

DATED 23 December

2021

- (1) DORSET COUNCIL
- (2) VERNON ROGER CHRISTOPHER

SECTION 106 AGREEMENT

relating to

**Land on the North-West side of the A350 between
Fontmell Magna and Sutton Waldron**

Planning Application Reference: 2/2020/0577/FUL

Michelmores 

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CONTENTS

1	DEFINITIONS	3
2	CONSTRUCTION OF THIS AGREEMENT	19
3	LEGAL BASIS	20
4	CONDITIONALITY	20
5	THE OWNER'S COVENANTS	20
6	THE COUNCIL'S COVENANTS	21
7	MISCELLANEOUS	21
8	WAIVER	23
9	INDEXATION	23
10	DISPUTES	23
11	SECTION 73 PERMISSIONS	24
12	INTEREST	24
13	VAT	24
14	JURISDICTION	24
15	DELIVERY	24
SCHEDULE 1	DESCRIPTION OF THE PROPERTY	25
SCHEDULE 2	THE DEVELOPMENT	26
SCHEDULE 3	THE OWNER'S COVENANTS	27
SCHEDULE 4	COUNCIL'S COVENANTS	39
SCHEDULE 5	TRANSFER OF OPEN SPACE	40
SCHEDULE 6	TRANSFER OF SCHOOL DROP OFF AREA	41

THIS AGREEMENT is made by Deed the 23rd day of December two thousand and twenty one

BETWEEN:-

- (1) **DORSET COUNCIL** of County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ ('**the Council**'); and
- (2) **VERNON ROGER CHRISTOPHER** of Crib House Farm, Ramshill, Manston, Sturminster Newton, Dorset, DT10 1HD ('**the Owner**');

INTRODUCTION

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Property is situated.
- (B) The Owner is the registered proprietor of the Property which forms part of the land registered at the Land Registry under title numbers DT201066 and DT426621 subject to the entries disclosed in the registered title.
- (C) The Council has received the Application and the parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement.
- (D) The Council is minded to grant the Planning Permission, subject to the prior completion of this Agreement.

THIS AGREEMENT WITNESSETH AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

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

'the Act' means the Town and Country Planning Act 1990 (as amended);

'Affordable Housing' means affordable housing for sale or rent within the definition of Affordable Housing in Annex 2 of the National Planning Policy Framework (or any other statement or circular which may supersede or amend it) and the

Affordable Housing Units shall be Affordable Housing disposed of in accordance with this Agreement;

'Affordable Housing Units'

means the Dwellings to be provided as Affordable Housing in accordance with this Agreement and 'Affordable Housing Unit' shall be construed accordingly;

'Affordable Housing Scheme'

means a scheme showing the physical location, layout, size, typical occupancy and specification (including that of any common parts serving the Affordable Housing Units) of the Affordable Housing Units within the Development and whether the Affordable Housing Units have a parking space or a garage as well as the type and tenure of the individual Affordable Housing Units and shall also include the following:

- i. a map or maps illustrating the distribution of Affordable Housing Units across the Development (including details of tenure)
- ii. a schedule of accommodation including the floor space of each Affordable Housing Unit (m²) and number of bedrooms, and
- iii. additional information (for example in relation to a scheme of prioritisation for the allocation of the Affordable Housing) as may be reasonably required by the Council
- iv. full details of proposed Affordable Housing Units which are not Affordable Rented Units so as to ensure their provision Occupation

and retention as Affordable Housing

'Affordable Rent'

means a level of rent (inclusive of any service charges an Approved Provider seeks to charge in respect of an Affordable Rented Unit) which does not exceed 80% of Market Rent for a similar dwelling in the locality and with the level of rent to be approved by the Council and such rent may thereafter be increased annually in accordance with Homes England guidance (also to be approved by the Council);

'Affordable Rent Tenancy'

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

'Affordable Rented Unit'

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

'Application'

means the application for full planning permission submitted to the Council for the Development and allocated reference number 2/2020/0577/FUL;

'Approved Provider'

means:

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

'Chargee'

means any financial institution having a mortgage or charge over any Affordable Housing Unit or any mortgagee or chargee of an Approved Provider in respect of any Affordable Housing Unit including (in either case) any receiver (including an administrative receiver appointed pursuant to the Law of Property Act 1925) and 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 Unit or any persons or bodies deriving title through such mortgagee or chargee or Receiver;

'Commencement of Development'

means the date on which any material operation (as defined in Section 56(4) of the Act) in respect of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of land clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, erection of any temporary means of enclosure, the temporary display of notices or advertisements and "Commence Development" shall be construed accordingly;

'Community, Leisure & Indoor Sports Facilities Contribution'

means a sum equal to £2,006.97 (two thousand and six pounds and ninety seven pence) per Dwelling to be used towards the enhancement or replacement of the existing village hall within Fontmell Magna;

'Conducting Media'	means apparatus, tanks, drains, sewers, water mains, pipes, cables, wires and any other media for the storage or passage of substances or energy;
'Contributions'	means the contributions specified at paragraph 1 and paragraph 2 of Part 2 of Schedule 3;
'Council Area'	means the administrative area of the Council;
'Council's Housing Register'	means the common housing register held by the Council or such other list or register that the Council may in future hold identifying Local Needs Persons or any list or register approved by the Council for the purposes of low-cost home ownership;
'the Development'	means the development of the Property as set out in the Application and described in the Second Schedule hereto;
'Destination Play Area'	means a play area at Fontmell Magna Village Hall and tennis courts in Fontmell Magna;
'Destination Play Area Contribution'	means a sum equal to £967.52 (nine hundred and sixty-seven pounds and fifty-two pence) per Dwelling to be used towards the provision of and/or improvements Fontmell Magna to the Destination Play Area;
'Destination Play Area Maintenance Contribution'	means a sum equal to £359.36 (three hundred and fifty-nine pounds and thirty six pence) per Dwelling to be used towards the maintenance of Fontmell Magna Destination Play Area;
'Diocese of Salisbury'	means the Salisbury Diocesan Board of Education of Diocesan Education Centre, The

