

DATED

2025

BONINGALE DEVELOPMENTS LIMITED (1)

AND

SHROPSHIRE COUNCIL (2)

AGREEMENT

Pursuant to Section 106 Town & Country Planning Act 1990

Relating to Land East of Tilstock Road, Tilstock, Whitchurch, Shropshire



LEGAL AND DEMOCRATIC SERVICES
The Shirehall Abbey Foregate Shrewsbury SY2 6ND
DX 702024 Shrewsbury 2

Planning Application Reference: 24/04176/FUL

TABLE OF CONTENTS

INTRODUCTION

1	DEFINITIONS
2	CONSTRUCTION OF THIS AGREEMENT
3	LEGAL BASIS
4	CONDITIONALITY
5	THE LANDOWNER'S COVENANTS
6	THE COUNCIL'S COVENANTS
7	MISCELLANEOUS
8	MORTGAGEE EXEMPTION CLAUSES
9	WAIVER
10	CHANGE IN OWNERSHIP
11	INTEREST
12	VAT
13	JURISDICTION
14	DELIVERY
15	DISPUTE RESOLUTION
16	SECTION 73 VARIATION
17	MORTGAGEES CONSENT

FIRST SCHEDULE

Landowner's Title and description of Site

SECOND SCHEDULE

The Landowner's Covenants

THIRD SCHEDULE

The Council's Covenants

THIS AGREEMENT is made the day of Two Thousand and
Twenty-Five

BETWEEN:-

- (1) **BONINGALE DEVELOPMENTS LIMITED** (Co Regn. No. 16123876 whose registered office is at Longhouse Office, 56 High Street, Albrighton Wolverhampton, England, WV7 3JH (the “Landowner”); and
- (2) **SHROPSHIRE COUNCIL** of Guildhall, Frankwell Quay, Shrewsbury, Shropshire, SY3 8HQ (the “Council”);

INTRODUCTION

1. The Council is the local planning authority for the purposes of the Act for the area within which the Site and the Biodiversity Gain Land is situated and accordingly is the person who is entitled to enforce the obligations contained in this Agreement.
2. The Landowner is the owner of the Site and the Biodiversity Gain Land which is currently registered in the at HM Land Registry under title numbers SL287277 and SL293178.
3. The Landowner submitted the Application to the Council on 31 October 2024 and pursuant to the Application has applied for planning permission for the Development.
4. The Council have not yet determined the Planning Application and the First Landowner has lodged an appeal for non-determination in this respect on 14 March 2025 (“the Appeal”).
5. The Landowner has agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against them and their respective successors in title and any mortgagee (but only insofar as any mortgagee is a Mortgagee in Possession) and its successors in title and to ensure that the Biodiversity Gain Land provides a Biodiversity Net Gain to satisfy the requirements of Schedule 7A of the Act should the Appeal be successful and Planning Permission granted by an Inspector duly appointed to determine the Appeal.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

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

“Act” means the Town and Country Planning Act 1990 (as amended).

“Affordable Housing Dwellings” means Dwellings that will be made available for Occupation by eligible persons for either rental or low cost home ownership at less than market value in accordance with the definitions of tenure given by the Council in the Supplementary Planning Document.

“Affordable Housing Contribution” means the sum calculated in accordance with the Supplementary Planning Document listed in the Second Schedule of this Agreement and due to the Council to facilitate the delivery of additional affordable and/or supported housing within Shropshire. The Landowner acknowledges the fact that the Council shall use 5% of the Affordable Housing Contribution for the administration of the delivery of affordable housing in accordance with the Council’s Type and Affordability of Housing Supplementary Planning Document.

“Affordable Rent Dwellings” means the Affordable Housing Dwellings to be constructed pursuant to the Planning Permission and transferred to a Registered Provider for allocation as rented housing as prescribed in the Second Schedule to this Agreement.

Lettings shall be made to persons under a form of tenancy permitted by Homes England and at a rent (inclusive of applicable service charges) equal to or less than 80% of the open market rental value (or the maximum amount of local housing allowance payable for the Dwelling if this is lower).

Any annual rent increase for the Dwelling must not result in the rent of that Dwelling exceeding the current level of Shropshire Local Housing Allowance or 80% of the Market Rent whichever is the lower.

“Application”	means a planning application made to the Council by the Landowner on 31 October 2024 for planning permission for 70 dwellings including access, open space, landscaping and associated works, and allocated the reference 24/04176/FUL by the Council.
“BNG Expiry Date”	means a date which is the expiration of the period of 30 years following the Completion Date.
“Biodiversity Gain Land”	means the areas of land shown comprised within the Site to deliver the BNG as detailed in the HMMP and for the avoidance does not constitute a single area of land but includes areas within the Site where the Habitat Creation Enhancement Works shall take place in accordance with the HMMP.
“Biodiversity Gain Land Monitoring Contribution”	means the sum of £20,613.77 (Twenty Thousand Six Hundred and Thirteen Pounds and Seventy-Seven Pence) Index Linked to be paid by the Landowner to the Council under paragraph 6 of the Second Schedule of this Deed to be applied by the Council as a financial contribution towards the Council’s costs of monitoring compliance with: (a) the Landowner’s obligations under this Deed in respect of the Biodiversity Gain Land.
“Biodiversity Net Gain or BNG”	means an increase in Biodiversity Units resulting from implementing the Habitat Management and Monitoring Plan (as measured using the Biodiversity Metric) that can be allocated to the development to fulfil its requirement to create or enhance biodiversity under Schedule 7A of the Act.
“Biodiversity Metric”	means the statutory biodiversity accounting tool published by DEFRA or Natural England from time to time that can be used to measure the biodiversity value or relative biodiversity value of habitat or habitat enhancement for the purposes of biodiversity net gain.
“BNG Commencement Date”	means the date upon which the Habitat Creation and Enhancement Works have commenced.
“Breach Notice”	means a notice which may be served by the Council on the Landowner under paragraph 10 of the Third Schedule to this Deed.

“Certificate of Completion”	means a written certificate of completion confirming that the Habitat Creation and Enhancement Works have been completed to the reasonable satisfaction of the Council on the Completion Date issued (or deemed to have been issued) by the Council under paragraph 6.1(b)(i) of the Third Schedule.
“Choice Based Lettings System”	means the Council’s system for advertising Affordable Housing Dwellings as being available for occupation.
“Commencement of Development”	means the date upon which the Development shall be implemented by the carrying out on the Site pursuant to the Planning Permission of a material operation specified in Section 56 of the Act PROVIDED THAT any works of or associated with demolition, site clearance, remediation works, environmental or archaeological investigations, site and soil surveys, erection of contractors work compound, erection of site office, erection of fencing to site boundaries and laying out of access roads and services shall for the purposes of this Agreement be deemed not to be material operations and “Commencement Date” shall be construed accordingly.
“Completion Date”	means the date specified in the Certificate of Completion as the date the Habitat Creation and Enhancement Works were completed.
“Completion Date Notice”	means written notice from the Landowner to the Council of the proposed Completion Date of the Habitat Creation and Enhancement Works served in accordance with paragraph 6.1.1(e) of the Second Schedule.
“Deed”	means this Agreement.
“DEFRA”	means the public body known as the Department for Environment, Food & Rural Affairs or any successor body which acts as the Government’s advisor for the natural environment, food or rural affairs in England.
“Development”	means the development of 70 dwellings including access, open space, landscaping and associated works in accordance with the Planning Permission.
“Discounted Rent Dwelling”	means an Affordable Housing Dwellings to be constructed pursuant to the Planning Permission and transferred to a Registered Provider by the Landowner for allocation in

perpetuity as rented housing as prescribed in the Second Schedule to this Agreement.

