

Dated 2025

DERBY CITY COUNCIL (1)

AND

MICHAEL PEPPER (2)

AND

THE OFFICIAL CUSTODIAN FOR CHARITIES (3)

AND

MILLER HOMES LIMITED (4)

SECTION 106 AGREEMENT

**Planning Obligation by Deed under Section 106
of the Town and Country Planning Act 1990
relating to Land at Royal Hill Road, Spondon,
Derby**

CONTENTS

Clause	Heading	Page
1	STATUTORY PROVISION	1
2	GENERAL INTERPRETATION	2
3	OBLIGATIONS COMING INTO EFFECT AND LAPSING	5
4	OWNERS OBLIGATIONS	6
5	COUNCIL OBLIGATIONS	6
6	MISCELLANEOUS	6
7	NOTICES	7
8	DISPUTE RESOLUTION	7
9	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	8
10	JURISDICTION	8
11	COMMUNITY INFRASTRUCTURE LEVY	8
12	FETTERING DISCRETION	8
13	SEVERABILITY	8
14	VARIATION OF PLANNING PERMISSION	9
15	VAT	9
16	MORTGAGEES	9
17	DEVELOPER CONSENT	9
18	DELIVERY	9
19	FEES	9
20	LATE PAYMENT	9
SCHEDULE 1	.....	13
REPAYMENT DATES	.....	13
SCHEDULE 2	.....	14
OFF-SITE FINANCIAL CONTRIBUTIONS	.....	14
SCHEDULE 3	.....	18
HOUSING – AFFORDABLE HOUSING	.....	18
SCHEDULE 4	.....	27
AMENITY GREEN SPACE	.....	27
SCHEDULE 5	.....	30
PRIMARY/SECONDARY SCHOOL PROVISION	.....	30
ANNEX 1	.....	33
PLAN 1	.....	33

THIS DEED is dated

2025

PARTIES

- (1) **DERBY CITY COUNCIL** of Council House, Corporation Street, Derby, DE1 2FS ("**City Council**"); and
- (2) **MICHAEL PEPPER** of Royal Hill Farm, Royal Hill Road, Spondon, Derby DE21 7AG ("**First Owner**"); and
- (3) **THE OFFICIAL CUSTODIAN FOR CHARITIES** on behalf of Clock Close of Charity Commission, PO Box, 211, Bootle L20 7YX and care of John Clewes, 21 Hall Dyke, Spondon, Derby DE21 7LF ("**Second Owner**"); and
- (4) **MILLER HOMES LIMITED** (Company Registration Number SC255429) whose registered address is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh, EH12 9DH ("**Developer**")

BACKGROUND

- (A) The City Council is the local planning authority for the purposes of the Act and the principal council for the purposes of the Local Government Act 1972 and the Local Government Act 2000 for the area within which the Application Site is situated and is the authority by whom the obligations contained in this Agreement are enforceable as provided for in clause 4.2.
- (B) The First Owner is the freehold owner of part of the Application Site registered at the Land Registry under title numbers DY26353 and DY119477, free from encumbrances save only as mentioned in the registered title.
- (C) The Second Owner is the freehold owner of part of the Application Site registered at the Land Registry under title number DY510690, free from encumbrances save only as mentioned in the registered title.
- (D) The Developer has the benefit of an option to purchase part of the First Owners' title DY119477 and the whole of title DY26353 dated 10 January 2017 and also pursuant to a supplemental agreement dated 24 November 2023.
- (E) The Developer has the benefit of an option to purchase the Second Owners' part of the Application Site dated 20 December 2019 and this is registered at the Land Registry on title number DY510690.
- (F) The Developer has applied to the City Council for planning permission to develop the Application Site under application reference 23/01631/OUT.
- (G) The City Council has refused to grant planning permission for the Development. The First Owner and Second Owner (hereinafter called "**Owners**") and the Developer have submitted the Appeal and enter into this Agreement to secure planning obligations necessary to mitigate the impact of the Development.

NOW THIS DEED WITNESSES as follows:

1 STATUTORY PROVISION

This Agreement is made pursuant to the provisions of Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 with the intention to bind the Owners' interests in the Application Site and the obligations in this Agreement on the part of the Owners (in so far as they are made under Section 106 of the Act) are planning obligations

for the purposes of the Act enforceable as provided for in clause 4.2 by the City Council subject to the provisions and exceptions contained in this Agreement.

2 GENERAL INTERPRETATION

2.1 In this Agreement in addition to the parties hereinbefore referred to the following words and expressions shall where the context so requires or admits (including for the avoidance of doubt the recitals above) have the following meanings:

Act	means the Town and Country Planning Act 1990 and includes any statute amending consolidating or replacing it for the time being in force;
Application	means outline application for residential development including access arrangements for up to 90 dwellings under reference 23/01631/OUT which is the subject of the Appeal;
Appeal	means the appeal submitted to the Planning Inspectorate bearing reference APP/C1055/W/24/3356476
Affordable Housing	has the same meaning as that set out in Schedule 3 to this Agreement;
Application Site	means the land shown edged red on Plan 1 attached to this Agreement at Annex 1 which is registered at the Land Registry under title numbers DY26353, DY119477 and DY510690;
Commenced	<p>means the commencement of the Development on the Application Site pursuant to the Planning Permission by the carrying out of a material operation within the meaning of Section 56 of the Act save that the following shall not for the purposes of this Agreement be treated as commencing the Development:</p> <ul style="list-style-type: none">(a) demolition and site clearance works (other than any demolition specifically referred to in the Planning Permission);(b) site investigation, archaeological or other surveys and decontamination and/or remediation works;(c) the erection of any site fencing or other means of enclosure and/or other site security and temporary construction compounds;(d) the construction of any construction access;(e) the erection of any temporary marketing suite or sales facilities other than those that may be contained within or comprise residential or commercial units constructed pursuant to the Planning Permission;(f) the laying or diversion of any services or other works in respect of or in relation to any statutory undertakers' equipment or concerns;

(g) the carrying out of any environmental or ecological works; and

(h) the temporary display of site notices or advertisements;

and "**Commence**" and "**Commencement**" shall be construed accordingly;

Commencement Date	means the date on which the Development is Commenced pursuant to the Planning Permission;
Commencement Notice	means the notice in writing to be served pursuant to clause 4 of this Agreement by the Owner on the City Council giving no less than 5 Working Days notice of their intention to Commence the Development;
Community Infrastructure Levy or CIL	means a tax tariff or charge introduced by the City Council pursuant to the Community Infrastructure Levy Regulations 2010 as amended enabled by the Planning Act 2008 or any subsequent, additional or alternative legislation intended to fund the delivery of infrastructure known as the "community infrastructure levy" or known by any other name;
Development	means the development approved pursuant to the Planning Permission for residential development on the Application Site;
Dwelling Units	means the residential dwelling units to be constructed on the Application Site pursuant to the Planning Permission and " Dwelling Unit " shall be construed accordingly;
Index Linked	means that where a contribution payable under the terms of this Agreement is indicated as being Index Linked sum of such contribution shall be increased or decreased in accordance with the percentage increase or decrease (a) in relation to the payments to be made pursuant to the provisions of Schedule 5 (<i>education provision</i>) of the All Tender Price Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors (or any successor organisation) and (b) for all other sums specified in this Agreement of the General Index of Retail Prices (All Items) as published by the Office for National Statistics (or any successor ministry or department) from the 14 December 2023 to the date of payment or in the event that that index ceases to exist such other index of inflation published in substitution for it;
Nominated Officer for the City Council	means the Director of City Growth and Vibrancy (or such other officer for the time being performing those functions) or such other City Council Officer as may be notified in writing from time to time to the Owners by the City Council as being the Nominated Officer for the purpose of this Agreement;
Occupation	means occupation for the purposes permitted by the Planning Permission, but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security

operations and "Occupy", "Occupiers" and "Occupied" shall be construed accordingly;

Owner

means the Owner or Owners who are party to this Agreement and shall include successors in title to the Owner or Owners and its/their assigns and all persons other than the City Council deriving title to all or part of the Application Site under or through it;

Plan 1

means the plan attached to this Agreement at Annex 1 and marked "Plan 1";

Planning Permission

means the planning permission to be issued pursuant to the Appeal by an inspector appointed on behalf of the Secretary of State and "Planning Permission" shall be construed as to include any Reserved Matters approval;

Repayment Date

means in terms of the financial contributions payable under this Agreement the respective date as set out in the column three of the table in Schedule 1 matching the respective financial contribution in the same row specified in column one in that table;

Reserved Matters

means pursuant to section 92 of the Act any reserved matter approval granted pursuant to the Planning Permission;

Secretary of State

means the Secretary of State for housing, communities and local government and such successor department as shall be responsible for the delivery of housing within England; and

Working Days

means Monday to Fridays (excluding days that in England are public holidays) inclusive.