Avenue, Wilton, Nr Salisbury, Wiltshire, SP2 0FG

'Discount'

means at least 20% discount to the Market Value to be applied in respect of each Discount Market Unit (therefore the sale price being not more than 80% of Market Value);

'Discount Market Units'

means the Affordable Housing Units (if any) allocated by the Affordable Housing Scheme to be sold at a Discount pursuant to paragraphs 11 to 22 of Schedule 3 of this Agreement and a reference to 'Discount Market' is a reference to the tenure;

'Discount Market Value'

means the average of two (2) agreed Market Values assessed by two (2) Estate Agents less the relevant Discount and in the absence of agreement determined in accordance with paragraph 14 of Schedule 3;

'Disposal'

means on a sale the transfer of a freehold interest or the grant of a leasehold interest for a fixed term exceeding seven (7) years and 'Dispose' shall be construed accordingly;

'Dwelling'

means any dwelling (including the Affordable Housing Units) to be constructed on the Property pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly;

'Estate Agent'

means an estate agent or valuer with experience valuing properties in the locality of the Development who is a member of the Royal Institution of Chartered Surveyors;

'Expert'

means an independent person appointed in accordance with the terms of this Agreement to determine a dispute between the parties

(other than a dispute relating to any valuation given by a Valuer or an Estate Agent (save in the case of manifest error or fraud));

'Footpath Maintenance Contribution'

means a sum equal to £76.62 (seventy six pounds and sixty two pence) per Dwelling to be used towards the shared footpath and cycle path to the village hall at Fontmell Magna from Gundels;

'Homes England'

means Homes England or other government body established to oversee Affordable Housing provision and policy;

'Housing Need'

means the circumstances where a household is currently occupying accommodation that is substandard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the open market and for the avoidance of doubt this may include circumstances where a household is currently in accommodation that is of an acceptable standard or is suitable for its requirements but requires a form of low cost home ownership such as Shared Ownership or housing obtainable at a discount;

'Index'

means the Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation;

'Informal Outdoor Space Contribution'

means a total sum of £4,000.00 (four thousand pounds) to be used towards the provision of the requested new viewing platform and picnic table at Middle Mill and

also the picnic bench and display board at Brookland Wood;

'Interest'

means interest at 4 % (four per cent) above the base lending rate of the Lloyds Bank PLC from time to time;

'Local Connection'

means a connection (calculated from the Start Date) with the Primary Area or the Council Area (as appropriate), as follows:

- a. being permanently resident therein for at least 2 (two) years; or
- b. in permanent full-time or part-time (working a minimum of 16 (sixteen) hours per week) work therein for 6 (six) months. This may include a person who needs to move to the Council Area in connection with permanent employment (working for a minimum of 16 (sixteen) hours per week) where commuting from the person's existing home is accepted by the Council as unreasonable. In all cases there should be no break in the period of employment for more than 3 (three) months over the relevant period; or
- c. having immediate relatives (including but not limited to parents, non-dependent children and siblings) who have lived therein for at least 5 (five) years and with whom there has been shown to have been frequent contact, commitment or dependency; or
- d. other categories or relationships which may be considered acceptable by the Council (including foster

relationships) where clear evidence of frequent contact, commitment dependency is shown; or

- e. other special circumstances which create a link to the Council Area (not including residence in a hospital armed forces accommodation holiday let or prison or rehabilitation facility) and having been first verified in writing by the Council as having such special circumstances and this may include the need to reside in the Council Area to give or receive medical support or (with the approval of the Council) some other form of special support;

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

'Local Needs Person'

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

- (a) firstly, persons who have a Local Connection with the Primary Area; then
- (b) if no person(s) satisfying the requirement in (a) above have entered into a tenancy

for or acquired (as appropriate) the relevant Affordable Housing Unit within 2 (two) weeks of the commencement of advertising, then such person or persons who have a Local Connection to the Council Area;

'Management Company'

means such company or body as may be established or nominated by the Owner for the purposes of implementing the Open Space Management Plan and/or the School Drop Off Area Management Plan (including any estate management company established for the purpose of owning and/or managing the common parts of the Property and/or the Development);

'Market Rent'

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

'Market Value'

means the estimated amount for which a Dwelling should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction

after proper marketing where the parties have each acted knowledgeably, prudently and without compulsion but disregarding the obligations and restrictions contained of this Agreement;

'Notice of Availability'

means a notice in writing informing the Council that the Affordable Housing Unit is available for Occupation;

'Notice of Commencement'

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

'Occupation'

means, in respect of each Dwelling, occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out, decoration, security or occupation for marketing or display and "Occupy" and "Occupied" shall be similarly construed;

'Offer to Dispose'

means a formal written offer to dispose of a Shared Ownership Lease in terms and at a value (to be determined by the Valuer in the event of a dispute) consistent with the provisions of this Agreement;

'Open Market Dwellings'

means those Dwellings which are not Affordable Housing Units and reference to an 'Open Market Dwelling' shall be to one of those dwellings;

'Open Space'

means the publicly accessible open space and play areas as shown on edged orange on Plan 2 and which is to be provided in accordance with the details of the Open

Space Specification and which will remain accessible by the public in perpetuity;

'Open Space Maintenance Contribution'

means a financial contribution of £1278.80 (one thousand, two hundred and seventy eight pounds and eighty pence) per Dwelling to be paid to the Parish Council or the Council (as appropriate) for the maintenance of the Open Space provided that such payment shall only be payable in the event that the Open Space is transferred to the Parish Council or the Council pursuant to Part 3 of Schedule 1;

'Open Space Management Plan'

means a scheme to be approved in writing with the Council to secure the future management and maintenance of the Open Space (including any variation or replacement thereof approved in writing with the Council);

'Open Space Specification'

means details and specifications (including of the equipment to be provided) for the laying out and provision of the Open Space together with triggers for delivery and for the avoidance of doubt this shall include all Open Space and play areas and any areas of incidental open space which fall outside the curtilage of any Dwelling;

'Outdoor Sports Area Contribution'

means a sum equal to £1,318.80 (one thousand, three hundred and eighteen pounds and eighty pence) per Dwelling to be used towards the provision and/or improvements to the playground and all-weather football pitch for the village in Fontmell Magna;

