

DATED 27 May 2022

- (1) DORSET COUNCIL
  
- (2) RITA JOAN NEALE and ROMA PRATT and LORRAINE DEANNA JARVIS and PAUL IAN CAVE

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**SECTION 106 AGREEMENT**

relating to

Land north of Crown Road, Marnhull, Dorset

Planning application reference: 2/2018/1124/OUT

Planning appeal reference: APP/D1265/W/21/3289314

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Michelmores

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**THIS AGREEMENT** is made the 27<sup>th</sup> day  
of May two thousand and twenty two

**BETWEEN:**

- (1) **DORSET COUNCIL** of County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ (**'the Council'**); and
- (2) **RITA JOAN NEALE** of Flat 3, Killock, 7 Martello Park, Poole BH1 7BA and **ROMA PRATT** of 40 Cheam Road, Broadstone BH18 9HE and **LORRIANE DEANNA JARVIS** of 26 Rempstone Road, Wimborne BH21 1RP and **PAUL IAN CAVE** of 22 Parsonage Barn Lane, Ringwood BH24 1PX (**'the Owners'**)

**INTRODUCTION**

1. The Council is the local planning authority for the purposes of the Act for the area within which the Property is situated.
2. The Owners are the registered proprietor of the Property which is registered at the Land Registry under title number DT296423 subject to the entries disclosed in the registered title.
3. By a notice of refusal dated 18 June 2021 the Council refused planning permission for the reasons set out therein (**'the Refusal'**) and the Planning Appeal has been submitted to the Secretary of State against the Refusal.
4. The Council has agreed to enter into this Agreement in connection with the Planning Appeal.

**THIS AGREEMENT WITNESSETH AS FOLLOWS:**

**OPERATIVE PART**

**1 DEFINITIONS**

1.1 For the purposes of this Agreement the following expressions shall have the following meanings:

- 'the Act'** means the Town and Country Planning Act 1990 (as amended);
- 'Affordable Housing'** means affordable housing within the meaning of the National Planning Policy Framework or any other statement or circular which may supersede or amend it and the Affordable Housing Units shall be Affordable Housing disposed of in accordance with this Agreement;
- 'Affordable Housing Contribution'** means the sum of eleven thousand and forty pounds (£11,040) towards the provision of off-site Affordable Housing within the Council's administrative area;
- 'Affordable Housing Units'** means the Dwellings to be provided as Affordable Housing in accordance with this Agreement;
- 'Affordable Housing Scheme'** means a scheme showing the physical location, layout, size, typical occupancy and specification (including that of any common parts serving the Affordable Housing Units) and whether the Affordable Housing Units have a parking space or a garage as well as the type and tenure of the individual Affordable Housing Units and shall also include the following:
- i. a map or maps illustrating the distribution of Affordable Housing Units across the Development (including details of tenure)
  - ii. a schedule of accommodation including the floor space of each Affordable Housing Unit (m<sup>2</sup>) and number of bedrooms, and
  - iii. additional information (for example in relation to a scheme of prioritisation for the allocation of the Affordable Housing) as may be reasonably required by the Council
  - iv. full details of proposed Affordable Housing Units which are neither Affordable Rented Units nor Shared Ownership

Units so as to ensure their provision Occupation and retention as Affordable Housing

**'Affordable Rent'** means a weekly rent (inclusive of any service charges an Approved Provider seeks to charge in respect of an Affordable Rented Unit) which does not exceed 80% of Market Rent for a similar dwelling in the locality and with the level of rent to be approved by the Council;

**'Affordable Rent Tenancy'** means a tenancy for Affordable Housing for rent only and subject to such terms as permitted by Homes England;

**'Affordable Rented Unit'** means any of the Affordable Housing Units to be let by an Approved Provider at an Affordable Rent on an Affordable Rent Tenancy (and the "Affordable Rented Units means all of them);

**'Allotments Contribution'** means a sum equal to three hundred and eight pounds and sixteen pence (£308.16) per Dwelling towards the provision of new allotments and/or the enhancement of existing allotments (including subsequent maintenance and management) within Marnhull;

**'Application'** means the application for outline planning permission for the erection of 72 dwellings and new community facilities on the Property and allocated reference number 2/2018/1124/OUT;

**'Approved Provider'** means:

- (a) a Registered Provider approved by the Council; or
- (b) a provider of housing approved by the Council for the purpose of owning, maintaining and managing Affordable Housing

**'Chargee'** means a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **'Receiver'**)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver;

**'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 other than (for the purposes of this Agreement and for no other purpose)

- a. operations consisting of land clearance including demolition;
- b. remediation works relating to any contamination investigation/ clearance/ treatment;
- c. archaeological investigations;
- d. investigations for the purpose of assessing ground conditions;
- e. erection of any temporary means of enclosure;
- f. the temporary display of notices or advertisements; and

"Commence", "Commencement of Development" and "Commence Development" shall be construed accordingly;

**'Community Facilities Contribution'** means a sum equal to £2,006.97 (two thousand and six pounds and ninety seven pence) per Dwelling for the enhancement or enlargement of the existing village hall within Marnhull;

**'Council's Housing Register'** means the common housing register held by the Council or such other list or register that the Council may in future hold identifying Local Needs Persons or register approved by the Council for the purposes of low cost home ownership;

