

DATED

20[XX]

**DEED UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND ALL
OTHER ENABLING POWERS**

relating to

LAND AT EAST OF SPITFIRE ROAD, CALNE, WILTSHIRE

(PLANNING REF: PL/2025/05943)

between

(1) WILTSHIRE COUNCIL

and

(2) ROBERT HITCHINS LIMITED

Wiltshire Council

Solicitor to the Council

Wiltshire Council

County Hall

Bythesea Road

Trowbridge

Wiltshire

BA14 8JN

Ref: IKEN 205127

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THIS DEED is dated _____ day of _____ 2026

PARTIES

- (1) **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (**Council**)
- (2) **ROBERT HITCHINS LIMITED**, incorporated in England and Wales with company registration number 00686734 whose registered office is at the Manor, Boddington Lane, Boddington, Cheltenham GL51 0TJ (**Owner**)

Background

- (A) The Owner is the freehold owner of the Land registered at the Land Registry under title number WT183041 shown for the purposes of identification only edged red on the Plan
- (B) The Council is the local planning authority for the purposes of the Act, the highway authority, the education authority and the housing authority for the area in which the Land is situated
- (C) The Owner has submitted the Planning Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed without which the Planning Permission would not be granted

1 Definitions

In this Deed, the following definitions apply:

“the Act”	means the Town and Country Planning Act 1990 as amended
“Administrative Fee”	means the sum of three hundred pounds (£300) to be paid by the Owner to the Council for the

	Council's administrative cost in sealing and completing this Deed in accordance with clause 7.6 of this Deed
"Affordable Housing"	means (1) Social Rented Housing; (2) Affordable Rented Housing; and (3) Intermediate Housing provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable Housing should include provision to remain at an affordable price for future eligible households or for the Subsidy to be recycled for alternative Affordable Housing provision;
"Affordable Housing Consideration"	means the price to be paid for the Affordable Housing Units by the Transferee which shall be the price at which the Transferee can afford to pay for the Affordable Housing Units on a Nil Subsidy basis and for the avoidance of doubt this consideration shall not preclude any agreement being reached between the Transferee and the Owner which enables an additional consideration to be paid for the Affordable Housing Units if it is of a higher quality or standard than that envisaged by paragraph 4 of Schedule 1
"Affordable Housing Contract"	means a contract to be entered into between the Owner and the Transferee for the construction of the Affordable Housing Units and the transfer to the

	Transferee for the Affordable Housing Consideration
“Affordable Housing Mix”	means the mix of Affordable Housing Units set out in Schedule 3
“Affordable Housing Plan”	means the plan to be submitted to the Council indicating the location of the Affordable Housing Units on the Land
“Affordable Housing Unit(s)”	means the Residential Unit(s) to be provided as Affordable Housing in accordance with Schedule 1 of this Deed
“Affordable Rented Housing”	means rented housing let by a Transferee to a Qualifying Person who is eligible to obtain Social Rented Housing and which is subject to rent controls that require rent of no more than 80% of the local Market Rent (including service charges, where applicable) at the time of letting which may be increased by no more than the Consumer Price Index plus 1% annually or other such amount prescribed by the Regulator of Social Housing
“Affordable Rented Unit(s)”	means the Affordable Housing Unit(s) that are only available to be used and Occupied as Affordable Rent Housing
“Allocations Policy”	means the Council’s policy for allocating Affordable Housing Units for all tenures (for the avoidance of doubt including Shared Ownership Housing) in the administrative area of Wiltshire (as amended from time to time)
“BNG Monitoring Fee”	means the sum of six thousand two hundred pounds (£6,200) to be paid by the Owner to the

	Council under clause 7.6.3 of this Deed to be applied by the Council towards the Council's costs of monitoring implementation of and compliance with the HMMP over the Monitoring Period
"Chargee"	means any mortgagee or chargee or Receiver and "Chargees" shall be construed accordingly
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010 (as amended)
"Commencement Date"	means the date upon which the Habitat Creation and Enhancement Works have commenced
"Commencement of Development"	means the date on which any material operation as defined in section 56(4) of the Act forming part of the Development begins to be carried out with the exception of investigation of ground conditions and remedial work archaeological work demolition and erection of hoardings and "Commence" and "Commenced" shall be construed accordingly
"Contribution"	means each financial contribution payable under this Deed
"Council's Nominee"	means Compton Bassett Parish Council
"Council's Standards"	means the construction provisions in the Standard Specification for the Adoption of Open Space and/or the Wiltshire Council Play Specification attached as Annex B
"Development"	means any development permitted by the Planning Permission

“Disposal”	a sale of the freehold or leasehold interest in an Affordable Housing Unit and reference to “Dispose” shall be construed accordingly
“Director”	means the Corporate Director of Place, Highways and Transport or his appointed representative for the time being of the Council
“Early Years Education Contribution”	means the sum of fifty-two thousand five hundred sixty-six pounds (£52,566) (for three (3) early years places based on seventeen thousand five hundred and twenty-two pounds (£17,522) per early years place) payable by the Owner to the Council towards the cost of provision of new or the expansion of early years provision in the vicinity of the Land
“Final Certificate”	means the certificate(s) issued by the Service Head – Highway Operations in relation to the Open Space and/or the Play Area (as applicable) verifying that the Landscape Plan has been upheld following the conclusion of the Maintenance Period
“Habitat Creation and Enhancement Works”	means the habitat creation and enhancement works set out in the HMMP (excluding any management or monitoring activities specified in the HMMP)
“Head of Housing”	means the manager for the time being of the Housing Enabling Team or such other person as the Council may appoint to perform the functions of the Head of Housing under this Deed

“HMMP”	means the Habitat Management and Monitoring Plan to be submitted and approved pursuant to condition 16 of the Planning Permission.
“Homes England (HE)”	means Homes England which is the trading name of the Homes and Communities Agency established by Section 1 of the Housing and Regeneration Act 2008 or such other body replacing it in function
“Homes England’s Fundamental Clauses”	means clauses as defined by Homes England’s Affordable Homes Capital Funding Guide produced by the Homes and Communities Agency and current at the date of this Deed (or such document as shall or replace it)
“Homes England Target Rent”	means the maximum weekly rent that may be charged by a Transferee for Social Rented Housing in Wiltshire as determined through the National Rent Regime
“Index”	means: (a) the All In Tender Price Index published by the Building Cost Information Service (BICS) of the Royal Institute of Chartered Surveyors in relation to the Early Years Education Contribution and the Waste and Recycling Contribution (b) All Items Index of Retail Prices issued by the Office for National Statistics in relation to the Off-Site Sports Pitch Contribution,

	and if applicable, the Off-Site Open Space Contribution and/or the Off-Site Play Area Contribution and in the event that such indices shall have changed the Council shall select a reasonable alternative index
“Index Linked”	means increased in accordance with the following formula: Amount Payable = the Contribution x (A/B) where A = The figure for the Index that applied immediately preceding the date of actual payment and B = The figure for the figure for the Index that applied when the Index was last published prior to the date of this Deed
“Interest”	Means Interest at the rate of 4% above the base lending rate of HSBC Bank Plc from time to time
“Intermediate Housing”	means Affordable Housing homes for sale and rent provided at a cost above Social Rented Housing but below open market levels the form of which shall be agreed with the Council at its absolute discretion but may include shared equity (Shared Ownership Housing and equity loans) other low-cost homes for sale and Intermediate Rent but not Affordable Rented Housing (or as set out in Schedule 3 - the Affordable Housing Mix)