**'Outdoor Sports Area
Maintenance Contribution'**

means a sum equal to £128.73 (one hundred and twenty eight pounds and seventy three pence) per Dwelling to be used towards the maintenance of the playground and all weather football pitch for the village in Fontmell Magna;

'Parish'

means the parish of Fontmell Magna;

'Parish Council'

means Fontmell Magna Parish Council (clerk@fontmellmagnapc.co.uk);

'Plan 1'

means the plan attached to this Agreement and marked 'Plan 1';

'Plan 2'

means the plan attached to this Agreement and marked 'Plan 2';

'Plan 3'

means the plan attached to this Agreement and marked 'Plan 3';

'Planning Permission'

means the planning permission to be granted pursuant to the Act in respect of the Application;

'Practical Completion'

the issue of a certificate of practical completion by the Owner's architect (or in the event that the Development is constructed by a party other than the Owner a certificate of practical completion issued by the other owner's architect) certifying the completion of any part of the Development so that such part can be used for the purpose and operate in the manner for which it was designed and 'Practically Complete' and 'Practically Completed' shall be construed accordingly.

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REVISION NOTES


Rev	Date	Description	Drw	Chk
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Site Boundary

84.0m


A350



WLAWilliamsLester.

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Client



Project
Land at Home Farm
Fontmell Magna

Title
Location Plan for 106

Scale A3 @ 1 : 1250

Revision Drawing Status
For Information

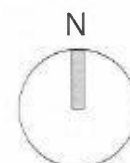
Suitability Suitability Description

Drawing No.
5939-WLA-XX-ZZ-DR-A-1007

1 0 S106 Block Plan 1 : 1250

0m 10m 20m 30m 40m 60m 80m 100m 120m 140m
1:1250

Plan 1



REVISION NOTES

Rev	Date	Description	Drw	Chk
A	26/04/2021	General revisions	NLH	NLH



Outline of extent of P.O.S.



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Client



Project

Land at Home Farm
Fontmell Magna

Title

Public Open Space
Allocation

Scale A3 @ 1 : 1250

Revision

Drawing Status

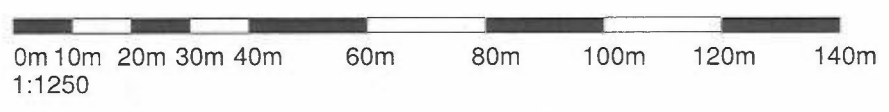
Suitability

A For Information
Suitability Description

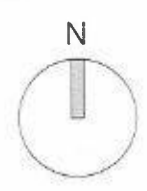
Drawing No.

5939-WLA-XX-ZZ-DR-A-1009

1 0 POS Location
1 : 1250



Plan 2



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REVISION NOTES

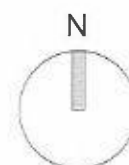
Rev	Date	Description	Drw	Ck
A	07/06/2021	Drop off and total site areas added	NLH	NLH
B	19/06/2021	Drop off area amended	AD	NLH



Plan 3 10

1 0 School Drop Off Location 1:1250

0m 10m 20m 30m 40m 60m 80m 100m 120m 140m
1:1250



WLA

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Client



Project

Land at Home Farm
Fontnell Magna

Title

School Drop off Location

Scale: A3 @ 1:1250

Revision: B For Approval
Suitability: Suitability Description

Drawing No: 5939-WLA-XX-ZZ-DR-A-1008

Plot date: 20/08/2021 09:43:01 P:\5939 Land at Home Farm, Fontnell Magna\1.1 WPA (Work in Progress)\1.1 Rev\Site Layout - V10.dwg

**'Pre-School Education
Contribution'**

means a sum equal to £190.50 ((one hundred and ninety pounds and fifty pence) per Qualifying Dwelling towards meeting the additional pre-school educational demand arising from the Development;

'Primary Area'

means the Parish, Compton Abbas, Ashmore, Cann, Sutton Waldron, East Orchard and Margret Marsh;

'Property'

means the land shown edged with a thick black line on Plan 1 being the land bound by this Agreement and as described in the First Schedule ;

'Protected Occupier'

means any occupier who:

(a) has exercised the right to acquire pursuant to the Housing Act 1996 or the Housing and Planning Act 2016 or any equivalent statutory provision for the time being in force in respect of a particular Affordable Housing Unit;

(b) has exercised any statutory right to buy (or any equivalent contractual or voluntary right to buy) in respect of a particular Affordable Housing Unit;

(c) either acquires the freehold in a Shared Ownership Unit or otherwise acquires a contractual or statutory right to staircase to acquire a 100% interest in an Affordable Housing Unit or any successor in title or mortgagee to any of the aforementioned parties;

'Qualifying Dwelling'

means any Dwelling with more than one (1) bedroom;

'Registered Provider'	means a registered provider of social housing as defined in the Housing and Regeneration Act 2008;
'Relevant Parties'	means the parties to this Agreement or their successors in title and/or assigns and in the case of the Council includes any statutory successors as local planning authority;
'Right of Way'	means to the public right of way situated to the north of the Property and joins on to the south side of West Street, Fontmell Magna (footpaths N63/6 and N63/7);
'Right of Way Maintenance Works Contribution'	means a sum equal to £76.62 (seventy six pounds and sixty two pence) per Dwelling to be used towards the resurfacing works to the Right of Way;
'Right of Way Upgrading Works Contribution'	means a financial contribution of £1,200.00 (one thousand two hundred pounds) towards upgrading the four (4) stiles on the perimeter of the Development to gates to British Standard (BS5709:2006);
'Secondary Education Contribution'	means a sum equal to £4,077.03 (four thousand and seventy seven pounds and three pence) per Qualifying Dwelling towards meeting the additional secondary and post 16 educational demand arising from the Development;
'School Drop Off Area'	means the land shown edged green on Plan 3 which has been designated for use as a school drop off area, which is to be provided in accordance with the School Drop Off Area

Specification in accordance with Schedule 3 Part 4.