Lettings shall be made to persons under an assured shorthold tenancy and at a rent (inclusive of applicable service charges) that shall be no greater than 80% of the Market Rent for the Dwelling or the maximum amount of local housing allowance payable for the Dwelling (whichever is the lower).

The maximum annual rent increase for the Dwelling will be the amount permitted by the Rent Standard but not exceeding the current level of Shropshire Local Housing Allowance or 80% of the Market Rent whichever is the lower.

“Discounted Sale Dwelling”

means an Affordable Housing Dwelling made available for freehold sale at the Formula Price and made available for Occupation as the Occupiers’ only or principal home and in accordance with the terms prescribed in the Second Schedule to this Agreement.

“Dwelling”

means a residential unit that may be built on the Site as part of the Development and reference to “Dwellings” shall be construed accordingly.

“Final Certificate”

means a certificate to be issued by the Council which shall be conclusive evidence that the Public Open Space has been constructed and maintained in accordance with the Public Open Space Specification and Planning Permission to the reasonable satisfaction of the Council.

“Habitat Creation Enhancement Works”

means the habitat creation and enhancement works set out in the Habitat Management and Monitoring Plan (excluding any management or monitoring activities specified in the Habitat Management and Monitoring Plan).

“Habitat Management and Monitoring Plan or HMMP”

means the document to be submitted at the same time as biodiversity gain plan which shall include but is not limited to written narrative and spatial mapping details for Biodiversity Net Gain on the Biodiversity Gain Land and including any modification to it approved by the Council.

"Homes England"	means Homes England or any other body undertaking the previous functions of the Housing Corporation under the Housing and Regeneration Act 2008.
"Homes England Model Lease"	means a form of lease prepared by a Registered Provider in a form which has been approved and/or prescribed by Homes England.
"Housing Allocations Policy and Scheme"	means the Council's adopted policy and procedure for allocating Affordable Housing Dwellings to eligible persons from its housing waiting list.
"Interest"	means interest at 4 per cent above the base lending rate of Barclays Bank plc from time to time.
"Index Linked"	means all payments expressed in this Deed are to be increased from the date of this Deed to the date of payment by reference to the Index applying the following formula: $D = A \times B/C$ where: A = the sum stated to be payable in this Deed; B = the last Index figure published prior to the payment date; C = the last Index figure last published prior to the [date]; and D = the sum payable to the Council.
"Local Lettings Plan"	means a written agreement made between the Council and the Registered Provider that is permitted in accordance with the Housing Allocations Policy and Scheme and used to help promote a sustainable mix and balance of residents at the development.
"Maintenance Period"	means a 12 month period from the date of completion of the layout of the Public Open Space until the Final Certificate is issued and the Public Open Space has been transferred to a Management Company or Parish Council or where the Public Open Space is being retained by the Landowner a Management Company has been appointed to manage and maintain the Public Open Space.
"Maintenance Scheme"	means a scheme for the maintenance of the Public Open Space to include the detail

prescribed in paragraph 4.4 of the Second Schedule to this Agreement.

“Management Company”

means a management company to be approved in writing by the Council for the purposes of managing and maintaining the Public Open Space whether this shall be by way of appointment of a management company to manage and maintain the Public Open Space or by way of a transfer of the Public Open Space to a management company and in the event the management company is to be constituted by the Landowner then its memorandum and articles of association shall be created so that any profits are retained and applied to the maintenance of the Public Open Space and provided further that where a management company is proposed which is already in existence then details of its memorandum and articles of association shall show that any profits are retained and applied to the maintenance of the Public Open Space.

“Market Rent”

Means the estimated amount for which the Dwelling should lease (let) on the date of valuation between a willing lessor and a willing lessee on appropriate lease terms in an arm's-length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion.

“Monitoring Report”

means the monitoring reports to be issued to the Council as specified in the Habitat Management and Monitoring Plan.

“Mortgagee in Possession”

Means a mortgagee of a Dwelling or the Site who has entered into possession of a Dwelling or the Site or who has appointed a receiver or administrative receiver under the security or has otherwise exercised its power of sale.

“Natural England”

Means the public body known as Natural England or any successor body which acts as the Government's advisor for the natural environment in England.

“Occupy/Occupation” and Occupied”

Means occupation for residential purposes 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.
“Open Market Value”	means the price which the Dwelling would be expected to fetch on the open market by a willing vendor to a willing purchaser unfettered by the terms of this Agreement with that value being the average of no less than two written valuations obtained from two chartered surveyors or valuers accredited by the Royal Institution of Chartered Surveyors; or In the case of Shared Ownership Dwellings the price which the Dwelling would fetch on the open market by a willing vendor to a willing purchaser with that value being determined between the occupier and the Registered Provider in accordance with the provisions of the lease for such a Dwelling.
“Open Market Dwelling”	means a Dwelling to be constructed on the Site pursuant to the Planning Permission and not made available for Occupation as an Affordable Housing Dwelling.
“Parish Council”	means Whitchurch Rural Parish Council.
“Plan”	means the plan attached to this Agreement marked “Plan 1”.
“Plan 2”	means the plan attached to this Agreement and marked “Plan 2”.
“Planning Inspector”	means the inspector appointed by the Secretary of State to preside over the Appeal.
“Planning Permission”	means a form of planning permission that may be granted by the Planning Inspector in pursuance of the Appeal in the event that the Appeal is upheld.
“Public Open Space”	means the area to be provided within the Site for recreation and amenity space purposes which are to be permanently retained and maintained as an open amenity area accessible to the public to serve the Development in accordance with the Second Schedule which shall be calculated at 30m ² per bedroom as set out in policy MD2 of Shropshire Council’s Site Allocations and Management of Development DPD adopted 17 December 2015 or such other planning

policy or supplementary planning guidance that may be adopted to replace the same.

“Public Open Space Commuted Sum”

means a commuted sum for maintenance of the Public Open Space (if the Public Open Space is to be transferred to the Parish Council) and the quantum of such commuted sum shall be agreed between the Landowner and the Parish Council prior to the date of transfer the quantum of which shall be based on the details set out in the Maintenance Scheme for a period of twenty years and such commuted sum shall be payable by the Landowner to the Parish Council upon the transfer of the Public Open Space to it.

“Public Open Space Specification”

means the specification approved in writing by the Council to include but not to be limited to:

1. the design specification and landscaping, including any boundary treatments including fencing for the Public Open Space;
2. the exact location and dimensions of the Public Open Space; to include a GIS map as a shapefile ESRI format to include the following suffixes: .shp; .shc; .dbf;
3. details of the provisions for the management of the Public Open Space whether by the transfer of the Public Open Space to a Management Company or where the Public Open Space is to be retained by the Landowner details of the Management Company appointed to manage and maintain the Public Open Space including details of any payments made by the Landowner to the Management Company to fund the maintenance of the Public Open Space.
4. details of the provisions for the management of the Public Open Space in the event of a transfer of the Public Open Space to the Parish Council.

“Public Open Space Works”

means the works to lay out plant construct and maintain the Public Open Space carried out and approved pursuant to the Second Schedule to this Agreement and in accordance with the Public Open Space Specification as agreed in writing with the Council.

“Qualifying Purchaser”

means a person who is resident within or employed within or has family connections within the administrative area of the Council who intends to purchase a Discounted Sale Dwelling and:

1. lacks his/her own housing or lives in housing which is agreed by the Council in its absolute discretion to be inadequate or unsuitable to meet his/her existing or future requirements whether because of its tenure size type design amenity location condition security or costs; and
2. is unlikely to be able to meet his/her housing needs at the Development without access to an Affordable Housing Dwelling.