“Intermediate Housing Unit(s)”	means the Affordable Housing Unit(s) that are only available to be used and Occupied exclusively as Intermediate Housing and which includes Intermediate Rented Units and Shared Ownerships Units
“Intermediate Rent”	means the Intermediate Housing let by Transferee to a Qualifying Person and which is subject to rent controls that require a rent of no more than 80% of the local Market Rent (including service charges, where applicable) at the time of letting which may increased by no more than the Consumer Price Index plus 1% annually or such other amount as prescribed by the Regulator of Social Housing from time to time
“Intermediate Rented Units”	means the Affordable Housing Unit(s) that are only available to be used and Occupied exclusively as Intermediate Rent
“Land”	means the land at East of Spitfire Road, Calne, Wiltshire shown edged red on the Plan
“Land Compensation Act”	means in relation to clause 14 means the Land Clauses Consolidation Act 1845 the Land Compensation Act 1961 the Compulsory Purchase Act 1965 the Land Compensation Act 1973 and the Planning and Compensation Act 1991 and includes the Human Rights Act 1998 and any variation or enactment of the Land Compensation Act on or after the date of execution of this Deed which confers a right of compensation for the compulsory acquisition of land and/or the diminution in value of

	land as a result of the carrying out of or the use of public works
“Landscape Plan”	means the plan(s) and details, to be in accordance with the Council’s Standards (unless otherwise approved by the Service Head — Highway Operations), as approved by the Council prior to or as part of the Reserved Matters Application showing the laying out and landscaping of the Open Space and/or the Play Area within the Development
“Management Charge”	means the perpetual yearly variable estate management charge to be imposed on each Residential Unit to cover the annual costs of the Management Company. With regards to the Management Charge on the Affordable Rented Units the Owner and the Registered Provider or Transferee shall reach an agreement on a reasonable figure to be imposed on each Affordable Rented Unit
“Maintenance Period”	means a period of twelve (12) months (unless an alternative time period is approved by the Service Head - Highway Operations) to be applied if the Owner transfers the Open Space or any part of the Open Space and/or a Play Area to the Council’s Nominee, triggered on the issue of an Open Space Practical Completion Certificate and/or a Play Area Certificate respectively.
“Management Company”	means the private limited company to be established by the Owner (and registered at Companies House), incorporated in the United Kingdom, the purpose of which will be (amongst

	other things) to manage and maintain the Open Space and/or Play Area as applicable
“Market Housing Units”	means the units constructed and identified as part of the Development as general housing for sale or rent on the open market and which are not Affordable Housing Units
“Market Rent”	means the estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion, as defined in the Royal Institution of Chartered Surveyors Valuation Global Standards December 2024 or any subsequent document which amends or replaces it
“Market Value”	means the market value as assessed by a Valuer of the Residential Unit and assessed in accordance with the RICS Valuation Global Standards (December 2024) or any such replacement guidance issued by RICS
“Monitoring Fee”	means a sum to be paid by the Owner to the Council to monitor compliance by the Owner of the planning obligations in this Deed (which will amount to 2.5% of the total financial Contributions payable under the terms of this Deed) to be paid by the Owner to the Council in accordance with clause 7.6.2 of this Deed
“Monitoring Period”	means the period of 30 years commencing from the Commencement Date

“National Rent Regime”	means the rent policy set out for Social Rent within the Rent within the Rent Standard Guidance as published by the Ministry of Housing Communities and Local Government and the Regulator of Social Housing in April 2020 and updated in December 2024 and any other guidance issued by the Regulator of Social Housing or its successors in relation to this document
“NDSS”	means the Technical Housing Standards Nationally Described Space Standards published by the Department of Housing Communities and Local Government in March 2015 and current at the Date of this Deed (or such document as shall succeed or replace it) as set out in Schedule 4
“Nil Subsidy”	means without the input of any other grant funding from the Council, Homes England, the Transferee’s Recycled Capital Grant Fund, the Private Finance Initiative or any other form of state aid or grant or subsidy
“Nomination Rights”	means the right of the Council to nominate tenants of the Affordable Housing Units as set out in Schedule 2 of this Deed
“Occupation” and “Occupied”	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction and “Occupied” and “Occupy” shall be construed accordingly
“Off-Site Play Area Contribution”	means the financial contribution required where the area of the Play Area (as approved pursuant to the Reserved Matters Application) to be delivered by

	the Owner falls short of the Play Area Requirement, such sum to be calculated at the rate of £144 per m ² of shortfall on submission of the Reserved Matters Application and to be used by the Council towards the upgrading or the provision of play space either at a target site as agreed in writing between the Owner and the Council as part of the approval of the Reserved Matters Application or within the vicinity of the Development
“Off-Site Open Space Contribution”	means the financial contribution required where the area of the Open Space (as approved pursuant to the Reserved Matters Application) to be delivered by the Owner falls short of the Open Space Requirement, such sum to be calculated at the rate of £34.87 per m ² of shortfall on submission of the Reserved Matters Application and to be used by the Council towards the upgrading or the provision of open space either at a target site as agreed in writing between the Owner and the Council as part of the approval of the Reserved Matters Application or within the vicinity of the Development
“Off-Site Sports Pitch Contribution”	means a financial contribution calculated on submission of the Reserved Matters Application at a rate of £276 per Residential Unit payable by the Owner to the Council towards the costs of the provision of a new a 3G Artificial Turf Pitch at Beaverbrook Sports Facility and/or providing or upgrading other sports pitches, or ancillary facilities within the vicinity of the Land
“Open Space”	means the area of open space (excluding the Play Area) within the Land to be kept open in perpetuity

	having an area calculated in accordance with the Open Space Requirement and which is to be delivered pursuant to the Landscape Plan in a location to be agreed in writing between the Owner and the Council prior to or as part of the submission of the Reserved Matters Application
“Open Space Maintenance Contribution”	means the sum to be agreed between the Owner and the Council's Nominee on the basis of a 20-year period from the time the Open Space is transferred to the Council's Nominee and payable by the Owner to the Council's Nominee in accordance with paragraph 11.3 of Schedule 5
“Open Space Practical Completion Certificate”	means the certificate or certificates issued (not to be unreasonably withheld) by the Service Head Highway Operations on being satisfied that the Open Space or any part of the Open Space has been provided and laid out in accordance with the approved Landscape Plan
“Open Space Requirement”	means the minimum area of Open Space that will be required to be delivered within the Land (with any shortfall compensated by the Off-Site Open Space Contribution), which will be calculated on the basis of the following provisions: 30 m² of Open Space per 1 bedroom Residential Unit; 45 m² of Open Space per 2 bedroom Residential Unit;

