



DISCLAIMER

This document or some parts of it may not be accessible when using adaptive technology.

If you require assistance with accessing the content of the document, please contact the Planning team and quote the document name and the web page you found it on:

- telephone: 01623 457313.

THIS AGREEMENT is made the 2nd day of March 2007

BETWEEN:

(1) **BOVIS HOMES LIMITED** (Company Number 397364) of The Manor House, North Ash Road, New Ash Green, Longfield, Kent, DA3 8HQ ('the Owner')

(2) **ASHFIELD DISTRICT COUNCIL** of Council Offices, Urban Road, Kirkby-in-Ashfield, Nottinghamshire, NG17 8DA ('the Council')

1. **Definitions**

IN THIS AGREEMENT the following words and phrases shall have the following meaning:-

1.1. "the Act" means Town and Country Planning Act 1990 (as amended) and terms not otherwise defined in this Agreement have the meaning ascribed to them in the Act unless a contrary intention appears

1.2. 'Affordable Housing Units' means the Dwellings to be constructed on the Application Site which are designated as the Affordable Housing Units on the Layout Plan and which shall be provided by the Owner in accordance with the terms of Clause 6 and the Third Schedule

1.3. 'non-Affordable Housing Units' means the Dwellings to be constructed on the Application Site other than the Affordable Housing Units

1.4. "the Application" means the Planning Application dated 23rd June 2006 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2006/0564

- 1.5. "the Application Site" means the land for which planning permission is sought to carry out the Proposed Development and which is shown for the purposes of identification only edged red on the Plan
- 1.6. 'agreed' or 'approved' means agreed or approved in writing and given for the purpose of this Agreement and where this Agreement requires any matter to be approved by the Council such approval shall not be unreasonably withheld or delayed
- 1.7. 'the POS' means any and all land designated as public open space on the Layout Plan which is laid out as Public Open Space pursuant to Condition 16 the Planning Permission
- 1.8. 'Commencement of the Proposed Development' or cognate terms means the point at which the Owner has implemented the Planning Permission (or as the case may be the detailed consent pursuant to a Subsequent Application) by carrying out a material operation as defined in Section 56(4) (a)-(d) of the Act other than the carrying out of development comprising trial holes bore pits or other ground investigation works or any other works relating to archaeology, ground surveys, works of demolition or the erection of advertisement hoardings.
- 1.9. 'Dwelling(s)' means (a) separate residential unit(s) and shall include both Affordable Housing Unit(s) and non-Affordable Housing Unit(s)
- 1.10. 'Education Authority' means Nottinghamshire County Council or such other Local Government Authority or Public body as shall for the time being have the statutory duty to provide compulsory state education within the area of Hucknall
- 1.11. "Education Need" means the provision of additional primary and secondary school accomodation within Hucknall necessitated by the cumulative effect of the Proposed Development and other immediately anticipated developments in the vicinity of the Proposed Development

- 1.12. 'Education Contribution' means a payment to be made pursuant to paragraph 3 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of the Second Schedule.
- 1.13. 'the Layout Plan' means the Bovis Homes drawing 'Planning Layout Revision K' dated 11.09.06 a copy of which is attached to this Agreement
- 1.14. 'the Obligations' means the planning obligations contained or referred to in the First, Third, and Fourth Schedules to this Agreement
- 1.15. 'the Open Space Maintenance Payment' means a payment to be made pursuant to paragraph 4 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of the Fourth Schedule
- 1.16. 'Proposed Development' means the erection of dwellings, construction of means of access, provision of public open space, footpaths, cycle paths, landscaping and associated works as more particularly described in the Application
- 1.17. 'Registered Social Landlord' means a registered social landlord within the meaning of the Housing Act 1996
- 1.18. 'the Prior Agreement' means an Agreement in substantially the same form as this Agreement dated 17 November 2006 whereby the Owner covenanted to enter into this Agreement not later than seven days after acquiring the Application Site
- 1.19. Any reference to a Dwelling number is to the housetype and curtilage thereof of that number as shown and designated on the Layout Plan

2. **Recitals**

WHEREAS:-

- 2.1 The Owner completed the purchase of the Application Site on 31st January 2007 and is now seized of it for an estate in fee simple in possession free from incumbrances
- 2.2 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Application Site is situated
- 2.3 The Council's Local Plan Review adopted in November 2002 contains inter alia policies HG6 (Public Open Space requirements on new housing development), HG4 (Affordable Housing) and TR6 (Contribution to costs of Transport Initiatives from new development) and on 18th September 2003 the Council adopted a planning brief by way of supplementary planning guidance covering (inter alia) the Application Site
- 2.4 The Proposed Development will create Education Need estimated at 22 new primary places and 16 secondary places per 100 dwellings built on the Application Site and the Council has on 18th September 2003 adopted a development brief in respect of the Application Site which seeks a contribution towards meeting the Education need in accordance with paragraph 8.55 of the Local Plan Review.
- 2.5 The Council resolved on 21st September 2006 to grant planning permission for the Proposed Development in accordance with the Application subject to conditions and subject to the making of this Agreement without which planning permission for the Development would not have been granted
- 2.6 The Owner has agreed to enter into this Agreement for the purpose of procuring the issue of the Planning Permission

3. Enabling Powers

THE parties hereto enter into this Agreement under and pursuant to Section 106 of the Act.

4. **Planning Obligations**

4.1 The Obligations are planning obligations for the purposes of Section 106 of the Act to the intent that the Obligations (subject to the provisions of clauses 7.6 and 7.7 below) shall be binding and enforceable without time limit against the Owner and any persons deriving title from him in the manner specified in Section 106 of the Act.