**'School Drop Off Area
Maintenance Contribution'**

means a financial contribution of £1,333.33 (one thousand, three hundred and thirty three pounds and thirty three pence) per Dwelling to be paid to the Diocese of Salisbury for the maintenance of the School Drop Off Area provided that such payment shall only be payable in the event that the School Drop Off Area is transferred to either the Parish Council or the Diocese of Salisbury (as the case may be) pursuant to Part 4 of Schedule 3;

**'School Drop Off Area
Management Plan'**

means a scheme to be approved in writing with the Council to secure the future management and maintenance of the School Drop Off Area to be provided;

**'School Drop Off Area
Specification'**

means the details and specification for the laying out and provision of the School Drop Off Area together with triggers for delivery and a plan to show the extent of the School Drop Off Area;

'Section 73 Permission'

means a planning permission granted by the Council pursuant to an application made under section 73 or section 73A of the 1990 Act to vary the Planning Permission

'Shared Ownership Lease'

means a lease for the rent and sale of an Affordable Housing Unit provided on terms which accord with the requirements of Homes England for shared ownership tenure and "Shared Ownership" shall be similarly construed;

'Shared Ownership Unit'

means an Affordable Housing Unit to be used as subsidised housing for shared ownership pursuant to a Shared Ownership Lease (and the **'Shared Ownership Units'** means all of them);

'Start Date'

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

'Valuer'

means an independent expert who is a member or fellow of the Royal Institution of Chartered Surveyors and whose appointment is approved in writing by the Council (such approval not to be unreasonably withheld or delayed) and in the absence of agreement nominated by the President (or other appropriate person) of the RICS on the application of either party;

'Working Day'

means Monday to Friday inclusive excluding Bank or public holidays;

2 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.

- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its respective statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This Agreement is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling legislation.
- 3.1 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the Act which bind the Property and are enforceable by the Council as local planning authority against the Owner AND so far as the obligations, covenants and undertakings in this Agreement are given by or to the Council they are entered into under the relevant powers referred to in clause **Error! Reference source not found.** and those obligations, covenants and undertakings are enforceable by or against the Council.

4 CONDITIONALITY

This Agreement shall come into force on the date hereof but save in respect of clause 7.1, its provisions are conditional upon the grant of the Planning Permission.

5 THE OWNER'S COVENANTS

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

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owner as set out in the Fourth Schedule.

7 MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement.
- 7.2 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement (other than by the Owner's successors in title and assigns and any successor to the Council's functions).
- 7.3 This Agreement shall be registered as a local land charge by the Council as soon as reasonably practicable after the date hereof.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Development Management or other appropriate manager or delegated officer within the Council and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.5 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall at the request of the Owner 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 Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development and the registration of this Agreement as a Local Land Charge shall be cancelled by the Council on application by the Owner.

- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement in relation to the Property or any part thereof after it shall have parted with its entire interest in the Property or that part thereof but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 The obligations contained in this Agreement shall not be binding on nor enforceable against:
- 7.9.1 any statutory undertaker or utility company which acquires any part of the Property or an interest in it for the purposes of carrying out its statutory undertaking or functions in connection with the provision of services necessary for the Development; or
- 7.9.2 an individual residential owner, or purchaser, lessee or occupier of any individual Dwelling within the Development or their mortgagees or successors in title save for Schedule 3 Part 1 which shall apply to all owner-occupiers or tenants of an Affordable Dwelling or Discount Market Unit (as appropriate) except in the circumstances expressly set out in this Agreement.
- 7.10 The affordable housing provisions contained in Part 1 of Schedule 3 shall not be binding on:
- 7.10.1 a Protected Occupier or any mortgagee or chargee of the Protected Occupier or any person deriving title from the Protected Occupier or any successor in title thereto and their respective mortgagees and charges, or
- 7.10.2 a Chargee or any purchaser including their successors in title from such bodies PROVIDED THAT in all cases the Chargee shall have first complied with its duty set out in paragraph 9 of Part 1 of Schedule 3 EXCEPT FOR AND FOR THE AVOIDANCE OF DOUBT any disposal under paragraph 9 of Part 1 of Schedule where the Affordable Housing Unit is safeguarded as an Affordable Housing Unit
- 7.11 Unless specifically stated otherwise nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 7.12 Nothing contained or implied in this Agreement shall prejudice or affect the rights,

discretions, powers, duties and obligations of the Council under all statutes, byelaws, statutory instruments, orders and regulations in exercise of their functions as a local authority.

- 7.13 If the Planning Permission expires without having been implemented or is quashed or revoked or otherwise varied or withdrawn without the consent of the Owner before Commencement of the Development this Agreement will cease to have effect.

8 WAIVER

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

9 INDEXATION

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

10 DISPUTES

- 10.1 Any dispute arising out of the provisions of this Agreement shall be referred to the Expert for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to this Agreement by the courts and / or in accordance with Section 106(6) of the 1990 Act.
- 10.2 The Expert shall be appointed jointly by the Relevant Parties who are in dispute.
- 10.3 The decision of the Expert shall be final and binding upon the Relevant Parties and subject to the following provisions:-
- 10.3.1 the charges and expenses of the Expert shall be borne equally between the Relevant Parties who are in dispute unless the Expert shall otherwise direct;
 - 10.3.2 the Expert shall give the Relevant Parties who are in dispute an opportunity to make representations and counter representations to him before making his decision;

10.3.3 the Expert shall make his decision within the range of any representations made by the Relevant Parties who are in dispute themselves;

10.4 The parties agree that nothing in this clause shall be taken to fetter the ability of the Council to seek redress for any breach of any of the obligations entered into by the Owner in this Agreement.

11 SECTION 73 PERMISSIONS

This Agreement shall apply to any Section 73 Permission in the same way as it applies to the Planning Permission provided that for the avoidance of doubt where the Council deems it appropriate the Council may require a further agreement under section 106 of the 1990 Act to secure additional obligations concerning the Section 73 Permission.

12 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.

13 VAT

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

14 JURISDICTION

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation is governed by and interpreted in accordance with the law of England and Wales and subject to the provisions of clause 10 the parties submit to the exclusive jurisdiction of the courts of England and Wales.

