

Dated: 31<sup>st</sup> July 2019

(1) Stroud District Council

(2)

(3)

(4) Gloucestershire County Council

(5) Colburn Developments Ltd

(6) Colburn Estates Ltd

## **Town and Country Planning Act 1990**

### **Section 106 Agreement**

**Relating to: Land South of the Chipping Surgery, Symn Lane,  
Wotton-under-Edge, Gloucestershire**

**Planning Application Reference: s.17/2307/FUL and S.18/2410/FUL**

Legal Services  
Stroud District Council  
Ebley Mill  
Ebley Wharf  
Stroud  
Glos.  
GL5 4UB

(Legal Services Ref: PLA2-779  
and PLA2-790)





DATE

31<sup>st</sup> July 2019

PARTIES

- (1) **STROUD DISTRICT COUNCIL** of Ebley Mill, Ebley Wharf, Stroud, Gloucestershire GL5 4UB ("the Council")
- (2) [REDACTED] of The Chipping Surgery, Symn Lane, Wotton-under-Edge, GL12 7BD ("the First Owners")
- (3) [REDACTED] of Loxley Solicitors Limited, Langford Mill, Charfield Road, Kingswood, Wotton-under-Edge, GL12 8RL Executors of [REDACTED] ("the Executors")
- (4) **GLOUCESTERSHIRE COUNTY COUNCIL** of Shire Hall, Gloucester, GL1 2TX ("the Second Owner")
- (5) **COLBURN DEVELOPMENTS LTD** (Company Registration Number 1873570) whose registered office is 43-45 Devizes Road, Swindon, Wiltshire, SN1 4BG ("the Developer")
- (6) **COLBURN ESTATES LTD** (Company Registration Number 8816306) whose registered office is 43-45 Devizes Road, Swindon, Wiltshire, SN1 4BG ("the Restriction Owner")

## INTRODUCTION

- A. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated
- B. The First Owners are the registered proprietors of part of the Site with Title Absolute registered at the Land Registry under Title Number GR230219 subject to a restriction dated 21<sup>st</sup> December 2016 in favour of the Restriction Owner
- C. The Second Owner is the registered proprietor of part of the Site with Title Absolute registered at the Land Registry under Title Number GR353346 subject to a restriction dated 21<sup>st</sup> December 2016 in favour of the Restriction Owner
- D. [REDACTED] died on 24<sup>th</sup> May 1988 and was the sole proprietor of part of the Site and [REDACTED] estate is the current freehold owner in fee simple absolute in possession of part of the Site registered at the Land Registry under Title Number GR352162 which is subject to a restriction dated 21<sup>st</sup> December 2016 ("the Restriction") in favour of the Restriction Owner.
- E. The will of the [REDACTED] was proved in the District Probate Registry at Llandaff on 15<sup>th</sup> August 1988.

- F. The Executors are the appointed personal representatives and executors of the [REDACTED] will and can enter into this Deed in order to secure the planning obligations contained in this Deed
- G. Planning applications have been submitted to the Council and the Owners have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- H. Each obligation undertaken in this Deed by the Owners is a planning obligation for the purposes of Section 106 of the Town and Country Planning Act 1990
- I. The Council has resolved to grant the Planning Permissions subject to the prior completion of this Deed

## OPERATIVE PART

### 1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

<b>"the Act"</b>	means the Town and Country Planning Act 1990 (as amended)
<b>"Affordable Housing"</b>	means affordable housing that meets the requirements of the National Planning Policy Framework including social rented, affordable rent and intermediate housing provided to specified eligible Persons in Housing Need and: <ul style="list-style-type: none"> <li>(a) meeting the needs of eligible Persons in Housing Need including availability at a cost low enough for them to afford determined with regard to local incomes and local house prices; and</li> <li>(b) providing for the affordable housing to remain at an affordable price for future eligible Persons in Housing Need or for the subsidy to be recycled for alternative affordable housing provision within the District of Stroud</li> </ul>
<b>"Affordable Housing Scheme"</b>	means a scheme setting out: <ul style="list-style-type: none"> <li>(a) subject to clause 1.7 of the Second Schedule details of the location (including individual plot</li> </ul>

	<p>numbers) design type and size of the Affordable Housing Units to be constructed on the Site having regard where appropriate to the Homes and Communities Agency's Design and Quality Standards or equivalent Standards current at the time and the Council's Planning Obligations Supplementary Planning Document</p> <p>(b) a programme and timetable for the provision in perpetuity of the Affordable Housing Units</p>
<b>"Affordable Housing Unit"</b>	means a Dwelling constructed pursuant to the Planning Permissions as Affordable Housing
<b>"Affordable Rented Units"</b>	means those Affordable Housing Units to be rented to Tenants at Affordable Rents and solely owned and managed by a Registered Provider
<b>"Affordable Rent"</b>	means rent up to a maximum of 80% of the estimated market rent for an equivalent property for the size and location, inclusive of service charges, based on a valuation in accordance with the method recognised by the Royal Institution of Chartered Surveyors and not higher than the relevant Local Housing Allowance maximum amount set for eligibility for housing benefit
<b>"the Applications"</b>	means the two applications for full planning permission comprising one application submitted to the Council on 10 <sup>th</sup> October 2017 for part of the Development and allocated reference number S.17/2307/FUL and the remaining application submitted to the Council on the 7 <sup>th</sup> November 2018 for the remaining part of the Development allocated reference number S.18/2410/FUL
<b>"Approval"</b>	means approval in writing by the Council under hand of the Planning Manager (or equivalent at the time) and the word "Approved" shall be construed accordingly
<b>"Car Park"</b>	land designated for the purposes of the public parking of 80 motor vehicles and 2 coaches not within the