4.2 The Council is the Authority entitled to enforce the Obligations.

5. **Conditionality**

The Obligations are conditional upon the issue of the Planning Permission.

6. **Covenant**

THE Owner hereby covenants with the Council pursuant to Section 106 of the Act that the Application Site shall be subject to the Obligations and that the Owner shall duly carry out and perform the Obligations

7. **Agreements and Declarations**

It is agreed and declared as follows:

7.1 Any reference to a party to this Agreement shall where the context so admits shall in the case of the Owner) include their successors in title and assigns and (in the case of the Council) include its successors in function

7.2 Words importing one gender shall be construed as importing any gender, and words importing the singular shall be construed as importing the plural and vice versa

- 7.3 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually
- 7.4 Any reference to a numbered clause, paragraph, schedule or plan is to one in or attached to the Agreement but any reference to a numbered paragraph occurring within a Schedule is to one within that same Schedule unless the contrary intention appears
- 7.5 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument direction or specification made or issued under the statute or deriving validity from it
- 7.6 No person shall be liable for breach of covenant contained in this Deed after he shall have parted with all interest in the Application Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 7.7 Upon the first transfer of a legal estate in each completed Dwelling comprised within the Proposed Development that completed Dwelling shall by operation of this paragraph be released from the Obligations save that any Affordable Housing Unit shall not be released from the Obligations contained in the Third Schedule
- 7.8 If the Planning Permission having been granted shall expire before the Proposed Development is begun, or shall at any time be revoked, this Agreement shall forthwith determine and cease to have effect
- 7.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the Planning Permission) granted after the date of this

Agreement

7.10 The Agreement is a Local Land Charge and shall be registered as such

8. Costs

The Owner shall on the execution of this Deed pay the Council's costs incurred in the preparation and settlement of this Deed in the sum of £250.00 (receipt whereof is acknowledged by the Council)

IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written

FIRST SCHEDULE

COMMUTED SUM PAYMENTS

1. There shall be paid by the Owner to the Council on the day prior to the Commencement of road construction on the Proposed Development for the improvement of existing open space and/or the provision of new open space and or the planting of community woodland within the administrative district of Ashfield in Nottinghamshire the sum of TWO HUNDRED AND NINETY ONE THOUSAND NINE HUNDRED AND EIGHT POUNDS (£291,908) (adjusted for inflation in accordance with paragraph 5)
2. There shall be paid by the Owner to the Council on the day prior to the Commencement of road construction on the Proposed Development for the improvement of public transport infrastructure including, bus priority measures, bus stop facilities, rail facilities, associated highway infrastructure to support public transport modes ONE HUNDRED AND SIXTY ONE THOUSAND FOUR HUNDRED AND SEVENTY THREE POUNDS (£161,473) (adjusted for inflation in accordance with paragraph 5)
3. There shall be paid by the Owner to the Council as an Education Contribution the sum of FIVE HUNDRED AND FORTY SIX THOUSAND EIGHT HUNDRED AND FORTY (£546,840) (adjusted for inflation in accordance with paragraph 6) by the following instalments:
 - 3.1 £273,420 (adjusted for inflation in accordance with paragraph 6) on the day prior to the first occupation of the 60th dwelling on the Application Site and
 - 3.2 £273,420 (adjusted for inflation in accordance with paragraph 6) on the day prior to the first occupation of the 120th dwelling on the Application Site

4. There shall be paid by the Owner to the Council the Open Space Maintenance Payment in the sum of FIFTEEN THOUSAND POUNDS (£15,000) (adjusted for inflation in accordance with paragraph 5) as provided in Paragraph 9 of the Fourth Schedule
5. Where any amount payable pursuant to paragraphs 1, 2 or 4 falls to be paid the amount shall be adjusted for inflation in accordance with the following formula :-

$$(P \div A) \times B$$

Where:-

P = the amount payable pursuant to paragraph 1, 2 or 4 as the case may be

A = the 'all items' figure of the Retail Prices Index published by the Office for National Statistics or any successor body (the 'RPI figure') in respect of the month of October 2006.

B = the RPI figure for the month in which the relevant Due Date falls

But so that if at any time B shall be less than A the amount payable pursuant to paragraphs 1, 2 or 4 as the case may be shall nevertheless be paid in full without reduction

- 6 Where any amount is payable pursuant to the provisions of paragraph 3 of this First Schedule the amount to be paid shall be adjusted for inflation in accordance with the following formula :-

$$\frac{(P \div A) \times B}{100} \times 104$$

Where:-

P = the amount payable pursuant to paragraph 3

A = the 'all items' figure of the Retail Prices Index published by the Office for National Statistics or any successor body (the 'RPI figure') in

respect of the month of January 2003.

