupy the 40th (fortieth) Dwelling unless and until all of the Public Realm Contribution has been paid to the District Council in full accordance with paragraph 3.4.2 of this Schedule.

3.7 To pay the Healthcare Contribution to the District Council for onward transmission to the ICB as follows:

3.7.1 100% (one hundred percent) prior to the Commencement of the Development;

3.7.2 Not to Commence the Development until 100% (one hundred percent) of the Healthcare Contribution has been paid.

3.8 To pay the County Contributions to the District Council as follows:

3.8.1 100% (one hundred percent) prior to the Commencement of the Development;

3.8.2 Not to Commence the Development until 100% (one hundred percent) of the County Contributions have been paid.

3.9 To pay the Monitoring Contribution to the District Council prior to the Commencement of Development and not to Commence Development until the Monitoring Contribution has been paid.

4 Footpath

4.1 Not to Commence Development until the Owner has submitted an application for a Creation Agreement to the County Council and has provided a copy to the District Council.

4.2 The Owner hereby agrees to the completed Footpath being entered onto the Definitive Map and Statement of Public Rights of Way for the County of Nottinghamshire.

5 Public Open Space

5.1 Not to Occupy more than:

5.1.1 40 (forty) of the Dwellings on the Application Land (or such other number of Dwellings that may be first agreed in writing by the District Council) until the Open Space Works on P.O.S. AREA '1' and P.O.S. AREA '2' have been completed on the

Application Land in accordance with the Open Space Management Plan (where relevant) and made available for use by the residents of the Development;

5.1.2 60 (sixty) of the Dwellings on the Application Land (or such other number of Dwellings that may be first agreed in writing by the District Council) until the Open Space Works on P.O.S. AREA '3' have been completed on the Application Land in accordance with the Open Space Management Plan (where relevant) and made available for use by the residents of the Development;

5.1.3 76 (seventy-six) of the Dwellings on the Application Land (or such other number of Dwellings that may be first agreed in writing by the District Council) until the Open Space Works on P.O.S. AREA '4' have been completed on the Application Land in accordance with the Open Space Management Plan (where relevant) and made available for use by the residents of the Development.

5.2 To complete the Open Space Works in accordance with the Open Space Management Plan (where relevant) and make it available for use by residents of the Development prior to the Occupation of:

5.2.1 in respect of the Open Space Works on P.O.S. AREA '1' and P.O.S. AREA '2', 40 (forty) of the Dwellings on the Application Land (or such other number of Dwellings that may be first agreed in writing by the District Council);

5.2.2 in respect of the Open Space Works on P.O.S. AREA '3', 60 (sixty) of the Dwellings on the Application Land (or such other number of Dwellings that may be first agreed in writing by the District Council);

5.2.3 in respect of the Open Space Works on P.O.S. AREA '4' 76 (seventy-six) of the Dwellings on the Application Land (or such other number of Dwellings that may be first agreed in writing by the District Council);

5.3 Following the completion of the carrying out of the Open Space Works on the Application Land the Owner shall serve a notice in writing upon the District Council ("**Owner's POS Notice**")

5.4 As soon as reasonably practicable following service of an Owner's POS Notice in accordance with **paragraph 5.3 of this Schedule** the Owner shall engage the Management Company (having first supplied to the District Council a certified copy of the Memorandum and Articles of Association of the Management Company) on terms to be agreed between the Owner and the Management Company in consultation and agreement with the District Council to manage and maintain the relevant area(s) of Open Space and all further management and maintenance shall

be thereafter carried out by the Management Company in accordance with the principles set out in **paragraph 5.4.2 of this Schedule PROVIDED THAT** it is agreed that it shall be a term of the Management Company's engagement that the Management Company will:

- 5.4.1 (subject to Clause 2.4) only allow the use of the Open Space for public use and no other purpose;
 - 5.4.2 (subject to Clause 2.4) maintain and manage in perpetuity the Open Space fully in accordance with the Open Space Management Plan relating to the relevant area of Open Space subject to any variations that may be agreed in writing between the District Council and the Owner from time to time.
- 5.5 The Owner will comply with the provisions set out in **paragraphs 5.4.1 and 5.4.2 of this Schedule** until such time as a Management Company has been engaged to undertake the future management and maintenance of the Open Space or the particular element of the Open Space as the case may be.
- 5.6 The Owner hereby declares that pursuant to Section 31(6) Highways Act 1980 that the Open Space has not been dedicated to the public nor is any use by the public of any part of the Open Space to be taken in any way as an intention by the Owner to dedicate the same as highway.
- 5.7 The Owner will procure that public access is allowed to the Open Space but subject to the following provisions:
- 5.7.1 access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management **PROVIDED THAT** such requirements and regulations shall not be imposed without the District Council's prior written approval; and
 - 5.7.2 notices may be erected on the Open Space and access to them will be denied by the Owner or the Management Company for 1 (one) day each year in order to prevent public rights of way or common rights coming into being; and
 - 5.7.3 access may be denied by the Owner or the Management Company for and during the maintenance, repair cleansing or renewal of the Open Space or for and during the construction of any building or land abutting it subject to the District Council's prior approval.

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

5.8.1 emergency; and/or

5.8.2 cleansing, maintenance and repair; and/or

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

5.8.4 construction activities whilst the proposed development is being built if in the interests of health and safety.