	curtilage of a Dwelling, such land being shown edged red on the Car Park Plan
<b>"Car Park Plan"</b>	means the plan attached at Annex 2
<b>"Car Park Specification"</b>	means the agreed specification for the design of the Car Park shown on Drawing Number Symn/ICS/01/XX/DR/C/045 Rev P3 attached at Annex 3
<b>"Car Park Management Scheme"</b>	<p>means a scheme setting out the detailed arrangements for the management and maintenance of the Car Park and the Drainage in perpetuity to the satisfaction of the Council which scheme shall include:</p> <ul style="list-style-type: none"> <li>• full details of the administration;</li> <li>• funding and insurance;</li> <li>• the maintenance programme;</li> <li>• the Car Park charges (which shall not exceed the Wotton-under-Edge Civil Centre Car park charges or otherwise agreed by the Council in writing);</li> <li>• details of sweeping the permeable paving to remove sediment which shall be no less frequent than annually;</li> <li>• replenishment of an aggregate in joints of non-porous areas;</li> <li>• annual inspection and repairs of surfaces;</li> <li>• monitoring of surface water drainage to avoid ponding; and,</li> <li>• the constitution of any Management Company to be established or appointed to undertake the management of the Car Park in perpetuity</li> </ul>
<b>"Commencement of Development"</b>	means the date on which any material operation (as defined in Section 56 of the Act) forming part of the Development begins to be carried out other than (for

	the purposes of this Deed and for no other purpose) operations consisting of site clearance demolition work archaeological investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commence" "Commenced" and "Commence the Development" shall be construed accordingly
<b>"Completed"</b>	means the point at which any Dwelling or the Car Park is practically complete save for minor snagging items such that it is reasonably fit for occupation or use and the words "Completion" and "Complete" shall be construed accordingly (and for the avoidance of doubt Completion shall not be achieved unless all the services to and from the Dwelling are connected and operating and are accessible by both vehicles and pedestrians and they are ready for occupation)
<b>"the Development"</b>	means the construction of 12 houses (including 2 Affordable Rented Units and 1 Shared Ownership Unit) with access road and Car Park and construction of an attenuating pond and off site drainage system on the Site pursuant to the Planning Permissions
<b>"Drainage"</b>	is the construction of an attenuating pond and off site drainage system to serve the Development in strict accordance with the Planning Permissions
<b>"Drainage Phasing Scheme"</b>	means a scheme setting out the phasing of the Drainage bringing the Drainage forward in a timely manner with the Car Park to the satisfaction of the Council
<b>"Dwelling"</b>	means a house constructed on the Site pursuant to the Planning Permissions together with its attendant curtilage
<b>Expert</b>	means an independent solicitor appointed in accordance with Clause 16 and who has at least 10

	years' appropriate experience in the field of planning obligations dispute resolution
<b>"First Occupation"</b>	means the date on which a Completed Dwelling or the Completed Car Park is occupied or used for the purposes permitted by the Planning Permissions but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
<b>"Interest"</b>	means 4% per annum over the NatWest Bank plc base rate from time to time in force
<b>"Management Company"</b>	means such company (or companies) as may be formed or appointed by the Owners and Approved by the Council for the purpose of owning and/or managing the On Site Open Space and, if applicable, the Car Park
<b>"Management Scheme"</b>	means a scheme setting out the detailed arrangements for the management and maintenance of the On Site Open Space in perpetuity to the satisfaction of the Council which scheme shall include full details of the administration, funding and insurance thereof; the maintenance programme; and the constitution of any Management Company to be established or appointed to undertake the of the On Site Open Space in perpetuity
<b>"Net Capital Receipts"</b>	means the amount received by the Owners after deduction of all legal and other costs reasonably incurred in connection with the transaction that release the equity and any sums to be repaid to a grant or mortgage provider
<b>"On Site Open Space"</b>	means the land identified in the Applications for the purposes of on-site formal and informal open space used for landscaping
<b>"Open Market Unit"</b>	means a Dwelling that is not an Affordable Housing Unit
<b>"Open Market Value"</b>	means the open market value of all or any of the



	<p>Affordable Housing Units having regard to all relevant circumstances on the assumptions that;</p> <p>(a) the Affordable Housing Units are provided for private open market sale on a private residential estate with vacant possession; and</p> <p>(b) that no restrictions relating to Affordable Housing apply thereto</p>
<b>"Other Local Group"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>• local chamber of commerce; or,</li> <li>• a local group either nominated by the Council or nominated by the Owners and Approved by the Council</li> </ul>
<b>"the Owners"</b>	means the First Owners, Second Owners and the Executors
<b>"Person in Housing Need"</b>	means a person whose housing needs are not met by the market and is unable to compete in the local housing market as a result of the relationship between his or her income level and the rents or prices of such housing
<b>"the Plan"</b>	means the plan attached at Annex 1
<b>"the Planning Permissions"</b>	means the planning permissions granted pursuant to the Applications
<b>"Qualifying Person"</b>	means a person on the Council's Housing Register and accepted by the Council as a Person in Housing Need who would qualify for Affordable Housing in accordance with the policies of the Council current at the relevant time
<b>"Registered Provider"</b>	<p>means:</p> <p>(a) a Registered Provider of social housing as defined in Housing and Regeneration Act 2008 who is registered with the Homes and Communities Agency; or</p> <p>(b) other body nominated by the Council and registered with the Homes and Communities Agency; or</p>