**'Defects Liability Period'** means a a minimum period of 12 months which starts from date the Council receives a copy of the Practical Completion Certificate in respect of the relevant Managed Area. In this 12 month period the Owner is responsible for rectifying any defects reasonably identified by the Council in writing relating to the relevant Managed Area;

**'the Development'** means the development of the Property as set out in the Application and described in the Second Schedule hereto;

**'Council Area'** means the administrative area of the Council;

**'Dwelling'** means any dwelling (including the Affordable Housing Units) to be provided pursuant to the Development;

<b>'Ecology and Conservation Contribution'</b>	means a sum equal to one hundred and one thousand, one hundred and eighteen pounds and thirty six pence (£101,118.36) towards Sites of Nature Conservation Interest grassland project within the parish of Marnhull and/or adjacent parishes
<b>'Financial Contributions'</b>	means the following financial contributions: <ul style="list-style-type: none"> <li>• Affordable Housing Contribution</li> <li>• Play Facilities Contribution;</li> <li>• Play Facilities Maintenance Contribution;</li> <li>• Allotments Contribution;</li> <li>• Formal Outdoor Sports Contribution;</li> <li>• Formal Outdoor Sports Maintenance Contribution;</li> <li>• Rights of Way Enhancement Contribution;</li> <li>• Secondary Education Contribution;</li> <li>• Ecology and Conservation Contribution;</li> <li>• Community Facilities Contribution;</li> <li>• Libraries Contribution; and</li> <li>• Primary Care Services Contribution</li> </ul>
<b>'Formal Outdoor Sports Contribution'</b>	means a sum equal to one thousand and three hundred and eighteen pounds and eighty pence (£1,318.80) per Dwelling for the Formal Outdoor Sports Facilities;
<b>'Formal Outdoor Sports Facilities'</b>	means upgrading Marnhull's cricket ground and football pitch, additional tennis court and provision of outdoor exercise equipment within Marnhull;
<b>'Formal Outdoor Sports Maintenance Contribution'</b>	means a sum equal to one hundred and twenty eight pounds and seventy three pence (£128.73) per Dwelling in respect of the future maintenance of the Formal Outdoor Sports Facilities;
<b>'Homes England'</b>	means Homes England or other government body established to oversee Affordable Housing provision and policy;
<b>'Housing Need'</b>	means the circumstances where a household is currently occupying accommodation that is substandard or unsuitable for its requirements and which has an income that is too low either to buy or rent

accommodation appropriate to their circumstances on the open market (and for the avoidance of doubt this may include circumstances where a household is currently accommodated but requires a form of low cost home ownership such as Shared Ownership);

- 'Index'** means the All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation;
- 'Informal Outdoor Space'** means an area of informal outdoor space of no less than 0.9ha in the form of parks and gardens/ amenity green space and/ or natural and semi-natural green space as described within the Fields in Trust Guidance (as shown for indicative purposes only coloured dark green on the Managed Areas Plan);
- 'Informal Outdoor Space Management Plan'** means a scheme to be agreed in writing with the Council (both parties acting reasonably in agreeing the scheme) to secure the future management and maintenance of the Informal Outdoor Space to be submitted as part of the Reserved Matters Application;
- 'Informal Outdoor Space Specification'** means details and specifications for the laying out and provision of the Informal Outdoor Space together with triggers for delivery and maintenance requirements of the Informal Outdoor Space to be agreed in writing with the Council;
- 'Interest'** means interest at 4 per cent above the base lending rate of the Lloyds Bank PLC from time to time;
- 'LEAP'** means Local Equipped Area for Play (and informal recreation);
- 'Libraries Contribution'** means a sum equal to two hundred and forty one pounds (£241) per Dwelling towards additional equipment and stock at Sturminster Newton Library;
- 'Local Connection'** means a connection (calculated from the Start Date) with the Council Area, as follows:
- a. being permanently resident therein for at least 2 years
  - b. in permanent full-time or part-time (minimum 16 hour contract per week) work therein for 6 months. This may include the need



to move to the Council Area in connection with permanent employment (minimum 16 hour contract per week) where commuting from the person's existing home is accepted by the Council as unreasonable. In all cases there should be no break in the period of employment for more than 3 months over the relevant period

- c. having immediate relatives (i.e. parents, non-dependent children, brother or sister) who have lived therein for at least 5 years and with whom there has been shown to have been frequent contact, commitment or dependency
- d. other categories or relationships may be considered by the Council including foster relationships where clear evidence of frequent contact, commitment dependency is shown
- e. other special circumstances which create a link to the Council Area (not including residence in a hospital armed forces accommodation holiday let or prison or rehabilitation facility) and having been first verified in writing by the Council as having such special circumstances and this may include the need to reside in the Council Area to give or receive medical support or (with the approval of the Council) some other form of special support

and in each case with priority given in accordance with any scheme of prioritisation approved as part of the Affordable Housing Scheme pursuant to Part 1 Paragraph 11 of the Third Schedule hereto;

**'Local Needs Person'**

means a person or persons in Housing Need (together with immediate family and dependents of such a person) who are registered on the Council's Housing Register and have a Local Connection as confirmed in writing by the Council or in the case of Shared Ownership Units as confirmed in writing by the Approved Provider and with priority given in the order below:

- a) firstly persons who have a Local Connection to the Primary Catchment Area; then
- b) if no person(s) satisfying the requirements in (a) above have identified within 2 months from when the Approved Provider first

commenced the process to identify a Local Needs Person satisfying the criteria in a) above then persons with a Local Connection to the Council Area;

**'Managed Areas'** means:

- the Informal Outdoor Space including (for the avoidance of doubt (unless and until the same adopted by a relevant statutory undertaker) any and all surface drainage features, systems apparatus and infrastructure present, provided, laid or constructed thereon relating to the Development; and
- the Play Area; and
- Private Roads and Paths

and **'Managed Area'** shall be construed accordingly

**'Management Company'** means such company or body as may be established or nominated by the Owner and approved by the Council for the purposes of managing and maintaining the Managed Areas;;

**'Managed Areas Plan'** means the plan attached to this Agreement with reference SK10 Rev P;

**'Market Rent'** means the estimated amount for which an Affordable Rented Unit should be let on the date of valuation between a willing lessor and willing lessee (disregarding the obligations in this Agreement) in an arm's length transaction after proper marketing where the parties have acted knowledgeably, prudently and without compulsion such estimated amount to be agreed between the Council and the Approved Provider or in the absence of such agreement to be determined by the Valuer in accordance with the principles set out above;

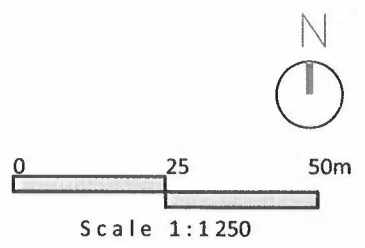
**'Notice of Availability'** means a notice in writing informing the Council that the Affordable Housing Unit is available for Occupation;

**'Notice of Commencement'** means a notice in writing to advise the Council of the date that Commencement of Development will take place;

<b>'Occupation'</b>	means for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display and "Occupy" and "Occupied" shall be similarly construed;
<b>'Offer to Dispose'</b>	means a formal written offer to dispose of a Shared Ownership Lease in terms and at a value (to be determined by the Valuer in the event of a dispute) consistent with the provisions of this Agreement;
<b>'Open Market Dwellings'</b>	means those Dwellings which are not Affordable Housing Units;
<b>'Plan'</b>	means the plan attached to this Agreement with reference SK03;
<b>'Planning Appeal'</b>	means the planning appeal in respect of the Council's refusal of the Application which has been given reference APP/D1265/W/21/3289314
<b>'Planning Permission'</b>	means the planning permission for the Development that may be granted by the Secretary of State pursuant to the Planning Appeal against the refusal of the Application
<b>'Play Area'</b>	means the on site LEAP of 400sqm to be provided as part of the Development (shown for indicative purposes only on the Managed Areas Plan);
<b>'Play Area Management Plan'</b>	means a scheme to be agreed in writing with the Council (both parties acting reasonably in agreeing the scheme) to secure the future management and maintenance of the Play Area to be submitted as part of the Reserved Matters Application;
<b>'Play Area Specification'</b>	means details, specifications and maintenance for the laying out and provision of the Play Area together with triggers for delivery to be agreed with the Council;
<b>'Play Facilities'</b>	means the upgrading of existing play equipment and skate park and provision of a multi-use games area within Marnhull;
<b>'Play Facilities Contribution'</b>	means a sum equal to nine hundred and sixty seven pounds and fifty two pence (£967.52) per Dwelling to be used for the Play Facilities;