B = the RPI figure for the month in which the relevant Due Date falls

But so that if at any time B shall be less than A the amount payable pursuant to paragraph 3 shall nevertheless be paid in full without reduction

PROVIDED ALWAYS that:

- (a) if such sum or any part thereof shall not be paid on or before its Due Date it shall carry interest at 4% per annum over the Base Lending Rate for the time being of Barclays Bank plc from the Due Date until actual payment and
- (b) if any payment due under this Agreement is to be paid prior to the first occupation of a particular Dwelling, no more than the number of Dwellings which is the trigger for that payment may be occupied until that payment has been made, and
- (c) payment of any commuted sum shall not in itself constitute commencement of the Proposed Development for the purposes of implementing the Planning Permission

SECOND SCHEDULE

TREATMENT OF EDUCATION CONTRIBUTIONS

Where in this Agreement reference is made to an Education Contribution the following provisions shall apply to such payment:-

1. Any Education Contribution received by the Council shall be ring fenced and be spent only in accordance with the following provisions of this Schedule.
2. The Council will work in conjunction with the Education Authority to procure that capital expenditure is undertaken by the Education Authority to make provision for the Education Need. The Council at its sole discretion will agree with the Education Authority a programme of works to address the Education Need but will, if at any time requested by the Owner in writing, advise the Owner of any works agreed pursuant to this paragraph.
3. As soon as the Council is satisfied that the Education Authority has let a contract for work to meet the Education Need or has otherwise entered into a binding commitment to meet it the Council may in its absolute discretion release to the Education Authority a sum from the amount(s) ring fenced by the Council to meet the Education Need up to an amount which the Council in its absolute discretion is satisfied that the Education Authority has committed to meet the Education Need.
4. Where the Council has received more than one Education Contribution in respect of the same Education Need, whether from the Owner or other owners of sites which also give rise to the same Education Need, the Education Contributions received by the Council shall be applied by them in payment to the Education Authority in the order in which they were received by the Council.

5. If any Education Contribution has not been paid by the Council to the Education Authority by the fifth anniversary of the date on which the Education Contribution was made then upon receipt by the Council of written notice by the Owner requiring the Education Contribution to be repaid the Council shall repay it (but without interest) to the Owner (which for the purposes of this and the next following paragraph only shall mean the Owner by whom the Education Contribution is made and not its successors in title). For the avoidance of doubt, any sum paid out of an Education Contribution by the Council to the Education Authority after the fifth anniversary of its payment but before the Council is served with written notice pursuant to this paragraph, any amount actually paid by the Council to the Education Authority before receipt of such notice shall not have to be repaid to the Owner.

6. At any time prior to the fifth anniversary of the making on an Education Contribution the Council shall upon written request by the Owner supply to the Owner reasonable short particulars of any payments made by the Council to the Education Authority from that Education Contribution pursuant to the provisions of this Schedule provided that the Council shall be under no further obligation to answer any such request after they have given sufficient particulars pursuant to this paragraph showing that the whole of the Education Contribution has been expended.

THIRD SCHEDULE

AFFORDABLE HOUSING OBLIGATIONS

PART ONE - GENERAL

1. Subject to the provisions of this Schedule the Owner shall construct on the Application Site a total of 40 Affordable Housing Units as part of the Proposed Development such units to be constructed in accordance with the plans submitted with the Application and approved pursuant to the Planning Permission and being Dwellings numbered are shown as plots 15-22, 103-105, 110-115 136 - 154 and 164-167 (all numbers inclusive) on the Layout Plan and the Owner may not dispose of such units save in accordance with the following terms of this Schedule
2. All Affordable Housing Units shall be provided with a vehicular access foul and surface water sewers and water gas electricity and telecommunication service systems linking in each case to the estate roads sewers and service systems to be constructed and laid as part of the remainder of the Proposed Development and connected ultimately (unless that the relevant authority shall refuse (except for reasonable cause) to accept their adoption) to highways and sewers maintainable at the public expense.

PART TWO - RENTED AND SHARED OWNERSHIP UNITS

3. The Owner shall not permit the first occupation of more than 50% of the non-Affordable Housing Units to be built pursuant to the Planning Permission until Dwellings numbered 15-22, 110-111, 136-140, 142- 145, 147-154, and 164-167 (all numbers inclusive) ('the Rented and Shared Ownership Housing Units') have been transferred in accordance with paragraph 4 to a Registered Social Landlord drawn from a list of Registered Social Landlords as may be approved by the Council or in the alternative transferred in accordance with the provision of paragraphs 8, 9 or 10 as the case may be.

4. The transfer to the Registered Social Landlord shall be in a form approved by the Council's Solicitor and on terms that will ensure that Dwellings 15-21, 136-139 and 147-154 (all numbers inclusive) are made available on a rental basis and Dwellings 22, 110-111, 140, 142-145 and 164-167 (all numbers inclusive) are made available by way of shared ownership leases
5. Beginning not later than the date of Commencement of Development the Owner shall enter into negotiations with a Registered Social Landlord (or Landlords) drawn from the Council's approved list or such other Registered Social Landlord(s) as may be approved in writing by the Council for the transfer to that Registered Social Landlord or Landlords of the Rented and Shared Ownership Housing Units. The negotiations shall be pursued by the Owner in good faith and details shall be supplied to the Council upon written request.
6. Provided always that the Owner shall have complied with paragraph 5 in respect of the Rented and Shared Ownership Housing Units specified therein but no Registered Social Landlord has been approved by the Council or no Registered Social Landlord is willing to take a transfer of the Rented and Shared Ownership Housing Units by either the date when 50% of the non-Affordable Housing Units constructed pursuant to the Planning Permission have been occupied or 1st June 2008 (whichever is the earlier) the restrictions on transfer of the Rented and Shared Ownership Housing Units (but not the restrictions on occupation of the non-Affordable Housing Units) contained in paragraph 3 may be varied by the Owner giving written notice to the Council that with effect from the date of such notice the provisions of paragraph 7 following shall apply instead of the said paragraph 3
7. From the date of a notice given pursuant to paragraph 6 the Owner may transfer the Rented and Shared Ownership Housing Units to any Registered Social Landlord and upon such terms as the Council may agree and upon the making of such a transfer the restrictions on occupation of the non-Affordable Housing Units constructed pursuant to the Planning Permission shall cease
8. If not less than six months have elapsed from the giving of a notice pursuant to paragraph 6 and the Owner shall have been unable to transfer any of the Rented and