	<p>(c) such other body Approved and nominated by the Council; or</p> <p>(d) such other body nominated by the Owners and Approved by the Council</p>
<b>"Shared Ownership Unit"</b>	means the Affordable Housing Unit to be let by way of Shared Ownership Lease to a Shared Ownership Occupier
<b>"Shared Ownership Lease"</b>	means a long shared ownership lease (as defined in Section 622 of the Housing Act 1985) with a Registered Provider in accordance with the Homes and Communities Agency model lease as at the date of any such lease
<b>"Shared Ownership Occupier"</b>	means a Person in Housing Need who is part renting and part purchasing an Affordable Housing Unit at the time of his First Occupation under a Shared Ownership Lease
<b>"Site"</b>	means the land described in the First Schedule against which this Deed may be enforced
<b>"Tenant"</b>	means a Person in Housing Need who is renting an Affordable Housing Unit at the time of his First Occupation under a tenancy agreement with a Registered Provider
<b>"Town Council"</b>	means the Wotton-under-Edge Town Council or any successor to its statutory functions

## 2 CONSTRUCTION OF THIS DEED

### 2.1 In this Deed:

- 2.1.1 The clause headings do not affect its interpretation.
- 2.1.2 Where reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.1.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.1.4 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.

- 2.1.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.1.6 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.
- 2.1.7 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 in the case of the Council the successors to their respective statutory functions.
- 2.2 None of the terms of this Deed will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it even if the terms are expressed to be for their or their successors benefit and nor shall any third party have a right of veto over any future variations of this Deed.
- 2.3 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect or impair the validity legality or enforceability of the remaining provisions of this Deed
- 2.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permissions) granted (whether or not on appeal) after the date of this Deed

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act and to the extent that they fall within the terms of Section 106 of the Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act
- 3.2 All other obligations under this Deed that are not enforceable as planning obligations shall take effect as personal covenants pursuant to Section 111 of the Local Government Act 1972 Sections 8 to 9 of the Housing Act 1985 Section 2 of the Local Government Act 2000 Section 1 of the Localism Act 2011 and all other enabling powers
- 3.3 The Council is the local planning authority having the power to enforce the planning obligations contained in this Deed

### **4 CONDITIONALITY & LIABILITY**

- 4.1 This Deed is conditional upon the grant of the Planning Permissions and Commencement of Development SAVE FOR:
- 4.1.1 Clauses 9, 10, 11 and 15 which shall come into effect immediately upon completion of this Deed; and
  - 4.1.2 the Second Schedule which shall come into effect upon the grant of the Planning Permissions
- 4.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or in the part of the Site in respect of which such obligation relates or breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the avoidance of doubt the benefit of any security or covenant or the reserving of any easement shall not be an interest for these purposes

## **5 THE OWNERS' COVENANT**

- 5.1.1 The Owners jointly and severally covenant with the Council on behalf of it, its assigns and successors in title as set out in the Second Schedule
- 5.1.2 The Developer acknowledges and declares that this Deed has been entered into with their consent and that the Site shall be bound by the obligations contained in this Deed and that the Developer's interest in the Site shall take effect subject to this Deed
- 5.1.3 Notwithstanding the provisions of clause 5.1.2 of this Deed, pursuant to clause 5.2 of an Option Agreement dated 20<sup>th</sup> December 2016 made between the Executors (1) and the Restriction Owner (2), the Restriction Owner undertakes and covenants to indemnify the Executors against all expenditure incurred and against any works carried out which are require by or arise from the implementation of the Planning Permissions and also covenants to indemnify the Executors against all actions claims demands and liability for any breach or non-observance of this Deed in so far as the same shall arise as a result of the implementation of the Planning Permissions by the Developer or Restriction Owner PROVIDED ALWAYS THAT the Executors (or any one of them) shall not have caused or permitted the Commencement of Development

## **6 RESTRICTION OWNER'S CONSENT**

The Restriction Owner acknowledges and declares that this Deed has been entered into by the Owners with its consent and the Site shall be bound by the obligations contained in this Deed and the Restriction over the Site shall take effect subject to this Deed

## **7 MORTGAGEE IN POSSESSION**

**7.1** The Owners and the Council agree and declare that the provisions of the Third Schedule shall not be binding upon a mortgagee in possession or chargee of a Registered Provider nor upon a receiver appointed by a mortgagee in possession or chargee of a Registered Provider to the intent that any such mortgagee or chargee exercising its security may dispose of its freehold or head long leasehold interest in the Affordable Housing Units subject to any subsisting leases underleases but otherwise not in compliance with the said terms of **PROVIDED THAT**

**7.1.1** the mortgagee or chargee notifies the Council in writing that it is seeking a purchaser of its freehold interest or head long leasehold interest in the Affordable Housing Units; and