RN X  
 RP X  
 LJ X  
 PC X

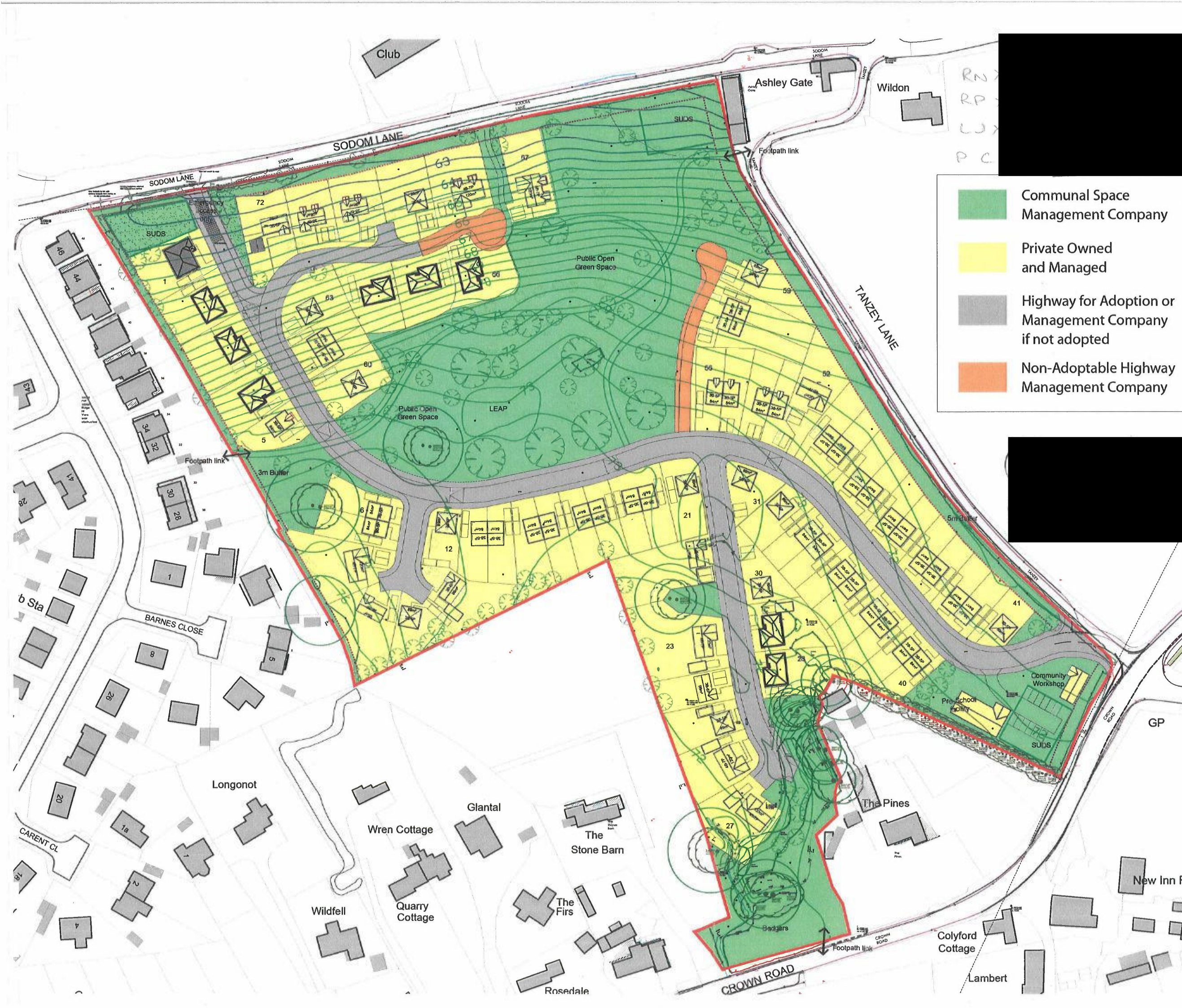


Rev	Date	Details	Drawn	Checked
<b>PLANNING</b>				
Project/Client:		Project No: 16080		
Land North of Crown Rd		Dwg No: SK03		
Marnhull		Rev:		
Drawing:		Scale: 1:1250 @A3		
Site Location Plan		Drawn By: CE Date: 06.08.2018		
1:1250		Checked By: DH Date: 06.08.2018		



15 Glasshouse Studios, Fryern Court Road, Fordingbridge  
 Hampshire, SP6 1QX T: (01425) 655806

∅ 75.7m

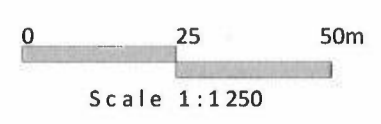


**KEY**

5m Planted buffer, measured from edge of hedge at ground level and will not include any residential gardens

New elements of landscape design are indicative only and are not fixed at this stage

- Communal Space Management Company
- Private Owned and Managed
- Highway for Adoption or Management Company if not adopted
- Non-Adoptable Highway Management Company



Rev	Date	Details	Drawn	Checked
Issued for:				
Project/Client:		Project No:		
Land North of Crown Rd Marnhull		16080		
Drawing:		Dwg No:		
s106 Management Plan		SK010		
		Rev:		
		P		
		Scale:		
		1:1250 @A3		
		Drawn By:	Date:	
		DH	03.05.2019	
		Checked By:	Date:	
		ES	03.05.2019	



15 Glasshouse Studios, Fryern Court Road, Fordingbridge Hampshire, SP6 1QX T: (01425) 655806

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<b>'Play Facilities Maintenance Contribution'</b>	means a sum equal to three hundred and fifty nine pounds and thirty six pence (£359.36) per Dwelling towards the future maintenance of the Play Facilities;
<b>'Practical Completion'</b>	means the issue of a certificate or certificates of practical completion in respect of the relevant Managed Area by the Owners' architect surveyor engineer or other relevant professional advisor (as applicable in the relevant circumstances) or in the event that the relevant facility or works is constructed by a party other than the Owner the issue of a certificate of practical completion by the other party's architect surveyor engineer or other relevant professional advisor (as applicable in the relevant circumstances) and the expression <b>'Practical Completion Certificate'</b> -shall be construed accordingly;
<b>'Primary Care Services Contribution'</b>	means a sum equal to five thousand, seven hundred and sixty pounds (£5,760) for the provision of a new clinical room in the Marnhull Surgery;
<b>'Primary Catchment Area'</b>	means the parishes of Marnhull, Hinton St Mary, Fifehead Magdalen, Todber, Stour Provost, Margret Marsh, West Orchard and Manston;
<b>'Private Roads and Paths'</b>	all vehicular roads and pedestrian and cycle paths and ways (including all verges thereto) to be constructed within the Property as part of the Development (shown for indicative purposes only coloured grey and brown on the Managed Areas Plan) save that any of the said roads, paths and ways which are subsequently adopted as public highway by the local highway authority shall from the date of the said adoption no longer fall within this definition for the purposes of this Deed;
<b>'Property'</b>	means the land shown edged with a thick black line on the Plan being the land bound by this Agreement and as described in the First Schedule hereto;
<b>'Registered Provider'</b>	means a registered provider of social housing as defined in the Housing and Regeneration Act 2008;
<b>'Reserved Matters Application'</b>	means the reserved matters application(s) submitted for the Development pursuant to the Planning Permission;