Shared Ownership Housing Units pursuant to paragraph 7 be the Owner shall then be free to make first disposal of dispose of such units to

8.1. a Registered Social Landlord on such terms as may be agreed between the Owner and the Registered Social Landlord; or

8.2. the Council; or

8.3. any other organisation or body whose principal business is the provision of affordable housing on such terms as may be agreed between the Owner and that body

8.4. a person or persons approved by the Council as being on its housing register for the time being or in need of housing accommodation of the type which it is proposed to transfer to him and always provided that any transfer made pursuant to this sub-paragraph 8.4 is of the freehold interest and on the following terms:

8.4.1. the maximum price payable to the Owner in respect of the sale of an Affordable Housing Unit shall not exceed 75% of the Open Market Value as certified by a Surveyor drawn from a list prepared by the Council or in default of preparing or maintaining such a list who practices within a 15 mile radius of the Application Site

8.4.2. The transfer to a person specified in this sub-paragraph 8.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of thirty years from the date of the first transfer by the Owner that

8.4.2.1. no subsequent transfer shall take place within the said period of thirty years save a disposal of the freehold or leasehold interest in the Affordable Housing Unit at a price or premium which does not exceed 75% of the market value of the said Unit at the date of disposal as certified by a Valuer or Surveyor in the manner described in 8.4.1, and

8.4.2.2. no letting of the Affordable Housing Unit shall take place within the said period except at a rental not exceeding 75% of the market rental income for a property of that type as certified by a Valuer or Surveyor in the manner above described

8.4.3. The transfer to a person specified in this sub-paragraph 8.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of thirty years from the date of the first transfer by the Owner that the transferee and any future transferees of the Affordable Housing Unit will procure a direct covenant from each successive transferee in favour of the Council to observe and perform all of the covenants specified in this sub-paragraph 8.4

8.4.4. The transfer to a person specified in this sub-paragraph 8.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of thirty years from the date of the first transfer by the Owner that the transferee and any future transferees of the Affordable Housing Unit will on each transfer of the Affordable Housing Unit apply to the Chief Land Registrar for the following Restriction to be entered in the Register of the title in the property:-

“Except under an order of the Registrar no transfer, assent or other dealing by the Proprietor of the property is to be registered without the transferee’s solicitor producing to the Land Registry a Certificate confirming that the purchase price for the property does not exceed 75% of the Open Market Value as determined in accordance with an Agreement dated [DATE] and made under Section 106 of the Town and Country Planning Act 1990 between Bovis Homes Limited (1) and Ashfield District Council (2)”

8.4.5 Nothing in the Transfer shall operate to restrict delay limit or prevent the immediate occupation or disposal of any Rented and Shared

X:\WP\CLIENTS\DOCS\NOV2006\WK47\A0358073.089 21/11/06 14:37

Ownership Housing Units to or by a person and those living with him where such occupation or disposal arises as a result of a Court Order or any other statutory provision or presumption or will or intestacy but subject always to the strict compliance by any transferee of the legal estate with the provisions of this sub-paragraph 8.4 before any further disposal for value of the legal estate takes place

8.5 If all the Rented and Shared Ownership Housing Units shall have been transferred pursuant to the provisions of this paragraph 8 the restrictions on occupation of the non-Affordable Housing Units constructed pursuant to the Planning Permission shall cease

9. If not less than twelve months have elapsed from the giving of a notice pursuant to paragraph 6 the Owner may dispose of the freehold interest in any of the Rented and Shared Ownership Housing Units to any person (whether or not that person qualifies with the requirements of sub-paragraph 8.4) provided that the transfer to him complies in all respects with the requirements of the said sub-paragraph 8.4, its sub-sub-paragraphs and sub-sub-sub-paragraphs

10. If at any stage the Owner and the Council so agree any of the Rented and Shared Ownership Housing Units may be sold in the open market without restriction and the Owner shall be entitled to retain the proceeds of sale therefrom save that the Owner shall pay to the Council not later than 14 days from the date of the legal completion of the relevant sale a sum equal to 40% of the agreed open market value of the Unit inclusive of standard fixtures and fittings but disregarding the value of any additions made thereto or extras included by the Owner as part of the sale and always provided that

10.1 any sums paid to the Council pursuant to paragraph 10 shall be held by them in an interest bearing account and shall be applied solely for the purpose of providing affordable housing be it for rental shared ownership or discounted market sale within the District of Ashfield

10.2 if any of the sums paid to the Council for the purpose of providing affordable housing have not been spent within 5 years of the date of the last such payment then those such sums shall be repaid together with interest to the person who paid the sums to the Council and where there is more than one such person the sums paid by each shall be clearly identifiable whether held in the same account or not

11. If all the Rented and Shared Ownership Housing Units specified in Paragraph shall have been transferred pursuant to the provisions of paragraphs 8,9 or 10 the restrictions on occupation of the non-Affordable Housing Units constructed pursuant to the Planning Permission shall cease

PART THREE - SHARED EQUITY UNITS

12. The Owner shall not make a first disposal of Dwellings numbered 103-105, 112-115, 141 and 146 (all numbers inclusive) ('the Shared Equity Units') to any person except in accordance with the terms of this Part Three of the Third Schedule.