“Qualifying Tenant”

means a person who is resident within or employed within or has family connections within the administrative area of the Council who intends to rent a Discounted Sale Dwelling from the current occupier and:

1. lacks his/her own housing or lives in housing which is agreed by the Council in its absolute discretion to be inadequate or unsuitable to meet his/her existing or future requirements whether because of its tenure size type design amenity location condition security or costs; and
2. is unlikely to be able to meet his/her housing needs at the Development without access to an Affordable Housing Dwelling.

“RAMSAR Contribution”

means the sum of £20,200 (Twenty Thousand Two Hundred Pounds) payable by the Landowner to the Council as a result of recreational pressure from the development to Cole Mere and Brown Moss RAMSAR Sites.

“Registered Provider”

means a housing association or registered provider or other body registered with the Regulator of Social Housing (which shall include any successor in title) as a provider of affordable housing in accordance with the provisions of the Housing and Regeneration Act 2008.

“Rent Standard”

means the regulatory standard made from time to time by the Minister of Housing,

	Communities and Local Government setting out rents to be charged by the Registered Provider.
“Sale Marketing Plan”	means written evidence provided by the owner of a Discounted Sale Dwelling to the Council demonstrating to the Council’s reasonable satisfaction that it will actively be offered for sale to Qualifying Purchasers at the Formula Price.
“Secondary Purchaser”	means any person who is not a Qualifying Purchaser.
“Shared Ownership Dwellings”	means the Affordable Housing Dwellings to be constructed pursuant to the Planning Permission and transferred to a Registered Provider for allocation to persons as a form of low cost home ownership on a part buy/part rent basis in accordance with the Homes England Model Lease.
“Shropshire Housing Partnership”	means any Registered Provider or constituted community land trust or other housing provider or registered charity working with the Council to provide Affordable Housing Dwellings.
“Site”	means the land described in the First Schedule.
“Social Rented Dwellings”	means the Affordable Housing Dwellings to be constructed pursuant to the Planning Permission and transferred to a Registered Provider for allocation to persons as rented housing as prescribed in the Second Schedule to this Agreement.
	Lettings shall be made under an assured tenancy at a rent equal to or less than the prevailing target rent level (exclusive of applicable service charges) permitted by Homes England through its national rent regime.
“Suitable Offer”	means a written offer made by a Qualifying Purchaser or the Council or a member of the Shropshire Housing Partnership or a Secondary Purchaser to purchase a Discounted Sale Dwelling from the occupier at the Formula Price and in accordance with the terms prescribed in the Second Schedule to this Agreement.

“Supplementary Planning Document”

means Shropshire Council’s Local Development Framework Supplementary Planning Document on the Type and Affordability of Housing (Adopted September 2012) or any subsequent modification or replacement thereof.

“Terms”

means terms which provide for the transfer of the freehold interest in the Public Open Space to be agreed pursuant to a draft transfer providing that:

- a) The Public Open Space is transferred free from encumbrances other than those existing as at the date hereof including the provisions of this Agreement and with full title guarantee;
- b) It is at nil consideration;
- c) It does not include any terms which would restrict public access;
- d) It includes for the benefit of the Public Open Space the grant of any rights of access over any adjoining land which rights are reasonably required for the management and maintenance of the Public Open Space for its purpose as public open space and for water attenuation and surface water drainage purposes;
- e) The transfer shall include a covenant that the Public Open Space shall not be used for any purpose other than for public open space; and
- f) The transfer shall include a covenant to put into effect and comply with the Maintenance Scheme in full for the purposes of thereafter maintaining the Public Open Space for the lifetime of the Development.

“Working Days”

means Monday to Friday inclusive excluding Bank or public holidays.

2 CONSTRUCTION OF THIS AGREEMENT

- 2 Where in this Agreement 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 Agreement.
- 2.1 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.2 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.
- 2.3 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.4 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.
- 2.5 References to any party to this Agreement 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.
- 2.6 The clause headings do not affect its interpretation.
- 2.7 References to the Site include any part of it.
- 2.8 “including” means “including, without limitation”.
- 2.9 Any covenant by the Landowner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.10 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected.
- 2.11 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

3 LEGAL BASIS

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

4 CONDITIONALITY

- 4.1 This Agreement is conditional upon the Commencement of Development save for the provisions of Clauses 7.1, 7.2, 7.3, 13 and 14 and paragraphs 1.1, 1.2, 3.1, 3.3, 4.1,

5.1, and 6.1 of the Second Schedule which shall come into effect immediately upon completion of this Agreement.

- 4.2 If in determining the Appeal the Secretary of State or the Planning Inspector expressly states in their decision letter determining the Appeal that any planning obligation contained in this Deed:

4.2.1 is not a material planning consideration; or

4.2.2 can be given no weight in determining the Appeal; or

4.2.3 does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the CIL Regulations, then subject to clause 4.3 of this Deed such planning obligation shall not be enforceable pursuant to this Deed and shall cease to have effect within this Deed save as set out in the relevant decision letter of the Secretary of State or the Planning Inspector.

- 4.3 If in determining the Appeal the Secretary of State or the Planning Inspector expressly states in their decision letter determining the Appeal that any planning obligation contained in this Deed should be secured by the imposition of a planning condition instead of the relevant planning obligation and if the Planning Permission is granted subject to such planning condition then subject to clause 4.2 of this Deed such planning obligation shall not be enforceable pursuant to this Deed and shall cease to have effect within this Deed save as set out in the relevant decision letter.

5 THE LANDOWNER'S COVENANTS

The Landowner covenants with the Council as set out in the Second Schedule.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Landowner as set out in the Third Schedule.

7 MISCELLANEOUS

- 7.1 The Landowner shall pay to the Council on completion of this Agreement:

7.1.1 the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement in the sum of £2,393 (Two Thousand Three Hundred and Ninety-Three Pounds); and

7.1.2 the s106 obligations monitoring and registration fees in the sums of £1,500 (One Thousand Five Hundred Pounds) and £500 (Five Hundred Pounds) respectively.

- 7.2 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

- 7.3 This Agreement shall be registered as a local land charge by the Council.

- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Landowner 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 Assistant Director for Economy and Place or the Housing and Enabling Manager (or their nominated representatives) 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.

- 7.5 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 7.6 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.
- 7.7 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 Landowner it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it has parted with its entire interest in the Site or any part thereof but without prejudice to liability for any subsisting breach arising prior to parting with such interest. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute the retention of an interest for the purposes of this paragraph.
- 7.9 Subject to the provisions of paragraph 1 of the Second Schedule the obligations contained in this Agreement shall not be binding upon or enforceable against owner-occupiers or tenants of the Open Market Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 7.10 The obligations contained in this Agreement shall not be binding upon or enforceable against any statutory undertaker or any person who acquires part of the Site or any interest in it for the purposes of the supply of electricity gas water drainage telecommunications or public transport services as part of their statutory functions.
- 7.11 The obligations in the Agreement shall not be binding upon or enforceable against any tenant who has exercised any statutory right to buy or right to acquire or similar legislation nor against any mortgagee of such person nor against anyone deriving title from such person or mortgagee.
- 7.12 Subject always to Clause 16 of this Agreement nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement whether or not pursuant to an appeal.