<b>'Rights of Way Enhancement Contribution'</b>	means a sum equal to thirty nine pounds and seventy seven pence (£39.77) per Dwelling for the upgrading/provision of pedestrian and bridleway gates, appropriate surfacing and signage required in relation to any footpath within Marnhull within 1 mile of the Property;
<b>'Satisfaction Notice'</b>	means a notice issued by the Council following the Defects Liability Period for the relevant Managed Area confirming that the relevant Managed Area has been constructed in accordance with the relevant approved specifications;
<b>'Secondary Education Contribution'</b>	means a sum equal to two hundred and ninety three thousand, five hundred and forty six pounds (£293,546) towards the provision of new specialist and science provision at Gillingham Secondary School;
<b>'Secretary of State'</b>	means the Secretary of State for the Department for Levelling Up, Housing and Communities (or any successor in function with respect to the determination of the Planning Appeal) and shall include any inspector appointed by him to determine the Planning Appeal
<b>'Services'</b>	means the service media (including without limitation highways water pipes foul and surface water drainage (such service media shall be provided to adoptable standard and an appropriate adoption agreement shall have been completed with the relevant adopting body at the date of Transfer) electricity gas supply telecommunications internet high bandwidth broadband communication services));
<b>'Shared Ownership Lease'</b>	means a lease for the rent and sale of an Affordable Housing Unit provided on terms which accord with the requirements of Homes England for shared ownership tenure and "Shared Ownership" shall be similarly construed;
<b>'Shared Ownership Unit'</b>	means the Affordable Housing Units to be constructed as subsidised housing for shared ownership pursuant to a Shared Ownership Lease (and the "Shared Ownership Units" means all of them);
<b>'Staircasing Payment'</b>	means any monies received following the sale of a Shared Ownership Unit as a result of the leaseholder exercising a right to increase their

share of the equity in the Shared Ownership Unit (and any part of such monies) and “Staircasing” shall be similarly construed;

**'Start Date'** means the date immediately preceding the date on which the Affordable Housing Unit is Occupied by a Local Needs Person;

**'Valuer'** means an independent expert who is a member or fellow of the Royal Institution of Chartered Surveyors and approved in writing by the Council and in the absence of agreement as nominated by the President (or other appropriate person) of the RICS on the application of either party;

**'Working Day'** means Monday to Friday inclusive excluding Bank or public holidays

## 2 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms 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 all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its respective statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.



### **3 LEGAL BASIS**

- 3.1 This Agreement is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the Act which bind the Property and are enforceable by the Council as local planning authority against the Owner.

### **4 CONDITIONALITY**

- 4.1 This Agreement shall come into force on the date hereof but is conditional upon the grant of the Planning Permission.

### **5 THE OWNER'S COVENANTS**

- 5.1 The Owner covenants with the Council as set out in the Third Schedule.
- 5.2 All obligations in this Agreement on the part of the Owner include an obligation not to cause or permit of suffer breach of such obligation by another person.

### **6 MISCELLANEOUS**

- 6.1 The Owner shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement.
- 6.2 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.3 This Agreement shall be registered as a local land charge by the Council.
- 6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Development Management or other appropriate manager or delegated officer within the Council and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 6.5 Following the performance and satisfaction of all the obligations contained in this

Agreement the Council shall at the request of the Owners effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

- 6.6 Insofar as any clause or clauses of this Agreement 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 Agreement.
- 6.7 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement where: (i) such person does not hold and has never held an interest in that part of the Property on which the breach arises and (ii) after such person shall have parted with its entire interest in the Property but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.9 Unless specifically stated otherwise nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 6.10 Nothing contained or implied in this Agreement shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council under all statutes, byelaws, statutory instruments, orders and regulations in exercise of their functions as a local authority.
- 6.11 This Agreement shall not bind or be enforceable against (i) any statutory undertaker or other person with an interest in any part of the Property for the purpose of supply of utilities such as electricity gas water drainage and telecommunications services; or (ii) the individual owners or occupiers (their mortgagees or chargees or persons deriving title from them) of the Open Market Dwellings.
- 6.12 If any of the obligations contained in this Agreement are found by the Secretary of State pursuant to the Planning Appeal to be inconsistent with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) then this shall not affect the legality of the remainder of the obligations required pursuant to this Agreement.

6.12.1 If it is determined that a further deed is necessary to give effect to clause 6.12 then the Owner and the Council agree to enter into any such deed.

**7 WAIVER**

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

**8 INDEXATION**

8.1 Any sum referred to in the Third Schedule to this Agreement shall be increased by an amount equivalent to the increase in the Index from the date of this Agreement until the date on which such sum is payable.

**9 INTEREST**

9.1 If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment.

**10 VAT**

10.1 All consideration given in accordance with the terms of this Agreement shall (unless otherwise stated) be exclusive of any value added tax properly payable.

**11 JURISDICTION**

11.1 This Agreement 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.

**12 DELIVERY**

12.1 The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

**IN WITNESS** whereof the parties hereto have executed this Agreement as a deed on the day and year first before written.