13. Any first disposal of a Shared Equity Unit by the Owner shall be upon the terms of a shared equity scheme the details and documentation of which shall have been approved by the Council and:

13.1. which creates a tenancy-in-common of the equitable interest such that the buyer from the Owner ('the First Buyer') shall acquire not more than 75% of the equitable interest in the Shared Equity Unit ('the Buyer's Share') and the Owner shall retain the remaining part of not less than 25% ('the Retained Share');

13.2. which allows the owner for the time being of the Buyer's Share to acquire the Retained Share (either in stages or at once) after but not before the fifth anniversary of the transfer to him of the Buyer's Share;

13.3. by which the Owner transfers the freehold legal estate to the First Buyer and the Owner jointly in which transfer to them they apply to the Chief Land Registrar for the following Restriction to be entered in the Register of the title of the property: -

"Except under an order of the Registrar no transfer, assent or other dealing by the Proprietor of the property is to be registered without the transferee's Solicitor producing to the Land Registry a Certificate confirming that the transfer is permitted under the terms of either paragraph 15 or paragraph 16 (as the case may be) of an Agreement made the [DATE] under s.106 Town and Country Planning Act 1990 between Bovis Homes Limited (1) and Ashfield District Council (2), and that if the transfer is permitted under paragraph 16 thereof that written notice of the intended transfer has been given to Ashfield District Council."

14. The Owner may not transfer the Buyer's Share except to a First Buyer who immediately prior to entering into a contract to purchase it has been approved as a person in housing need by:-

14.1 EMHomeBuy;

14.2 In the event that EMHomeBuy ceases to have delegated powers of approval for housing need within Ashfield then any substitute organisation agreed by the Council as having such power for the purpose of this paragraph; or

14.3 The Council

and no person other than the owner of the Buyer's Share or a member of his household may occupy a Shared Equity Unit whilst ever the Buyer's Share and the Retained Share remain in separate ownership

15. The First Buyer (and any subsequent transferee of the Buyer's Share) may not transfer the Buyer's Share during the period of five years from the date of the transfer to the First Buyer to any person other than a buyer who is immediately prior to

X:\WP\CLIENTS\DOCS\NOV2006\WK47\A0358073.089 21/11/06 14:37

entering into a contract to purchase it approved pursuant to paragraph 14 *mutatis mutandis*

16. The Owner shall not later than three months after the transfer of all the Buyers' Shares to First Buyers transfer the Retained Shares in the Shared Equity Units to an RSL or other body approved by the Council and any such disposal shall be on terms to be agreed by the Council which shall restrict any further disposal of the Retained Share in the following ways:-

16.1 For the period of 5 years from the date of the transfer to the First Buyer of the Buyer's Share in any Shared Equity Unit no disposal may be made of the Retained Share except to an RSL or other body approved by the Council

16.2 Any acquisition of the Retained Share to the Owner of the Buyer's Share must be made pursuant to the shared equity Scheme approved pursuant to paragraph 13

16.3 Any monies obtained from the sale of the Retained Share during the period of 80 years from the first disposal of the Buyer's Share (except a sale to a further RSL or other body approved by the Council) which is in excess of the price paid by the seller for the interest sold shall after deduction of the seller's administrative and legal expenses be used to assist in the provision of further affordable housing within the boundaries of the Council (but so that if such monies shall be insufficient for such purposes or the Council shall so agree then the seller shall be entitled to use the same to assist in the provision of affordable housing elsewhere).

PART FOUR - PROTECTION OF MORTGAGEE'S RIGHTS ETC

17. The covenants within this Schedule shall not be binding on a mortgagee in possession exercising a power of sale under their mortgage nor the right to acquire the freehold interest in any of the said Rented and Shared Ownership Housing Units pursuant to any statutory right to acquire the same

FOURTH SCHEDULE

OPEN SPACE PROVISION

1. No more than 120 Dwellings on the Application Site may be occupied for the first time until the POS has been laid out and the Owner has offered to transfer it to the Council in accordance with the provisions of the following paragraphs of this Fourth Schedule
2. The Owner shall lay out any the POS in accordance with condition 16 in the Planning Permission ('the Condition')
3. At any time after the Owner shall in its opinion have complied with the Condition it shall invite the Council in writing to make an inspection of the POS for the purposes of this Fourth Schedule and the Council shall as soon as practical thereafter arrange for such inspection to be made the Council's Surveyor.
4. The Council's Surveyor shall with all reasonable diligence make his inspection and either
 - 4.1 give his written certificate that the Condition has been complied with and that the POS is ready to be transferred to the Council, or
 - 4.2 make a written report setting out any respects in which the Condition has not yet been complied with and the steps which the Owner must make in order to rectify such omissions, and
 - 4.3 forthwith serve his certificate pursuant paragraph 6.1 or his report pursuant paragraph 6.2 as the case may be on the Owner and the Council

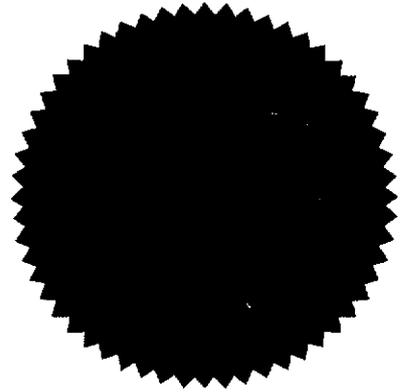
5. If the Council's Surveyor shall have given his certificate pursuant to paragraph 4.1 then the Owner shall proceed to transfer the POS to the Council in accordance with paragraphs 7 - 10 following but if the Council's Surveyor shall have given a report pursuant to paragraph 4.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the POS whereupon the Council shall as soon as practical thereafter arrange for such further inspection to be made the Council's Surveyor and so on as often as may be necessary (*mutatis mutandis*) until the Council's Surveyor shall give his certificate pursuant to paragraph 4.1
6. For the avoidance of doubt the Council's Surveyor shall act as an expert and not an arbitrator and his opinion shall be binding on the parties
7. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor incurred in making any inspection of the POS for the purposes of this Fourth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's Surveyor's invoice
8. Not later than two months after the Council's Surveyor shall have given his certificate pursuant to paragraph 4.1 the Owner shall offer to transfer the freehold interest with Title Absolute of the POS to the Council such transfer to contain covenants to the following effect:-
 - 8.1 The POS shall be used solely for the purpose of providing recreation and amenity space for use by the general public.
 - 8.2 The Council shall take reasonable steps to ensure that use of the POS shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development
 - 8.3 No development shall take place on the POS other than for the purpose of facilitating their use for recreation and amenity purposes