2.2 In this Agreement where the context so requires:

2.2.1 the singular includes the plural and vice versa;

2.2.2 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 as interchangeable;

2.2.3 whenever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision to the contrary;

2.2.4 references to clauses, schedules, appendices and paragraphs are references to clauses, schedules, appendices and paragraphs in this Agreement except where otherwise specified;

2.2.5 title headings to the clauses schedules appendices and paragraphs are for convenience only and shall not affect the interpretation of this Agreement;

2.2.6 the schedules hereto shall be deemed to be incorporated herein and to have the same force and effect as if the provisions thereof were set out in extension of the body of this Agreement; and

2.2.7 references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force.

3 OBLIGATIONS COMING INTO EFFECT AND LAPSING

- 3.1 With the exception of clauses 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18 and 19 (which shall take effect immediately) this Agreement is conditional on the grant and issue of the Planning Permission.
- 3.2 This Agreement shall be enforceable against the Owners to the extent specified in Section 106(3) of the Act and, subject to the provisions of this Agreement, against any person for the time being deriving title from the Owners as provided in Section 106 of the Act provided that the Owners shall not have any liability under this Agreement (but without prejudice to the rights of any party in respect of any antecedent breach) in respect of any part of the Application Site in which they do not have an interest or of any period during which the relevant owner (or as the case may be such other person) no longer has an interest in the Application Site or relevant part thereof.
- 3.3 If the Planning Permission expires before the Commencement Date or is revoked or otherwise ceases to exist then (without prejudice to the rights of any party against another in respect of any antecedent breach) this Agreement will cease to have effect in respect of the Planning Permission (but shall remain in effect in respect to any variation of the Planning Permission pursuant to clause 14) and as from such time there shall be no further obligation on the parties in relation to any matter that has occurred or that may arise under this Agreement in respect of the obligations relating to the Planning Permission which has expired, been revoked or ceased to exist.
- 3.4 Subject to clause 14 nothing in this Agreement shall prohibit, restrict or limit the right of the Owners or any other person to develop the Application Site in accordance with any planning permission (other than the Planning Permission) granted after the date of this Agreement (whether or not on appeal) or impose any obligation on the Owners or any other person as a consequence of the development of the Application Site in accordance with such a planning permission. Such a planning permission will not be taken to give any consent or approval that may be required under the terms of this Agreement.
- 3.5 When the Owners or their respective successors in title consider that they have discharged their obligations under this Agreement or the obligations cease to have effect pursuant to clause 3.3 they may (jointly or individually) request the City Council to cancel the entry relating to this Agreement in the Local Land Charges Register and on the City Council agreeing that the obligations have been discharged to its reasonable satisfaction or ceased to have effect it shall cancel the entry.
- 3.6 Covenants made hereunder on the part of the City Council shall be enforceable against the City Council as hereinafter provided and against any statutory successor to them as the local planning authority.
- 3.7 Should the Secretary of State or his appointed inspector in their decision letter make a finding that any of the covenants or obligations in this Agreement do not meet the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and accordingly attaches no weight to that obligation, covenant or agreement in determining the Appeal then such covenant(s) or obligation(s) as so identified by the Secretary of State or his appointed inspector shall be deemed to be of no effect notwithstanding the remaining provisions of this Agreement which for the further avoidance of doubt shall remain in effect and enforceable.

4 OWNERS OBLIGATIONS

4.1 The Owners covenants with the City Council as follows:

- 4.1.1 to serve the Commencement Notice on the Nominated Officer of the City Council indicating the intended Commencement Date such date to be no less than 5 Working Days after the date of the service of the Commencement Notice;
- 4.1.2 to notify the City Council of any change of ownership (such notice to be given in writing within 21 Working Days of the change of ownership) of any part of the Application Site, to include details of the new owner(s) together with the areas of the Application Site or unit of occupation purchased by reference to a plan other than where the transfer relates to an individual Dwelling Unit or land required for the sole purpose of statutory undertakers equipment transferred to statutory undertakers provided that the obligation in this clause 4.1.2 shall cease to apply when the Owner's obligations in this Agreement are satisfied.

4.2 To observe and perform the obligations contained in Part 2 of each of Schedule 2 to Schedule 5 (inclusive) and compliance with those obligations shall be enforceable by the City Council as local planning authority against the Owner and their respective successors in title subject to the provisions of this Agreement.

5 COUNCIL OBLIGATIONS

5.1 The City Council covenants with the Owners as follows:

- 5.1.1 to observe and perform the obligations on the City Council contained in Part 3 of each of Schedule 2 to Schedule 45 (inclusive);
- 5.1.2 at any time after a payment has been made of a financial contribution but before the Repayment Date (after which the provisions of clause 5.1.3 apply) the City Council shall respond to a written request from the Owners for details of how and when that money has been expended provided that such a request may not be made more than once every twelve months in respect of each financial contribution;
- 5.1.3 where provision is made within a Schedule for the repayment of an unspent financial contribution or any part of such then the following provisions will apply:
 - 5.1.3.1 any time after the Repayment Date, the City Council shall on written request by the party who has paid a financial contribution under this Agreement issue to that party written confirmation of how that contribution has been expended;
 - 5.1.3.2 if any time after the Repayment Date in respect of a contribution, or any part of a contribution that contribution or part has not been spent for the purpose for which it was paid then subject to clause 5.1.3.3 below the City Council shall within 14 Working Days refund any unexpended amount to the person who paid that contribution along with the interest accrued thereon; and
 - 5.1.3.3 if at the time of the Repayment Date of a contribution the City Council has entered into a contract or other legally binding obligation to expend that contribution or part thereof for the purpose(s) for which it was paid then it shall not be required to refund that part of the contribution provided it is spent pursuant to the said contract or obligation.

6 MISCELLANEOUS

6.1 This Agreement shall be registered as a Local Land Charge by the City Council.

- 6.2 No waiver (whether express or implied) by the City Council of any breach or default by the Owners in performing or observing any of the obligations terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the City Council from enforcing any of the said obligations terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Owners or any other party.
- 6.3 Unless otherwise specified where any agreement consent approval or expression of satisfaction is to be obtained from any party under the terms of this Agreement the parties hereby agree that they shall deal expeditiously with such request and shall not unreasonably delay or withhold such approval or consent.
- 6.4 This Agreement shall not be enforceable against any Registered Provider nor any Chargee (as defined in Schedule 3 of this Agreement) nor against any owners, occupiers or tenants of individual Dwelling Units nor their mortgagee(s) or chargee(s) or any successors in title to such persons, except the provisions of the Affordable Housing in Schedule, which shall apply to any Registered Provider, or Chargee, and to any individual owners, occupiers and tenants into relation to their specific Dwelling Units. or land required for the sole purpose of statutory undertakers equipment transferred to statutory undertakers.