8 MORTGAGEE EXEMPTION CLAUSES

- 8.1 It is hereby agreed and declared between the parties that the covenants contained in this Agreement relating to Affordable Housing Dwellings shall not be binding on a mortgagee or chargee in possession of the Open Market Dwellings on the Site or a receiver appointed by such mortgagee or chargee or a bona fide purchaser for value thereof from such a mortgagee or chargee in possession or receiver appointed (except in the case of a purchaser which is a Registered Provider) or the successors in title of such purchaser with the intent that the clauses in this Agreement relating to affordable housing shall cease to bind the Open Market Dwellings on the Site in perpetuity.

8.2 The Second Schedule of this agreement shall not be binding on 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 Dwellings (other than the Shared Ownership Dwellings which are dealt with in accordance with clause 8.3 and the Discounted Sale Dwellings which are dealt with in accordance with clause 8.4) or any persons or bodies deriving title through such mortgagee or chargee or Receiver **PROVIDED THAT:**

8.2.1 such mortgagee or chargee or Receiver shall first have given written notice to the Council of its intention to dispose of the Affordable Housing Dwellings (other than the Shared Ownership Dwellings and the Discounted Sale Dwellings) 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 Dwellings (other than the Shared Ownership Dwellings and the Discounted Sale Dwellings) 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

8.2.2 if such disposal has not been completed within the three month period the mortgagee chargee or Receiver shall be entitled to dispose of the Affordable Housing Dwellings (other than the Shared Ownership Dwellings and the Discounted Sale Dwellings) free from the Second Schedule of this agreement which provisions shall determine absolutely.

8.3 Shared Ownership Mortgagee Exemption

8.3.1 It is agreed between the parties that in the event that a mortgagee or a chargee of a Dwelling that is occupied on the basis of a Shared Ownership Lease takes possession of the said Dwelling from the Leaseholder ("the Leaseholder") then, under this Agreement that said mortgagee or chargee must comply with the following procedures;

8.3.2 It shall give notice in writing to the Chief Executive of the Registered Provider or to any other Registered Provider that it may have transferred the Site or Dwellings of its possession and shall offer to dispose of the leasehold interest in the Dwelling at the price of the consideration of the equity share paid by the Leaseholder or the sum outstanding under any mortgage or charge on the Dwelling whichever is the greater ("the Offer").

8.3.3 The Registered Provider shall within twenty working days of receipt of the Offer notify the mortgagee or chargee of its decision either to accept the Offer or to decline it.

8.3.4 If the Registered Provider decides to accept the Offer it shall complete the transfer of the leasehold interest in the Dwelling within thirty working days of the Offer acceptance and shall following completion of the transfer of the Dwelling pursuant to this sub-clause remarket the Dwelling in accordance with this Agreement to another purchaser.

8.3.5 In the event that the Registered Provider shall decline the Offer the mortgagee or chargee shall give notice in writing to the Planning and Corporate Policy Manager of the Council of its intention to sell to it on the basis of the Offer in 8.3.2.

8.3.6 The Council shall within twenty working days of the Notice notify in writing the mortgagee or chargee of its intention to either accept or decline the Offer.

- 8.3.7 If the Council decides to accept the Offer it shall complete the transfer of the leasehold interest in the Dwelling within thirty working days of the Offer acceptance.
- 8.3.8 In the event that the Council declines the Offer the mortgagee or chargee shall be free to market and dispose of the leasehold interest in the Dwelling subject to the provisions in this Agreement as it relates to the Shared Ownership Dwellings.
- 8.3.9 In the event that the mortgagee or chargee shall dispose of the leasehold interest in the Dwelling in accordance with the provisions of clause 8.3.8 it shall apply the proceeds of sale in the following order:-
- (i) to itself to satisfy the amount owing under its mortgage or charge;
 - (ii) to the Registered Provider in respect of any sums properly due under the lease;
 - (iii) to apply any further sums in accordance with the mortgagee or chargee's statutory obligations.

8.4 Discounted Sale Mortgagee Exemption

- 8.4.1 A Mortgagee in Possession of a Discounted Sale Dwelling shall not sell it other than as provided for within sub-clauses 8.4.2 and 8.4.3 of this Agreement.
- 8.4.2 The Mortgagee in Possession shall be free to sell the Discounted Sale Dwelling to any purchaser **PROVIDED THAT** the sale price shall be no more than the Formula Price or the sum necessary to recoup all of the mortgage debt and costs (whichever shall be the higher) unless the sale is pursuant to sub-clause 8.4.3 of this Agreement.
- 8.4.3 If after a period of eight weeks from taking possession of the Discounted Sale Dwelling (with notice in writing having been sent by recorded signed for post to the Council by the Mortgagee in Possession on the commencement of that period or as soon as possible thereafter) it has not been sold or is not subject to a formal exchange of contracts pursuant to a sale in accordance with sub-clause 8.4.2 of this Agreement the Mortgagee in Possession shall be entitled to sell the Dwelling to any purchaser at Open Market Value and free from the restrictions contained in this Agreement.
- 8.4.4 Where the Mortgagee in Possession sells the Discounted Sale Dwelling pursuant to sub-clause 8.4.3 of this Agreement it shall (after recouping all of the mortgage debt and costs) pay to the Council all of the difference between the sale price and the Formula Price (subject to the sale price exceeding the Formula Price) which sum the Council shall use to facilitate the provision of additional Affordable Housing Dwellings.
- 8.4.5 Following completion of a sale by the Mortgagee in Possession pursuant to sub-clause 8.4.3 of this Agreement the Council shall within two weeks remove the provisions of this Agreement as they relate to the Dwelling from the local land charges register and also consent to removal of the land registry title Restriction.

9 WAIVER

No waiver (whether express or implied) by the Council or Landowner 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 or Landowner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10 CHANGE IN OWNERSHIP

The Landowner agrees with the Council to give to the Council as soon as practicably possible written notice of any change in ownership of any of their interests in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site by reference to a plan.

11 INTEREST

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.

12 VAT

All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

13 JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England and Wales.

14 DELIVERY

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 signed by all parties and dated.

15 DISPUTE RESOLUTION

In the event of any dispute or difference arising out of this Agreement between the parties (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Agreement) such dispute or difference shall be referred to a person to be agreed between the parties who is a member of the Royal Institution of Chartered Surveyors or in the absence of agreement on the application of any party to be appointed by the President of the Royal Institution of Chartered Surveyors such person to act as sole expert in the determination of the dispute or difference and whose decision shall be final and binding upon the parties.

16 SECTION 73 VARIATION

In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the Act in respect of the conditions relating to the Planning Permission or shall approve an application by the Landowner for a non material amendment relating to the Planning Permission (and for no other purposes whatsoever) references in this Agreement to the Application and the Development and the Planning Permission shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and the Agreement shall henceforth take effect and be read and constructed accordingly.