and if at the date of transfer the POS cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by vehicles to enable public access to the POS from the nearest public highway.

- 9 On the date of transfer the Owner shall pay to the Council the Open Space Maintenance Payment
- 10 The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the POS

**THE COMMON SEAL OF
BOVIS HOMES LIMITED**

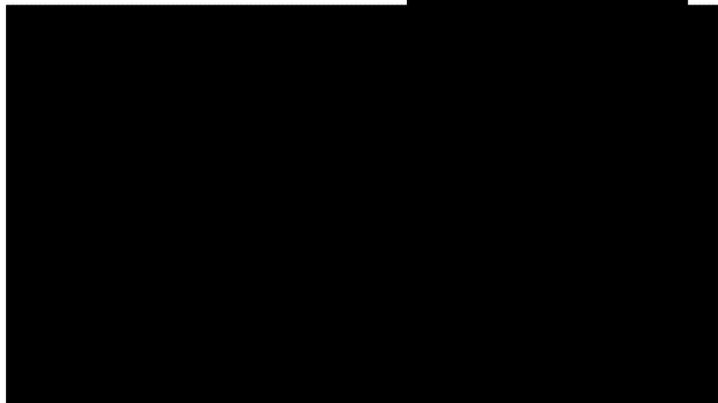
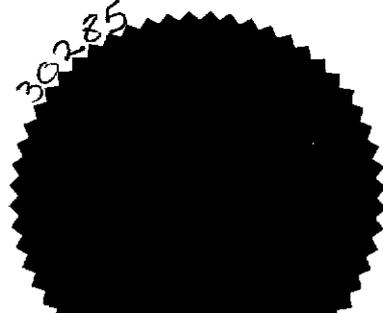
affixed in the presence of
two authorised signatories:-



Authorised Signatory

Authorised Signatory

EXECUTED AS A DEED by
ASHFIELD DISTRICT COUNCIL
having affixed its **COMMON SEAL**
to this deed in the presence of



**ASHFIELD DISTRICT COUNCIL
MEMORANDUM**

TO: HEAD OF LAND AND PROPERTY

**FROM: DEVELOPMENT AND BUILDING CONTROL ADMIN
MANAGER**

SUBJECT: LAND AT GARDEN ROAD, HUCKNALL, NOTTINGHAM

DATE: 10/01/2008

REF: V/2006/0564

Would you please register the amendment to the above Section 106 Agreement (Town & Country Planning Act 1990) between:

**BOVIS HOMES LTD
and
ASHFIELD DISTRICT COUNCIL**

as a Local Land Charge



Sally Needham
Development and Building Control Administration Manager

RECEIVED ON
10 JAN 2008 pm
LAND CHARGES

THIS AGREEMENT is made the 21st day of January 2008

BETWEEN:

- (1) **BOVIS HOMES LIMITED** (Company Number 397634) whose registered office is at The Manor House, North Ash Road, New Ash Green, Longfield, Kent, DA3 8HQ ('the Owner') and
- (2) **ASHFIELD DISTRICT COUNCIL** of Council Offices, Urban Road, Kirkby-in-Ashfield, Nottinghamshire, NG17 8DA ('the Council')

1. **Definitions**

IN THIS AGREEMENT the following words and phrases shall have the following meaning:-

- 1.1 "the Act" means Town and Country Planning Act 1990 (as amended) and terms not otherwise defined in this Agreement have the meaning ascribed to them in the Act unless a contrary intention appears
- 1.2 "the Previous Agreement" means an Agreement under and pursuant to Section 106 of the Act made between (1) Bovis Homes Limited and (2) Ashfield District Council hereto on the 17th November 2006
- 1.3 "the Development" means residential development in accordance with the terms of the Planning Permission a draft whereof was appended to the Previous Agreement
- 1.4 "the Existing Affordable Housing Obligations" means the planning obligations contained or referred to in the Third Schedule to the Previous Agreement

1.5 “the New Affordable Housing Obligations” means the Existing Affordable Housing Obligations as varied by this Agreement.

2. **Recitals**

WHEREAS:-

2.1 The Owner is registered at H.M. Land Registry as the proprietor with title absolute under title number NT430402 of all those parts of the Application Site affected by the Obligations in the Previous Agreement which it is sought to vary by this Agreement

2.2 The Owner desires to vary the Existing Affordable Housing Obligations in the manner following

2.3 The Owner has agreed to enter into this Agreement for the purpose of varying the Previous Agreement in the manner following.

3. **Enabling Powers**

THE parties hereto enter into this Agreement under and pursuant to Section 106A sub-sections 1(a) and 2 of the Act.