	60 m² of Open Space per 3 bedroom Residential Unit; 75 m² of Open Space per 4+ bedroom Residential Unit
“Open Space Works”	means all the necessary works for the laying out, construction and landscaping of the Open Space or any part of the Open Space in accordance with the Landscape Plan
“Phase”	such a part of the Development as is comprised in a Reserved Matters Application
“Plan”	means the plan or drawing attached to this Deed at Annex A entitled S106 Plan and referenced 381.L.1
“Planning Application”	means the planning application for outline planning permission for residential development of up to 20 dwellings, together with associated works including infrastructure, ancillary facilities and landscaping and construction of a new vehicular access off Spitfire Road registered by the Council on 28 July 2025 and allocated reference number PL/2025/05943;
“Planning Permission”	means the planning permission for the Development that may be granted pursuant to the Planning Application
“Play Area”	means that part of the Land to be kept open in perpetuity as an area to accommodate an informal play/trim trail having an area calculated in accordance with the Play Area Requirement and which is to be delivered pursuant to the Landscape Plan, the final details (to include the location within

	the Land and equipment details) of which shall be agreed in writing between the Owner and the Council prior to or as part of the submission of the Reserved Matters Application
“Play Area Certificate”	means the certificate of practical completion (not to be unreasonably withheld) by the Service Head – Highways Operations once they are satisfied that the Play Area has been laid out in accordance Landscape Plan
“Play Area Maintenance Contribution”	means the sum to be agreed between the Owner and the Council's Nominee on the basis of a 20-year period from the time the Play Area is transferred to the Council's Nominee payable by the Owner to the Council's Nominee in accordance with paragraph 11.3 of Schedule 5
“Play Area Requirement”	means the minimum area of the Play Area (subject to the requirements within the Wiltshire Council Play Specification) that will be required to be delivered within the Land (with any shortfall compensated by the Off-Site Play Area Contribution), which will be calculated on the basis of the following provisions: 0 m² of Play Area per 1 bedroom Residential Unit; 3 m² of Play Area per 2 bedroom Residential Unit; 6 m² of Play Area per 3 bedroom Residential Unit; 9 m² of Play Area per 4+ bedroom Residential Unit

“Play Area Works”	means all the necessary works for the laying out, construction and landscaping of the Play Area in accordance with the Landscape Plan.
“Practical Completion”	means the issue of a certificate of practical completion by the Owner’s architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by the other party’s architect
“Protected Tenant”	means any person who: (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit (c) has purchased from the Transferee all of the shares so that they own the entire Affordable Housing Unit
“Qualifying Person”	means an individual who meets the requirements of the Allocations Policy and who is unable to compete in the open housing market from time to time as the financial resources of his household are too low to facilitate the purchase at Market Value or rent of a house in the area at Market Rents and who is considered by the Council to be a person whom it is a proper to be allocated accommodation in an Affordable Housing Unit
“Receiver”	means any receiver (including an administrative receiver) appointed by any 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
“Registered Provider”	means a Registered Provider as defined by Section 80 of the Housing and Regeneration Act 2008 from the Council’s list of preferred development partners or as otherwise agreed in writing by the Council such approval not to be unreasonably withheld or delayed
“Regulator of Social Housing”	means the Regulator of Social Housing as referred to in s80A Housing and Regeneration Act 2008
“Remedial Notice”	means the notice or notices that may be issued by Service Head — Highway Operations requiring the Owner to carry out any works that the Council considers (at their reasonable discretion) to be necessary for the Open Space or any part of the Open Space and/or a Play Area (as applicable) to be provided in accordance with the Landscape Plan including (without limitation) re-planting of unhealthy dead diseased or dying plants and trees and a reasonable timescale within which those works are to be completed
“Reserved Matters Application”	means the reserved matters application submitted for the Development pursuant to the Planning Permission
“Residential Unit(s)”	means all residential units forming part of the Development including Market Housing Units and Affordable Housing Units

“Service Head – Highway Operation”	means the head of the service with responsibility for the adoption of public open spaces or such replacement head of service as determined by the Council or their appointed representative for the time being
“Shared Ownership Housing”	means the Affordable Housing to be managed by Transferee and to be disposed of in accordance with the Allocations Policy to a Qualifying Person on a lease which includes Homes England’s Fundamental Clause
“Shared Ownership Unit(s)”	means the Affordable Housing Unit(s) that are only available to be used and occupied exclusively as Shared Ownership Housing
“Social Rented Housing”	means the housing owned and managed by a Transferee for which guideline target rents are determined through the National Rent Regime
“Social Rented Unit(s)”	means the Affordable Housing Unit(s) that are only available to be used and Occupied exclusively as Social Rented Housing
“Standards”	means the size standards promoted by Homes England as at the time of the relevant reserved matters approval being at least 85% NDSS
“Subsidy”	means any grant funding from the Council Homes England the Transferee’s Recycled Capital Grant Fund the Private Finance Initiative or other form of state aid or grant subsidy
“Transferee”	means the Registered Provider the Council in its capacity as local housing authority (at the Council’s absolute discretion) and/or a third party which

	meets the requirements of the Council to own and manage Affordable Housing Units such as approval not to be unreasonably withheld or delayed
“Valuer”	means a Member or Fellow of the Royal Institution of Chartered Surveyors who shall act in an independent capacity
“Waste and Recycling Contribution”	means a financial contribution calculated on submission of the Reserved Matters Application at a rate of £121 per Residential Unit payable by the Owner to the Council as a contribution towards the costs of provision of waste and recycling equipment for the Residential Unit(s)
“Working Day(s)”	days on which clearing banks in the City of London are open to the public and for the avoidance of doubt such days shall not include any Saturday or Sunday New Year’s Day Good Friday Easter Monday May Day Christmas Day and Boxing Day

2 Interpretation

- 2.1 Words importing the masculine include the feminine and neuter gender and vice versa
- 2.2 Words importing the singular include the plural and vice versa
- 2.3 Words importing persons include companies’ corporations and vice versa and all such words shall be construed interchangeable in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation (including by becoming a successor in title) all their obligations can be enforced against all of them jointly and against each individually