7 NOTICES

- 7.1 All approvals, authorities, demands, invoices, information or notices and other documents or acts authorised or required by or under this Agreement by the Owners shall be in writing.
- 7.2 Where any document is required to be delivered to the City Council it shall be addressed to Derby City Council, The Council House, Derby DE1 2FS, for the attention of the named Nominated Officer of the City Council, quoting the reference 23/01631/OUT and headed "Planning Agreement: Land to the West of Royal Hill Road Derby".
- 7.3 Where any document is required to be delivered to the Developer and/or Owners if a company it shall be sent to its registered office and if an individual it shall be sent to their usual address or to such other address as the Developer or Owners may from time to time direct.

8 DISPUTE RESOLUTION

- 8.1 Save for issues relating to the interpretation of this Agreement (which shall be matters for the Courts) in the event of any dispute arising between the City Council and the Owners in respect of any matter contained in this Agreement including questions of value and any question of reasonableness the dispute shall be referred to an independent person for determination in accordance with the following provisions:
- 8.1.1 where such dispute relates to engineering construction or highway works it shall be referred to a Chartered Civil Engineer agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Institution of Civil Engineers;
- 8.1.2 where such dispute relates to the valuation of property it shall be referred to a Chartered Surveyor agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Royal Institution of Chartered Surveyors; and
- 8.1.3 in any reference to an independent person under this clause such person shall unless the parties otherwise agree act as expert and not as arbitrator.

8.2 In terms of disputes referred under clause 8.1 the following provisions and terms of appointment shall, unless the parties to the dispute agree otherwise, apply to such disputes or disagreements and questions:

8.2.1 the expert shall have at least 15 years post qualification experience in the subject matter of the dispute;

8.2.2 the persons calling for the determination shall make written submissions to the expert and the other parties within 10 Working Days of the expert's appointment;

8.2.3 the other parties shall have 21 Working Days from receipt of such written submission or such extended period as the expert shall allow to respond in writing;

8.2.4 the expert shall disregard any representations made out of time and shall make his decision within 21 Working Days of receipt of the representations under clause 8.2.3 or if none the expiry of the period referred to in clause 8.2.3;

8.2.5 the expert's decision shall be in writing and give reasons for his decision; and

8.2.6 the expert's fees (including the re-imbursement of the costs of any other experts' fees) shall be met by the person or persons as determined by the expert.

8.3 The decision of the appointed expert shall be binding save for manifest error.

9 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

It is hereby agreed and declared that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

10 JURISDICTION

This Agreement is governed by and interpreted in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the courts of England

11 COMMUNITY INFRASTRUCTURE LEVY

11.1 If after the date of this Agreement a CIL is introduced which is applicable to the Development then the parties hereto will use reasonable endeavours to agree variations to this Agreement with the intent that:

11.1.1 the planning benefits secured by this Agreement should continue to be secured and delivered; and

11.1.2 the Owners should not be in a worse financial position because of CIL in respect of the obligations contained in Schedule 2 to Schedule 5 (inclusive) than they would be if they performed the obligations in this Agreement and CIL did not apply.

12 FETTERING DISCRETION

Save as permitted by law in equity nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the City Council in its rights powers duties and obligations under all public and private statutes bylaws and regulations which may be as fully and effectually exercised as if the City Council were not a party to this Agreement.

13 SEVERABILITY

If any court or other competent authority finds that any part or provision of this Agreement is void, unlawful or unenforceable then that part or provision will be deemed to have been severed

from this Agreement and shall from the date of that finding have no force and effect. The remaining provisions of this Agreement will continue to be valid and enforceable to the fullest extent permitted by law, and the parties hereto shall negotiate in good faith to agree the terms of a mutually acceptable and satisfactory alternative part or provision so that, as amended, such is valid, lawful and enforceable.

14 VARIATION OF PLANNING PERMISSION

If the City Council determines pursuant to an application under Section 73 of the Act to vary or release any condition contained in the Planning Permission or if any such condition is varied or released following an appeal under Section 78 of the Act (without as part of such decision a requirement to vary or impose additional planning obligations under Section 106 of the Act) the covenants or provisions of this Agreement shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission.

15 VAT

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

16 MORTGAGEES

The obligations in this Agreement will not be enforceable against any mortgagee or chargee acquiring security over the Application Site or any part of it or any receiver or security agent appointed by such mortgagee unless and until such mortgagee, receiver, security agent takes possession of the Application Site or any part of it pursuant to the relevant mortgage or charge in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.

17 DEVELOPER CONSENT

The Developer hereby consents to the completion of this Agreement and declares that its interest in the Application Site shall be bound by the terms of this Agreement as if it had been executed and registered as a local land charge prior to the creation of its interest in the Application Site and that its interest in the Application Site shall take effect subject to this Agreement provided that the Developer shall otherwise have no liability under this Agreement other than pursuant to clause 19 unless it takes possession of the Application Site in which case it will be bound by the obligations as if it were a person deriving title from the Owners.

18 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 dated.

19 FEES

19.1 The Developer shall pay to the Council the following:

19.1.1 their reasonable legal fees in the sum of £900 [Nine Hundred Pounds] prior to the completion of this Agreement;

19.1.2 their administrative costs in the sum of £8,100 (Eight Thousand One Hundred Pounds).

20 LATE PAYMENT

If any payment or repayment due under this Agreement is paid late, interest will be payable at 4% over the base rate of the Lloyds Bank plc. Such interest to run from day to day from the date that the payment or repayment is due to the date of payment or repayment.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.


Authorised Officer

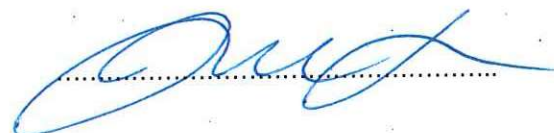
THE COMMON SEAL OF
DERBY CITY COUNCIL was hereunto
affixed in the presence of:




Authorised Officer

Executed as a Deed by
MILLER HOMES LIMITED
by a director in the presence of a witness:

Signature of Director:



Signature of Witness:



Name of Witness:

JOYCE GRANTHAM

Address of Witness:

MILLER HOUSE

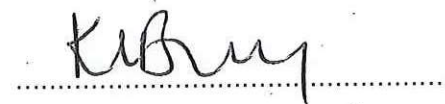
2 LOCKSIDE VIEW

EDINBURGH EH12 9DH

Excuted as Deed by
MICHAEL PEPPER
in the presence of



Signature of Witness:



Name of Witness:

KATHARINE L BASEY SOLICITOR

ALEXANDER & CO SOLICITORS LLP

THE GATE HOUSE

1st FLOOR 43B CHURCH GATE

LOUGHBOROUGH

LEICESTERSHIRE

LE11 1UE

TEL: 01509 272268

Address of Witness:

Signed on behalf of the Official Custodian for Charities

by **JONATHAN MARK CLEWES**, one of the Trustees

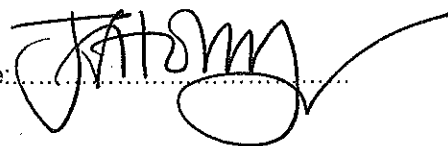
of the Clock Close Charity, under an authority

conferred pursuant to section 333 of the Charities Act

2011, in the presence of:



Witness signature:



Witness name:

JULIAN FRANCIS HOLLYWELL

Witness address:

THE VICARAGE, GASCOIGNE DR, SPONDON, DE21 7AL

Signed on behalf of the Official Custodian for Charities

by **CATHERINE ANNE LEATHERBARROW**, one of the Trustees

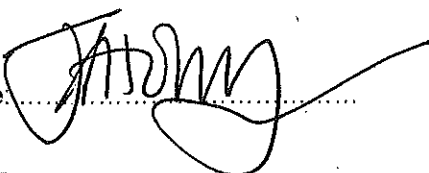
of the Clock Close Charity, under an authority

conferred pursuant to section 333 of the Charities Act

2011, in the presence of:



Witness signature:



Witness name:

JULIAN FRANCIS HOLLYWELL

Witness address:

THE VICARAGE, GASCOIGNE DR, SPONDON, DE21 7AL

SCHEDULE 1

REPAYMENT DATES

CONTRIBUTION	SCHEDULE	REPAYMENT DATE
Health Care	2	10 years from the date of payment
Sport Facilities	2	10 years from the date of payment
Community Centre	2	10 years from the date of payment
Transport	2	10 years from the date of payment
Education	5	10 years from the date of payment
Major Open Space	2	5 years from the date of payment

SCHEDULE 2

OFF-SITE FINANCIAL CONTRIBUTIONS

PART 1

INTERPRETATION

- 1 The following words and expressions for the purpose of interpretation of this Schedule shall have the following meanings:

Community Centre Contribution

means the sum calculated in accordance with the following:

- £558 per 1-bed flat
- £744 per 2-bed flat
- £930 per 3-bed flat or 1-4 bed house
- £1,116 per 5-bed house and above

Index Linked payable to the City Council pursuant to paragraph 2 of part 2 of this Schedule;

Health Care Contribution

means the sum of Ninety-Two Thousand One Hundred and Seventy Eight Pounds (£92,178.00) Index Linked payable to the City Council pursuant to paragraph 2 of part 2 of this Schedule;

Major Open Space Contribution

means the sum calculated as follows:

- £2,087 per 1-bed flat
- £2,792 per 2-bed flat
- £3,478 per 3-bed flat or 1-4 bed house
- £4,173 per 5-bed house and above

Index Linked payable to the City Council pursuant to paragraph 2 of part 2 of this Schedule;

Sport Facilities Contribution means the sum to be calculated as follows:

Health and Fitness Suites

- £174 per 1-bed flat
- £232 per 2-bed flat
- £290 per 3-bed flat or 1-4 bed house
- £348 per 5-bed house and above

Swimming Pools

- £335 per 1-bed flat

- £446 per 2-bed flat
- £558 per 3-bed flat or 1-4 bed house
- £669 per 5-bed house and above

Sports Halls

- £309 per 1-bed flat
- £412 per 2-bed flat
- £515 per 3-bed flat or 1-4 bed house
- £618 per 5-house and above

Index Linked payable to the City Council pursuant to paragraph 2 of part 2 of this Schedule;

Transport Contribution

means the sum to be calculated as follows:

- £2,001.00 per house; and
- £1,041.00 per apartment

Index Linked payable to the City Council pursuant to paragraph 2 of part 2 of this Schedule;

SCHEDULE 2

OFF-SITE FINANCIAL CONTRIBUTIONS

PART 1

INTERPRETATION

- 1 The following words and expressions for the purpose of interpretation of this Schedule shall have the following meanings:

Community Centre Contribution	<p>means the sum calculated in accordance with the following:</p> <ul style="list-style-type: none">• £558 per 1-bed flat• £744 per 2-bed flat• £930 per 3-bed flat or 1-4 bed house• £1,116 per 5-bed house and above <p>Index Linked payable to the City Council pursuant to paragraph 2 of part 2 of this Schedule;</p>
Health Care Contribution	<p>means the sum calculated on the basis of £1,024.20 per Dwelling Unit Index Linked payable to the City Council pursuant to paragraph 2 of part 2 of this Schedule;</p>
Major Open Space Contribution	<p>means the sum calculated as follows:</p> <ul style="list-style-type: none">• £2,087 per 1-bed flat• £2,792 per 2-bed flat• £3,478 per 3-bed flat or 1-4 bed house• £4,173 per 5-bed house and above <p>Index Linked payable to the City Council pursuant to paragraph 2 of part 2 of this Schedule;</p>
Sport Facilities Contribution	<p>means the sum to be calculated as follows:</p> <p>Health and Fitness Suites</p> <ul style="list-style-type: none">• £174 per 1-bed flat• £232 per 2-bed flat• £290 per 3-bed flat or 1-4 bed house• £348 per 5-bed house and above <p>Swimming Pools</p> <ul style="list-style-type: none">• £335 per 1-bed flat

- £446 per 2-bed flat
- £558 per 3-bed flat or 1-4 bed house
- £669 per 5-bed house and above

Sports Halls

- £309 per 1-bed flat
- £412 per 2-bed flat
- £515 per 3-bed flat or 1-4 bed house
- £618 per 5-house and above

Index Linked payable to the City Council pursuant to paragraph 2 of part 2 of this Schedule;

Transport Contribution

means the sum to be calculated as follows:

- £2,001.00 per house; and
- £1,041.00 per apartment

Index Linked payable to the City Council pursuant to paragraph 2 of part 2 of this Schedule;

SCHEDULE 3

HOUSING – AFFORDABLE HOUSING

PART 1

INTERPRETATION

- 1 The following words and expressions shall for the purpose of interpretation of this Schedule have the following meanings:

Affordable Housing housing (in the form as described in paragraph 2.2 of this Schedule or as otherwise agreed in writing by the City Council in accordance with Part 2 of this Schedule) comprising Dwelling Units to be provided as affordable housing as defined in Annex 2 of the National Planning Policy Framework 2024 and "Affordable Housing Unit" and "Affordable Housing Units" shall be construed accordingly;.

Affordable Housing Building Specifications means the prevailing Homes England Design and Quality Standards with the following minimum standards (the minimum GIA of 85% of the sizes below):

Nos of bedrooms	Nos of bedspaces	1 storey dwelling (inc. apartments)	2 storey dwelling (inc. duplexes)	3 storey dwelling	Built in storage
1b	2p	50	58	n/a	1.5
2b	4p	70	79	n/a	2.0
3b	5p	86	93	99	2.5
4b	6p	n/a	106	112	3.0
	7p	n/a	115	121	
5b	7p	n/a	119	125	3.5
	8p	n/a	128	135	
6b	8p	n/a	132	138	4.0

Affordable Housing Contribution a sum equivalent to 55% of the Market Value of the Affordable Rented Housing and the Social Rented Housing plus 40% of the Market Value of the Shared Ownership Housing.

Affordable Rented Housing Affordable Housing which is provided as affordable rented housing by a Registered Provider to households who are eligible for social rented housing with the rent being no more than 80% of Market Rent; unless otherwise agreed with the City Council and "Affordable Rented Housing Unit" shall be construed accordingly;