6 General

6.1 The Owner covenants to give the District Council not less than 21 (twenty one) days prior written notice of:

6.1.1 the Commencement of Development; and

6.1.2 Occupation of the first (1st) Dwelling; and

6.1.3 Occupation of the 50th (fiftieth) Market Dwelling; and

6.1.4 Occupation of the 40th (fortieth), the 60th (sixtieth) and the 80th (eightieth) Dwelling.

6.2 The Owner covenants to give the District Council written notice upon Commencement of Development.

SECOND SCHEDULE
(Council's Covenants)

The District Council covenants with the Owner as follows:

1 Affordable Housing

- 1.1 In the event that the Owner serves notice on the District Council pursuant to **paragraph 1.10 of the First Schedule** 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 prior to the first Occupation of 50 (fifty) of the Market Dwellings (or such other number of Market Dwellings that may be first agreed in writing by the District Council).
- 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 the District Council determines that an Affordable Housing Contribution is payable, the District Council hereby confirms that upon receipt of payment of the Affordable Housing Contribution the Owner will be released from the obligations relating to Affordable Housing in this Agreement.
- 1.4 In the event that a Subsequent Owner pays to the District Council any sum under **paragraph 1.14 of the First Schedule** 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.
- 1.5 If all or any part of the Affordable Housing Contribution shall remain unexpended after the period of 5 (five) years from the date of payment of the final instalment by the Owner to the District Council it shall following receipt of a request from the Owner repay such unexpended monies to the Owner (or to the Owner's nominee) together with interest thereon calculated from the date of payment to the date of repayment.

2 Bus Stop Infrastructure Contribution

- 2.1 To pass to the County Council the Bus Stop Infrastructure Contribution following receipt of written confirmation from the County Council that:

2.1.1 Such monies shall be used solely for the purposes specified in this Agreement in the definition Bus Stop Infrastructure Contribution and for no other purpose whatsoever; and

2.1.2 If all or any part of the Bus Stop Infrastructure Contribution shall remain unexpended or uncommitted after the period of 7 (seven) years from the date of payment of the final instalment by the Owner to the District Council it shall following receipt of a request from the Owner or the District Council repay such unexpended or uncommitted monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment

2.2 To forward to the Owner (or the Owner's nominee) any monies received from the County Council pursuant to **paragraph 2.1.2 of this Schedule.**

3 Sustainable Transport Contribution

3.1 To pass to the County Council the Sustainable Transport Contribution following receipt of written confirmation from the County Council that:

3.1.1 Such monies shall be used solely for the purposes specified in this Agreement in the definition of Sustainable Transport Contribution and for no other purpose whatsoever; and

3.1.2 If all or any part of the Sustainable Transport Contribution shall remain unexpended or uncommitted after the period of 7 (seven) years from the date of payment of the final instalment by the Owner to the District Council it shall following receipt of a request from the Owner or the District Council repay such unexpended monies to the District Council together with interest thereon calculated from the date of payment to the date of repayment.

3.2 To forward to the Owner (or the Owner's nominee") any monies received from the County Council pursuant to **paragraph 3.1.2 of this Schedule.**

4 Public Open Space Contribution

4.1 To use the Public Open Space Contribution solely for the purposes set out in this Agreement in the definition for Public Open Space Contribution and for no other purpose whatsoever.

4.2 If all or any part of the Public Open Space Contribution shall remain unexpended or uncommitted after the period of 7 (seven) 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.

5 Public Realm Contribution

5.1 To use the Public Realm Contribution solely for the purposes set out in this Agreement in the definition for Public Realm Contribution and for no other purpose whatsoever.

5.2 If all or any part of the Public Realm Contribution shall remain unexpended or uncommitted after the period of 7 (seven) 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.

6 Healthcare Contribution

6.1 To hold the Healthcare Contribution in an interest bearing account upon receipt from the Owner.

6.2 Following receipt of the Healthcare Contribution to transfer the Healthcare Contribution to the ICB only upon receipt of a written confirmation from the ICB that the ICB will apply the Healthcare Contribution for the purposes set out in this Agreement.

6.3 To return to the party who paid the Healthcare Contribution any part thereof paid to the District Council under this Agreement that has not been transferred to the ICB in accordance with paragraph 6.2 of this Schedule or committed to be transferred to the ICB together with any interest accrued after the expiry of 10 (ten) years from the date of receipt by the District Council of the Healthcare Contribution.

7 Monitoring

7.1 Following receipt of a written request from the Owner to produce full details of the expenditure of all monies referred to in paragraphs 2 to 6 (inclusive) of this Schedule and, if applicable, paragraphs 1 of this Schedule.

THIRD SCHEDULE
(Indexation Provisions)

1 In this Schedule:-

"**Index**" means 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.

"**Base Index Date**" means the date of this Agreement.

"**Base Index Figure**" means the figure published in respect of the Index immediately prior to the Base Index Date.

"**Final Index Figure**" means 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.

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: "A" equals the relevant contribution
"B" equals the Base Index Figure
"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 RPI 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.

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

EXECUTED as a DEED (but not delivered)
until the date hereof) by)
LESLIE LUTHER WILSON)
in the presence of:)



Signature

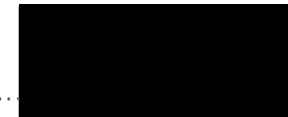
Signature witness: 

Name of witness: Michael John Taplin



Occupation: Solicitor

EXECUTED as a DEED (but not delivered)
until the date hereof) by)
ANN WILSON)
in the presence of:)



Signature

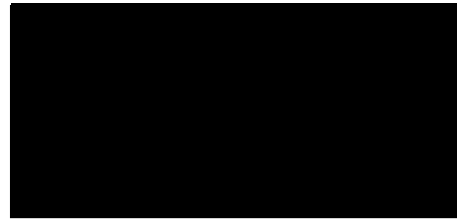
Signature witness: 

Name of witness: Michael John Taplin



Occupation: Solicitor

SIGNED as a DEED by)
PEVERIL HOMES LIMITED)
acting by a director in the presence of a witness:)



Director: J. A. SMITH

Witness Signature: [Redacted]
Witness Name: THOMAS WILLIAM BROSE
Address: [Redacted]
Occupation: DIRECTOR