- 2.5 Insofar as different parts of or interests in the Land are owned by different persons each person covenants with the Council and with one another to co-operate insofar as they are able to ensure that the Covenants herein on behalf of the “the Owner” are fulfilled as expeditiously as possible
- 2.6 The headings throughout this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed
- 2.7 Any reference to a clause paragraph schedule or plan is to one in to or attached to this Deed and any reference to this Deed includes any schedule, plan, annexure or other attachment to this Deed
- 2.8 In the absence of contrary provision any reference to a Council document to be completed which is annexed or referred to in this Deed shall be the Council document which is current and in force at the date of its completion
- 2.9 In the absence of contrary provision any reference to a statute or statutory instrument includes any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and reference to a statute includes any statutory instrument direction or specification made or issued under the statute or deriving validity from it
- 2.10 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and successors to any statutory functions of the Council
- 2.11 Covenants to do or not to do an action shall include respectively a covenant to permit or not to permit that action to be done

3 Statutory Provisions

- 3.1 This Deed is made pursuant to the following
- 3.1.1 Section 106 of the Act
- 3.1.2 Section 111 of the local Government Act 1972

3.1.3 Section 93 Local Government Act 2003

3.1.4 Section 1 Localism Act 2011

and all other enabling powers and has been entered into by the Council pursuant to those powers

3.2 The covenants restrictions and requirements created by this Deed are planning obligation for the purposes of Section 106 of the Act to the intent that it shall bind the parties and their respective successors in title to each and every part of the Land and are enforceable by the Council as local planning authority

3.3 It is acknowledged that the obligations contained in this Deed are

3.3.1 necessary to make the Development acceptable in planning terms;

3.3.2 directly related to the Development; and

3.3.3 fairly and reasonably related in scale and kind to the Development in accordance with the requirements of Regulation 122 of the CIL Regulations

4 Commencement

4.1 Save for the provisions of clauses 1 to 4 and clauses 7 to 19 and any other provisions which either expressly or by necessary implication are required to come into effect beforehand, which shall come into force immediately or as otherwise set out in this Deed, this Deed is conditional upon the grant of Planning Permission and the Commencement of Development.

4.2 The Owner shall notify the Council of the Commencement of Development and the date of Occupation of the first Residential Unit, the date of Occupation of 50% of the Market Housing Units and the date of Occupation of 70% and 90% of the Residential Units and the Owner agrees that no time shall run to the detriment of the Council if and so long as the Owner has failed to server notice

- 4.3 If the Owner has not provided the information referred to in clause 4.2 above within 20 Working Days of its becoming available the Council shall have the right to obtain this information by the other reasonable means and to charge the Owner its cost in obtaining this information subject to a maximum of one thousand pounds (£1000) per time **PROVIDED THAT** the information is in fact obtained as aforesaid and reasonable evidence of this is provided by the Council to the owner

5 The Owner's Covenants

- 5.1 The Owner will observe and perform the Owner's obligations set out in this Deed and the Schedules (excluding Schedule 9)

6 The Council's Covenants

- 6.1 The Council covenants with the Owner as set out in the Schedule 9

7 General

The parties agree that

- 7.1 Nothing in this Deed constitutes an obligation to grant planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function and nothing in this Deed constitutes and such approval, consent or permission
- 7.2 This Deed does not and is not intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999 (other than any replacement body of the Council)
- 7.3 No person shall be liable for any breach of any of the planning obligations or other provision of this Deed after it shall have parted with its entire interest in the Land or that part of the land in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 7.4 Insofar as any clause or clauses or any part thereof this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such

invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed

7.5 If before Commencement of Development the Planning Permission:

7.5.1 expires within the meaning of Sections 91 92 or 93 of the Act;

7.5.2 is quashed following a successful legal challenge; or

7.5.3 is revoked, quashed or modified without consent of the Owner

this Deed shall cease to have effect

7.6 The Owner shall pay to the Council:

7.6.1 the Administrative Fee and its proper and reasonable legal cost incurred in negotiating preparing and entering into this Deed upon completion of this Deed;

7.6.2 The Monitoring Fee prior to Commencement of Development;

7.6.3 The BNG Monitoring Fee prior to Commencement of Development

7.7 This Deed shall be registerable as a local land charge by the Council

7.8 If required by the Council the Owner shall secure registration of this Deed in the Charges Register of the Registered Title to the Land at the Land Registry

7.9 Where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement approval or consent or expression of satisfaction shall not unreasonably withheld or delayed any such agreement consent approval or expression of satisfaction shall be given in writing on behalf of the Council by the Director as appropriate

7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the land in accordance with a planning permission (other than the

Planning Permission) granted (whether or not on appeal) after the date of this Deed

7.11 Nothing contained or implied in this Deed shall prejudice affect fetter or restrict the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority or any other statutory function rights duties powers and obligations under all public and private statutes bylaws and regulations

7.12 This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

8 Notices

Any notice or other communication given or made under this Deed shall be in writing and (unless otherwise herein provided) shall be deemed to be sufficiently served if sent by pre-paid first class post or other next working day delivery service to the address of the party specified in this Deed or to such other address (in substitution thereof) as may be notified in writing by that party from time to time for this purpose and in the case of the council shall be addressed to the Head of Legal Services and quote reference **IKEN 205127** and copied to the Section 106 and Community Infrastructure Levy Officer

9 Waiver

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

10 Change in Ownership

The Owner agrees with the Council to give the Council to give the Council immediate written notice of any change in ownership of any of its interest in the Land occurring before all obligations under this Deed have been discharged.

Such notice to give details of the transferee's name and registered office (if a company or usual address if not) together with the area of the land or unit of occupation transferred by reference to a plan PROVIDED THAT this clause shall not apply to the disposal of an individual Residential Unit

11 Indexation

All financial Contributions payable to the Council (or the Council's Nominee) under this Deed shall be Index Linked

12 Interest

If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of actual payment compounded annually

13 VAT

13.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable in respect thereof

13.2 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Deed, then to the extent that VAT had not previously been charged in respect of that supply person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

14 Indemnity

14.1 The Owner hereby undertakes and agrees with the Council that in the event of any claim or claims being made against the Council for any one or more of the following payments:

a) Compensation (including any claim arising under the Land Compensation acts)

b) Damages

c) Costs

d) Charges

e) any other payment

such claim arising in connection with or incidental to or in consequence of any failure on the part of the Owner to comply with its obligations under this Deed the Owner will hold the Council fully indemnified from and against each and ever said claim

- 14.2 The Owner shall not be liable under this clause to indemnify the Council in respect of any claim only insofar as and to the extent that the said claim is found to have resulted from the negligent act or omission of the Council or its servants or agents save that for the purpose of this clause the Owner or persons acting on behalf of the Owner shall not be regarded as servants or agents of the Council

15. Section 73 Application

If after the date of this Deed any planning permission is granted pursuant to section 73 of the Act in respect of conditions attached to the Planning Permission references in this Deed to the Planning Application and Planning Permission shall be deemed to include respectively any such subsequent section 73 planning applications and any planning permissions granted pursuant to the section 73 planning applications and this Deed shall apply and take effect and be read and construed accordingly PROVIDED ALWAYS THAT nothing in this Clause shall fetter the discretion of the Council in determining any such section 73 planning application from requiring that any consequential planning obligations be secured by way of a new deed or supplemental deed under section 106 and/or section 106A of the Act.