**7.1.2** the mortgagee or chargee thereafter uses reasonable endeavours to sell and transfer its freehold interest in any Social Rented Housing Unit or its head long leasehold interest in any Shared Ownership Housing Unit to a Registered Provider subject to the terms of this Deed including the terms of this Paragraph at a price equal to its Open Market Value; and

**7.1.3** at least three (3) months have elapsed since the Council received the written notice referred to in Clause 7.1.1 and a contract for the sale of the freehold in the Social Rented Housing Units and/or head long leasehold interest in the Shared Ownership Housing Unit has not been exchanged with a Registered Provider despite the mortgagee's or chargee's reasonable endeavours **PROVIDED FURTHER THAT:**

**7.1.4** The said mortgagee charge or receiver shall not be required to dispose of the freehold in the Social Rented Housing Units and/or head long leasehold interest in the Shared Ownership Housing Unit to a Registered Provider for a consideration of less than the amount due and outstanding under the terms of the mortgage or charge together with all accrued principle monies, interest costs and expenses incurred in respect of the mortgage or charge

**7.2** The Owners and the Council also agree that the provisions of this Deed shall not bind:

**7.2.1** a mortgagee of a Shared Ownership Housing Unit which realises its security by exercising a power of sale **PROVIDED THAT** for a period of three (3) calendar months prior to the said sale the said mortgagee has first used its reasonable endeavours to sell the Shared Ownership Housing Unit to a Person in Housing Need or such other prospective purchaser to which the Council has given prior Approval; or

7.2.2 individuals exercising their statutory right to buy a relevant Affordable Housing Unit

## **8 APPROVALS & NOTICES**

- 8.1 Where the agreement approval consent or expression of satisfaction is required by the Owners from the Council under the terms of this Deed 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 Planning Manager
- 8.2 Any notice to the Owners under this Deed shall be in writing signed by the Planning Manager for the time being of the Council unless otherwise herein provided and shall be deemed to be sufficiently served in the case of the Owners if sent to it by registered or recorded delivery post at the address of the relevant party in this deed
- 8.3 Any notice to the Council under this Deed shall be in writing and shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the Council addressed to the Planning Manager at the address stated at the beginning of this Deed

## **9 TERMINATION OF THIS AGREEMENT**

- 9.1 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permissions shall be quashed revoked or otherwise withdrawn or (without the consent of the Owners) they are modified by any statutory procedure or they expire prior to the Commencement of Development

## **10 WAIVER**

- 10.1 It is hereby agreed by the parties hereto that failure by the Council at any time to enforce the provisions of this Deed or to require performance strictly or otherwise by the Owners of any of the conditions, covenants, agreements, or obligations of this Deed or any failure or delay by the Council to exercise any act right or remedy shall not:
- (a) be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation; nor
  - (b) affect the validity of this Deed or any part thereof or the right of the Council to enforce any provision;
- and any variation of this Deed agreed between the Owners and the Council shall not vitiate the remainder of the Deed which shall remain in full force and effect subject to such agreed amendments

**11 CONSENT TO REGISTRATION**

- 11.1 The Owners hereby consent to the registration of this Deed as a Local Land Charge and if the Council so requires with The Land Registry

**12 CHANGE IN OWNERSHIP**

The Owners agree with the Council to give the Council written notice of any change in ownership of any of its interests in the Site within 5 working days of such change in ownership being completed (save for any transfer or lease in respect of any Dwelling) such notice to give details of the transferee's or lessee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan

**13 INTEREST**

The Owners covenant that if any payment due to the Council under this Deed is paid late Interest calculated on a daily basis and compounded quarterly will be payable from the date payment is due under the terms of this Deed to the date of payment

**14 WARRANTY**

The Owners hereby warrant to the Council that they have not leased mortgaged charges or otherwise created any interest in the Site other than already stated above at the date of this Deed

**15 MISCELLANEOUS**

- 15.1 Upon the satisfaction of any obligation under this Deed the Council shall as soon as reasonably practicable upon the receipt of a written demand for such and evidence of such compliance provide the Owners with written confirmation of the satisfaction of that obligation
- 15.2 This Deed constitutes the entire agreement between the parties in respect of the Planning Permissions
- 15.3 Subject to Clause 4 the provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated
- 15.4 This Deed is governed by and interpreted in accordance with the law of England

**16 DISPUTES**

- 16.1 In the event of any dispute or difference relating to any matter contained in this Deed any party to the dispute (including successors in title to the parties to this Deed) may, by serving notice of the same on the other party or parties, require it to be referred for determination by an Expert (who will act as an expert not an arbitrator) appointed under clause 16.2 below, acting in accordance with clauses 16.3 to 16.9



- 16.2 If the parties do not make the appointment of the Expert by agreement within 14 days of service requiring reference of the dispute, the Expert shall be nominated upon the application of either party by the President (or other officer to whom the making of such appointment is for the time being delegated) of the Law Society and the Expert shall be an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than 10 years
- 16.3 Unless the Expert shall direct to the contrary, not more than 28 days after his appointment the parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon
- 16.4 The Expert shall be at liberty to visit the Site relevant to the dispute unaccompanied and to call for such written evidence from the parties as he may require
- 16.5 The Expert shall not, unless he directs to the contrary, hear oral representations from any party to the dispute
- 16.6 The Expert shall fully consider all submissions and evidence when making his decision
- 16.7 The Expert shall give his decision in writing and shall give reasons
- 16.8 The Expert shall use reasonable endeavours to give his decision and the reason for it as speedily as possible and in any event within 42 days of his appointment
- 16.9 The Expert's decision (save in the case of manifest or legal error) including his decision as to costs shall be final and binding. The Expert's fees shall be payable by the parties in such proportions as he shall determine and in default of such determination equally between them