15 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.

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

SCHEDULE 1
DESCRIPTION OF THE PROPERTY

All that land shown for identification purposes only edged with a thick black line on Plan 1 being part of the land known as "Land on the North West side of the A350 between Fontmell Magna and Sutton Waldron" (registered at the Land Registry with title number DT201066) and part of the land known as "Land on the North-West side of South Street, Fontmell Magna, Shaftesbury" (registered at the Land Registry with title number DT426621).

SCHEDULE 2

THE DEVELOPMENT

Erect 30 No. dwellings with garages, form vehicular access, parking and a school drop off area. Carry out landscaping works including the diversion of the public footpath at the northern end of the site.

SCHEDULE 3
THE OWNER'S COVENANTS

PART 1 – AFFORDABLE HOUSING

The Owner hereby covenants with the Council:

1. Not to Commence Development until a Notice of Commencement has been served on the Council.
2. Not less than twelve (12) of the Dwellings shall be Affordable Housing Units.
3. The Affordable Housing Units shall be Affordable Housing and shall not be Occupied other than as Affordable Housing subject to the provisions of this Agreement save where expressly specified otherwise herein.
4. Not to Commence Development until such time as the Affordable Housing Scheme shall have been submitted to and approved in writing by the Council and thereafter to comply with the Affordable Housing Scheme subject to the terms of this Agreement.
5. Not less than 50% (fifty per cent) of the Affordable Housing Units shall be Affordable Rented Units with the remainder being Discount Market Units (or such other form of Affordable Housing as approved pursuant to the Affordable Housing Scheme).
6. Not to Occupy or permit Occupation of more than 60% (sixty per cent) of the Open Market Dwellings until such time as all of the Affordable Housing Units have been constructed and substantially completed and, in the case of the Affordable Rented Units only, transferred to an Approved Provider.
7. Save as provided in paragraphs 9 and 10 below, not to Occupy or permit Occupation of any of the Discount Market Units other than by Local Needs Persons and in the manner specified in the approved Affordable Housing Scheme.
8. Save as provided in paragraphs 9 and 10 below, not to Occupy or permit Occupation of any of the Affordable Rented Units at any time otherwise than by Local Needs Persons and by way of an Affordable Rent Tenancy at an Affordable Rent and in the manner specified in the approved Affordable Housing Scheme.
9. A Chargee shall prior to seeking to Dispose of its interest in any Affordable Housing Unit following any default under the terms of its mortgage or charge give prior written notice to the Council of its intention to dispose and:

- 9.1. in the event that the Council responds within six (6) weeks from receipt of the notice indicating that arrangements for the transfer of the interest in the Affordable Housing Unit can be made in such a way as to safeguard it as Affordable Housing and safeguard the reasonable interests of the Chargee then the said Chargee shall co-operate with such arrangements and use reasonable endeavours to secure such transfer PROVIDED THAT such arrangements shall not require the Chargee to dispose of its interest in the relevant Affordable Housing Unit for a sum less than the total of all accrued principal monies interests and costs;
- 9.2. if the Council does not within six (6) weeks serve a response to the Chargee's notice referred to in this paragraph 9 then the Chargee shall be entitled to dispose of its interest in the relevant Affordable Housing Unit free of the Affordable Housing restrictions set out in this Agreement and all future dispositions of the relevant Affordable Housing Unit shall likewise be free of the Affordable Housing restrictions set out herein;
- 9.3. if the Council or any other person nominated by the Council cannot within six (6) weeks of the date of service of the Council's response under paragraph 9.1 secure such transfer then provided that the Chargee shall have complied with its obligations under this paragraph 9 and the Chargee shall be entitled to dispose of its interest in the relevant Affordable Housing Unit free of the Affordable Housing restrictions set out in this Agreement and all future dispositions of the relevant Affordable Housing Unit shall likewise be free of the Affordable Housing restrictions set out herein

PROVIDED THAT at all times the rights and obligations in this paragraph 9 shall not require the Chargee to act contrary to its duties or obligations under the charge or mortgage and the Chargee shall not be under any obligation to dispose of the Affordable Housing Unit for a consideration less than the monies outstanding pursuant to the said mortgage or charge inclusive of interest, costs and charges

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

Mechanism for Provision of Discount Market Units

11. Subject to paragraph 9 above and paragraph 18 below the Owner shall not cause or permit the sale of any Discount Market Unit for more than the Discount Market Value.
12. The Owner shall not Dispose of the Discount Market Units unless and until the Owner has:
 - 12.1. given not less than fourteen (14) Working Days prior written notice to the Council (the 'DMU Availability Notice') of their intention to market the Discount Market Unit(s) for sale and the parties hereby agree that the Owner may serve the DMU Availability Notice before the relevant Discount Market Units have been substantially completed;
 - 12.2. provided two (2) Market Value valuations of the Discount Market Units from different Estate Agents and written confirmation of the Owner's calculation of the Discount Market Value based on such valuations; and
 - 12.3. provided the names of the Estate Agents instructed to provide the valuations referred to at Paragraph 12.2 above.
13. The Council shall respond to the DMU Availability Notice given pursuant to paragraph 12.1 above within twenty (20) Working Days of receipt of the DMU Availability Notice to confirm whether or not it agrees with the Discount Market Value PROVIDED THAT in the event that the Council does not respond to the DMU Availability Notice to confirm the selling price within twenty (20) Working Days of receipt of the DMU Availability Notice the Council shall be deemed to have approved the Discount Market Value stated in the DMU Availability Notice.
14. In the event that the Owner and Council are unable to reach agreement in respect of the Discount Market Value, the Discount Market Value will be decided by the Valuer acting as an expert. For the avoidance of doubt the Owner will pay for the cost of instructing a Valuer if one is required PROVIDED THAT if the Valuer concludes that the Discount Market Value is within the range of values identified by the two (2) Market Value valuations provided pursuant to paragraph 12.2 above, the cost of instructing the Valuer shall be borne by the Council.
15. The Owner shall commence marketing the Discount Market Units within thirty five (35) Working Days of the date of the DMU Availability Notice ('**Commencement of Marketing**').