4. **Planning Obligations**

4.1 In exercise of its powers under Section 106A of the Act the Council has agreed that the Existing Affordable Housing Obligations shall be varied with effect from the date of this Agreement by the addition of the following paragraph after paragraph 12 of Part Two of the Third Schedule of the Previous Agreement to the intent that the Existing Affordable Housing Obligations as so varied shall become the New Affordable Housing Obligations and the Owner has agreed to enter into the New Affordable Housing Obligations:

"13. Once the Affordable Housing Units have been transferred to a Registered Social Landlord none of the obligations imposed by the Agreement in relation to the Affordable Housing Units shall apply to: -

13.1 Any mortgagee or chargee of the Affordable Units pursuant to any mortgage or charge granted to it by a Registered Social Landlord; or

13.2 Any person who having been granted a long lease of the Shared Ownership Housing exercises the right to and completes final staircasing under the terms of such lease; or

13.3 The mortgagee or chargee of any person who has been granted a lease of Shared Ownership Housing; or

13.4 The Registered Social Landlord or any tenant in circumstances where any tenant exercises a right to buy, or right to acquire under the Housing Acts 1985 or 1996 or any Statutory Modification or extension amendment or re-enactment thereof or any regulations or Orders made thereunder; or

13.5 Any purchaser from or successor in title to any person specified in sub-paragraphs 13.1 to 13.4 above."

4.2 In all other respects the Previous Agreement remains unaltered and the Obligations as therein set out remain in force

4.3 The Council is the Authority entitled to enforce the New Affordable Housing Obligations

5. Covenant

THE Owner hereby covenants with the Council pursuant to Section 106A of the Act that those parts of the Application Site as defined in the Previous Agreement as are at the date hereof in the Owner's title NT414412 shall be subject to the New Affordable Housing Obligations and that the Owner will at his own expense duly carry out and perform the New Affordable Housing Obligations

6. **Agreements and Declarations**

It is agreed and declared as follows:

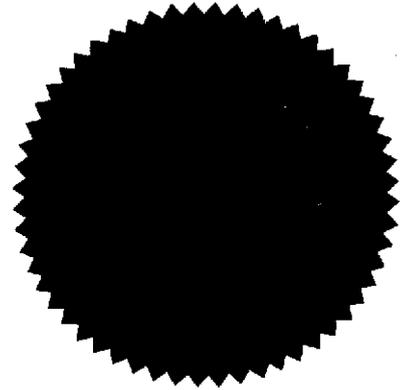
- 6.1 Any reference to a party to this Agreement shall where the context so admits shall include their successors in title and assigns
- 6.2 Words importing one gender shall be construed as importing any gender, and words importing the singular shall be construed as importing the plural and vice versa
- 6.3 No person shall be liable for breach of covenant contained in this Deed after he shall have parted with all interest in the Application Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 6.4 The Agreement is a Local Land Charge and shall be registered as such and upon such registration the previous registration of the Existing Affordable Housing Obligations shall be amended as aforesaid

7. **Costs**

The Owner shall on the execution of this Deed pay the Council's costs incurred in the preparation and settlement of this Deed in the sum of £420.00 exclusive of VAT

IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written

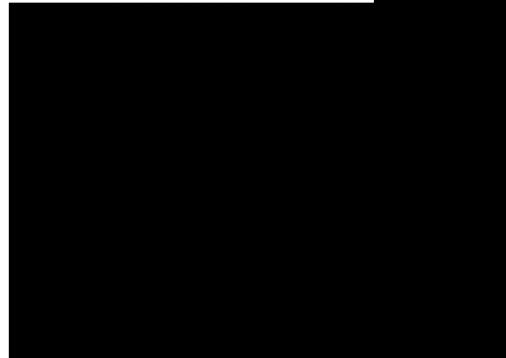
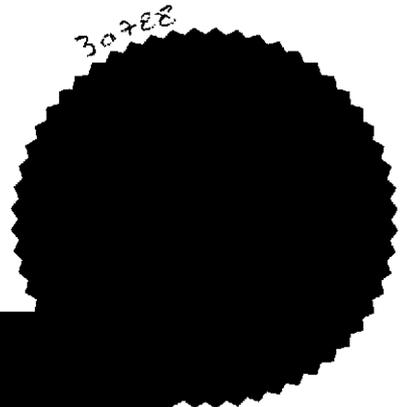
The common seal of
~~EXECUTED as a DEED by~~
BOVIS HOMES LTD LIMITED
~~was here to affixed~~
having affixed its COMMON SEAL
to ~~this deed~~ in the presence of



Authorized Signatory: 

Authorized Signatory: 

EXECUTED AS A DEED by
ASHFIELD DISTRICT COUNCIL
having affixed its COMMON SEAL
to this deed in the presence of



ASHFIELD DISTRICT COUNCIL

Urban Road,
Kirkby-in-Ashfield,
Nottingham,
East Midlands.
NG17 8DA

Tel: 01623 450000
Fax: 01623 457332
www.ashfield-dc.gov.uk



Ashfield

With Compliments

Land at Garden Road V/2006/0564
Section 106A Agreement enclosed
Please attach to original agreement

Trevor Watson
Head of Land and Property

THIS AGREEMENT is made the 29th day of September 2009.