Executed as a **Deed** on the date specified at the commencement of this **Agreement**

FIRST SCHEDULE

Details of the Landowner's Title, and description of the Site

ALL THAT freehold land east of Tilstock Road, Tilstock, Whitchurch, Shropshire and ALL THAT freehold land to the north-east of Tilstock Bradbury Village Hall, Crabmill Meadow, Tilstock, Whitchurch, Shropshire as the same is registered with absolute title at HM Land Registry under title numbers SL287277 and SL293178 shown edged red on the Plan:

PLAN 1

ISSUE:

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KEY: SITE LOCATION PLAN

 APPLICATION BOUNDARY



LAND NORTH OF TILSTOCK ROAD - SITE LOCATION PLAN



SECOND SCHEDULE

The Landowner's covenants with the Council

1. Affordable Housing Dwellings

- 1.1 The Landowner covenants with the Council that it will submit to the Council for approval a provisional scheme for the phasing of the Development on the Site or a statement that the development of the Site is to be completed in one phase to be approved prior to the Commencement of Development **PROVIDED ALWAYS THAT** the provisional scheme may be amended by the Landowner from time to time and any amended scheme which has been approved in writing by the Council (such approval not to be unreasonably withheld or delayed) shall from the date of that approval constitute the phasing scheme for the purpose of this clause **AND PROVIDED THAT** if the provisional scheme is not approved by the Council within 20 working days of submission to them for approval (with a letter referring to the Application, this Agreement and the consequences of this provision) receipt of such submission having been acknowledged in writing by the Council then it shall be deemed approved.
- 1.2 The Landowner covenants with the Council that prior to the Commencement Date for each phase of Development identified pursuant to clause 1.1 of this Schedule it shall submit to the Council written confirmation of the agreed Affordable Housing Dwelling tenures Dwelling types and bed-space numbers on a plot by plot basis for the phase identified.
- 1.3 The First Landowner covenants with the Council that not less than 10 of the total number of Dwellings that will have been constructed on the Site pursuant to the Planning Permission by completion of the phase or phases will be Affordable Housing Dwellings being plots 67 – 70 (1 bed bungalows), plots 32 – 34 (2 bed houses) and plots 56 – 58 (3 bed houses) as identified on Plan 2. The transfer of those Dwellings that are to be Affordable Rent Dwellings and/or Social Rent Dwellings and/or Discounted Rent Dwellings and/or Shared Ownership Dwellings pursuant to paragraphs 1.5 and 1.7 of this Schedule and the marketing of those Dwellings that are to be made available as Discounted Sale Dwellings pursuant to paragraph 1.9 of this Schedule shall be triggered by the Occupation of 50% of the Dwellings to be constructed on each phase of the Development.
- 1.4 The Landowner covenants with the Council that the Affordable Housing Dwellings shall be made available as 7 Social Rent Dwellings and 3 Shared Ownership Dwellings being one 2-bed and two 3-beds dwellings (or such other Affordable Housing Dwelling tenure type and mix as the Council may approve in writing) to be Occupied by in accordance with the provisions set out in the following clauses 1.5 to 1.9 (inclusive) to this Schedule.

Affordable Rent Dwellings and Social Rent Dwellings and Discounted Rent Dwellings

- 1.5 Save in the case where it is a Registered Provider the Landowner shall transfer each of the Affordable Housing Dwellings to a Registered Provider to be made available for Occupation as rented affordable housing.
- 1.6 The Landowner covenants with the Council as follows:-
- 1.6.1 Not to permit the occupation of any of the Affordable Rent Dwellings and/or Social Rent Dwellings and/or Discounted Rent Dwellings other than strictly in accordance with the

procedures set out in the following sub-clauses 1.6.2 to 1.6.4 (inclusive) of this Schedule.

- 1.6.2 The Affordable Housing Dwellings referred to in sub-clause 1.6.1 of this Schedule shall at all times be allocated in accordance with the Council's adopted Housing Allocations Policy and Scheme and advertised as available for Occupation through its preferred Choice Based Lettings System (such policy and scheme and system may be amended and adopted from time to time by the Council upon prior notification to the Registered Provider).
- 1.6.3 The Affordable Housing Dwellings referred to in sub-clause 1.6.1 of this Schedule shall at all times be managed in accordance with such published policies and procedures as may be adopted from time to time by the Registered Provider.
- 1.6.4 The Affordable Housing Dwellings referred to in sub-clause 1.6.1 of this Schedule shall at all times be allocated and managed in accordance with the requirements of sub-clauses 1.6.2 and 1.6.3 (inclusive) of this Schedule together with the requirements of any Local Lettings Plan agreed in writing by the Council in operation at that particular time.

Shared Ownership Dwellings

- 1.7 Save in the case where it is a Registered Provider the Landowner shall transfer each of the Shared Ownership Dwellings to a Registered Provider to be made available for Occupation under this form of low cost home ownership.
- 1.8 The Landowner covenants with the Council as follows:-
 - 1.8.1 Shared Ownership vacancies made available by the Registered Provider shall be advertised through the Council's preferred Choice Based Lettings System and in accordance with the requirements of the Council's adopted Housing Allocations Policy and Scheme (such policy and scheme and system may be amended and adopted from time to time by the Council upon prior notification to the Registered Provider) and provisions of any Local Lettings Plan agreed in writing by the Council in operation at that particular time provided always that if there is at any time a conflict between the provisions of this clause and the Homes England Model Lease then the terms of the Homes England Model Lease will prevail.
 - 1.8.2 Not to permit the Occupation of any of the Shared Ownership Dwellings otherwise than by a person who has acquired an interest in that Dwelling in accordance with the procedures set out in clause 1.8 of this Schedule.
 - 1.8.3 The Shared Ownership Dwellings shall be marketed for acquisition on the basis of a purchase price of at least 10% of the Open Market Value with a rent payable to the Registered Provider by the occupier of no more than 2.75% of the retained equity at the Open Market Value.
 - 1.8.4 The Occupier of a Shared Ownership Dwelling shall have the right to increase his ownership share in the Dwelling by purchasing additional equity over time at a price reflecting the Open Market Value of the share being acquired at the date of acquisition **BUT SUBJECT TO** a maximum of 80% equity ownership through Restricted Staircasing.

- 1.8.5 The Occupier of a Shared Ownership Dwelling shall not dispose of their interest in it nor offer so to do other than in accordance with the terms of the Homes England Model Lease.

Discounted Sale Dwellings

- 1.9 The Landowner covenants with the Council to provide a Sale Marketing Plan demonstrating that the Discounted Sale Dwellings will be offered for sale to Qualifying Purchasers at no more than the Formula Price for Occupation under this form of low cost home ownership and to dispose of them strictly in accordance with the provisions set out in the following sub-paragraphs 1.9.3 to 1.9.13 (inclusive) of this Schedule **SAVE THAT** in the case of the initial sale of a Discounted Sale Dwelling references to the owner in those sub-clauses shall be taken to also mean the Landowner.

- 1.9.1 The owner of a Discounted Sale dwelling covenants with the Council as follows:-
- 1.9.2 A Discounted Sale Dwelling shall not be let (or offered to be let) other than to a Qualifying Tenant under a shorthold tenancy and at the same level of rent as would be applicable to a Discounted Rent Dwelling.
- 1.9.3 A Discounted Sale Dwelling shall not be sold (or offered for sale) other than in accordance with an agreed Sale Marketing Plan at the Formula Price and to a Qualifying Purchaser (or to the Council or to a body nominated by the Council from the Shropshire Housing Partnership) pursuant to sub-paragraph 1.9.6 of this Schedule or otherwise to a Secondary Purchaser pursuant to sub-paragraph 1.9.9 of this Schedule.
- 1.9.4 A Discounted Sale Dwelling shall not be marketed until the Council has been provided with a Sale Marketing Plan evidencing the Formula Price and stating the actions to be taken to advertise the Dwelling for sale to Qualifying Purchasers and such a document shall serve as formal written notice to the Council of the owner's intention to sell the Dwelling.
- 1.9.5 The Council shall within two weeks of receipt of a complete Sale Marketing Plan grant written consent to the owner (or be deemed to have granted the same) for marketing to commence in accordance with the information given in that document.
- 1.9.6 For a period of twelve weeks from receipt of the Council's written consent under sub-paragraph 1.9.5 of this Schedule only Qualifying Purchasers (or to the Council or to a body nominated by the Council from the Shropshire Housing Partnership) shall be permitted to make a Suitable Offer and enter into terms with the owner to purchase the Discounted Sale Dwelling in accordance sub-paragraph 1.9.7 of this Schedule.
- 1.9.7 Any sale of the Discounted Sale Dwelling under sub-clauses 1.9.6 or 1.9.9 of this Schedule shall be on the following terms:-
- (i) the purchaser shall make a Suitable Offer to the owner which shall be no more than the Formula Price;
 - (ii) the purchaser shall covenant with the Council to observe and perform the obligations set out in sub-paragraphs 1.9.1 to 1.9.13(inclusive) of this Second schedule;
 - (iii) the Dwelling shall be sold with vacant possession;

- (iv) the sale shall be subject to the formal exchange of contracts within four weeks of the Suitable Offer being made with a completion date being no more than four weeks thereafter (or such other date for completion as may be agreed as binding between the parties); and
- (v) the contract for sale shall be subject to the edition of the Standard Conditions of Sale current at the date of the Suitable Offer.