## **SCHEDULE 1**

### **Description of the Property**

ALL THAT freehold land (registered pursuant to HM Land Registry title number DT296423 ) being land North of Crown Road, Marnhull, Dorset as shown for identification purposes only edged with a thick black line on the Plan attached hereto.

## **SCHEDULE 2**

### **The Development**

The erection of 72 No. dwellings and new community facilities (Outline application to determine access and layout).

### SCHEDULE 3

**The Owner covenants to the Council as follows:**

#### **PART 1**

##### Affordable Housing

1. Not to Commence Development until a Notice of Commencement has been served on the Council.
2. Not less than 40% of the Dwellings shall be Affordable Housing Units.
3. The Affordable Housing Units shall be Affordable Housing and shall not be Occupied other than as Affordable Housing subject to the provisions of this Agreement save:
  - 3.1 with respect to any tenant or occupier or lessee of an Affordable Housing Unit where such tenant or occupier or lessee has: (i) exercised a statutory right to buy with respect to the relevant Affordable Housing Units or (ii) exercised a statutory right to acquire with respect to the relevant Affordable Housing Unit or (iii) with respect to a Shared Ownership Unit where the lessee has acquired the freehold of that Shared Ownership Unit by virtue of Staircasing where the Shared Ownership Lease so permits (and the mortgagees and successors in title of such persons and the mortgagees of such successors in title);
  - 3.2 and save also where expressly specified otherwise elsewhere herein .
4. Not to Commence Development until such time as the Affordable Housing Scheme shall have been submitted to and approved in writing by the Council and thereafter to comply with the Affordable Housing Scheme.
5. Not less than 70% of the Affordable Housing Units shall be Affordable Rented Units with the remainder being Shared Ownership Units (or such other form of Affordable Housing as approved pursuant to the Affordable Housing Scheme).
6. Not to Occupy or permit Occupation of more than 50% of the Open Market Dwellings until such time as 50% of the Affordable Housing Units have been constructed and substantially completed and transferred to an Approved Provider. Not to Occupy or permit Occupation of more than 90% of Open Market Dwellings until such time as 100% of the Affordable Housing Units have been constructed and substantially completed and transferred to an Approved Provider.

7. Save as provided in Paragraphs 9 and 10 below in this Part of this Schedule, not to Occupy or permit Occupation of any of the Affordable Housing Units other than by Local Needs Persons and in the manner specified in the approved Affordable Housing Scheme.
8. Save as provided in Paragraph 10 below in this Part of this Schedule, not to Occupy or permit Occupation of the Affordable Rented Units at any time otherwise than by Local Needs Persons and by way of an Affordable Rent Tenancy at an Affordable Rent.
9. Save as provided in Paragraph 10 below in this Part of this Schedule, not to Occupy or permit Occupation of the Shared Ownership Units at any time otherwise than by Local Needs Persons and by way of a Shared Ownership Lease unless the Shared Ownership Unit is for sale and the criteria set out in either Paragraph 9.1 or 9.2 below have been fulfilled:-

9.1 All four of the following steps (a) to (d) have been taken:-

- (a) the Owner has served a Notice of Availability on the Council that the relevant Shared Ownership Unit is available for Occupation; and
- (b) a period of not less than 14 weeks has elapsed since the service of that Notice of Availability and during that period a disposition of the Shared Ownership Lease to a Local Needs Person or an Approved Provider has not been concluded despite all reasonable endeavours by the Owner (and for the avoidance of doubt the Owner shall not have used all reasonable endeavours if unable to offer vacant possession to the buyer); and
- (c) (if the Shared Ownership Unit has not by then been sold) the Owner has made an Offer to Dispose of the Shared Ownership Lease to the Council or its nominee (such offer to remain open for a period of not less than 14 weeks and not to be served until the 14 week (minimum) period referred to in Paragraph 9.1(b) above has elapsed); and
- (d) during the period of the Offer to Dispose a disposition of the Shared Ownership Lease to the Council or its nominee has not been concluded despite all reasonable endeavours by the Owner (and for the avoidance of doubt the Owner shall not have used all reasonable endeavours if unable to offer vacant possession to the buyer)

OR

9.2 The owner of a Shared Ownership Unit (in this context including the Chargee provided that the Chargee has first followed the procedure set down in paragraph 10 of this Third Schedule, Part I below) has acquired the freehold of that Shared Ownership Unit by virtue of Staircasing where the Shared Ownership Lease so permits

AND in the event that the criteria set out in either paragraph 9.1 or 9.2 above have been fulfilled THEN the Owner shall be entitled to dispose of the Shared Ownership Unit free from the Affordable Housing restrictions of this Agreement and all future dispositions of the Shared Ownership Unit shall likewise be free from the Affordable Housing restrictions set out herein.

10. The restrictions in this Part of this Schedule shall not be binding on a Chargee PROVIDED THAT:

10.1 the Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Unit(s) and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Unit(s) to another Registered Provider or to the Council for a consideration 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

10.2 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Unit(s) free from the provisions that apply to the Affordable Housing Units in this Agreement which provisions shall determine absolutely

11. Where the Affordable Housing is to be provided with the involvement of a Community Land Trust or Housing Association the Owner shall consult with the Community Land Trust or Housing Association when preparing the Affordable Housing Scheme and endeavour where reasonable to incorporate any additional requirements of the Community Land Trust or Housing Association including any reasonable preferences of the Community Land Trust or Housing Association to impose a scheme of prioritisation for the allocation of the Affordable Housing to Local Needs Persons.