16. Exclusion of Liability Clause

 This Deed shall not be enforceable against:

- 16.1 any individual owner of any Market Housing Units comprised within the Development unless that individual owner is also the Owner or a party deriving

title from the Owner other than as a purchaser of a completed Market Housing Unit of this Deed;

16.2 any individual owner of any Affordable Housing Unit comprised within the Development unless that individual owner is also the Owner or a party deriving title from the Owner other than as a purchaser of a completed Affordable Housing Unit except for any provisions under Schedule 1 of this Deed that are expressed to apply to such individual owner;

16.3 any Chargee of an individual Residential Unit, or any Receiver appointed by such Chargee, or any person deriving title through such mortgagee or Receiver (including their respective Chargee or Receiver), unless and until such person takes possession of these Residential Unit(s) for purposes other than securing repayment of the loan, in which case the planning obligations of this Deed will be enforceable.

16.4 the Registered Provider nor their Chargee or any Receiver appointer by such Chargee (except for the Affordable Housing provisions in Schedules 1 to 4 of this Deed);

16.5 any statutory undertaker or utility company (including but not limited to providers of electricity, gas, water, telecommunications, or sewerage services) solely by virtue of their ownership, occupation, or use of any part of the Development for the purposes of providing or maintaining utility infrastructure or services."

and for the avoidance of doubt as a consequence of the release given in, this clause this Deed may be modified varied or released without the consent or approval of any such person without them being a party to any document or deed required to effect such modification variation or release but such document or deed shall take effect as if they had been a party to such document or deed

17. Council's Discretion

FOR AVOIDANCE OF DOUBT nothing herein contained shall prejudice or affect the rights, discretion, powers, duties and obligations of the Council under all statutes by laws statutory, instruments orders and regulations in the exercise of their functions as a local authority

18 Dispute Resolution

- 18.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the president (or equivalent person) for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties to the dispute in such a proportion as the experts shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares
- 18.2 In the absence of agreement within 10 Working Days as to the appointment or suitability of the person to be appointed pursuant to clause 18.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares
- 18.3 Any expert howsoever appointed shall be subject to the express requirement that a decision shall be reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation

18.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days

18.5 The provisions of this clause shall not affect the ability of the Council or to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief

19 Delivery

The provision of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1 : AFFORDABLE HOUSING

The Owner covenants with the Council that it shall

General

1. provide the Affordable Housing Units in accordance with the Affordable Housing Plan and the Affordable Housing Mix unless otherwise agreed in writing with the Council;
2. not submit any Reserved Matters Application without simultaneously submitting the Affordable Housing Plan and details of the Affordable Housing Mix to the Council (a copy of which shall be provided at the same time by the Owner to the Head of Housing) for the Affordable Housing Units contained within the relevant Reserved Matters Application and not to Commence Development of any such area until the Affordable Housing Plan and the Affordable Housing Mix relating to that area have been approved by the Council;
3. provide:
 - 3.1 at least 30% (6 units) of the Residential Units as Affordable Housing at Nil Subsidy
 - 3.2 60% (4 units) of the Affordable Housing Units shall be Social Rented Units and 40% (2 units) shall be Shared Ownership Units unless otherwise agreed in writing with the Council

Design of Affordable Housing Units

4. Construct all of the Affordable Housing Units to the Standards unless otherwise agreed in writing with the Council;

Affordable Housing Contract

5. not Commence the Development until the Owner and the Transferee have entered into the Affordable Housing Contract unless otherwise agreed in writing with the

Council and to provide to the Council on demand documentary evidence of the existence of the Affordable Housing Contract;

Transfer of Affordable Housing Units to Transferee

6. transfer the completed Affordable Housing Units to the Transferee for the Affordable Housing Consideration and such transfer shall include a restriction that in the event that any of the Affordable Housing Units are sold the surplus proceeds of sale shall be recycled into the provision of further Affordable Housing Units in Wiltshire

7. not Occupy more than

7.1. 50% of the Market Housing Units (in each Phase if relevant) until 50% of the Affordable Housing Units (within that Phase) have been completed in accordance with the Planning Permission and made available for Occupation and transferred to the Transferee in accordance with paragraph 6 of this Schedule 1 and to provide to the Council on demand documentary evidence of the existence of the transfer(s) of the Affordable Housing Units;

7.2. 80% of the Market Housing Units (in each Phase if relevant) until 100% of the Affordable Housing Units (within that Phase) have been completed in accordance with the Planning Permission and made available for Occupation and transferred to the Transferee in accordance with paragraph 6 of this Schedule 1 and to provide to the Council on demand documentary evidence of the existence of the transfer(s) of the Affordable Housing Units

Affordable Housing Transfer Terms

8. ensure that each transfer of an Affordable Housing Unit shall:

8.1. be with full title guarantee of either a freehold interest or a leasehold estate for a minimum of 125 years;

8.2. provide, without additional cost to the Transferee, vehicular access and foul and surface water sewers and water, gas (if any), electricity and

telecommunications service systems for the Affordable Housing Unit linking in each case to the estate roads and service systems to be constructed and laid as part of the remainder of the Development and connected to highways and sewers that serve the area;

Allocations Policy/Nominations Rights – Rented and Shared Ownership

9. procure that on transfer of the Affordable Housing Units to the Transferee the Transferee will operate in accordance with the Allocations Policy and the Nomination Rights in respect of the Affordable Housing Units unless otherwise agreed in writing with the Council;

Homes England's Target Rent

10. ensure that the
 - 10.1 Social Rented Units are let at a rent that is no more than the Home England's Target Rent;
 - 10.2 equity share of the Shared Ownership Units which is retained by the Transferee is only let at a rent that is no more than 2.75% per annum of the value of the share retained by the Transferee or in line with Homes England guidelines applicable at the time of sale of the Shared Ownership Units;
 - 10.3 Intermediate Rented Units are let at a rent that is no more than 80% of the local Market Rent (including service charges where applicable at the time of letting which may be increased by no more than the Consumer Price Index plus 1% annually or such other amount as prescribed by Homes England);
 - 10.4 Affordable Rented Units are let at a rent of no more than 80% of local Market Rent (including service charges where applicable at the time of letting which may be increased by no more than the Consumer Price Index plus 1% annually or such other amount as prescribed by the Homes England);

Distribution and Design of Affordable Housing Units

11. not Commence the Development until the Owner has agreed with the Council the distribution of the Affordable Housing Units across the Development

12. ensure that the Affordable Housing Units are materially indistinguishable (in terms of outlook design and appearance) from the Market Housing Units of similar size (other than to accommodate any differences required as a result of paragraph 4 of this Schedule 1)