16. The Owner shall subject to first obtaining the proposed buyer's consent to the disclosure of personal information to the Council, notify the Council promptly of the name and address of the proposed buyer together with full details of the sale price and shall provide such information as the Council may reasonably require to satisfy itself that the proposed buyer is a Local Needs Person and that the sale price including any inducements or other benefits (whether of a monetary value or not) offered by the Owner does not exceed the Discount Market Value of the Discount Market Unit.
17. If no Local Needs Person has purchased the relevant Discount Market Unit within four (4) months of the Commencement of Marketing the Owner of the relevant Discount Market Unit may offer to sell the Discount Market Unit at no more than the Discount Market Value to an Approved Provider and/or the Council and if the Discount Market Unit is purchased by an Approved Provider it shall be capable of being used as a Shared Ownership Unit or an Affordable Rented Unit free from the restrictions in this Schedule relating to Discount Market Units.
18. If the Owner has not exchanged contracts for the sale of the Discount Market Unit(s) with a Local Needs Person, an Approved Provider and/or the Council within six (6) months of the Commencement of Marketing the Owner shall notify the Council in writing that it has not exchanged contracts for the sale of the Discount Market Unit(s) and shall be free to sell its interest in the relevant Discount Market Unit(s) at no more than the Discount Market Value to any person in Housing Need PROVIDED THAT the provisions of paragraphs 11 to 21 of this Schedule shall (unless otherwise approved in writing by the Council) apply in full in respect of any subsequent Disposals of the said Discount Market Unit(s).
19. The transfer of each Discount Market Unit (save for any transfer made to the Council or an Approved Provider pursuant to paragraph 17 above or a transfer made pursuant to paragraph 18 above) shall contain a covenant by the transferee not to let the whole or part of the dwelling for a period in excess of six (6) months in any period of ownership without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed) but for the avoidance of doubt it shall be reasonable for the Council to refuse to give consent if the proposed rent payable exceeds 80% of Market Rent).
20. Subject to paragraph 17 above, on any sale and all subsequent resales of the Discount Market Units the owner of the relevant Discount Market Unit ('the **Seller**') covenants:-

- 20.1. Not to transfer the dwelling at a price greater than the Discount Market Value;
- 20.2. Not to let the whole or part of the dwelling for a period of in excess of six (6) months in any period of ownership and not without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed but for the avoidance of doubt it shall be reasonable for the Council to refuse to give consent if the proposed rent payable exceeds 80% of Market Rent);
- 20.3. to notify the Council in writing of the intention to sell and to provide the Council with two (2) independent valuations from two (2) different Estate Agents for the Market Value of the dwelling together with a calculation of the Discount Market Value;
- 20.4. to contract to sell only to those persons and in the timescales set out in Paragraphs 11 to 22 of Schedule 3 Part 1 of the Agreement entered into pursuant to s.106 of the Town and Country Planning Act 1990 between (1) the Council and (2) the Owner dated the day of *23 December* 2021 PROVIDED THAT and prior to exchange of contracts to supply to the Council with evidence that the purchaser satisfies the relevant provisions provided that if a person cannot be identified who satisfies the requirements of the said paragraphs within four (4) months from first marketing the dwelling the Seller may ask the Council in writing to consent to the sale of the Discount Market Unit on such other terms as may be proposed by the Seller (such consent not to be unreasonably withheld)
21. The Council shall within ten (10) Working Days of receipt of such notification referred to in paragraph 20.3 of this Schedule confirm to the Seller:
- 21.1. the agreed Market Value valuation for the dwelling (being the average of the two (2) valuations referred to in paragraph 20.3); and
- 21.2. the Discount Market Value.
22. Within one (1) month of completion of the sale of the Discount Market Unit a fee of £50 shall be payable to the Council by the Seller to cover reasonable administration costs incurred by the Council such sum to be reviewed every five (5) years from the date of this Agreement in line with changes in the Consumer Prices Index over the five-year period immediately preceding the relevant review date.

PART 2 – FINANCIAL CONTRIBUTIONS PAYABLE BY THE OWNER

1. The Owner hereby covenants with the Council to pay 50% (fifty per cent) of each of the following contributions to the Council prior to first (1st) Occupation of any Dwelling:
 - a. Community, Leisure and Indoor Sports Facilities Contribution
 - b. Destination Play Area Contribution;
 - c. Destination Play Area Maintenance Contribution;
 - d. Footpath Maintenance Contribution;
 - e. Informal Outdoor Space Contribution;
 - f. Pre-School Education Contribution;
 - g. Right of Way Maintenance Contribution;
 - h. Right of Way Upgrading Works Contribution;
 - i. Pre School Education Contribution;
 - j. Secondary Education Contribution;
 - k. Outdoor Sports Area Contribution;
 - l. Outdoor Sports Area Maintenance Contribution;(the "Contributions")
2. The Owner shall not cause permit or allow Occupation of any Dwelling on the Development prior to payment to the Council of 50% (fifty per cent) of the Contributions.
3. Prior to Occupation of the twelfth (12th) Dwelling the Owner shall pay the Council the remaining 50% (fifty per cent) of the Contributions to the Council.
4. The Owner shall not cause permit or allow Occupation of the twelfth (12th) or any subsequent Dwelling prior to payment to the Council of 100% (one hundred per cent) of the Contributions.