12. The Approved Provider shall use its reasonable endeavours to apply any Staircasing Payment (excluding build costs and fees) to the provision of Affordable Housing within the Council Area unless otherwise agreed in writing by the Council and the Approved Provider shall produce to the Council evidence to demonstrate this upon request

## **PART 2**

### Financial Contributions

1. Not to Commence Development until 50% of the Secondary Education Contribution has been paid to the Council.
2. To pay 50% of the Secondary Education Contribution to the Council prior to the Commencement of Development.
3. Not to Occupy 50% of the Dwellings or more until 100% of the Secondary Education Contribution has been paid to the Council;
4. To pay 100% of the Secondary Education Contribution to the Council prior to the Occupation of 50% of the Dwellings or more.
5. Not to Commence Development until 50% of the Community Facilities Contribution has been paid to the Council.
6. To pay 50% of the Community Facilities Contribution to the Council prior to Commencement of Development.
7. No to Occupy 50% of the Dwellings or more until 100% of the Community Facilities Contribution has been paid to the Council.
8. To pay 100% of the Community Facilities Contribution to the Council prior to the Occupation of 50% of the Dwellings or more.
9. Not to Occupy 25% of the Dwellings or more until 50% of the total of all other Financial Contributions, aside from the Secondary Education Contribution and the Community Facilities Contribution, have been paid to the Council.

10. To pay 50% of the total of all other Financial Contributions, aside from the Secondary Education Contribution and the Community Facilities Contribution, to the Council prior to the Occupation of 25% of the Dwellings or more.
11. Not to Occupy 80% of the Dwellings or more until 100% of all of the other Financial Contributions, aside from the Secondary Education Contribution and the Community Facilities , have been paid to the Council.
12. To pay 100% of all of the other Financial Contributions, aside from the Secondary Education Contribution and the Community Facilities Contribution, to the Council prior to the Occupation of 80% of the Dwellings ore more.

### **PART 3**

#### Provision of Informal Outdoor Space

1. Not to Commence Development until the Owner has submitted to and obtained the Council's written approval of the Informal Outdoor Space Specification and the Informal Outdoor Space Management Plan **PROVIDED THAT** if the Council fails to respond within 30 Working Days of its receipt and **PROVIDED THAT** as a minimum the size and location of the Informal Outdoor Space has been agreed in writing between the Owner and the Council **THEN** the Owner may Commence Development but will not Occupy any Dwelling until the Informal Outdoor Space Specification and the Informal Outdoor Space Management Plan have been approved in writing by the Council.
2. To construct and deliver at the Owner's expense the Informal Outdoor Space accordance with the Informal Outdoor Space Specification and the Informal Outdoor Space Management Plan as approved by the Council in accordance with paragraph 1 in this Part of this Schedule and not to Occupy or permit or allow the Occupation of more than 50% of the Market Dwellings until the Informal Outdoor Space has been Practically Completed and a copy of the Practical Completion Certificate has been provided to the Council, following which the Owner will allow access to the Council to inspect the Informal Outdoor Space.
3. The Owner will rectify any defects to the Informal Outdoor Space reasonably identified by the Council during the Defects Liability Period.

4. Not to Occupy or permit or allow the Occupation of more than 70% of the Open Market Dwellings until the Defects Liability Period for Informal Outdoor Space has passed and the Council has issued a Satisfaction Notice in accordance with paragraph 5 below.
5. On expiry of Defects Liability Period the Owner will invite the Council to make a final inspection of the Informal Outdoor Space. Subject to any defects reasonably identified by the Council being made good by the Owners, the Council shall issue a Satisfaction Notice to the Owner.
6. Unless otherwise agreed with the Council in writing, within 4 months following the issue of the Satisfaction Notice the Owner shall have established the Management Company to the written satisfaction of the Council and have transferred (the freehold of) the Informal Outdoor Space to the Management Company for onward management and maintenance, in accordance with the terms set out in Schedule 4. For the avoidance of doubt Owner will continue to maintain the Informal Outdoor Space in accordance with the approved Informal Outdoor Space Specification and the Informal Outdoor Space Management Plan- until such time that the Informal Outdoor Space is transferred to the Management Company.
7. On the laying out and completion of the Informal Outdoor Space it shall thereafter be retained solely for use by the public (free of charge) as open space and shall be maintained in accordance with the approved Informal Outdoor Space Management Plan in perpetuity

#### **PART 4**

##### Provision of Play Area

1. Not to Commence Development until the Owner has submitted to and obtained the Council's written approval of the Play Area Specification and the Play Area Management Plan **PROVIDED THAT** if the Council fails to respond within 30 Working Days of its receipt and **PROVIDED THAT** as a minimum the size and location of the Play Area has been agreed in writing between the Owner **THEN** the Owner may Commence Development but will not Occupy any Dwelling until the Play Area Specification and the Play Area Management Plan have been approved in writing by the Council.