Affordable Housing Site Plan	the plan approved by the City Council pursuant to paragraph 2.4 of this Schedule showing the location of the Affordable Housing Units;
Charge	a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Units (or any number of them) in favour of the Chargee;
Chargee	any mortgagee or chargee of the Registered Provider of the Affordable Housing Units (or any number of them) and any receiver (including an administrative receiver) and manager appointed by such security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator;
Date of Deemed Service	<p>in each instance where a Chargee has served a Default Notice under paragraph 2.11.2.1 of this Schedule:</p> <p>(a) in the case of service by delivery by hand of the Default Notice to the City Council's offices at Council House, Corporation Street, Derby DE1 2FS during 9 am to 5 pm, the date on which the Default Notice is so delivered; or</p> <p>(b) in the case of service by using first class registered post to the City Council's offices at Council House, Corporation Street, Derby DE1 2FS, the second Working Day after the date on which the Default Notice is posted (by being placed in a post box or being collected by or delivered to Royal Mail) PROVIDED THAT the Chargee is able to evidence that the Default Notice was actually delivered to the LPA (by Royal Mail proof of delivery or otherwise);</p>
Default Notice	a notice in writing served on the City Council by the Chargee under paragraph 2.11.2.1 of the Chargee's intention to enforce its security over the relevant Affordable Housing Units;
Intention Notice	a notice in writing served on the Chargee by the City Council under paragraph 2.9.3 of this Schedule that the City Council is minded to purchase the relevant Affordable Housing Units;
Market Rent	the rental value of a Dwelling Unit assessed on the basis of its Market Value;
Market Units	all those Dwelling Units to be constructed on the Application Site pursuant to the Planning Permission other than those units that are provided for Affordable Housing pursuant to Part 2 of this Schedule and "Market Unit" shall be construed accordingly;
Market Value	the estimated sale or rental value of a Dwelling Unit as the case may be having regard to all material circumstances on the basis that:

- (a) the estimate has been carried out by a professional valuer acting in good faith and with due diligence;
- (b) in relation to a freehold sale where the Dwelling Unit is provided for private open market sale on a private estate and the exchange is between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion;
- (c) in relation to assessing the market rent the Dwelling Unit is provided for private open market rental between a willing lessor and lessee after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion;
- (d) it is assessed in accordance with VPS 4 paragraph 1.2 of the RICS Valuation - Professional Standards 2014;
- (e) the relevant Dwelling Unit(s) has been practically completed and is ready for immediate occupation and use;
- (f) the relevant Dwelling Unit(s) has vacant possession;
- (g) the relevant Dwelling Unit(s) is assumed to be free from all encumbrances; and
- (h) no restrictions or provisions contained within this Schedule relating to Affordable Housing apply;

Moratorium Period

in each instance where a Chargee has served a Default Notice under paragraph 2.11.2.1 the period from (and including) the Date of Deemed Service on the City Council of the Default Notice to (and including) the date falling three months after such Date of Deemed Service (or such longer period as may be agreed between the Chargee and the City Council;

Option

the option to be granted to the City Council (and/or its nominated substitute Registered Provider) in accordance with paragraph 2.11.4 of this Schedule for the purchase of the Affordable Housing Units;

Protected Tenant

means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any other statutory provision for the time being in force (or equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (b) has exercised any statutory right to buy (or equivalent contractual right) in respect of a particular Affordable Housing Unit; and
- (c) has been granted a shared ownership lease by a Registered Provider (or similar arrangements where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered

Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit;

Rented Affordable Housing Units	those Affordable Housing Units which are to be let at as Affordable Rented Housing or as Social Rented Housing;
Registered Provider	a registered provider of housing as defined in Part 1 of the Housing Act 1996 as being a Registered Provider of Housing who is registered with the RSH pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of Act of that Act and who is approved by the City Council;
RSH	a body established under section 80A of the Housing and Regeneration Act 2008 (as amended) as the national housing and regeneration agency for England and the body responsible for the regulation of social housing providers in England and shall include any predecessor including the Homes and Communities Agency (where the context so allows) or successor regulatory body for social housing providers;
Shared Ownership Housing	those Affordable Housing Units that shall be sold on a long lease on a shared ownership basis whereby the initial price for the lease granted by the Registered Provider shall not exceed 70% of the value of the property and the annual rent charged on the retained share shall not exceed 2.75% of the value of that share unless otherwise agreed in writing with the City Council and "Shared Ownership Housing Unit" and "Shared Ownership Housing Units" shall be construed accordingly;
Social Rented Housing	Affordable Housing which is provided as social rented housing by a Registered Provider with the rent set at the target rent for the location as determined by the RSH and "Social Rented Housing Unit" and "Social Rented Housing Units" shall be construed accordingly;
Statutory Services	the provision of gas, electricity, water supplies, sewerage and telecommunications facilities;
Sums Due	all sums due to the Chargee of the Affordable Housing Units pursuant to the terms of its Charge including (without limitation) all interest and reasonable legal and administrative fees costs and expenses;
Valuation Date	in relation the assessment of the valuation of the Affordable Housing pursuant to paragraph 2.7.6 of this Schedule the date of transfer of the Affordable Housing or such other date as the Owner and Registered Provider or as the case may be the City Council may agree;
Vehicular Access	a vehicular highway constructed to adoptable standards.

PART 2

OWNER'S OBLIGATIONS

- 2 The Owner hereby agrees with the City Council as follows:
- 2.1 That 30% of the Dwelling Units shall be constructed as Affordable Housing Units to be provided in the types and proportions described in paragraph 2.2 below and in accordance with the provisions of this Schedule.
- 2.2 Unless otherwise agreed in writing by the City Council the Affordable Housing to be provided pursuant to paragraph 2.1 of this Schedule shall be provided in the following types and proportions:
- 2.2.1 80% shall be Social Rented Housing; and
- 2.2.2 20% shall be Shared Ownership Housing.
- 2.3 All of the Affordable Housing Units shall be built in accordance with the Affordable Housing Building Specifications.
- 2.4 Not to Commence Development until the Affordable Housing Site Plan has been submitted to and approved (in writing) by the Nominated Officer of the City Council.
- 2.5 The Affordable Housing shall be evenly distributed across the Application Site so as to ensure that no more than 10 Affordable Dwelling Units are grouped together unless otherwise agreed with the City Council.
- 2.6 To give 14 days prior notice to the City Council of the date anticipated as to when 50% of the Market Units will become Occupied.
- 2.7 Not to permit Occupation of more than fifty per cent (50%) of the Market Units until all of the Affordable Housing Units have been transferred to the Registered Provider on the following terms and conditions;
- 2.7.1 subject to all those matters (other than financial charges) contained mentioned or referred to in the registers of title to the relevant Title Number(s) in respect of the Affordable Housing existing at the date of this Agreement;
- 2.7.2 with Statutory Services and Vehicular Access;
- 2.7.3 the grant and reservation by the relevant Owner or Owners of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Housing and the Market Units;
- 2.7.4 with reservation of such rights of access and passage of services and rights of entry reasonably necessary for the benefit of the remainder of the Application Site;
- 2.7.5 the imposition of such covenants as the Owner may reasonably require as are consistent with the sale of any Dwellings Units or are reasonably required by the Owner; and
- 2.7.6 at a consideration assessed by way of the valuation of the Affordable Housing Unit (at the Valuation Date) on the basis that:
- (i) in respect of the Shared Ownership Housing Units the sale price of such will not exceed 70% of the Market Value of the Dwelling Unit and allow for the rent to be no more than 2.75% of the retained equity; and

- (ii) in respect of the Social Rented Housing the sale price of such is restricted so as to enable the Registered Provider to acquire and make the same available for rent at RSH target rent levels without the need for public subsidy and shall not exceed the maximum transfer price specified in the City Council's Planning Obligations Supplementary Planning Document.; and
- (iii) in respect of any Affordable Rented Units that the rent of such unit will be restricted so as not to exceed 80% of Market Rent.

2.7.7 The transfer to be prepared by the relevant Owner's solicitor at the Owner's cost.

2.8 Subject to paragraph 2.9 below those Dwelling Units identified on the Affordable Housing Site Plan:

2.8.1 as Social Rented Housing shall not be used for any other purpose other than for use or Occupation as a Social Rented Housing Unit without the City Council's prior written consent;

2.8.2 as Shared Ownership Housing Units shall not be used for any purpose other than use and Occupation as Shared Ownership Housing without the City Council's prior written consent; and

2.8.3 as Affordable Rented Housing shall not be used for any other purpose other than for use or Occupation as an Affordable Rented Housing Unit without the City Council's prior written consent.