Use of Affordable Housing Units

13. ensure that the Affordable Housing Units are at all times owned and managed by the Transferee and that the Affordable Housing Units are used and Occupied in accordance with Schedule 3 (Affordable Housing Mix) as:
- 13.1 Social Rented Units and the Affordable Rented Units and the Intermediate Rented Units let by way of tenancy agreements in line with the Regulator of Social Housing's regulatory standards or such other form of tenancy agreement as shall be agreed in writing with the Council; and
- 13.2 Shared Ownership Units which are owned and occupied in accordance with a lease that includes the Homes England's Fundamental Clauses; or such other tenancy agreement or shared ownership lease as shall be agreed in writing with the Council and for the avoidance of doubt the operation of this paragraph does not prevent staircasing to 100%;
14. subject to the provisions of paragraphs 16 and 17 of this Schedule 1 not cause, allow or permit to use the Affordable Housing Units from the date of Practical Completion other than for Affordable Housing;

Qualifying Persons – rented and shared ownership

15. ensure unless otherwise agreed in writing with the Council that the Affordable Housing Units are occupied and let to a person(s) who satisfies the following conditions:
- 15.1 is a Qualifying Person whom it is proper for the Transferee to house in accordance with its rules; and
- 15.2 has a local connection as set out in the Allocations Policy

Mortgage Provisions – rented and shared ownership

16 The Affordable Housing provisions of this Deed and the Nomination Rights contained in Schedule 2 shall not be binding on a Chargee (appointed by such Chargee or any other person appointed under any security documentation to enable such 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 Housing Units or any persons or bodies deriving title through such Chargee PROVIDED THAT:

16.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a Disposal of the Affordable Housing Units to another Transferee for a consideration of not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

16.2 if such Disposal has not completed within the three (3) month period the Chargee shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely

17 The Affordable Housing provisions contained in this Schedule 1 and the Nomination Rights contained in Schedule 2 shall not be binding on or enforceable against any Protected Tenant or any Chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective Chargees

SCHEDULE 2: Nomination Rights

1. Pursuant to paragraph 9 of Schedule 1, as between the Transferee and the Council the following provisions shall govern the nominations/allocations of Occupation of the Affordable Housing Units in line with the Allocations Policy and the nominations procedures for each type of tenure;
2. The Transferee shall notify the Council in writing from time to time of any Affordable Housing Unit that shall be vacant and available for Occupation;
3. The Transferee will liaise with the Council as necessary with regard to local housing need generally and the list of Qualifying Persons;
4. The Council and the Transferee shall have the following nomination rights in respect of the Affordable Housing Units:

Nominations

The initial allocation of each Residential Unit:	the Council 100%
Thereafter:	the Council 75%
	the Transferee 25%

SCHEDULE 3: Affordable Housing Mix

An indicative mix only – details will need to be reviewed/confirmed at time of any

Reserved Matters Planning Application to ensure still in line with the current

demonstrable need:

Social Rented (4)

50% x 1 bed 2 person flats or house-style maisonettes (2)

25 % x 2 bed 4 person houses (1)

25% x 34 bed 56 person houses (1)

Shared Ownership (2)

50 % x 2 bed 4 person houses (1)

50 % x 3 bed 5 person houses (1)

SCHEDULE 4: NDSS and 85% NDSS

Number of bed rooms	Number of bed spaces	NDSS			Minimum 85% NDSS		
		1 storey (sq m)	2 storey (sq m)	3 storey (sq m)	1 storey (sq m)	2 storey (sq m)	3 storey (sq m)
Studio	1p	39 (37)*			34 (32)*		
1b	2p	50	58		43(F)	50	
2b	3p	61	70		52	60	
	4p	70	79		60(B)	68(H)	
3b	4p	74	84	90	63	72	77
	5p	86	93	99	74	80	85
	6p	95	102	108	81	87	92
4b	5p	90	97	103	77	83	88
	6p	99	106	112	85	91	96
	7p	108	115	121	92	98	103
	8p	117	124	130	100	106	111
5b	6p	103	110	116	88	94	99
	7p	112	119	125	96	102	107
	8p	121	128	134	103	109	114

6b	7p	116	123	129	99	105	110	
	8p	125	132	138	107	113	118	

*Where a one person flat has a shower room rather than a bathroom the floorspace may be reduced from 39 sqm to 37 sqm (NDSS) or from 34 sqm to 32 sqm (85% NDSS).

(F=Flat) (B=Bungalow) (H=House)

SCHEDULE 5 - OPEN SPACE AND PLAY AREA

The Owner covenants with the Council that the Owner shall:

1. Complete the relevant Open Space Works and the Play Area Works in accordance with the Landscape Plan.
2. On completion of the Play Area Works for the Play Area and on request by the Service Head – Highway Operations following any remedial actions required by any Remedial Notice for the Play Area to carry out a post-installation Royal Society for the Prevention of Accident play safety inspection for the relevant Play Area and submit the relevant report to the Service Head – Highway Operations.
3. Notify the Council in writing of the details of their designated contact for queries regarding the Open Space and Play Area within seven (7) Working Days of completion of the relevant such Open Space Works and Play Area Works.
4. Not allow more than 70% of the Residential Units to be Occupied (unless is otherwise agreed in writing by the Council) in each Phase (if applicable) until:
 - 4.1. The Open Space Practical Completion Certificate and/or the Play Area Completion Certificate have been issued by the Council for such Phase; and
 - 4.2. the Open Space and the Play Area have been made available for public use for such Phase (if applicable); and
 - 4.3 prominent signs on the Open Space and the Play Area have been erected indicating who is responsible for maintaining such areas.
5. After completion of the relevant Open Space Works and the Play Area Works and as soon as the planting season permits to plant in the Open Space and the Play Area (as applicable) plants and trees in accordance with the -Landscape Plan.

6. The Owner further covenants

- 6.1. Not to adjust the actual area of any part of the Open Space and Play Area so as to include and/or exclude land that abuts the boundary of the curtilages of individual Residential Units or adopted or adoptable highway UNLESS such adjustment has been agreed in writing with the Service Head – Highway Operations
- 6.2. not to use or allow the Open Space and the Play Area to be used for any other purpose other than as Open Space and Play Area respectively for the use by and for the enjoyment of the public in perpetuity.
- 6.3. pay the Council's costs in taking any action to remedy the failure to comply with the Remedial Notice within 21 Working Days of the Service Head – Highway Operations serving notice of the amount due.
- 6.4. To insure and maintain or procure the maintenance of the Open Space and the Play Area until completion of the transfer of the freehold of the Open Space and the Play Area, (as applicable) and/or the transfer of the maintenance responsibilities to (in the Owner's absolute discretion) the Council's Nominee or the Management Company (as applicable).