## **FIRST SCHEDULE**

### **Details of the Owners' Title and description of the Site**

All that land known as Land South of the Chipping Surgery, Symn Lane, Wotton-under-Edge, Gloucestershire and shown edged in red on the Plan at Annex 1 and registered at the Land Registry under Title Numbers GR230219, GR352162, and GR353346.

## **THE SECOND SCHEDULE**

### **The Owners' Covenants**

#### **1 AFFORDABLE HOUSING PROVISION**

- 1.1 Not to allow or permit First Occupation of any Open Market Unit until such time as the Owners have:
  - 1.1.1 Entered into a binding unconditional contract with a Registered Provider for the sale and transfer of the Affordable Housing Units on the terms and conditions specified in the Third Schedule and for the construction and provision (subject to the terms of this Deed) in perpetuity of the Affordable Housing Units in accordance with the Approved Affordable Housing Scheme
  - 1.1.2 The Owners have confirmed to the Council in writing that an unconditional contract has been entered into between the Owners and the Registered Provider for the construction and transfer of the Affordable Housing Units and produced to the Council a certified copy of the said contract
- 1.2 To provide 25% of the total number of Dwellings as Affordable Housing (which shall be 3 Affordable Housing Units based on a total number of 12 Dwellings)
- 1.3 If 3 Affordable Housing Units are constructed then to construct 2 of the Affordable Housing Units as Affordable Rented Units and the remaining 1 as a Shared Ownership Unit PROVIDED THAT if less than 3 Affordable Housing Units are constructed then to construct 100% of the Affordable Housing Units as Affordable Rented Units
- 1.4 To construct and Complete the Affordable Housing Units (and all associated works including all services roads and paths) in accordance with the Approved Affordable Housing Scheme

- 1.5 To provide pedestrian and vehicular access foul and surface water sewers and water gas electricity and telecommunication service systems for the Affordable Housing Units constructed and laid as part of the Development to a standard that each may be adopted and maintained at the public's or a statutory undertaker's expense to an appropriate point (whereupon it may be private) linking in each case to the remainder of the roads and/or sewers and/or pipes and/or cables and/or other apparatus built laid or constructed on the remainder of the Site
- 1.6 Not to allow or permit First Occupation of more than 50% of the Open Market Units until:
  - 1.6.1 all the Affordable Housing Units have been Completed to the reasonable satisfaction of the Council said notification of satisfaction not to be unreasonably withheld or delayed
  - 1.6.2 the freehold of all the Affordable Housing Units has been transferred to the Registered Provider on the terms and conditions specified in the Third Schedule hereof and a certified copy of the transfer document(s) has been delivered to the Council
- 1.7 Not to dispose of any Affordable Housing Units other than:
  - 1.7.1 In accordance with the Third Schedule
  - AND
  - 1.7.2 by way of a sale and transfer to the Registered Provider for the purposes of providing accommodation for Tenants or Shared Ownership Occupiers; or
  - 1.7.3 where the disposal is by a Registered Provider in accordance with its Approved allocation policy

## **2 ON SITE OPEN SPACE PROVISION & MAINTENANCE**

- 2.1 Not to commence the Development until the Owners have submitted to the Council:
  - 2.1.1 A specification setting out the design and layout of the On Site Open Space which accords with the Council's Planning Obligations Supplementary Planning Document (or equivalent policy at the time) for the Council's Approval and thereafter to comply with the Approved On Site Open Space specification

- 2.1.2 A Management Scheme for the provision in perpetuity of the On Site Open Space for the Council's Approval and thereafter to comply with the Approved Management Scheme in perpetuity
- 2.2 Not to allow or permit First Occupation of any Dwellings until the On Site Open Space has been Completed to the reasonable satisfaction of the Council in accordance with the Approved On Site Open Space specification provided that nothing in this clause shall require any Approved landscaping scheme planting to be carried out any sooner than the first planting season following First Occupation of any Dwelling
- 3 CAR PARK & DRAINAGE**
- 3.1 Not to allow or permit First Occupation of any Dwelling until the Owners have completed the Car Park to sub-base level to the reasonable satisfaction of the Council and in strict accordance with the sub-base layer identified on the approved Car Park Specification as "Type 1 Sub-base" and "225mm Open graded crushed rock OGCR"
- 3.2 Not to allow or permit First Occupation of any seven Open Market Units until the Owners have:
- 3.2.1 Completed the Car Park to the Approval of the Council in strict accordance with the approved Car Park Specification
- 3.2.2 offered to transfer the Car Park to the Town Council on the terms as are set out in the Fourth Schedule ("Offer Notice")
- 3.2.3 The Town Council may accept the Offer Notice by serving an acceptance notice on the Owners at any time within 6 months of service of the Offer Notice ("Prescribed Period")
- 3.2.4 subject to paragraph 3.3, following compliance with paragraph 3.2.1 and 3.2.2, transferred the Car Park to the Town Council on the terms as set out in the Fourth Schedule ; and,
- 3.2.5 subject to paragraph 3.3, paid the Town Council's reasonable legal costs up to a maximum of £2,000 in connection with the transfer of the Car Park
- 3.2.6 The Car Park is open and available for First Occupation for the purposes permitted by the Planning Permissions
- 3.3 Not to Commence the Development until the Owners have submitted to the Council a Drainage Phasing Scheme