THE COMMON SEAL OF)
ASHFIELD DISTRICT COUNCIL)
was hereunto affixed in the presence of: -)

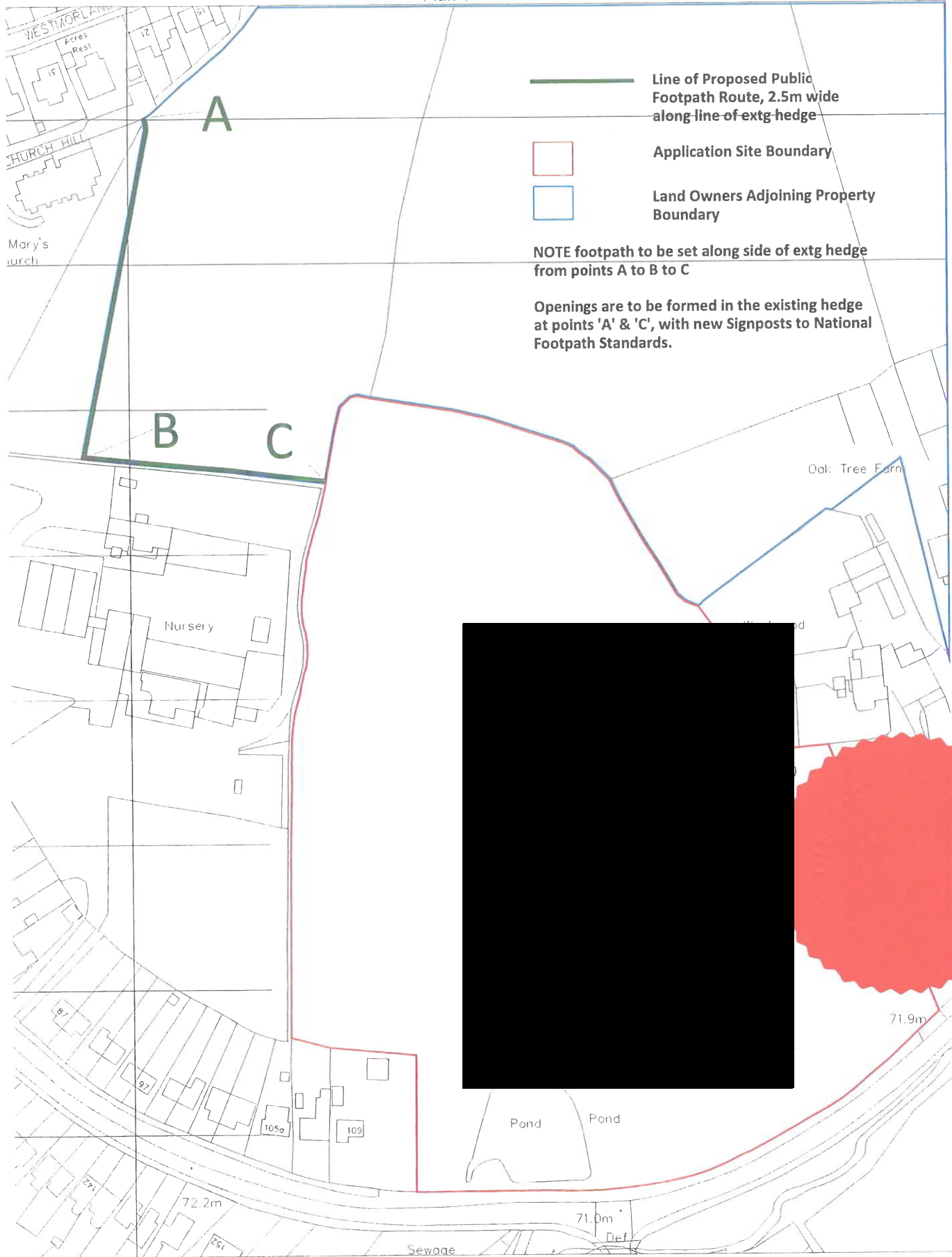


Chairman of the Council
[Redacted]

Authorised Officer
[Redacted]

Annex 1
(Plan 1)

Plan 1



— Line of Proposed Public Footpath Route, 2.5m wide along line of extg hedge

□ Application Site Boundary

□ Land Owners Adjoining Property Boundary

NOTE footpath to be set along side of extg hedge from points 'A' to B to C

Openings are to be formed in the existing hedge at points 'A' & 'C', with new Signposts to National Footpath Standards.

<p>Project: MAIN ROAD JACKSDALE Drawing: Footpath Link to Jacksdale Church Hill</p>	 <p>Peveril Homes homes to build a life in</p>	<p>Drawing No. 60164-FP01 Revision. B Scale. 1:1250 @ A3 Date. July 2023 Drawn. ARB</p>
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Annex 2
(Plan 2)

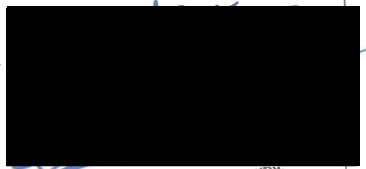
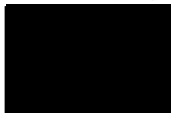
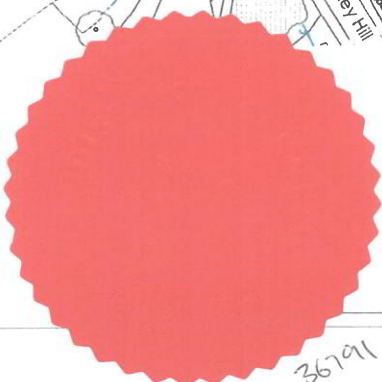
Planning Layout