PART 3 – OPEN SPACE

1. Not to Commence Development until the Owner has submitted to and obtained the Council's written approval of the Open Space Specification and Open Space Management Plan.
2. Not to permit or allow the Occupation of more than 80% (eighty per cent) of the Dwellings unless and until:
 - 2.1. the Open Space has been provided and/or constructed (as appropriate) in accordance with the approved Open Space Specification; and
 - 2.2. the Owner has served on the Council a written notice stating that the Open Space has been provided laid out and completed in accordance with the Open Space Specification ('Owner's Open Space Notice') and the Council has responded with a written notice confirming that it agrees with the Owner's Open Space Notice ('Council's Open Space Notice') PROVIDED THAT if the Council does not respond by serving the Council's Open Space Notice or a notice served pursuant to paragraph 4 below within two (2) months of receipt of the Owner's Open Space Notice the Owner shall be deemed to have complied with this obligation (paragraph 2.2 of Part 3 of Schedule 3).
3. As soon as reasonably practicable following laying out and completion of the Open Space to permit the Council to inspect the Open Space to establish if it has been provided laid out and completed in all material respects in accordance with the Open Space Specification.
4. If within the period of two (2) months after the date of the Owner's Open Space Notice referred to in paragraph 2.2 above the Council identifies any works which are reasonably necessary to bring the Open Space up to the standard required by the approved Open Space Specification the Council shall notify the Owner of those works and the Owner shall complete such works as soon as reasonably practicable and when such works have been completed the Owner shall serve a further notice pursuant to paragraph 2 above (and for the avoidance of doubt the provisions contained in this Part 3 shall apply to such further notice(s)) PROVIDED THAT the existence of minor outstanding works shall not entitle the Council to withhold issuing the Council's Open Space Notice referred to in paragraph 2.2 above.
5. Subject to paragraph 7 below, from the date of completion of the Open Space to maintain the Open Space in accordance with the approved Open Space Management Plan.

6. Not to Occupy or permit the Occupation of more than 50% (fifty per cent) of the Dwellings until the Owner has offered to transfer the Open Space to the Parish Council such offer to remain open for acceptance in writing for a period of three (3) months from the date the offer is submitted to the Parish Council.
7. Subject to paragraphs 8 and 9 below, if the Parish Council accept the offer of the Open Space in writing within the three (3) month period specified in paragraph 6 above, the Owner shall use reasonable endeavours to transfer the Open Space to the Parish Council prior to Occupation of the final Dwelling (such transfer to include the terms set out in Schedule 5) and immediately prior to the transfer the Owner shall issue a certificate to the Parish Council confirming that the conditions of any restriction on the title to the Open Space have been complied with.
8. On completion of the transfer referred to in paragraph 7 above the Owner shall pay to the Parish Council the Open Space Maintenance Contribution PROVIDED THAT if the Parish Council does not complete the transfer then no Open Space Maintenance Contribution shall be payable.
9. In the event that:
 - 9.1. the Owner has made an offer to transfer the Open Space to the Parish Council but following the expiration of a period of three (3) months the Parish Council has not accepted the offer referred to in paragraph 6 above in writing; or
 - 9.2. the Parish Council accepts the said offer in writing within the three (3) month period specified in paragraph 6 above but despite the Owner's reasonable endeavours the transfer of the Open Space to the Parish Council has not completed by the date six (6) months after the service (or deemed service) of the Council's Open Space Notice;

the Owner shall as soon as reasonably practicable submit details of the proposed Management Company in writing to the Council for approval and the Council shall not unreasonably withhold or delay its approval of the proposed Management Company;
10. Following approval from the Council as set out in paragraph 9 above, the Owner shall establish the Management Company and shall:
 - 10.1. not to permit the Occupation of the final Open Market Dwelling until the Open Space has been transferred to the Management Company in accordance with the details approved by the Council under the approved Open Space

Management Plan and on the terms set out in Schedule 5; and

- 10.2. procure that the buyer of each Dwelling comprised in the Development enters into the following covenants direct with the Management Company:
 - 10.2.1. to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the Open Space in accordance with the approved Open Space Management Plan; and
 - 10.2.2. that upon any subsequent transfer of such Dwelling or the grant of a lease of seven (7) years or more to a tenant he will procure that the incoming buyer/disponsee shall enter into direct covenants with the Management Company in the form of Schedule 3 Part 3 paragraphs 10.2.1 and 10.2.2.
11. On the laying out and completion of the Open Space it shall thereafter be retained solely for use by the public (free of charge, save as set out above, if applicable, and save for any estate maintenance charge payable by the owners and occupiers of the Development) as open space and shall be maintained in accordance with the approved Open Space Management Plan in perpetuity.

PART 4 – SCHOOL DROP OFF AREA

1. Not to Commence Development until the Owner has submitted to and obtained the Council's written approval of the School Drop Off Area Specification and School Drop Off Area Management Plan
2. Not to permit or allow the Occupation of more than 80% (eighty per cent) of the Dwellings until:
 - 2.1. the School Drop Off Area has been provided and/or constructed (as appropriate) in accordance with the approved School Drop Off Area Specification; and
 - 2.2. the Owner has served on the Council a written notice stating that the School Drop Off Area has been provided laid out and completed in accordance with the School Drop Off Area Specification ('Owner's School Drop Off Area Notice') and the Council has responded with a written notice confirming that it agrees with the Owner's School Drop Off Area Notice ('Council's School Drop Off Area Notice') PROVIDED THAT if the Council does not respond by serving the Council's School Drop Off Area Notice or a notice served pursuant to paragraph 4 below within two (2) months of receipt of the Owner's School Drop Off Area Notice the shall be deemed to have complied with this obligation paragraph 2.2 of Part 4 of Schedule 3)
3. As soon as reasonably practicable following laying out and completion of the School Drop Off Area to permit the Council to inspect the School Drop Off Area to establish if it has been provided laid out and completed in all material respects in accordance with the School Drop Off Area Specification.
4. If within the period of two (2) months after the date of the Owner's School Drop Off Area Notice referred to in paragraph 2.2 above the Council identifies any works which are reasonably necessary to bring the School Drop Off Area up to the standard required by the approved School Drop Off Area Specification the Council shall notify the Owner of those works and the Owner shall complete such works as soon as reasonably practicable and when such works have been completed the Owner shall serve a further notice pursuant to paragraph 2.2 above (and for the avoidance of doubt the provisions contained in this Part 4 shall apply to such further notice(s)) PROVIDED THAT the existence of minor outstanding works shall not entitle the Council to withhold issuing the Council's School Drop Off Area Notice referred to in paragraph 2.2 above.
5. Subject to paragraph 7, from the date of completion of the School Drop Off Area to

maintain the School Drop Off Area in accordance with the approved School Drop Off Area Management Plan.