1.9.8 In the event that the Discounted Sale Dwelling is purchased by the Council or by a nominated member of the Shropshire Housing Partnership such a purchaser may at its absolute discretion sell the Dwelling in accordance with the provisions of this Schedule or retain it for use as either a Discounted Rent Dwelling or a Shared Ownership Dwelling.

1.9.9 If after a period of twelve weeks from receipt of the Council's written consent under sub-paragraph 1.9.5 of this Schedule the Discounted Sale Dwelling has not been sold or is not subject to a formal exchange of contracts pursuant to a sale in accordance with sub-paragraph 1.9.6 of this Schedule the owner shall be entitled to sell the Dwelling to a Secondary Purchaser in accordance with sub-paragraph 1.9.7 of this Schedule.

1.9.10 A Secondary Purchaser shall only be permitted to make a Suitable Offer and enter into terms with the occupier to purchase the Discounted Sale Dwelling pursuant to the provisions of sub-paragraph 1.9.9 of this Schedule.

1.9.11 No freehold interest in any Discounted Sale Dwelling shall be transferred by the occupier to any purchaser other than subject to a covenant that:

"No disposition or sale to a third party shall take place at a price exceeding the Formula Price as defined in the agreement made under section 106 of the Town and Country Planning Act 1990 dated [] and made between Boningale Developments Limited (1) and Shropshire Council (2) and no disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, is to be registered without a certificate signed by Shropshire Council of Guildhall Frankwell Quay Shrewsbury Shropshire SY3 8HQ that the provisions of paragraph 1.9 of the Second Schedule of the said agreement have been complied with or that they do not apply to the disposition" and

1.9.12 Each purchaser of a Discounted Sale Dwelling shall:

within seven days of completion of the purchase apply to register this Agreement in the Charges Register of the Land Registry Title relating to that Discounted Sale Dwelling and to register the following restriction in the Proprietorship Register of the title:-

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, is to be registered without a certificate signed by Shropshire Council of Guildhall Frankwell Quay Shrewsbury Shropshire SY3 8HQ that the provisions of paragraph 1.9 of the Second Schedule of the agreement made under section 106 of the Town and Country Planning Act 1990 dated [] and made between Boningale Developments Limited (1) and Shropshire Council (2) have been complied with or that they do not apply to the disposition" (the "Restriction"); and

provide to the Council as soon as is reasonably possible a copy of the Land Registry Title following completion of the registration of the Restriction referred to in this clause.

- 1.9.13 Provisions for a Mortgagee in Possession of a Discounted Sale Dwelling to dispose of their interest in that Dwelling are prescribed in clause 8.3 of this Agreement.

2 Affordable Housing Contribution

- 2.1 The Affordable Housing Contribution comprises financial amounts due in respect of the balance of the Affordable Housing Contribution remaining after the on-site contribution has been calculated in accordance with the Supplementary Planning Document including any fractions remaining after on-site Affordable Dwellings have been taken into account and/or the outcome of other negotiations between the Council and the Landowner in respect of further commuted sum payments.
- 2.2 The Landowner covenants with the Council that it shall pay the sum of £45,000 (Forty-Five Thousand Pounds) to the Council as the Affordable Housing Contribution within 1 year of the Commencement of Development or on practical completion of the Development whichever date shall occur first and acknowledges the fact that the Council shall use 5% of the Affordable Housing Contribution (in the sum of £2,250) for the administration of the delivery of affordable housing in accordance with the Council's Type and Affordability of Housing Supplementary Planning Document and that any refund of any unallocated or unspent part of the Affordable Housing Contribution in accordance with clause 2 of the Third Schedule shall be reduced by such an amount.

3. Public Open Space

The Landowner covenants as follows:

- 3.1 Not to Commence Development on any phase or on any part of the Site in the event the Development is to be completed in one phase until it has secured approval for the Public Open Space in respect of that phase or for the whole of the Site in the event that the Development is to be completed in one phase and the Public Open Space Specification and Maintenance Scheme has been approved in writing by the Council.
- 3.2 To lay out and complete the Public Open Space for that phase or for the whole Site in the event the Development is to be completed in one phase in accordance with the details approved in the relevant Planning Permission and Public Open Space Specification.
- 3.3 Prior to the Commencement of Development to offer to transfer the Public Open Space to the Parish Council on the Terms.
- 3.4 Not to allow more than 50% of the Dwellings within any phase or within the whole Development in the event the Development is to be completed in one phase to be Occupied until:
- 3.4.1 it has laid out and completed the Public Open Space for that phase or for the whole of the Site in the event the Development is to be completed in one phase in accordance with the details approved in the relevant Planning Permission and Public Open Space Specification to the reasonable satisfaction of the Council and shall thereafter maintain the Public Open Space for the Maintenance Period;

- 3.4.2 it has exchanged contracts to transfer the Public Open Space to the Parish Council on the Terms or Management Company or where the Public Open Space is being retained by the Landowner a Management Company has been appointed to manage and maintain the Public Open Space; and
- 3.4.3 it has served notice on the Council to confirm that it has laid out and completed the Public Open Space in accordance with paragraph 3.4.1 of this Schedule.
- 3.5 From the date the Public Open Space has been laid out and completed the Landowner shall:
 - 3.5.1 maintain the Public Open Space in accordance with the Planning Permission and Public Open Space Specification for the Maintenance Period;
 - 3.5.2 allow free unrestricted use and access to the Public Open Space to the general public for the purposes of recreation at all times of the day and night;
- 3.6 At least 6 weeks prior to the transfer of the Public Open Space to the Parish Council or Management Company or where the Public Open Space is being retained by the Landowner and a Management Company is to be appointed to manage and maintain the Public Open Space the Landowner shall:
 - 3.6.1 serve notice on the Council inviting them to inspect the Public Open Space Works and issue a Final Certificate confirming that such works have been completed and maintained to its reasonable satisfaction, and
 - 3.6.2 if the Council inspects the Public Open Space Works and identifies necessary remedial works, complete such remedial works to the reasonable satisfaction of the Council, and
 - 3.6.3 upon completion of any remedial works serve notice on the Council inviting them to inspect the remedial works identified by them pursuant to paragraph 3.6.2 and issue a Final Certificate confirming that such works have been completed to its reasonable satisfaction.

PROVIDED THAT if the Council fails to inspect the Public Open Space Works within 30 Working Days of receipt of a notice of invitation from the Landowner pursuant to paragraphs 3.6.1 or 3.6.3 or fails to issue a Final Certificate within 30 Working Days of the inspection where no remedial works have been identified then the Final Certificate shall be deemed to have been issued at the end of those specified periods **PROVIDED FURTHER THAT** the inspection procedure identified in paragraphs 3.6.1 or 3.6.3 shall be repeated until such time as the Council issue or are deemed to have issued a Final Certificate in relation to the Public Open Space Works **AND PROVIDED FURTHER THAT** nothing shall prevent the Landowner undertaking the Public Open Space Works in phases or in individual component parts and seeking Final Certificates for each such phase or part of the Public Open Space Works.