Plan 2



Legend

Open Space to receive special planting & management with restricted access to provide enhanced ecology habitat and biodiversity



Scale
0m 10m 20m 30m

MCH 0001	1:500 @ A1	Viva Architecture & Urban Design
Jock Macleod	Dec 23	35 Freshwell Road
Peveril Homes		Manchester
		Stafford
		ST13 9AS
P.O.S. Area Allocation	20-465-P10	www.vivauad.co.uk

Peveril Homes
homes to build a life in

Viva Architecture & Urban Design

36791

Annex 3
(Open Space Management Plan)

Land North of Main Road, Westwood
Landscape & Ecological Management Plan

Client: Peveril Homes

27th July 2023 – Issue 2

Ref: GL1387

Report Issue 1: 25-02-2021

Status: DRAFT

Author: Joel Stanley

Report Issue 1: 27-07-2023

Status: FINAL

Author: Dave Carter CMLI

Golby + Luck Ltd
Wilson House
207 Leicester Road
Ibstock
Leicestershire
LE67 6HP

t: 01530 265688

e: info@golbyandluck.co.uk

w: www.golbyandluck.co.uk





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2 MANAGEMENT SCHEME REVIEW & MAINTENANCE SCHEDULES 134



1 MANAGEMENT OPERATIONS

Introduction

- 1.1 This Landscape Management Plan has been prepared by Golby + Luck Landscape Architects in support of the planning application by Peveril Homes for the residential development at Land North of Main Road, Westwood. This document provides a comprehensive schedule of maintenance for annual operations and a 20-year management plan for the proposed open spaces, continuing the previously approved management regime for the earlier phases.
- 1.2 The initial landscape contract will include 12 months maintenance and defect liability period. Following the initial 12-month maintenance defect liability period the landscape areas will be covered by the approved Contractor who will take responsibility for all hard and soft landscape elements on a running contract managed by the appointed residents Management Company. This plan will run in perpetuity, and will be reviewed at 5 year intervals so that operations can be adapted to the development of the landscaping scheme.
- 1.3 The overall objectives for this management plan are:
- To secure the long-term health and retention of the existing trees and hedgerows to the site and secure wildlife and ecological benefits where possible;
 - To secure the implementation and establishment of the proposed landscaping scheme, and to secure wildlife and ecological benefits;
 - To establish a functional and attractive public open space network that contributes to the visual amenity of the site and enjoyment by users;
 - To ensure best horticultural and health and safety practices at all times;
 - To maintain high standards of landscape development through considered management procedures;
 - To ensure that methods employed respect and encourage wildlife at all times; and
 - Defects in the landscape are identified early and addressed promptly.
- 1.4 This document should be read in conjunction with the latest revision of the site landscape proposals, see **Appendix A**. This drawing details all existing and proposed habitats.
- ### Insurances and Certification
- 1.5 The appointed Contractor must provide details of all necessary insurances and certification to carry-out the works specified in this management plan. It is the responsibility



of the Management Company to ensure that all submitted insurances and certificates are up to date and provide the appropriate level of cover for the specified works.

Landscape Operations

1.6 The following sets out the landscape components that are considered in detail in this management plan:

- Litter and debris removal;
- Management of existing trees and hedgerows;
- Amenity grass cutting;
- Meadow grass cutting;
- Native tree and shrub maintenance;
- Amenity tree and shrub maintenance;
- Amenity Hedgerow maintenance;
- SUDS maintenance;
- Hard landscape and site furniture maintenance; and
- Children's play area.

Environmental Considerations

1.7 All chemical weed control must be carried out by suitably trained staff in accordance with the manufacturers recommendations and the legislation set out below:

- The Food and Environment Protection Act (1985);
- The Control of Pesticides Regulations 1986 (COPR) (as amended 1997);
- The Control of Substances Hazardous to Health Regulations (2002);
- The Environment Protection Act (1990)

1.8 It is the Contractors responsibility to ensure that all operatives are conversant with the foregoing legislation and other relevant Codes of Practice and British Standards. The Contractor will make any notifications as are required under the terms of The Food and Environment Protection Act (1985), and will be responsible for any damage caused through the inappropriate use or application of any such hazardous substances.

1.9 Horticultural peat is not to be used as mulch on any beds or as a soil conditioner.

1.10 Where appropriate arisings from the site should be recycled. In the case of fallen or lopped tree material this can be located within areas of undergrowth, away from key public spaces, to form eco-stacks. The creation of such features must be done so in



consultation with the Management Company and should not be used as a measure to dump arisings on the site.

- 1.11 All arisings (unless otherwise specified) will be removed from site and deposited at an approved tip or registered green compost facility.
- 1.12 Watering operations will be carried out as specified in this management plan. A water source will be identified by the Management Company. If no water source is available then watering will be carried out using a bowser.

Landscape Management Preambles

- 1.13 The Contractor will visit the site and take note of all existing conditions including levels, condition of vegetation, soil conditions, and access. No claims that are based on a lack of understanding of the site or the nature of the work required to carry out the operations in this plan will be entertained.
- 1.14 At all times care will be taken to avoid interference with the established levels and contours of the ground, and to avoid damage to footpaths, roads, drains, manholes and existing structures and vegetation. Damage so occasioned is to be made good at the Contractors expense.
- 1.15 All work will be carried out by experienced and qualified operatives holding the necessary training certificates to undertake the prescribed works. All works detailed in the following specifications shall be carried out in accordance with good horticultural practice, using materials, plant and machinery appropriate to the task, undertaken in such a manner that avoids damage and/or nuisance to the site and its surroundings. Any plant material that dies as a result of the Contractors neglect will be replaced at their cost.