- 3.4 Not to allow or permit First Occupation of the Car Park until the Owners have completed the Drainage to the reasonable satisfaction of the Council in strict accordance with the Drainage Phasing Scheme
- 3.5 In the event that the Town Council do not serve an acceptance notice within the Prescribed Period the Owners shall follow the same process in paragraph 3.1.2 and 3.1.3 of this Schedule but substituting Other Local Group in place of the Town Council
- 3.6 In the event that both the Town Council and the Other Local Group do not serve an acceptance notice within the Prescribed Period the Owners may either:
- 3.6.1 retain the Car Park and will insure and maintain or procure the insurance and maintenance of the Car Park in perpetuity; or
- 3.6.2 the Car Park will be transferred to such Management Company on the terms as are set out in the Fourth Schedule and such Management Company will insure and maintain or procure the insurance and maintenance of the Car Park in perpetuity
- 3.7 The Car Park shall remain open to the public for use as such in perpetuity

#### **4 INFORMATION and ENFORCEMENT**

- 4.1 To provide the Council within 14 days of its written request to the Owners such information as the Council may reasonably require to monitor compliance with this Deed
- 4.2 To reimburse the Council in respect of all reasonable legal and administrative costs it incurs in connection with the enforcement of any provision of this Deed as a result of the Owner's non-compliance with this Deed

### **THE THIRD SCHEDULE**

#### **Terms and Conditions for the Transfer of the Affordable Housing Units**

1. The Owners shall sell and transfer the Affordable Housing Units to the Registered Provider on the following terms and conditions

##### **1.1 Price**

The price to be payable on completion shall be the price which can reasonably be paid by the Registered Provider for the Affordable Housing Units

##### **1.2 Title**

The Owners shall deduce a good and marketable title to the Affordable Housing Units free from any financial or other charge

### **1.3 Plan**

The Owners shall provide four coloured plans (or such other number as maybe required by the Registered Provider showing the Affordable Housing Units for use in connection with the sale and transfer of the Affordable Housing Units

### **1.4 Covenant for Title**

The Owners shall convey full title guarantee

### **1.5 Matters subject to which Affordable Housing Units Sold**

The Affordable Housing Units shall be sold subject to and with the benefits of (as the case may be):

- (a) all matters registered as local land charges
- (b) all notices orders proposals or requirements affecting or relating to the Affordable Housing Units given or made by any government statutory undertaking or other public or local authority of which notice is given
- (c) all rights easements quasi – easements and privileges
- (d) drainage way and passage and other like rights used or enjoyed over the land
- (e) such other matters as appropriate or as the parties to the sale agree

### **1.6 Rights to be Granted**

The transfer of the Affordable Housing Units shall contain covenants by the Owners (to bind the successors in title to the Site) for the benefit of the Affordable Housing Units and each and every part thereof to the effect of securing all necessary rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units by the Registered Provider (and its successors to each and every part thereof) over the Site (including over all the roads and paths on or to be constructed on the Site) together with rights to make full use of any and all services (subject to capacity) now and or to be laid in the Site PROVIDED THAT:

- (a) in exercising such rights the Registered Provider shall take all reasonable steps to avoid causing any damage and shall make good in a prompt and efficient manner any that may be caused to the reasonable satisfaction of the Owners

- (b) the rights granted in this Subparagraph 1.6 shall cease and determine upon the adoption of the services or roads; and
- (c) the Owners (and its successors in title) may alter the position of the roads and services within the Site provided that the exercise of the rights shall not be materially prejudiced by such alternations

#### **1.7 Rights to be Reserved**

The transfer of the Affordable Housing Units shall make provisions for reserving unto the Owners (and their successors in title to the Site) for the benefit of the remainder of the Site a right of support from the Affordable Housing Units and rights to enter the Affordable Housing Units for all purposes associated with the inspection maintenance and repair of any services existing therein together with rights to use the same PROVIDED THAT in exercising these rights the Owners shall take reasonable steps to avoid causing any damage and shall make good in a prompt and efficient manner any that may be caused to the reasonable satisfaction of the Registered Provider

#### **1.8 Covenants by the Registered Provider**

Subject to paragraph 1.9, to execute and deliver to the Council on the date of the transfer of the Affordable Housing Units a Deed of Covenant containing covenants on the part of the Registered Provider in the following terms for the benefit of and enforceable by the Council:

- (a) To occupy and manage the Affordable Housing in accordance with the objects of the Registered Provider and with such published housing waiting list and lettings and allocations policy as the Registered Provider may from time to time adopt (the same having been first Approved by the Council) to ensure that upon taking ownership and possession of the Affordable Housing Units and at all times subsequently that each Affordable Housing Unit is allocated to a Person in Housing Need as their sole residence for as long as this Deed applies to that Unit
- (b) In respect to the Social Rented Units or the Affordable Rented Units and without prejudice to generality of Paragraph 1.8(a):
  - i. that upon taking ownership and possession of such units and at all times subsequently to allocate each Dwelling to a Qualifying Person by advertising any vacant Dwelling through the Gloucestershire Homeseeker Choice Based Lettings scheme (or any replacement scheme) and thereafter by allocating any such vacant Dwelling to a Qualifying Person as his sole residence and

who expresses an interest in occupying the said Dwelling through bidding on the Council's 'Choice Based Letting' scheme (or any replacement scheme) SUBJECT TO the Owners having first agreed in writing with the Council the appropriate labelling for such Dwelling to provide more information on who is eligible to express an interest in occupying the same

- ii. That if after a period of three (3) calendar months from first advertising the Dwelling in the manner prescribed in Paragraph 1.8(b)(i) the Owners are unable to allocate the Dwelling in the manner prescribed in the said Paragraph then the Owners shall be permitted to allocate any such Dwelling to a Person in Housing Need

**(c)** In respect of the Shared Ownership Housing Unit and without prejudice to generality of Paragraph 1.8(a):

- i. Not to dispose of any Shared Ownership Housing Unit other than through the regional Homebuy Agent: Help to Buy South (or any successor body or bodies from time to time appointed by the Homes and Communities Agency for the District of Stroud) to a Qualifying Person
- ii. That if after three (3) calendar months from first advertising the Dwelling in the manner prescribed in Paragraph 1.8(c)(i) the Owners are unable to allocate the Dwelling in the manner prescribed in said Paragraph then the Owners shall be permitted to dispose of any such Shared Ownership Housing Unit by applying the procedure contained in the said Paragraph to a Person in Housing Need

**(d)** To use reasonable endeavours to reinvest any Net Capital Receipts from future release of equity in the Affordable Housing Units for the provision of other Affordable Housing in the District of Stroud

### **1.9 Rights pursuant to Housing Acts 1985 & 1996**

The covenants in Paragraph 1.8 shall not apply to any part of the Affordable Housing where the Owners shall be required to:

- i. Dispose of any part pursuant to a right to buy claim under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable; or



- ii. Sell to a tenant with the benefit of voluntary purchase grant provided under Sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation)

PROVIDED THAT the Owners shall reinvest any Net Capital Receipts from such disposals in accordance with the requirements of Paragraph 1.8(d)

## **THE FOURTH SCHEDULE**

### **Terms and Conditions for the Transfer of the Car Park**

The Owners shall sell and transfer the Car Park on the following terms and conditions:

#### **1.1 Price**

The price to be payable on completion shall be £1.00

#### **1.2 Title**

The Owners shall deduce a good and marketable title to the Car Park free from any financial or other charge

#### **1.3 Plan**

The Owners shall provide four coloured plans (or such other number as maybe required) showing the Car Park for use in connection with the sale and transfer of the Car Park

#### **1.4 Covenant for Title**

The Owners shall convey full title guarantee

#### **1.5 Matters subject to which the Car Park is Sold**

The Car Park shall be sold subject to and with the benefits of (as the case may be):

- (a) all matters registered as local land charges
- (b) all notices orders proposals or requirements affecting or relating to the Car Park given or made by any government statutory undertaking or other public or local authority of which notice is given
- (c) all rights easements quasi – easements and privileges
- (d) drainage way and passage and other like rights used or enjoyed over the land
- (e) such other matters as appropriate or as the parties to the sale agree

#### **1.6 Vacant Possession**

Vacant possession shall be given on completion



**1.7 The Transfer shall include the following**

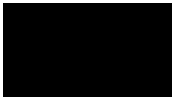
Unless otherwise agreed between the Owners and the Council the Car Park shall be transferred with the benefit of:

- a) rights of access from the public highway to the boundary of the Car Park and (if appropriate) with such access road or roads constructed to base course tarmac level to be maintained by the Owners until adoption as highway maintainable at the public expense
- b) a Section 38 Highways Act 1980 Agreement supported by a bond relating to access roads and footpaths from the public highway to the Car Park (if appropriate)
- c) foul and surface water sewers constructed to the requirements of the local sewerage undertaker ready for use at a depth and capacity sufficient to serve the Car Park and connecting to foul and surface water sewers maintainable at public expense and maintained by the Owners until adopted as sewers maintainable at public expense
- d) a Section 104 Water Industry Act 1991 Agreement relating to such sewers (if appropriate)
- e) supplies of services of electricity up to the boundary of the Car Park
- f) The transfer shall contain adequate provision for easements and reservations and other like rights to be granted or reserved by the parties as are necessary to ensure the future use of the Car Park and to comply with the requirements of all public authorities and statutory undertakers
- g) The transfer shall contain a covenant which requires the Car Park to remain open to the public for use as such in perpetuity

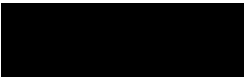
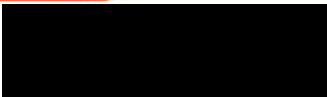