Transfer

- 3.7 In the event the Public Open Space is transferred to the Parish Council the Landowner covenants to pay a Public Open Space Commuted Sum.

- 3.8 If within 30 days of the Landowner's offer made pursuant to paragraph 3.3 above the Parish Council has not accepted the offer of the Public Open Space the Landowner shall either transfer the Public Open Space to a Management Company or retain ownership of the Public Open Space and appoint a Management Company to maintain and manage the Public Open Space on behalf of the Landowner.
- 3.9 In the event the Public Open Space is retained by the Landowner and a Management Company is appointed to manage and maintain the Public Open Space the Landowner shall comply with the following:
- 3.9.1 prior to Occupation of any phase of the Development or any part of the Development where the Development is to be completed in one phase, in respect of the Public Open Space within that phase or the whole of the Public Open Space where the Development is to be completed in one phase:
- 3.9.1.1 the Landowner shall have appointed a Management Company to manage and maintain the Public Open Space and shall have provided details of the Management Company to the Council to include but not to be limited to details of the name, registered company number and registered office; and
- 3.9.1.2 The Landowner shall not permit the Occupation of any Dwelling within a phase or in the event the Development is to be completed in one phase any Dwelling within the Development unless and until a transfer of that Dwelling has been completed with the purchaser of that Dwelling that includes a covenant by the purchaser to pay the required contributions (being a fair proportion of the overall cost) to the Management Company in respect of the Dwelling (or part thereof) so that the Management Company can comply with the obligations contained in this Agreement in respect of the Public Open Space (or the relevant part of it as applicable).
- 3.9.2 to put into effect and comply with the Maintenance Scheme in full for the purposes of thereafter managing and maintaining the Public Open Space for the lifetime of the Development.
- 3.10 In the event the Public Open Space is transferred to a Management Company the Landowner shall comply with the following:
- 3.10.1 Prior to the Occupation of any phase of the Development or any part of the Development where the Development is to be completed in one phase in respect of the Public Open Space within that Phase or the whole of the Public Open Space where the Development is to be completed in one phase:
- 3.10.1.1 the Landowner shall have formed a Management Company or chosen an existing Management Company to transfer to and shall have provided details of the Management Company to the Council to include but not to be limited to details of the name registered company number and registered office; and
- 3.10.1.2 The Landowner shall not permit the Occupation of any Dwelling within a phase or in the event the Development is to be completed in one phase any dwelling within the Development unless and until a transfer of that Dwelling has been completed

with the purchaser of that Dwelling that includes a covenant by the purchaser to pay the required contributions (being a fair proportion of the overall cost) to the Management Company in respect of the Dwelling (or part thereof) so that the Management Company can comply with the obligations contained in this Agreement in respect of the Public Open Space (or the relevant part of it as applicable).

- 3.10.2 To put into effect and comply with the Maintenance Scheme in full for the purposes of thereafter managing and maintaining the Public Open Space for the lifetime of the Development.
- 3.11 No more than 75% of the Dwellings in any phase or of the whole Development where the Development is to be completed in one phase shall be permitted to be Occupied until such time as the whole of the Public Open Space within that phase or the whole of the Public Open Space for the Development where the Development is to be completed in one phase has been transferred to either:
 - 3.11.1 the Parish Council in accordance with the Terms and the Public Open Space Commuted Sum has been paid to the Parish Council; or
 - 3.11.2 to a Management Company in accordance with the Terms or in the event the Landowner retains ownership of the Public Open Space a Management Company has been appointed to manage and maintain the Public Open Space on the Landowner's behalf and the management and maintenance responsibilities have been transferred to the Management Company; and
 - 3.11.3 a Final Certificate has been issued or deemed to have been issued in relation to all parts of the Public Open Space within the relevant phase or for the whole of the Development where the Development is to be completed in one phase.
- 3.12 No use shall occur or be permitted of the Public Open Space for any other purpose than for public recreation for the lifetime of the Development.
- 3.13 Not to carry out any development (within the meaning of Section 55 of the Act) on the relevant Public Open Space save as is appropriate to such an area (which shall first be agreed in writing with the Council) and to use such land only as amenity space in accordance with the Planning Permission.

4 Maintenance Scheme

- 4.1 Prior to the Commencement of Development the Landowner shall have submitted to and have approved in writing by the Council the Maintenance Scheme such approval to be given within 60 Working Days of request and deemed to be approved in the event the Council fails to respond within that timescale.
- 4.2 No Occupation of any Dwellings in the relevant phase or on the Site where the Development is to be constructed within one phase shall be permitted until the Council shall have approved or be deemed to have approved the Maintenance Scheme in writing.
- 4.3 The Landowner shall implement the Maintenance Scheme in full and shall thereafter comply with the Maintenance Schemes in all respects.

Maintenance Scheme Provisions

4.4 The Maintenance Scheme shall be a written scheme for the maintenance of the Public Open Space prepared by the Landowner which shall include the following:

4.4.1 frequency of maintenance;

4.4.2 measures to replace any trees shrubs or turf which may die or become diseased following implementation of the Maintenance Scheme;

4.4.3 standard of maintenance and repair to be achieved;

4.4.4 how the costs of maintenance shall be funded.

5 RAMSAR CONTRIBUTION

5.1 Prior to Commencement of Development the Landowner will pay the RAMSAR Contribution to the Council.

6 BNG

The Landowner covenants with the Council as follows:

6.1 Submission and Implementation of Habitat Management and Monitoring Plan

6.1.1 to:

- (a) prior to the Commencement of Development to submit to the Council for approval the Habitat Management and Monitoring Plan prepared in accordance with the approved biodiversity gain plan;
- (b) begin the Habitat Creation and Enhancement Works no later than twelve (12) months following the Commencement of Development;
- (c) notify the Council in writing of the BNG Commencement Date within 10 Working Days of it occurring;
- (d) complete the Habitat Creation and Enhancement Works in accordance with the Habitat Management and Monitoring Plan;
- (e) issue the Completion Date Notice to the Council within 10 Working Days of the completion date of the Habitat Creation and Enhancement Works;
- (f) promptly rectify any defects in the Habitat Creation and Enhancement Works identified by the Council under paragraph 6.1(b)(ii) of the Third Schedule and issue a subsequent Completion Date Notice and thereafter to continue to rectify any defects and issue Completion Date Notices until the Council issues a Certificate of Completion;
- (g) upon receiving the Certificate of Completion from the Council, maintain the Biodiversity Gain Land in accordance with the Habitat Management and Monitoring Plan for a period of not less than 30 years from the Completion Date; and

- (h) provide a Monitoring Report to the Council within 20 (twenty) Working Days of each Monitoring Report date specified in this Deed and the Habitat Management and Monitoring Plan.
- (i) Not to dispose/change ownership of the Biodiversity Gain Land without the written consent of the Council.

6.2 Habitat Management and Monitoring Plan (HMMP)

6.2.1 To notify and obtain written approval from the Council of any requested amendment to the Habitat Management and Monitoring Plan, such notice to include:

- (a) the proposed amended Habitat Management and Monitoring Plan;
- (b) a statement of reasons for such amendment(s); and
- (c) confirmation (with reasons) that the amendment would not prejudice:
 - (i) the use or management of the Biodiversity Gain Land in a manner consistent with its function to deliver Biodiversity Net Gain; and
 - (ii) the continued function of the Biodiversity Gain Land for Biodiversity Net Gain.