7. Practical Completion of Open Space and Play Area

- 7.1. Within seven (7) Working Days from completion of the relevant Open Space Works and/or Play Area Works (as applicable) to serve a written notice on the Council to request an Open Space Practical Completion Certificate and/or the Play Area Certificate (as applicable)
- 7.2. If the Council issues a Remedial Notice to undertake all the necessary works identified in the Remedial Notice within the timeframes provided and to repeat the steps under paragraphs 7.1 and 7.2 of this Schedule until the Council issues an Open Space Practical Completion Certificate and the Play Area Completion Certificate (as applicable).
- 7.3. After the Council issues an Open Space Practical Completion Certificate and/or the Play Area Completion Certificate (as applicable) the Open Space and/or the Play Area (as applicable) shall thereafter be maintained as such in perpetuity.

Transfer of the Open Space and Play Area

8. The Owner undertakes

8.1. To transfer the freehold of the relevant part of the Open Space and/or the Play Area (as applicable) at the Owner's absolute discretion either to the Council's Nominee in accordance with paragraphs 9 to 15 of this Schedule or to a Management Company pursuant to paragraphs ~~176_5~~ to ~~19219~~ of this Schedule;

8.2. Not to allow more than 90% of the Residential Units to be Occupied in each Phase (if applicable) (unless it is otherwise agreed in writing with the Council) until the freehold of the Open Space and/or the Play Area have been transferred in accordance with paragraph 8.1 above of this Schedule.

Transfer to the Council's Nominee

9. Further to paragraph 8 above, if the Owner chooses to transfer the freehold of the relevant part of the Open Space and/or the Play Area (as applicable) to the Council's Nominee, the Owner undertakes:

9.1. to serve a written notice on the Council's Nominee offering to transfer the freehold of the relevant part of the Open Space and/or Play Area (as applicable) to the Council's Nominee PROVIDED that the relevant Open Space Practical Completion Certificate and/or the Play Area Certificate has been issued by the Council

9.2. To keep the offer for the transfer open and available for acceptance for sixty (60) Working Days ("the Offer Period") and

9.3. not to transfer the Open Space and/or the Play Area (as applicable) to any other person body or organisation prior to expiry of the Offer Period without the Council's prior written consent (not to be unreasonably withheld or delayed).

10. If the Council's Nominee accepts the offer within the Offer Period, the Owner undertakes to transfer the freehold of the relevant part of the Open Space, and/or the Play Area (as applicable) to the Council's Nominee in accordance with paragraphs 11 to 15 of this Schedule in which case paragraphs 16 to 20 of this Schedule won't be applicable.

11. Following acceptance of the offer, the Owner further undertakes:

- 11.1. subject to paragraph 15.2.4 below not to unreasonably delay the completion of such transfer;
- 11.2. to keep the consideration payable by the Council's Nominee to one pound (£1);
- 17.2 to pay to the Council's Nominee upon the date of such transfer the relevant portion of the Open Space Maintenance Contribution, and/or the Play Area Maintenance Contribution as applicable

12. The transfer

- 12.1. shall include terms which:
 - 12.1.1. require the Council's Nominee to maintain such Open Space and/or Play Area (as applicable) in perpetuity (unless otherwise agreed with the Council);
 - 12.1.2. allow the use of the Open Space and/or Play Area (as applicable) by the general public;
- 12.2. shall include the reservation of rights (or easements) for access, services and utilities over the relevant part of the Open Space and Play Area for the benefit of any other part of the Land where such rights are reserved for the purpose of laying, managing, maintaining, replacing, renewing, cleaning and repairing accesses, services or utilities;
- 12.3. shall include for the benefit of the relevant part of the Open Space and Play Area the grant of any and all reasonable rights of access, services and utilities over any adjoining land within the Owners' control or any other part of the Land as are reasonably required for the intended use of the relevant part of the Open Space and Play Area or its management and maintenance.
- 12.4 The Standard Conditions of Sale (current at the time of the transfer) shall apply to the transfer insofar as the same are not inconsistent with the expressed terms of this Deed
- 13.** On the issue of an Open Space Practical Completion Certificate, and/or a Play Area Completion Certificate the Maintenance Period will commence respectively on the issue of each of those certificates.
- 14.** If an alternative Maintenance Period time period of zero (0) days is approved by the Service Head - Highway Operations then paragraphs 15.1 to 15.2.4 of this Schedule will not apply and the transfer of the freehold of the relevant part

of the Open Space, and/or the Play Area (as applicable) to the Council's Nominee will occur on the issue of the Open Space Practical Completion Certificate and/or the Play Area Certificate respectively (as applicable)

15. On one (1) months prior to the expiry of the Maintenance Period for each of the relevant part of the Open Space and/or Play Area (as applicable) the Owner undertakes to:

15.1. notify the Council of the expiration date of the relevant Maintenance Period and

15.2. if a Remedial Notice is issued by the Council in accordance with paragraph 6.2 of Schedule ~~95~~

15.2.1. to undertake the works identified in the Remedial Notice within the timeframes provided to the Council's reasonable satisfaction and

15.2.2. To notify the Council within five (5) Working Days from completion of the works under Remedial Notice and

15.2.3. if applicable repeat the steps under paragraphs 15.2.1 and 15.2.2 of this Schedule 5 until a Final Certificate is issued

15.2.4. on the issue of the Final Certificate to transfer the freehold of the relevant part of the Open Space, and/or Play Area (as applicable) to the Council's Nominee.

16. ~~If~~ the Council's Nominee rejects or fails to accept the offer within the Offer Period in accordance with paragraph ~~10 s-XX~~ of this Schedule 5, or if the Owner elects to do so, the Owner undertakes to transfer the relevant part of the Open Space and/or the Play Area (as applicable) to the Management Company and paragraphs ~~176~~ to ~~219~~ shall only apply.

Transfer to the Management Company

17. If the Owner elects to transfer the freehold of the relevant part of the Open Space and/or Play Area to the Management Company, pursuant to paragraph 8.1 or the Council's Nominee rejects or fails to accept the offer within the Offer Period in accordance with paragraph 10 of this Schedule then the Owner undertakes to transfer the freehold of the relevant part of the Open Space and/or the Play Area to the Management Company and paragraphs ~~176~~ to ~~219~~ shall apply and paragraphs 9 to 15 of this Schedule will not be applicable

18. The Owner further undertakes that such transfer shall

18.1. Require the Management Company to maintain such Open Space and/or Play Area (as applicable) in perpetuity (unless otherwise is agreed with the Council) and

18.2. Allow the use of the Open Space and/or Play Area (as applicable) to be used by the general public and

19. Unless and until any transfer of the freehold of the Open Space and/or Play Area to the Management Company and/or the transfer of the maintenance responsibilities occurs, the Owner shall maintain or procure the maintenance of the Open Space, Play Area and shall allow the use of the Open Space and/or the Play Area provided thereon by the general public from the date of issue of the Open Space Practical Completion Certificate or the Play Area Certificate (as applicable).