2.9 The provisions of this Schedule shall not be binding upon:

2.9.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees or chargees;

2.9.2 any Chargee in possession of an Affordable Housing Unit as a consequence of a default under the terms of the mortgage or clause, provided that the Chargee has first complied with the provisions of paragraph 2.10; or

2.9.3 any purchaser from a mortgagee or chargee or an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and their successors in title.

2.10 In order to benefit from the protection granted by paragraph 2.9.2 above a Chargee must:

2.10.1 serve a Default Notice on the City Council by delivery by hand to the City Council's offices at Council House, Corporation Street, Derby DE1 2FS during 9am to 5pm or using first class registered post to the City Council's offices at Council House, Corporation Street, Derby DE1 2FS in either case addressed to the Head of Planning and Head of Legal Services of the City Council prior to seeking to dispose of the relevant Affordable Housing Units;

2.10.2 when serving the Default Notice, provide to the City Council official copies of the title registers for the relevant Affordable Housing Units; and

2.10.3 subject to paragraph 2.15 below, not exercise its power of sale over or otherwise dispose of the relevant Affordable Housing Units before the expiry of the Moratorium Period except in accordance with paragraph 2.12 of this Schedule below.

2.11 From the first day of the Moratorium Period to (but excluding) the date falling one calendar month later, the City Council may serve an Intention Notice on the Chargee.

2.12 Not later than 15 Working Days after service of the Intention Notice (or such later date during the Moratorium Period as may be agreed in writing between the City Council and the Chargee), the Chargee will grant the City Council (and/or the City Council's nominated substitute Registered Provider) an exclusive option to purchase the relevant Affordable Housing Units which shall contain the following terms:

2.12.1 the sale and purchase will be governed by the Standard Commercial Property Conditions (Third Edition – 2018 Revision) (with any variations that may be agreed between the parties to the Option (acting reasonably));

2.12.2 the price for the sale and purchase will be agreed in accordance with paragraph 2.13.2 of this Schedule below or determined in accordance with paragraph 2.14 of this Schedule below;

2.12.3 provided that the purchase price has been agreed in accordance with paragraph 2.13.2 of this Schedule below or determined in accordance with paragraph 2.14 of this Schedule below, but subject to paragraph 2.12.4 of this Schedule below, the City Council (or its nominated substitute Registered Provider) may (but is not obliged to) exercise the Option and complete the purchase of the relevant Affordable Housing Units at any time prior to the expiry of the Moratorium Period;

2.12.4 the Option will expire upon the earlier of (i) notification in writing by the City Council (or its nominated substitute Registered Provider) that it no longer intends to exercise the Option and (ii) the expiry of the Moratorium Period; and

2.12.5 any other terms agreed between the parties to the Option (acting reasonably).

2.13 Following the service of the Intention Notice:

2.13.1 the Chargee shall use reasonable endeavours to reply to enquiries raised by the City Council (or its nominated substitute Registered Provider) in relation to the Affordable Housing Units as expeditiously as possible having regard to the length of the Moratorium Period; and

2.13.2 the City Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the purchase price for the relevant Affordable Housing Units, which shall be the higher of:

(i) the price reasonably obtainable in the circumstances having regard to the restrictions as to the use of the relevant Affordable Housing Units contained in this Schedule; and

(ii) (unless otherwise agreed in writing between the City Council (or its nominated substitute Registered Provider) and the Chargee) the Sums Due.

2.14 On the date falling 10 Working Days after service of the Intention Notice, if the City Council (or its nominated substitute Registered Provider) and the Chargee have not agreed the price pursuant to paragraph 2.13.2(i) of this Schedule above:

2.14.1 the City Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the identity of an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the Derby area to determine the dispute and, if the identity is agreed, shall appoint such independent surveyor to determine the dispute;

2.14.2 if, on the date falling 15 Working Days after service of the Intention Notice, the City Council (or its nominated substitute Registered Provider) and the Chargee have not been able to agree the identity of an independent surveyor, either party may apply to

the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to appoint an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the Derby area to determine the dispute;

- 2.14.3 the independent surveyor shall determine the price reasonably obtainable referred to at paragraph 2.13.2(i) of this Schedule above, due regard being had to all the restrictions imposed upon the relevant Affordable Housing Units by this Agreement;
 - 2.14.4 the independent surveyor shall act as an expert and not as an arbitrator;
 - 2.14.5 the fees and expenses of the independent surveyor are to be borne equally by the parties;
 - 2.14.6 the independent surveyor shall make his/her decision and notify the City Council, the City Council's nominated substitute Registered Provider (if any) and the Chargee of that decision no later than 14 days after his/her appointment and in any event within the Moratorium Period; and
 - 2.14.7 the independent surveyor's decision will be final and binding (save in the case of manifest error or fraud).
- 2.15 The Chargee may dispose of the relevant Affordable Housing Units free from the obligations and restrictions contained in paragraphs 2.1 to 2.8 of this Schedule which shall determine absolutely in respect of those Affordable Housing Units (but subject to any existing tenancies) if:
- 2.15.1 the City Council has not served an Intention Notice before the date falling one calendar month after the first day of the Moratorium Period;
 - 2.15.2 the City Council (or its nominated substitute Registered Provider) has not exercised the Option and completed the purchase of the relevant Affordable Housing Units on or before the date on which the Moratorium Period expires; or
 - 2.15.3 the City Council (or its nominated substitute Registered Provider) has notified the Chargee in writing pursuant to the Option that it no longer intends to exercise the Option.
- 2.16 The City Council (and its nominated substitute Registered Provider, if any) and the Chargee shall act reasonably in fulfilling their respective obligations under paragraphs 2.8 to 2.15 of this Schedule above (inclusive).
- 2.17 The matters referred to in paragraph 2.13 above shall be determined having regard to the following:
- 2.17.1 the Market Value of the Affordable Housing Units; and
 - 2.17.2 the maximum subsidy available per Affordable Dwelling Unit not exceeding 30% of the Market Value of the Affordable Housing Units.
- 2.18 The obligations in paragraphs 2.1 to 2.19 (inclusive) shall cease to apply if:
- 2.18.1 (subject to the Owner complying with the requirements of paragraph 2.19 below) the Owner has failed to reach agreement transferring the Affordable Housing to a Registered Provider on the terms set out in paragraph 2.7 of this Schedule (either in the types and proportions set out in paragraph 2.2 of this Schedule or as may be varied pursuant to paragraph 2.19.3 below) and neither the Owner or the City Council has identified a Registered Provider willing to accept such a transfer on those terms; and

2.18.2 the Owner has offered to transfer the Affordable Housing to the City Council on the terms set out in paragraph 2.7 of this Schedule and on the basis that the City Council is free to select the types and proportions of the Affordable Housing to be provided and the City Council has declined that offer or within 4 months of the offer being made has not notified the Owner of its acceptance (such offer not to be made before the completion of the process set out in paragraph 2.19 below); and

2.18.3 the Affordable Housing Contribution has been paid to the City Council.

2.19 The requirements referred to at paragraph 2.18.1 of this Schedule shall be as follows:

2.19.1 the Owner in seeking to secure agreement with a Registered Provider to take a transfer of the Affordable Housing shall:

- (i) use all reasonable endeavours to identify and reach agreement with a suitable Registered Provider to take a transfer of the Affordable Housing on the terms in paragraph 2.7 of this Schedule;
- (ii) (for the purpose of paragraph 2.19.1(i) above) approach at least 5 Registered Providers (including any Registered Provider specified by the City Council).