BETWEEN:

- (1) **BOVIS HOMES LIMITED** (Company Number 397364) of The Manor House, North Ash Road, New Ash Green, Longfield, Kent, DA3 8HQ ('the Owner')
- (2) **ASHFIELD DISTRICT COUNCIL** of Council Offices, Urban Road, Kirkby-in-Ashfield, Nottinghamshire, NG17 8DA ('the Council')

1. **Definitions**

IN THIS AGREEMENT the following words and phrases shall have the following meaning:-

- 1.1 "the Act" means Town and Country Planning Act 1990 (as amended) and terms not otherwise defined in this Agreement have the meaning ascribed to them in the Act unless a contrary intention appears
- 1.2 "the Planning Permission" means the planning permission issued under reference number 2006/0564 as defined in the Principal Agreement
- 1.3 "the Principal Agreement" means an Agreement under and pursuant to Section 106 of the Act made between (1) Bovis Homes Limited and (2) Ashfield District Council hereto on the 2nd March 2007 as previously varied by a subsequent Agreement under and pursuant to Section 106A of the Act made between the same parties on 8th January 2008 and terms not otherwise defined in this Agreement shall, unless the context otherwise requires, have the same meaning as in the Principal Agreement

2. **Recitals**

WHEREAS:-

- 2.1 The Owner is registered at H.M. Land Registry as the proprietor with title absolute under title number NT430402 of all those parts of the Application Site affected by the Obligations in the Principal Agreement which it is sought to vary by this Agreement
- 2.2 The Owner desires to vary the Principal Agreement in the manner following
- 2.3 The Owner has agreed to enter into this Agreement for the purpose of varying the Principal Agreement in the manner following.

3. **Enabling Powers**

THE parties hereto enter into this Agreement under and pursuant to Section 106A sub-sections 1(a) and 2 of the Act.

4. **Planning Obligations**

- 4.1 The Principal Agreement required the Owner to provide on site affordable housing and commuted sum payments towards integrated transport improvements, the improvement of existing open space and / or the provision of new open space and provision of new education facilities
- 4.2 In exercise of its powers under Section 106A of the Act the Council have agreed with the Owner to vary the Principal Agreement so that the Affordable Housing provision shall be by way of rented accommodation rather than shared ownership
- 4.3 The Council and the Owner agree that the Principal Agreement shall be and is hereby varied as follows: -
 - 4.3.1 There shall be substituted for the existing Paragraph 3 of the Third Schedule the following:
3. The Owner shall not permit the first occupation of more than 50% of the non-Affordable Housing Units to be built

pursuant to the Planning Permission until the Affordable Housing Units' have been transferred in accordance with paragraph 4 to a Registered Social Landlord drawn from a list of Registered Social Landlords as may be approved by the Council

4.3.2 There shall be substituted for the existing Paragraph 4 of the Third Schedule the following:

4. The transfer to the Registered Social Landlord shall be in a form approved by the Council's Solicitor and on terms that will ensure that Dwellings 15-21, 103-105, 112-115, 136-139, 141 and 146-154 (all numbers inclusive) are made available on a rental basis and Dwellings 22, 110-111, 140, 142-145 and 164-167 (all numbers inclusive) are made available by way of shared ownership leases

4.3.3 Any and every occurrence of the term "Rented and Shared Ownership Housing Units" shall be amended to read "Affordable Housing Units"

4.3.4 Part Three of the Third Schedule shall be deleted in its entirety and shall cease to be binding as an Obligation

4.4 In all other respects the Principal Agreement remains unaltered and the Obligations as therein set out remain in force

4.5 The Council is the Authority entitled to enforce these new clauses as if they were Obligations within the Principal Agreement

5. Covenant

THE Owner hereby covenants with the Council pursuant to Section 106A of the Act that those parts of the Application Site as defined in the Principal Agreement as are at the date hereof in the Owner's title NT430402 shall be subject to these new clauses and that the Owner will at his own expense duly carry out and perform these new clauses

6. **Agreements and Declarations**

It is agreed and declared as follows:

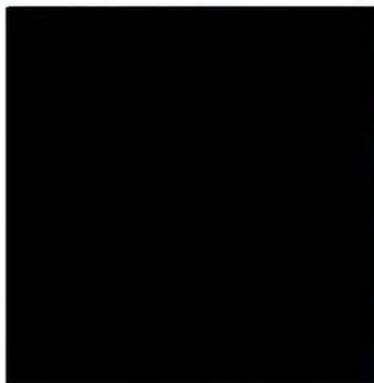
- 6.1 Any reference to a party to this Agreement shall where the context so admits shall include their successors in title and assigns
- 6.2 Words importing one gender shall be construed as importing any gender, and words importing the singular shall be construed as importing the plural and vice versa
- 6.3 No person shall be liable for breach of covenant contained in this Deed after he shall have parted with all interest in the Application Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 6.4 This Agreement is a Local Land Charge and shall be registered as such and upon such registration the previous registration of the Obligations in the Principal Agreement shall be amended accordingly

7. **Costs**

The Owner shall on the execution of this Deed pay the Council's costs incurred in the preparation and settlement of this Deed in the sum of £575

IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written

EXECUTED AS A DEED by
affixing the **COMMON SEAL OF**
BOVIS HOMES LIMITED
in the presence of
two authorised signatories:-

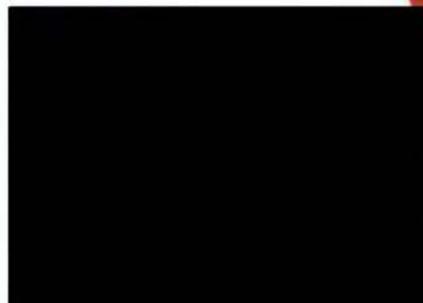


Authorised Signatory

Authorised Signatory



EXECUTED AS A DEED by
ASHFIELD DISTRICT COUNCIL
having affixed its **COMMON SEAL**
to this deed in the presence of





V/2006/0564
Land at Garden Road
Hucknall



Scale: 1 to 2500

Date:



Ashfield

For reference purposes only. No further copies may be made.