2. To construct and deliver at the Owner's expense the Play Area in accordance with the Play Area Specification and the Play Area Management Plan as approved by the Council in accordance with paragraph 1 in this Part of this Schedule and not to Occupy or permit or allow the Occupation of more than 50% of the Market Dwellings until the Play Area has been Practically Completed and a copy of the Practical Completion Certificate has been provided to the Council following which the Owner will allow access to the Council to inspect the ~~Informal Outdoor Space~~ <sup>MM</sup> *Play Area*.
3. The Owner will rectify any defects to the Play Area reasonably identified by the Council during the Defects Liability Period.
4. Not to Occupy or permit or allow the Occupation of more than 70% of the Open Market Dwellings until the Defects Liability Period for Play Area has passed and the Council has issued a Satisfaction Notice in accordance with paragraph 5 below.
5. On expiry of Defects Liability Period the Owner will invite the Council to make a final inspection of the Play Area. Subject to any defects reasonably identified by the Council being made good by the Owners, the Council shall issue a Satisfaction Notice to the Owner.
6. Unless otherwise agreed with the Council in writing, within 4 months following the issue of the Satisfaction Notice the Owner shall have established the Management Company to the written satisfaction of the Council and have transferred (the freehold of) the Play Area to the Management Company for onward management and maintenance, in accordance with the terms set out in Schedule 4. For the avoidance of doubt the Owner will continue to maintain the Play Area in accordance with the approved Play Area Specification and Play Area Management Plan until such time that the Play Area is transferred to the Management Company.
7. On the laying out and completion of the Play Area it shall thereafter be retained solely for use by the public (free of charge) as a play area and shall be maintained in accordance with the approved Play Area Management Plan in perpetuity
8. The Play Area shall be constructed to the specifications recommended for local equipped areas for play by Fields in Trust (formerly the National Planning Fields Association) to Fields in Trust Standards unless otherwise agreed in writing with the Council.

## **PART 5**

### Private Roads and Paths

1. The Owner will not Occupy or permit or allow the Occupation of more than 90% of the Market Dwellings until the freehold interest in the Private Roads and Paths have been transferred to the Management Company, in accordance with the terms set out in Schedule 4, and for the avoidance of doubt the Owner will continue to manage and maintain the Private Roads and Paths in accordance with the terms of the Planning Permission (and otherwise in accordance with good industry practice) until they are so transferred to the Management Company.

## **PART 6**

### Management Company

1. The Owner shall make provision to include in the transfer of the freehold or leasehold sale of each Dwelling a covenant by the purchaser to pay a reasonable annual charge for the maintenance of the Managed Areas which have been or are to be transferred to the Management Company (save that this annual charge shall not be imposed on the owners and occupiers of the Affordable Housing Units save through the relevant Registered Provider).
2. Upon any subsequent sale of such Dwelling the Owner will procure that the incoming buyer shall enter into direct covenants with the Management Company to pay a reasonable annual charge for the maintenance of the Managed Areas.
3. Immediately upon the sale of the first Dwelling the Owner will provide the Council with a copy of the transfer relating to the Dwelling including the covenants referred to in paragraph 1 above (and will thereafter provide copies to the Council of transfers relating to other Dwellings as may be requested by the Council from time to time).

#### SCHEDULE 4

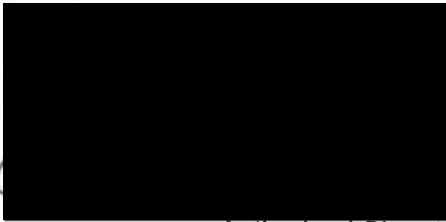
The transfer of the Informal Outdoor Space, Play Area and Private Roads and Paths to the Management Company shall:

- i. be a transfer of the entire freehold interest
- ii. be free from any pre-emption or option agreement
- iii. be free from any mortgage, charge, lien or other such encumbrance
- iv. be free from any lease, licence or any other third party interests that would adversely affect the use for public recreation and amenity or as a road/path as applicable
- v. be subject to a covenant which prohibits the use for any purpose other than for public recreation and amenity or as a road/path as applicable
- vi. include all necessary rights of way with or without vehicles
- vii. reserve in favour of the Owner and any statutory authority any necessary rights and easements to enable the proper construction, maintenance and use of the Property and to use existing or proposed services comprised in the that area
- viii. reserve in favour of the Owner and any statutory authority the right to lay and use new services together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- ix. define by whom boundary structures shall be owned and maintained
- x. not require consideration in excess of one pound (£1)

THE COMMON SEAL of )

DORSET COUNCIL was

affixed in the presence of:-



Authorised Signatory



**SIGNED** as a **DEED** by )

**RITA JOAN NEALE** )

in the presence of:- )

Witness s

Name ....

Address .

Occupatio



**SIGNED** as a **DEED** by )

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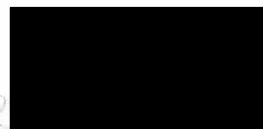
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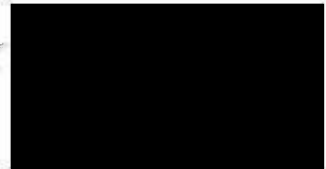
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**SIGNED** as a **DEED** by )

**LORRAINE DEANNA JARVIS** )

in





Occupation *Retired* .....

**SIGNED** as a **DEED** by )

**PAUL IAN CAVE** ) *PC*

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