6.3 Biodiversity Gain Land Monitoring Contribution

6.3.1 To pay the Biodiversity Gain Land Monitoring Contribution to the Council within 10 Working days of the BNG Commencement Date.

6.4 Access for Inspection

6.4.1 From the BNG Commencement Date, to allow the Council, its agents, and contractors with or without workmen and equipment to:

- (a) enter onto the Biodiversity Gain Land at all reasonable times (following reasonable notice given in accordance with paragraph 9 of the Third Schedule) to monitor compliance with:
 - (i) the obligations in this Deed; and
 - (ii) any Breach Notice.

and

- (b) pass and re-pass across any land in the Landowners control which is necessary to gain access to for the purposes of accessing the Biodiversity Gain Land in accordance with paragraph 6.4.1(a).

6.5 Step-In Rights

6.5.1 Where a Breach Notice is served to:

- (a) comply with the requirements of the Breach Notice within the time limits specified by the Breach Notice (or other extended timeframe as agreed with the Council in writing);

- (b) use reasonable endeavours to agree the following with the Council within 20 Working days of receipt of the Breach Notice:
 - (i) the steps required to remedy the breach; and
 - (ii) if applicable, any remedial works;and
- (c) commence and diligently proceed to remedy the breach within the time period specified in the Breach Notice (or such other period as may be agreed with the Council under sub-paragraph (a)) in accordance with the details agreed under sub-paragraph (b).

6.5.2 Where it has failed to comply with a time limit of the Breach Notice, to allow the Council, its agents, and contractors with or without workmen and equipment to enter:

- (a) the Biodiversity Gain Land; and
- (b) other land in the Landowner's control needed to access the Biodiversity Gain Land,

at all reasonable times to carry out works reasonably necessary to comply with the requirement of the Breach Notice; and

6.5.3 To pay the Council a sum equivalent to its reasonable and properly incurred costs in respect of carrying out the relevant works under paragraph 6.5.2 within 20 Working Days of a notice requesting payment (such notice to include a breakdown of such costs).

THIRD SCHEDULE

The Council's Covenants

Discharge of obligations

1. At the written request of the Landowner the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed.

Repayment of Contributions

2. In the event an Affordable Housing Contribution is due and paid by the Landowner pursuant to paragraph 2.1 of the Second Schedule the Council covenants with the Landowner that if after a period of 10 years from the date of receipt of the final instalment of the Affordable Housing Contribution, it, or any part of it, remains unspent or unallocated it shall repay such unspent or unallocated sum to the party that initially made the payment to the Council.
3. The Council covenants with the Landowner that if after the period of 10 years from the date of receipt of the RAMSAR Contribution, it, or any part of it, remains unspent or unallocated it shall repay such unspent or unallocated sum to the party that initially made the payment to the Council.

Use of Contributions

4. In the event an Affordable Housing Contribution is due and paid by the Landowner pursuant to paragraph 2.1 of the Second Schedule the Council covenants with the Landowner that it shall use the Affordable Housing Contribution to facilitate the provision of additional affordable and/or supported housing within the administrative area of the Council and for the monitoring and supervision of the obligations in this Agreement in accordance with paragraph 2.2 of the Second Schedule.
5. The Council covenants with the Landowner that it will use the RAMSAR Contribution towards providing a suite of visitor improvement measures to mitigate recreational impacts, including improved visitor signage, visitor infrastructure maintenance, car park improvements and visitor monitoring.

6 Inspection of the Habitat Management and Monitoring Plan

- 6.1 To:
 - (a) inspect the Habitat Creation and Enhancement Works within 30 Working Days following receipt of the Completion Date Notice;
 - (b) to do the following where Habitat Creation and Enhancement Works are inspected under sub-paragraph (a):
 - (i) promptly issue a Certificate of Completion if the Habitat Creation and Enhancement Works have been completed to the reasonable satisfaction of the Council; or

- (ii) promptly notify the Landowner of any defects, if the Council determines that the Habitat Creation and Enhancement Works have not been completed; and
- (c) where the Landowner issues a subsequent Completion Date Notice under paragraph 6.1.1 (e) of the Second Schedule, re-inspect the Habitat Creation and Enhancement Works under paragraph 6.1 (a) of this Schedule and to comply with paragraph 1.1.1(b) of this Schedule until it issues the Certificate of Completion.

7 Habitat Management and Monitoring Plan

7.1 Not to unreasonably withhold or delay giving its written approval to any revised or replacement Habitat Management and Monitoring Plan submitted by the Landowner to the Council under the Third Schedule of this Deed;

7.2 To monitor the implementation and operation of the Habitat Management and Monitoring Plan by a suitably qualified ecology and environmental management professional by way of periodic physical visits to the Biodiversity Gain Land and/ or remotely surveying the Biodiversity Gain Land and to provide, as soon as practicable afterwards, a written report to the Owner of the findings any monitoring activities, at the following intervals:

- (a) in years 1, 3 and 5 from the anniversary of the BNG Commencement Date; and then
- (b) every five years thereafter until the Agreement Expiry Date.

8 Habitat Management and Monitoring Contribution

8.1 To use the Biodiversity Gain Land Monitoring Contribution for its intended purpose and not for any other purpose.

9. Rights of Access

9.1 To give not less than 10 Working Days' notice to the Landowner of its intention to access the Biodiversity Gain Land for the purposes of inspection under paragraph 6.4 of the Second Schedule of this Deed to ascertain the Landowner's compliance with its covenants under this Deed or a Breach Notice.

10. Breach Notice and Step-in Rights

10.1 Where it considers that the Landowner is not complying with its obligations under this Deed, and intends to take steps to remedy the breach, to first notify the Landowner:

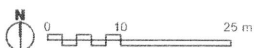
- (a) the reasons for alleging non-compliance;
- (b) the steps it proposes the Landowner should take to remedy any breach or non-compliance, and
- (c) the reasonable time limits for the Landowner to take these steps;

- 10.2 Where it serves a Breach Notice, it may notify the Landowner of any extension of time specified in the Breach Notice, as it considers appropriate (in its absolute discretion);
- 10.3 Where the Landowner does not comply with the time limits specified in the Breach Notice (or as otherwise agreed), undertake the requirements imposed on the Landowner as set out in the Breach Notice provided that the Council:
- (a) provides reasonable notice that it, its agents, and contractors with or without workmen and equipment will enter the Biodiversity Gain Land and/or land in the Landowner's control to access the Biodiversity Gain Land;
 - (b) ensures minimal damage and inconvenience to the Landowner;
 - (c) repairs any damage caused by exercising the step-in rights under this paragraph; and
 - (d) issues to the Landowner a full breakdown of the time spent and costs incurred in exercising its step-in rights under this paragraph.



KEY: AFFORDABLE HOUSING

- APPLICATION BOUNDARY
- AFFORDABLE DWELLINGS



LAND NORTH OF TILSTOCK ROAD - AFFORDABLE HOUSING PLAN



Executed as a **Deed** on the date specified at the commencement of this **Agreement**

EXECUTED as a DEED by)
BONINGALE DEVELOPMENTS LIMITED)

acting by a director)

in the presence of)

Witness signature:

Witness name:

Witness address:

Witness occupation:

EXECUTED as a DEED by affixing)
The **COMMON SEAL** of)
SHROPSHIRE COUNCIL)
in the presence of:-)

Tim Collard/Miranda Garrard/Rhian Cains/Kim Brown
Service Director of Legal Governance and Planning/Head of Legal and Democratic
Services/Legal Team Manager – People/Legal Team Leader - Regulatory and Environment

Authorised Officer