20. The Standard Conditions of Sale (current at the time of the transfer) shall apply to the transfer referred to in paragraph ~~19~~ above insofar as the same are not inconsistent with the expressed terms of this Deed

21. The Owner undertakes to enter into negotiations with the Registered Provider or Transferee and agree a reasonable figure for the Management Charge to be levied on occupants of the Affordable Housing Units.

SCHEDULE 6 – EARLY YEARS EDUCATION CONTRIBUTION

The Owner covenants with the Council

- 1 To pay the Council in its capacity as local education authority the Early Years Education Contribution prior to Commencement of Development and
- 2 Not to Commence or allow or permit Commencement of Development until the Early Years Education Contribution has been paid in full

SCHEDULE 7 - OFF-SITE SPORTS PITCH/OFF-SITE OPEN SPACE AND OFF-SITE PLAY AREA CONTRIBUTIONS

The Owner covenants with the Council

1. To pay the Council the Off-Site Sport Pitch Contribution prior to Commencement of Development and not to Commence or allow or permit Commencement of Development until the Off-Site Sport Pitch Contribution has been paid in full
2. If applicable, to pay the Council the Off-Site Open Space Contribution and/or the Off-Site Play Area Contribution (as applicable) before Commencement of Development and not to Commence or allow or permit Commencement of Development until the Off-Site Open Space Contribution and/or the Off-Site Play Area Contribution (if applicable) is/are paid in full.

SCHEDULE 8 - WASTE AND RECYCLING CONTRIBUTION

1. **The Owner covenants with the Council** that it shall:
 - 1.1 pay the Council the Waste and Recycling Contribution prior to Commencement of Development and not to Commence or allow or permit Commencement of Development until the Waste and Recycling Contribution has been paid in full
 - 1.2 Prior to Commencement of Development to provide details of their designated contact for liaison regarding the waste and recycling and to provide update of their designated contact following any change of personnel.
 - 1.3 Prior to first Occupation of any of the Residential Units to provide details of the designated contact for liaison regarding the waste and recycling of the Development and to provide an update of the designated contact following any change of personnel
2. The Owner hereby undertakes and agrees with the Council that the indemnity provisions in clauses 14.1 and 14.2 of this Deed shall be applicable to any valid and properly made claim or claims made against the Council arising in connection with or incidental to or in consequence of the Council carrying out its duties of waste and recycling collection during the course of the Development on the Land and the Owner will hold the Council fully indemnified from and against each and every said claim save that this indemnity will cease on the date that the highway that any Residential Units on the Land abut or front becomes adopted by the Local Highway Authority as highway maintainable at the public expense
3. The Owner shall not be liable under paragraph 2 to indemnify the Council in respect of any claim only insofar as and to the extent that the said claim is found to have resulted from the negligent act or omission of the Council or its servants or agents save that for the purpose of this clause the Owner or persons acting on behalf of the Owner shall not be regarded as servants or agents of the Council

SCHEDULE 9: COUNCIL'S COVENANTS

Part 1

Repayment Contributions

The Council covenants with the Owner

1. To use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid
2. To pay to the paying party such amount of any payment made by the owner to the Council (excluding the Play Area Maintenance Contribution and Open Space Maintenance Contribution) under this Deed which has not been expended or committed in accordance with the provisions of this Deed within TEN (10) years of the date of receipt by the Council of such payment on receipt of a written request from the Owner to do so.

Part 2

Open Space and Play Area

The Council covenants with the Owner to:

1. inspect the Open Space and the Play Area within a reasonable period of having received notification from the Owner under paragraph 3 of Schedule 5 of this Deed or, in the event that no such notification has been received, at the Council's discretion (but acting reasonably) to determine whether to issue the Open Space Practical Completion Certificate and/or Play Area (as the case may be).
2. If appropriate following an inspection referred to under paragraph 1 of this part of Schedule 9 either:
 - 2.1 if it is satisfied that the relevant Open Space Works and/or Play Area Works (as applicable) have been completed in accordance with the Landscape Plan, to issue the Open Space Practical Completion Certificate and/or the Play Area

Certificate (as applicable) within twenty (20) Working Days from the inspection referred to paragraph 1 of this part of Schedule 9; or

- 2.2 if the Council is not satisfied that the relevant Open Space Works and/or the Play Area Works have been completed in accordance with the Landscape Plan to issue a Remedial Notice within 20 (twenty) Working Days of the inspection referred to under paragraph 1 of this part of Schedule 9.
3. In the event of a Remedial Notice being issued under paragraph 2.2 of this part of Schedule 9, to inspect the relevant part of the Open Space and the Play Area (as appropriate) within twenty (20) Working Days from receipt of the Owner's written notification of completion of the Remedial Works and:
 - 3.1 if satisfied, to issue the Open Space Practical Completion Certificate and/or the Play Area Certificate (as applicable)
 - 3.2 if it is not satisfied, to issue a further Remedial Notice.
4. If a Remedial Notice is issued then the timetable for issuing the Open Space Practical Completion Certificate and/or the Play Area Certificate under this Deed shall be deemed amended accordingly and the steps under paragraphs 2 and 3 of this part of Schedule 9 shall be repeated accordingly until the Open Space Practical Completion Certificate and/or the Play Area Certificate are issued by the Council.

Transfer of the Open Space and Play Area to the Council's Nominee

5. In the event of the Open Space and/or Play Area are intended to be transferred to the Council's Nominee, the Council shall undertake the inspection of the relevant part of the Open Space and/or Play Area (as applicable) within twenty (20) Working Days from receipt of the Owner's notification in accordance with paragraph 15.1 of Schedule 5 under which the Owner notifies the Council of the expiration of the Maintenance Period and within twenty (20) Working Days from the inspection:
6. If, following inspection under paragraph 5 above,
 - 6.1 the Council is satisfied that no Remedial Notice needs to be served on the Owner, to issue the Final Certificate; or

6.2 if it is not satisfied, to serve a Remedial Notice.

7. In the event that paragraph 6.2 above applies, to inspect the relevant part of the Open Space and/or Play Area (as appropriate) within twenty (20) Working Days from receipt of the Owner's written notification of completion of the Remedial Works and:

7.1 if satisfied, acting reasonably, to issue the Final Certificate; and

7.2 if it is not satisfied, acting reasonably, to issue a further Remedial Notice.

8. If a Remedial Notice is issued then the timetable for issuing the Final Certificate under this Deed shall be deemed amended accordingly and the steps under paragraphs 6 and 7 of this Schedule 9 shall be repeated accordingly until the Final Certificate is issued by the Council.

ANNEX A: PLAN

**Annex B: Standard Specification for Adoption of Open Space and the Wiltshire
Council Play Specification**

Executed as a deed by affixing the
common seal of **WILTSHIRE
COUNCIL**

in the presence of:

Authorised signatory

.....

Executed as a deed by

ROBERT HITCHINS LIMITED
acting by two Directors

.....

Director

.....

Director