Litter Removal

- 1.16 The Contractor will ensure that the entire site is kept free of litter and other debris through a regular programme of monitoring, collection and disposal, coinciding with visits to maintain grassed areas and planting.
- 1.17 Particular care will be taken to remove all broken bottles, glass, tins, sharp objects and other items likely to constitute a hazard to the public.
- 1.18 The Contractor will take particular care when carrying out litter collection to ensure that any discarded needles or syringes are removed as soon as they are discovered. Such items must be packaged separately from other litter, and be contained within



- appropriately labelled, puncture-proof sharps containers and disposed of in a safe manner.
- 1.19 The Contractor must ensure that all operatives likely to come into contact with needles and syringes have been instructed in the means of safe collection and disposal, and that they have been issued with, and wear, adequate protective gloves and footwear to protect against penetration of needles and other sharp objects.
- 1.20 All litter and debris shall be removed off site to an authorised tip specified by the Contractor.
- 1.21 This shall be carried out in accordance with the Code of Practice on Litter and Refuse issued under Section 89 of the Environment Protection Act (1990).

Management of Existing Trees and Hedgerows

- 1.22 Following the completion of the construction phase and commencement of the landscape management phase all levels and surface finishes will be checked around all retained trees and boundary hedgerows. Where levels and/or surfaces are considered unsatisfactory these will be rectified to a satisfactory condition.
- 1.23 At each visit all trees and hedgerows will be inspected and cleared of litter and debris in accordance with the details set out above.
- 1.24 All works to trees and hedgerows will be carried out to avoid the Birds Nesting Season (March to August inclusive). Any works to retained trees must be approved by a qualified Ecologist to safeguard potential bat habitat.
- 1.25 Retained trees will be inspected at each visit and any deadwood considered dangerous will be removed in accordance with the recommendations set out in BS 3998: 2010 'Tree work recommendations'.
- 1.26 Any deadwood in trees will be either retained on site in the form of eco stacks/vegetation piles or removed from site to a registered tip.
- 1.27 Retained native hedgerows will be cut every other year, or on a rotation cycle to ensure that not all sections of hedgerow are cut in the same growing season. Where appropriate sections of hedgerow should be left to allow the maximum opportunity to:
- Encourage species diversity;
 - Provide suitable habitat for ground foraging wildlife;



- Provide suitable habitat for nesting birds and insects; and
 - Maximise opportunity for pollen and nectar production as a resource for bees and butterflies.
- 1.28 Operations should be carried out to encourage the wildlife and biodiversity potential of all native hedgerows. Further guidance can be found in Hedgerow cutting: answers to 18 common questions – Natural England (2007). Reference should also be made to Hedgelink UK (www.hedgelink.org.uk).
- 1.29 Native hedgerow margins (existing & proposed): where hedgerows adjoin amenity grassland a minimum margin width of 500mm shall be maintained as longer grass for bio-diversity value. Grass shall be cut once per annum to 300mm in height. Grass shall be cut by means of tractor mounted or pedestrian guided rotary, flail or reciprocating blade machines.
- 1.30 Suitable safety precautions should be taken during cutting to protect workers carrying out the task and members of the public from any hazards that could potentially be caused by this work.
- 1.31 Where necessary the hedgerow will be gapped up using appropriate native species to be planted as transplanted and/or container stock with proprietary spiral guards and cane supports and/or shrub shelters and stakes, as necessary.
- 1.32 All arisings are to be removed from site to the Contractors specified tip.
- Amenity Grassland**
- 1.33 Prior to cutting all areas will be cleared of litter and debris in accordance with the section detailed above.
- 1.34 All operations will be carried out using machinery appropriate to the task; cylinder, rotary or mulch mowers. Mowing operations will only be carried out during appropriate weather conditions avoiding sustained periods of rain, heavy frost, snow, and waterlogging.
- 1.35 Operations will be suspended where ground conditions prevent the use of machinery without damage to the ground surface. Where operations are suspended due to unsuitable conditions additional maintenance visits will be agreed in order to maintain the sward within acceptable growth limits.
- 1.36 During each maintenance visit the Contractor will cut adjacent to fences, walls, kerbs, paths, trees and other boundaries or obstacles using equipment suitable to the task.



Strimmers will not be used around the base of trees. Strimming will be restricted leaving an un-cut sward at the base of each trees of a radius of not less than 500mm from the outside edge of the trunk. The frequency of cuts shall remain flexible in order to accommodate growth rates and weather conditions. As a general guide cutting is likely to be required every two weeks in high maintenance areas, ensuring that the sward height does not exceed 75mm and that the presence of flowering weed species is suppressed. The height of cut shall be 30mm. The Contractor is required to assess growing conditions and adjust maintenance schedules as necessary, taking into account bulb planting where it occurs.

- 1.37 All cuttings are to be evenly dispersed over the ground.
- 1.38 Following cutting, all grass clippings and other debris shall be swept from adjacent areas of hard standing and removed from site to an authorised tip, or dispersed over the plot.

Meadow Grassland

- 1.39 During the 1st year of establishment meadow grassland will be cut twice in each growing month to maintain a balance between the faster growing species and flowers. The grassland will be mown to a height of 40-60mm with arisings cleared from the site.
- 1.40 In following seasons prior to cutting all areas shall be cleared of litter and debris in accordance with the section detailed above. To maintain diversity, all meadow grass areas will be cut annually in late June to end of August following flowering (the summer hay cut). An autumn cut will be carried out in November to leave the grass short over the winter period (cut to 40-75mm). If required a spring cut should be carried out prior to the end of May to remove the first flush of grass (cut to 40-75mm). All arisings are to be removed from site unless otherwise directed.
- 1.41 The diversity of the grassland should be subject to on-going monitoring to ensure maximum ecological benefit.