2.19.2 if all the Registered Providers approached pursuant to paragraph 2.19.1 above decline to take a transfer of the Affordable Housing on the terms in the Schedule the Owner shall:

- (i) provide the City Council with details of the Registered Providers approached and evidence that they have declined to take a transfer;
- (ii) request the City Council to vary the type and proportions of the Affordable Housing (set out in paragraph 2.2 of this Schedule);

2.19.3 if the City Council within 28 days of a request (made pursuant to paragraph 2.19.2(ii) above) vary the types and proportions of the Affordable Housing the Owner shall:

- (i) use all reasonable endeavours to identify and reach agreement with a suitable Registered Provider to transfer the Affordable Housing on the terms in paragraph 2.7 of this Schedule in the types and proportions as varied by the City Council pursuant to paragraph 2.19.3 above;
- (ii) (for the purposes of paragraph 2.19.3(i) above) approach at least 5 Registered Providers (including any Registered Provider specified by the City Council);
- (iii) provide the City Council with details of the Registered Providers approached pursuant to paragraph 2.19.3(ii) above and evidence that they have declined to take a transfer.

SCHEDULE 4

AMENITY GREEN SPACE

PART 1

INTERPRETATION

- 1 The following words and expressions for the purpose of interpretation of this Schedule shall have the following meanings:

Amenity Green Space	means Three Thousand One Hundred and Fifty square meters (3,150 sqm) of on site open space to be provided and includes a toddler play area;
Amenity Green Space Plan	the plan or plans submitted by the Owners showing the location, size, layout and proposed landscaping of the Amenity Green Space;
Amenity Green Space Completion Certificate	means the certificate issued by the City Council once it is satisfied that the Amenity Green Space has been laid out in accordance with the Specification
Specification	means a detailed specification submitted by the Owners to the City Council pursuant to paragraph 2.4.2 of this Schedule showing the location, size, layout and proposed landscaping of the Amenity Green Space including any equipment to be installed thereon;
the Management Company	means the management company or organisation approved by the City Council pursuant to paragraph 2 of this Schedule as the organisation that will manage and maintain the Amenity Green Space;
the Management Plan	means the plan for maintaining and securing the future maintenance in perpetuity of the Amenity Green Space as submitted and approved pursuant to paragraph 2 of this Schedule;

PART 2

OWNERS OBLIGATIONS

- 2 The Owners covenants with the City Council:
- 2.1 No later than any Reserved Matters to submit to the City Council for its written approval the Amenity Green Space Plan in respect of the proposed Amenity Green Space.
- 2.2 To provide the Amenity Green Space for public use in such form that the public may for the lifetime of the Development freely and without charge access such land for the purposes of public recreation.
- 2.3 Not to Commence Development until they submitted to the City Council and obtained its approval for the Management Plan for securing the future maintenance for the lifetime of the Development of the Amenity Green Space which for the avoidance of doubt can include provision for the Amenity Green Space to be transferred to a management company to manage and maintain the Amenity Green Space in which case the Management Plan shall include details of the proposed management company, its corporate structure, directors and officers and the mechanism of funding the proposed management company to demonstrate that the Amenity Green Space is able to be maintained by the proposed management company in perpetuity.
- 2.4 Not to Commence Development unless the Owners have submitted to the City Council and obtained its approval to
- 2.4.1 the Amenity Green Space Plan;
- 2.4.2 the Specification for the provision of and construction and laying out (including equipment and facilities thereon) of the Amenity Green Space Plan
- 2.5 To complete the construction, laying out and landscaping of the Amenity Green Space in accordance with the Amenity Green Space Plan and the Specification approved pursuant to paragraph 2.3 above and make available for public use prior to the Occupation of 50% of the Dwelling Units unless otherwise agreed with the City Council such completion to be confirmed by the City Council by the issue of the Amenity Green Space Completion Certificate.
- 2.6 In the event that the City Council consider that the Amenity Green Space has not been provided to their reasonable satisfaction then the Owners shall carry out any remedial works notified to them in writing by the City Council to enable the Amenity Green Space Completion Certificate to be issued.
- 2.7 Not to Occupy or permit the first Occupation of more than 50% of the Dwelling Units (unless otherwise agreed with the City Council) until the City Council have issued the Amenity Green Space Completion Certificate.
- 2.8 To maintain the Amenity Green Space in accordance with the Management Plan approved pursuant to paragraph 2.2 above to the reasonable satisfaction of the City Council from the date of the issue of the relevant Amenity Green Space Completion Certificate.
- 2.9 The Owners may appoint a management company or other organisation:
- 2.9.1 that has been approved pursuant to paragraph 2.2 above as part of the Management Plan to manage and take on the responsibilities for maintenance of the Amenity Green Space and if appointed they shall transfer the Amenity Green Space to the Management Company on terms which secure the future maintenance of the Amenity Green Space in accordance with the Management Plan and secure their agreement (unless otherwise agreed in writing with the City Council) that they will fully comply with the terms of the Management Plan; or

- 2.9.2 if the Management Plan provided pursuant to paragraph 2.2 above has not provided details as outlined therein of the management company or other organisation the Owners shall provide details of the proposed management company or other organisation, its corporate structure, directors and officers and the mechanism of funding the proposed management company or other organisation for the approval of the City Council to demonstrate that the Amenity Green Space is able to be maintained for the lifetime of the development and subject to such being approved by the City Council they shall complete a transfer of the Amenity Green Space to the management company or other organisation on terms which secure the future maintenance of the Amenity Green Space in accordance with the Management Plan and secure their agreement (unless otherwise agreed in writing with the City Council) that they will fully comply with the terms of the Management Plan.
- 2.10 On the completion of the laying out of the Amenity Green Space and the issuing of the Amenity Green Space Completion Certificate the Owners to secure the future maintenance of the Amenity Green Space (or any part thereof) in accordance with the Management Plan and the Management Company approved in accordance with paragraphs 2.2 and 2.8 above.
- 2.11 The Owners shall maintain the Amenity Green Space in accordance with the Management Plan to the reasonable satisfaction of the City Council from the date of the issue of the relevant Amenity Green Space Completion Certificate until such time as the Amenity Green Space is transferred to the Management Company and thereafter the Owners will secure the future maintenance of the Amenity Green Space and will ensure that the Management Company and any future Owners of the Amenity Green Space complies with the terms of the Management Plan above.

SCHEDULE 5

PRIMARY/SECONDARY SCHOOL PROVISION

PART 1

INTERPRETATION

- 1 The following words and expressions shall for the purpose of interpretation of this Schedule have the following meanings:

Primary School Available Capacity the number of available pupil places at Springfield Primary School if any, that number being determined by deducting from the total number of pupil places at that school both:-

- (a) the number of pupils recorded on the school roll; and
- (b) the numbers of pupil places required at that school by other development sites within the schools catchment area as assessed by the City Council as a result of the submission of reserved matters for those developments;

[which for clarity is represented by the following formula;

(No. of primary school pupil places) - (No. of pupils on the school roll + Places required by other developments) = Primary School Available Capacity];

Primary School Contribution for the purpose of this Schedule means a sum equivalent to D in the following formula which may be payable in accordance with Part 2 of this Schedule to be calculated in accordance with the following methodology:

$$(A - B) \times C = D$$

Where:

A = ratio: the number of primary school pupil places generated by the Development (calculated at a ratio of [0.28] (7/25) primary school pupil places per House and [0.07] 7/100 primary school pupil places per Flat);

B = Primary School Available Capacity at Springfield Primary School;

C = contribution per pupil place: (a contribution of £19,483 (Index Linked) per each primary school pupil place);

D = Primary School Contribution;

Secondary School Available Capacity the number of available pupil places at West Park Secondary School if any, that number being determined by deducting from the total number of pupil places at that school both:

- (a) the number of pupils recorded on the school roll; and

- (b) the numbers of pupil places required at that school by other development sites within the schools catchment area as assessed by the City Council as a result of the submission of reserved matters for those developments;

[which for clarity is represented by the following formula;

(No. of secondary school pupil places) - (No. of pupils on the school roll + Places required by other developments) = Secondary School Available Capacity]; and

Secondary School Contribution

for the purpose of this Schedule means a sum equivalent to D in the following formula which may be payable in accordance with Part 2 of this Schedule to be calculated in accordance with the following methodology:

$$(A - B) \times C = D$$

Where:

A = ratio: the number of secondary school pupil places generated by the Development (calculated at a ratio of [0.2] (1/5th) pupils per House);

B = Available Capacity at the West Park Secondary School;

C = contribution per pupil place: (a contribution of £29,321 (Index Linked) per each secondary school pupil place);

D = Secondary School Contribution.

