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

THIS AGREEMENT is made the 30th day of March 2007

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) Alan Sowter, Edwin Sowter and Keith Sowter and (2) Ashfield District Council hereto on the 11th February 2005
- 1.3 "the Previous Plan" means the Plan attached to the Previous Agreement.
- 1.4 "the Development" means residential development in accordance with the terms of the Planning Permission a draft whereof was appended to the Previous Agreement

1.5 “the Existing Affordable Housing Obligations” means the planning obligations contained or referred to in the Second Schedule to the Previous Agreement

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

1.7 “the New Plan” means the Plan attached to 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 NT 414412 of all those parts of the Application Site affected by the Obligations in the Previous Agreement which it is sought to vary this Agreement

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

2.3 It has been agreed by the Parties that the balancing pond situated on the Development needs to be re-located away from the position shown on the Previous Plan and that the area for Public Open Space to be transferred to the Council pursuant to the Previous Agreement needs to be re-designated accordingly.

2.4 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 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 Units have been transferred to a Registered Social Landlord none of the obligations imposed by the Agreement in relation to the Affordable 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 further exercise of its powers under Section 106A of the Act the Council has agreed that the Previous Agreement shall be further varied inasmuch as the Blue Land as defined at clause 1.7 of the Previous Agreement and to which the Obligations contained in paragraphs 6 to 9 inclusive of the Fifth Schedule of the Previous Agreement apply shall be as shown on the New Plan and not the Previous Plan.

4.2 In all other respects the Previous Agreement remains unaltered and the Obligations (other than the Existing Affordable Housing 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

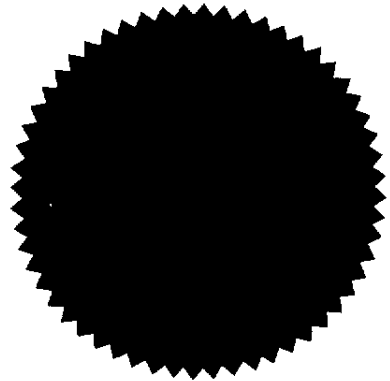
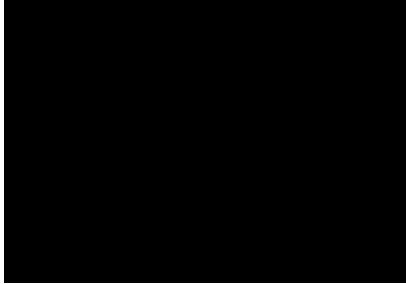
6.4 The Agreement is a Local Land Charge and shall be registered as such and upon such registration the previous registration of the Existing Affordable Housing Obligations shall be removed

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

EXECUTED as a DEED by
BOVIS HOMES LTD
having affixed its **COMMON SEAL**
to this deed in the presence of



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