Native Tree and Shrub Planting

- 1.42 Native tree and shrub planting will be managed to achieve full natural growth potential and deliver its landscape function.
- 1.43 Year 1. Areas of new tree and shrub planting will be attended to monthly. All stock deemed to be dead, dying or diseased within this period will be replaced. Weed clearance: all planting areas are to be kept weed free by hand weeding.

Litter clearance: all litter is to be removed from planting beds



Watering: planting areas are to be brought up to field capacity at each visit and each tree is to receive 20 gallons

Checking trees: all tree ties and stakes are to be checked and adjusted if too loose, too tight or if chafing is occurring; any broken stakes are to be replaced.

Formative pruning: any damaged shoots/branches are to be pruned back to healthy wood; plants are to be pruned in accordance with good horticultural practice to maintain healthy well-shaped specimens. Trees adjoining pedestrian or vehicular thoroughfares should be crown-lifted as necessary to maintain suitable clearance.

- 1.44 Year's two to five inclusive. Areas of new tree and shrub planting will be attended to three times during the growing season (April to September inclusive) and one during the dormant period (October to March inclusive). The following operations will be carried out on each visit:

Litter clearance: all litter is to be removed from planting beds.

Firming up: all plants to be checked and firmed up in the ground as necessary.

Pruning: any damaged shoots/branches are to be pruned back to healthy wood using secateurs cutting back to above a live outward facing bud or shoot. Trees adjoining pedestrian or vehicular thoroughfares should be crown-lifted as necessary to maintain suitable clearance.

Weed clearance: weed growth to be eliminated during summer visits by hand removal. Tree shelters shall be lifted as necessary to achieve weed control and re-firmed in the ground after completion of the work. Dead weed material shall be removed during the following visit to site.

Grass control: grass growth within the planting beds shall be controlled with strimming and hand removal.

Tree shelters: tree shelters (if fitted) shall be checked at each visit, stakes firmed up as necessary and ties adjusted. Any missing or vandalised shelters or ties shall be replaced and lopsided shelters straightened.

Dead trees/shrubs: any dead trees or shrubs are to be removed and the resulting hole filled. Replacement planting is to be carried out during the next planting season.

- 1.45 Year 6 onwards. The appropriate level of annual maintenance for new tree and shrub planting will be dependent on how well the trees and shrubs have established. The number of maintenance visits will generally be reduced from year six onwards, although



the same operations as described above are likely to be required until at least year ten. At least two visits should be undertaken each year, one at the start of the growing season and one at the end of the growing season to inspect stakes and ties. Any looseness, constriction or abrasion will be corrected by adjustment or replacement as needed. Where stakes are no longer required, they will be removed from site. Dead trees are to be replaced, as required. At year ten the overall condition and structure of planting will be reviewed and a programme for future management prepared.

Specimen Tree Planting

- 1.46 All tree works will be carried out in accordance with BS8545: 2014 'Trees: from nursery to independence in the landscape – Recommendations'. More specifically all trees will be inspected at each visit in accordance with the young tree quality assessment set out under Figure D.4 (page 53) of BS8545. Formative pruning will be carried as necessary in accordance with Figure G.1 (page 73) of the BS8545. Trees identified as being defective, declining, or damaged by the adopting authority will be replaced at the Contractor's expense, unless evidence can be provided to demonstrate that the defective nature, decline, or damage to the tree(s) was beyond the control of the Contractor.
- 1.47 In years 1 – 5 following planting, trees are to be watered as required between March and September to maintain a vigorous and healthy condition. Trees are to receive 5 gallons of water per tree or be watered to field capacity. As a guide, a minimum of 12 watering visits are likely to be required annually in years 1 – 3, however, this may be adjusted relative to weather conditions such as prolonged dry or wet spells. Where necessary, a suitable nitrogen, phosphorus and potassium (N:P:K) fertiliser should also be selected by the Contractor, based on the site's existing soil conditions, and applied to trees in April.
- 1.48 All staked trees will be inspected at each maintenance visit, and any trees which have died or are excessively damaged will be removed from site, complete with the stake, and the ground reinstated.
- 1.49 Mulched areas around trees will be maintained to an acceptable standard (see details on mulching standard set out below in reference to amenity shrub planting).
- 1.50 At the start and end of each growing season all stakes, ties and guying systems will be inspected. Any looseness, constriction or abrasion will be corrected by adjustment or replacement as necessary. Where the support of a stake is no longer required the stake will be removed from site.



1.51 Any trees which have died as a result of the Contractors operations or omissions will be replaced by the Contractor at their expense during the next planting season.

1.52 Where the appointing company has agreed that plant deaths have arisen due to circumstances out of the control of the Contractor, replacement planting will be instructed by the appointing company and paid for at an agreed rate.

Amenity Shrub Planting

1.53 During years 1-5 or until canopy closure, planting will be maintained during annual visits.

1.54 Prior to maintenance, all areas shall be cleared of litter and debris in accordance with details set out above.

1.55 All plants will be checked and where necessary firmed into the ground.

1.56 Any damaged shoots or branches will be pruned using secateurs.

1.57 The Contractor will ensure that all shrub beds are maintained 90% free of weed growth. This shall normally be achieved by hand removal, although it remains the responsibility of the Contractor to adopt other methods where this is unsuccessful.

1.58 The Contractor will remove any dead, dying or diseased plants, during each maintenance visit. The appointing company will be informed of the location, number and species of all material that has been removed. Any plants that have died as a result of the Contractor's operations or omissions will be replaced by the Contractor at their expense during the next planting season.

1.59 Where the appointing company has agreed that plant deaths have arisen due to circumstances out of the control of the Contractor, replacement planting will be instructed by the appointing company and paid for at an agreed rate.

1.60 All replacement planting will be carried out using similar species to those removed unless alternative species are agreed with the appointing company.