**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written

**THE COMMON SEAL** )  
of **STROUD DISTRICT COUNCIL** )  
was affixed in the presence of: )

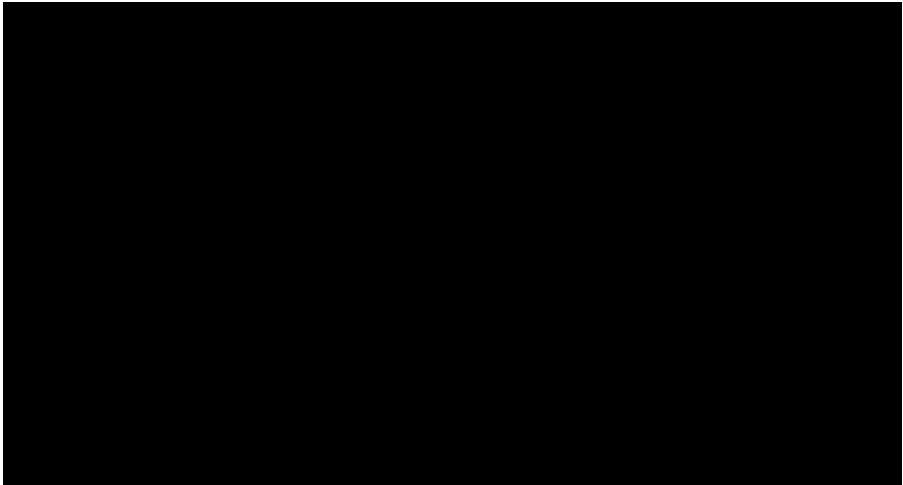


Authorised Signatory:



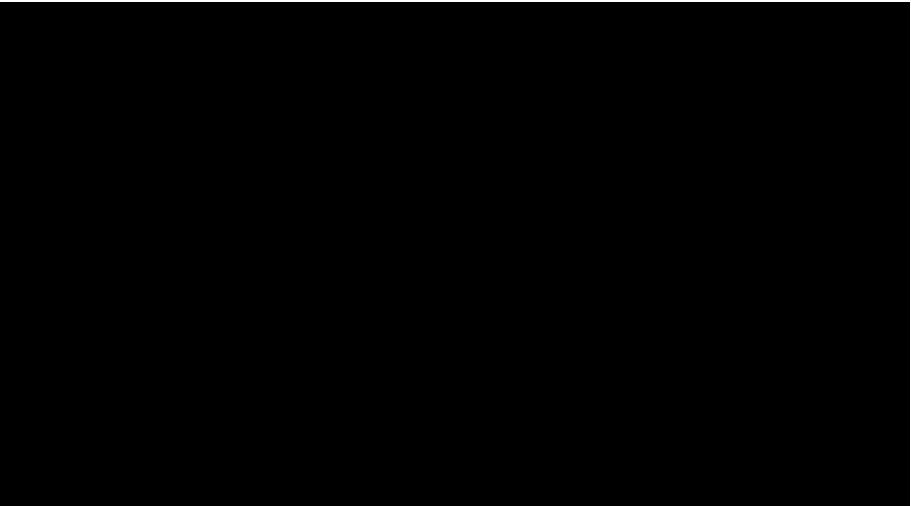
**SIGNED AS A DEED BY**  
**JONATHAN JOSEPH KABLER**  
in the presence of:

Signature of Witness:  
Name of Witness:  
Address of Witness:  
Occupation of Witness:



**SIGNED AS A DEED BY**  
**CHRISTINE LOUISE THOMPSON**  
in the presence of:

Signature of Witness:  
Name of Witness:  
Address of Witness:  
Occupation of Witness:



**SIGNED AS A DEED BY**  
**RACHEL SARAH HAMPSON**  
in the presence of:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

**SIGNED AS A DEED BY**  
**RICHARD ANTHONY WARD**  
in the presence of:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

**SIGNED AS A DEED BY**  
**ROBERT DEREK KING**  
in the presence of:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

**SIGNED AS A DEED BY**  
**NIGEL CHARLES DIXON**  
in the presence of:

)

)

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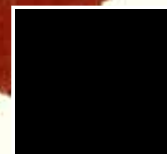
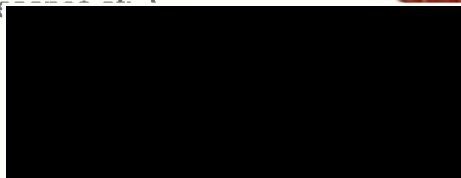
Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

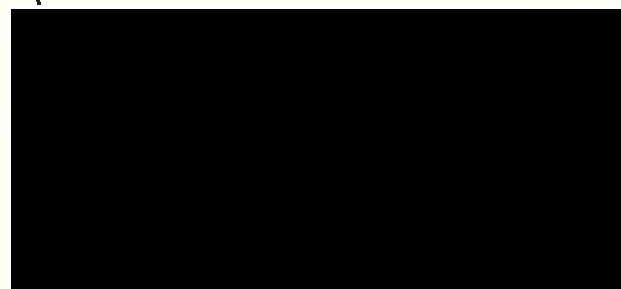
THE COMMON SEAL )  
of GLOUCESTERSHIRE COUNTY )  
COUNCIL was affixed in the presence of \



EXECUTED AS A DEED BY )  
COLBURN DEVELOPMENTS LTD )  
Acting by two directors / a director and the secretary \

Director

Director / Secretary



EXECUTED AS A DEED BY )  
COLBURN ESTATES LTD )  
Acting by two directors / a director and the secretary )

Director

Director / Secretary