Springfield Primary School Springfield Primary School, West Road, Spondon, Derby DE21 7AB;

West Park Secondary School West Park Secondary School West Road, Spondon, Derby DE21 7BT;

PART 2

OWNER'S OBLIGATIONS

- 2 The Owners covenants with the City Council:
 - 2.1 On submission of Reserved Matters to make a written request to the City Council asking it to provide statements of capacity for:
 - 2.1.1 Springfield Primary School; and
 - 2.1.2 West Park Secondary School.
 - 2.2 If the statement of capacity for Springfield Primary School provided by the Council under paragraph 3.1 of this Schedule indicates that either there is no Primary School Available Capacity at that school or there would be insufficient capacity at the school to meet the anticipated needs of the Development (that anticipated need being based on a ratio of [0.28] (7/25) primary school pupil places per House and [0.07] 7/100 primary school pupil places per Flat) the **Primary School Contribution** will become payable on Commencement of the Development;

- 2.3 If the statement of capacity for the West Park Secondary School provided by the Council under paragraph 3.1 of this Schedule indicates that either there is no Secondary Available Capacity at that school or there would be insufficient capacity at the school to meet the anticipated needs of the Development (that anticipated need being based on a ratio of [0.2 ($\frac{1}{5}^{\text{th}}$)] of a pupil per House) the **Secondary School Contribution** will become payable on Commencement of the Development;
- 2.4 Not to Commence the Development until the Primary School Contribution and the Secondary School Contribution have been paid to the City Council or the Owner has received written notification from the City Council that such are not required;

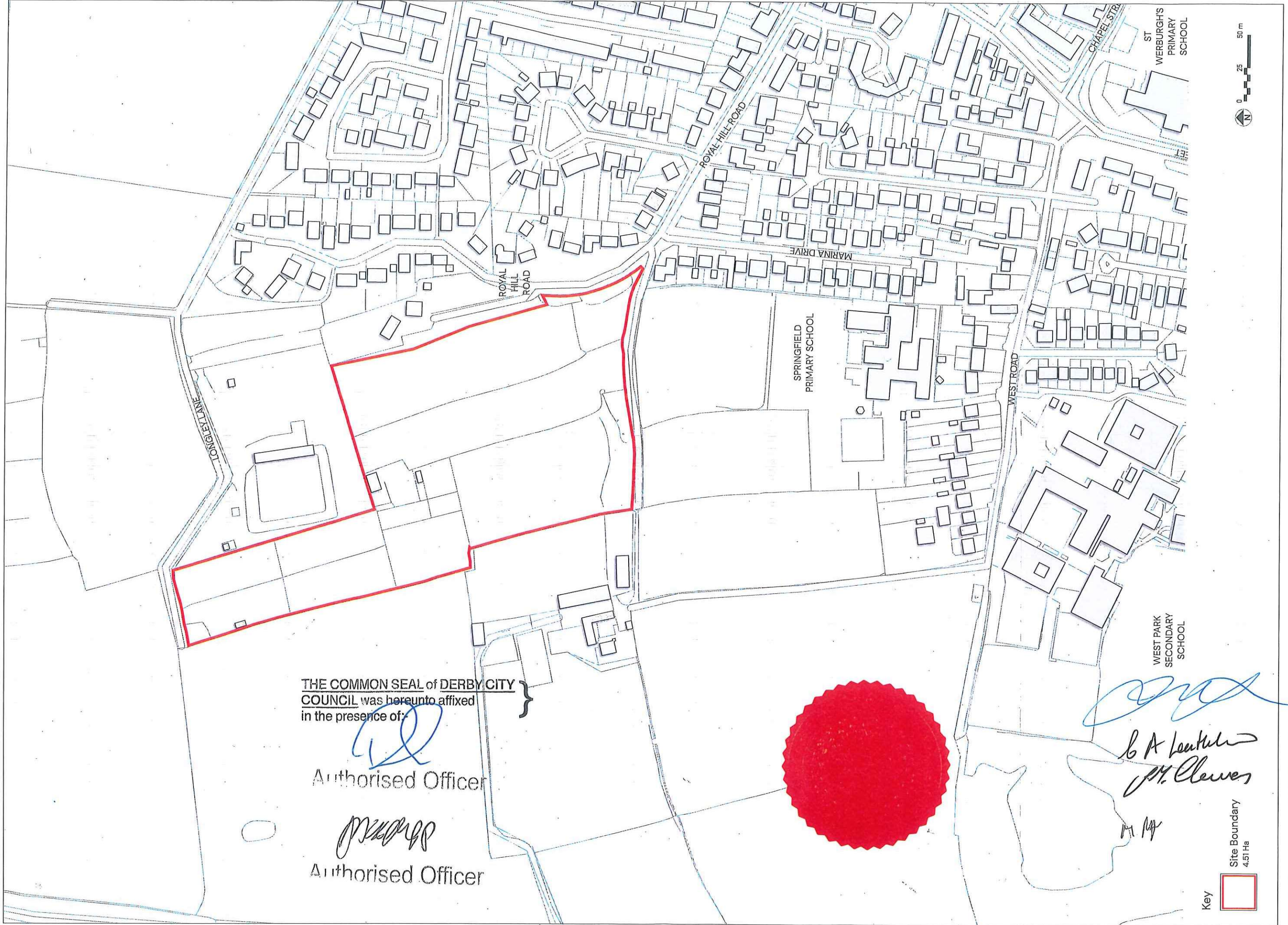
PART 3

CITY COUNCIL'S OBLIGATIONS

- 3 The City Council agrees with the Owner:
- 3.1 Within 28 days of a request by the Owner for the statements of capacity to the pursuant to paragraph 2.1 of Part 2 of this Schedule to provide the Owner with such statements of capacity and written confirmation on whether the Primary School Contribution [and/or] the Secondary School Contribution are required;
- 3.2 In the event that the Primary School Contribution is payable to the City Council under Part 2 of this Schedule it will apply those monies in its absolute discretion as it considers appropriate solely for the provision and or improvement of education facilities at Springfield Primary School or such other successor facility as may be agreed in writing with the Owners;
- 3.3 In the event that the Secondary School Contribution is payable to the City Council under Part 2 of this Schedule it will apply those monies in its absolute discretion as it considers appropriate solely for the provision and or improvement of education facilities at the West Park Secondary School or such other successor facility as may be agreed in writing with the Owners; and
- 3.4 To account for and refund any unexpended balances of the Primary School Contribution and/or Secondary School Contribution to the party that paid the contribution in accordance with the provisions of clause 5.1.

ANNEX 1

PLAN 1



THE COMMON SEAL of DERBY CITY
COUNCIL was hereunto affixed
in the presence of:


Authorised Officer


Authorised Officer

Key
 Site Boundary
4.51 Ha

WEST PARK
SECONDARY
SCHOOL

SPRINGFIELD
PRIMARY SCHOOL

ST
WERBURGH'S
PRIMARY
SCHOOL