1.61 In any mulched beds where the depth of cover is below 50mm additional mulch will be added to maintain a minimum of 50mm of cover.

1.62 The Contractor will clean all hard standing, gullies, drains, and grassed areas of soil spillage, bark mulch, and leaves. All arisings will be removed from Site to an approved tip.



Amenity Hedgerow Planting

- 1.63 Prior to maintenance, the hedge line shall be cleared of litter and debris in accordance with the litter removal section as detailed above.
- 1.64 Pruning will be carried out using mechanical cutters according to the type of hedge. Correct equipment and attachments must be used.
- 1.65 All cuts will be clean, and any ragged edges will be removed using a sharp knife except where it has agreed that a side arm flail or reciprocating knife blade mechanical cutter may be used to carry out the work.
- 1.66 Unless otherwise stated, current growth will be removed back to a regular line and shape with the width at the top edge less than at the base and the general shape as that which existed at the completion of the last approved pruning.
- 1.67 Frequency of hedge cutting will depend on the species mix and the locality of the hedge. In general, amenity hedgerows will be cut once following the conclusion of the bird nesting season (March to September inclusive). Hedge growth will be monitored throughout the year and pruned if excess growth presents an obstruction.
- 1.68 The base of hedges shall be inspected and if necessary kept free of weeds through mechanical maintenance and hand removal. In locations where the development of a base layer is desirable vegetation shall be left to develop. Such locations are to be agreed with by the appointing company only.

SUDS Facility

- 1.69 The grass areas within the facility have been specified to cater for seasonal flooding and damp conditions, and will only require limited management. In addition areas of native shrub planting with tree planting have been specified to the boundaries of the facility to provide increase habitat and foraging opportunities.
- 1.70 The attenuation pond will be managed in accordance with CIRIA SUDs Manual C753. At each maintenance visit the Contractor will inspect the SUDS facility and remove any branches and leaf debris and/or any other object that are likely to restrict water flow/capacity. All areas will be inspected and cleared of litter and other debris in accordance with the details set out above.
- 1.71 The Contractor will inspect all outfall features, check grilles (if present), and remove any obstructions.



- 1.72 Excess silt is to be removed from the base of facilities to maintain volume capacity and safeguard functionality of the balancing ponds themselves as necessary. A suggested 5-10 year clean-out cycle is to be adopted initially but this is to be monitored and reviewed by the contractor.
- 1.73 Where material is removed it should be placed for a maximum of 2 days at the edge of the pond to allow insects and creature to return to the waterbody. Following this period all material will be removed from site to the Contractor's tip.
- 1.74 The management of the pond should be reviewed by the ecological consultant and appropriate measure taken to enhance biodiversity and wildlife potential where appropriate, and without affecting the drainage function of the pond.

Hard Surfaces and Street Furniture

- 1.75 The Contractor will check at each visit that all the hard surfaces and street furniture is safe and fit for purpose.
- 1.76 Hard surfaces are to be reviewed at each visit. Any damage is to be recorded and made good either during the visit or at the following visit. If the repairs cannot be carried out or completed the Contractor will make the area safe and/or cordon off any sections that present a hazard. Any such areas will be made good as soon as practically possible. Every effort should be made to match into the original materials, making sure line/levels are correctly adhered to.
- 1.77 All roads and paths will be kept clear of weed and moss growth through mechanical sweeping. Hard surfaces will be swept at each visit.
- 1.78 All furniture will be maintained to a standard so that it is clean, safe and fit for purpose at all times. Any damage will be made good during the maintenance visit. Otherwise the item will be made safe and/or cordoned off and made good as soon a practically possible. All repairs to street furniture will be carried out using parts sourced from the supplying manufacturer and carried out in accordance with their guidelines.

Children's Play Area

- 1.79 Prior to the play area opening for public use the Management Entity will produce a play area risk assessment in accordance with the Management of Health and Safety at Work Regulations 1999 and RoSPA guidelines. This will include the identification of 'risk', assessing the risk and actions for risk reduction. This will be retained by the Management Entity and reviewed on an annual basis.



- 1.80 At each maintenance visit all areas will be cleared of litter and debris in accordance with the section set out above.
- 1.81 All areas for play will be inspected and maintained in accordance with requirements of BS EN 1176/77 and best practice guidelines from the Royal Society for the Presentation of Accidents (ROSPA).
- 1.82 Recorded weekly safety inspections will be carried out by RoSPA qualified play inspectors, followed up by a 6 weekly structural check. The frequency may vary depending on use or with any variation agreed with the Management Entity and Local Authority following best practice guidance.
- 1.83 A visual assessment of all facilities will be undertaken at each site visit by the Management Entity. Any defects or hazards considered dangerous are to be dealt with immediately by immobilising the item and making the item safe until repair and only if necessary, will the play facilities will be closed until appropriate measures have been taken to make the facilities safe and fit for purpose. The Local Authority is to be notified of any closures
- 1.84 All inspections as set out above are to be carried out by a suitably qualified person (please refer to the Register of Play Inspectors International (RPII) for requirements).
- 1.85 An Outdoor Annual Inspector accredited by the RPII shall carry out certified inspections annually, and permanent record maintained to ensure continued compliance with legislation.
- 1.86 Contact details for the Management Entity will be displayed in a suitable location at each play facility and updated should this change promptly. The contact information must include a direct telephone number so that any faults can be reported and dealt with in an appropriate timeframe. The Management Entity to have out of hours arrangements to allow reporting of faults at any time.
- 1.87 Maintenance of equipment and safety surfacing will be undertaken in strict accordance with the manufacturer's recommendations. This will include painting, vandalism, graffiti and sweeping.
- 1.88 All replacement parts must be sourced from an accredited manufacturer/supplier and be appropriate for the intended use. The Management Entity is to retain a record of all warranty inspections, maintenance, repairs and modifications carried out to any part of the play apparatus and/or associated safety surfacing.



2 MANAGEMENT SCHEME REVIEW & MAINTENANCE SCHEDULES

2.1 The sequence of agreement, monitoring and review is set out below. It is envisaged that at each stage agreement will be reached between the Contractor, Management Company, and the Local Authority. It is the responsibility of the Contractor to bring to the attention of the Management Company any issues that require immediate attention. Any such issues left unchecked that result in permanent damage or degradation of the landscape and associated environment will be put right at the Contractors expense. The stages of agreement, monitoring and review are set out below:

- Management scheme and annual maintenance schedules to be agreed by all parties involved (including the Local Authority) in the on-going management of the landscape and features specific to this plan;
- At the end of year 1 the Contractor, Management Company and the Local Authority are to meet on site and review all open spaces;
- Following this monitoring stage appropriate adjustments to the management objectives, operations and frequencies of visits are to be agreed in writing between the Contractor, Management Company, and the Local Authority;
- Monitoring visits and amendments to the plan are to be continuous between years 1 to years 5;
- At the end of year 5 there will be a wholesale review of this scheme and any changes to it (including the removal/insertion of operations and/or the change in frequency of operations) will be agreed between the Contractor, Management Company, and the Local Authority.

2.2 The following tables set out the Year 1 maintenance schedule.



Management Scope: Maintenance Activity	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Litter & debris removal												
Pick all litter from areas of hard and soft landscape and remove from site.	•	•	•	•	•	•	•	•	•	•	•	•
Existing Trees and Hedgerows												
Inspect all existing trees and hedgerows.	•	•	•	•	•	•	•	•	•	•	•	•
Action required works to existing trees and hedgerows. Where possible works should be programmed for dormant period (October to March). Carry out works in accordance with BS 3998: 2010.	•	•	•							•	•	•
Carry out hedgerow maintenance biennially and adopt a rotational maintenance strategy to ensure that not all hedgerows are cut in the same growing season.										Biannual rotation cut		
Inspect hedgerow at each visit carryout infill planting measures as necessary.	•	•	•							•	•	•
Remove cuttings from site.										•		
Amenity grassland												
Cut grass and remove arisings from site.				•	•	•	•	•	•	•	•	•
Control/remove weeds.				•	•	•	•	•	•	•	•	•
Repair worn areas.				•	•	•	•	•	•	•	•	•
Remove cuttings from site.										•		



Meadow grassland												
Cut grassland twice in each growing month (Year 1 only)					•	•	•	•	•	•		
Cut grass in following years in late June and end of August								•				
Autumn cut carried out to leave grassland short over the winter period (40-75cm)												•
As required a spring cut can be carried out to remove the initial flush of grass cover					•							
Native tree & shrub planting												
Hand weed. No strimmers to transplant areas.					•					•		
Replace shelters and guards as necessary, firm plants as required					•					•		
Replace dead/dying/yandilised transplants and shelters					•							
Prune back plants encroaching over kerbs/road edges etc										•		
Remove shelters/stakes/flies from established plants	Approximately 4-5 years after planting											
Coppice shrubs species (except Holly)	Approximately 4-5 years after planting. Carryout works between October to March											
Specimen tree, shrub & hedgerow planting												
Spray grass and weeds (no strimmers to bases)									•			
Water and fertilise as necessary as specified					•	•	•	•	•	•	•	•



Adjust/ replace stakes/ties/guards as necessary	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Check stability/remove stakes/guys when ready	Approximately 4-5 years after planting																			
Replace dead/dying/vandalised trees	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Deal with individual problems as they arise	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Prune to BS. 3998 2010 or horticultural standards as appropriate for species																				
Prune amenity hedgerows.																				
SUD's Facility																				
Inspect SUDS facility and remove all litter and debris. Ensure that channel and outfalls are free of obstructions.	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Programme specific operation to remove leaf litter during autumn months. Allow for 2 day creep back period.	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Mow grassland within SUDS facility.																				
Annual inspection to review management and agree wildlife and biodiversity enhancement measures																				
Hard landscape & site furniture																				
Inspect, clean, repair or replace.	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•



<p>Where repairs cannot be made good at time of visit and additional visit will be programmed as soon as practically possible to make any repair good and the item fit for purpose. During any such delay it is the Contractor's responsibility to ensure that all areas are made safe and remain safe until any such repairs are completed.</p>													
<p>Children's Play Area</p>													
<p>Visually inspect children's play areas. Inspection to be carried out by qualified staff member. Observe any hazards, defect or act of vandalism.</p>													
<p>Any repairs are to be carried out during the inspection. Otherwise the facility is to be made safe and works programmed within a reasonable timeframe.</p>	<p>Any repair works that cannot be carried out at the maintenance visit are to be programmed in as soon a practically possible taking into consideration order lead in times etc. Any temporary closure of and/or partial closure of the facility is to be checked on a daily basis to ensure that the area remain safe and for purpose until such time that the facility is in full working order.</p> <p>Initially frequency of play area maintenance to be every visit. To be reviewed / determined more accurately once in use and usage pattern can be confirmed. Best practice to be followed with any variation to monthly inspections will be agreed with the appointing authority.</p>												



Appendix A

Soft Landscape Proposals



ECOLOGICAL RESTORATION

The site plan includes a series of numbered units (1-81) and various annotations. A red line traces a path through the site. The plan shows building footprints, courtyards, and landscaping elements like trees and shrubs.

LANDSCAPE SCHEDULE

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golby+luck 
landscape architects

Tel: 01530 265688 Web: www.golbyandluck.co.uk

Email: info@golbyandluck.co.uk

Office: 207 Leicester Road, Ibstock, Leicestershire, LE67 6HP
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