6. Not to Occupy or permit the Occupation of more than 50% (fifty per cent) of the Dwellings until the Owner has offered to transfer the School Drop Off Area to either or both of (a) the Parish Council or (b) the Diocese of Salisbury (to be decided at the discretion of the Council) such offer to remain open for acceptance in writing for a period of three (3) months from the date the offer is submitted to either or both of (a) the Parish Council or (b) the Diocese of Salisbury.
7. Subject to paragraphs 8 and 9 below, if either (if only offered to one) or both (if offered to both) of (a) the Parish Council or (b) the Diocese of Salisbury accepts the offer of the School Drop Off Area in writing within the relevant three (3) month period specified in paragraph 6 above, the Owner shall use reasonable endeavours to transfer the School Drop Off Area to either the Parish Council or the Diocese of Salisbury (as may be applicable) prior to Occupation of the final Dwelling (such transfer to include the terms set out in Schedule 6) and shall immediately prior to the transfer issue a certificate to the Parish Council or the Diocese of Salisbury confirming that the conditions of any restriction on the title to the School Drop Off Area have been complied with.
8. On completion of the transfer referred to in paragraph 7 above the Owner shall pay to the Parish Council or the Diocese of Salisbury (as applicable) the School Drop Off Area Maintenance Contribution PROVIDED THAT if the Parish Council or the Diocese of Salisbury (as the case may be) does not complete the transfer then no School Drop Off Area Maintenance Contribution shall be payable.
9. In the event that:
 - 9.1. the Owner has made an offer to transfer the School Drop Off Area to the Parish Council or the Diocese of Salisbury but following the expiration of a period of three (3) months neither the Parish Council nor the Diocese of Salisbury has accepted an offer referred to in paragraph 6 above in writing; or
 - 9.2. either or both of the Parish Council or the Diocese of Salisbury accepts the said offer in writing within the three (3) month period specified in paragraph 6 above but despite the Owner's reasonable endeavours the transfer of the School Drop Off Area to the Parish Council or the Diocese of Salisbury (as the case may be) has not completed by the date six (6) months after the service (or deemed service) of the Council's School Drop Off Area Notice;

the Owner shall as soon as reasonably practicable submit details of the proposed Management Company in writing to the Council for approval and the Council shall not unreasonably withhold or delay its approval of the proposed Management Company ;

10. Following approval from the Council as set out in paragraph 9 above , the Owner shall establish the Management Company and shall:

- 10.1. not to permit the Occupation of the final Open Market Dwelling until the School Drop Off Area has been transferred to the Management Company in accordance with the details approved by the Council under the approved School Drop Off Area Management Plan and on the terms set out in Schedule 6; and

- 10.2. procure that the buyer of each Dwelling comprised in the Development enters into the following covenants direct with the Management Company:

- 10.2.1. to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the School Drop Off Area in accordance with the approved School Drop Off Area Management Plan; and

- 10.2.2. that upon any subsequent transfer of such Dwelling or the grant of a lease of seven (7) years or more to a tenant he will procure that the incoming buyer disponent shall enter into direct covenants with the Management Company in the form of Schedule 3 Part 4 paragraphs 10.2.1 and 10.2.2.

11. On the laying out and completion of the School Drop Off Area it shall thereafter be retained solely for use by the public (free of charge, save as set out above, if applicable, and save for any estate maintenance charge payable by the owners and occupiers of the Development) as a vehicle drop off area and shall be maintained in accordance with the approved School Drop Off Area Management Plan in perpetuity.

SCHEDULE 4
COUNCIL'S COVENANTS

Repayment of Contributions

The Council hereby covenants with the Owner:

1. Not to use any part of the Contributions received from the Owner under the terms of this Agreement other than for the purposes for which they were paid; and
2. Upon receipt of a written request from the Owner, to repay such amount of any payment made by the Owner to the Council under this Agreement which has not been expended or committed in accordance with the provisions of this Agreement within ten (10) years of the date of Occupation of the final Dwelling.

SCHEDULE 5

TRANSFER OF OPEN SPACE

The transfer of the Open Space to the Parish Council or the Management Company (as may be appropriate) shall:

- i. be a transfer of the entire freehold interest of the Open Space (less any areas transferred or to be transferred to a statutory undertaker or utility company);
- ii. be free from any pre-emption or option agreement;
- iii. be free from any mortgage, charge, lien or other such encumbrance;
- iv. be free from any lease, licence or any other third-party interests save for any lease, easements or other rights to a statutory undertaker or utility company;
- v. be subject to a covenant which prohibits the use of the Open Space for any purpose other than for public recreation and amenity and for the accommodation of Conducting Media serving the Development or any part thereof;
- vi. include all necessary rights of way with or without vehicles for the benefit of the Open Space and reserve in favour of the Owner any necessary rights and easements to enable the proper construction, maintenance and use of the Development and all parts thereof (including for the avoidance of doubt a right of way on foot over the pathways leading to the public right of way situated to the north of the Property) and to use existing services in so far as they are necessary based upon the final approved layout of the Development and location of the Open Space and all easements wayleaves licences rights and privileges granted or to be granted at any time in the future by the Owner to any statutory undertakers or utility companies in connection with any Conducting Media of whatever nature provided or to be provided for the benefit of the Development or any part thereof;
- vii. reserve in favour of the Owner the right to install lay and use new Conducting Media as may be reasonably necessary for the benefit of the Development or any Part thereof together with any rights of entry to inspect, repair, renew, cleanse and maintain the same;
- viii. declare that boundary structures separating the Dwellings from the Open Space shall belong to and be maintained by the owners of the relevant Dwellings which adjoin the Open Space;
- ix. not require consideration in excess of one pound (£1); and
- x. contain a covenant for the benefit of the Council for the Parish Council or Management Company (as appropriate) to manage and maintain the Open Space in accordance with this Agreement.

SCHEDULE 6
TRANSFER OF SCHOOL DROP OFF AREA

The transfer of the School Drop Off Area to the Parish Council or the Diocese of Salisbury or the Management Company (as may be appropriate) shall:

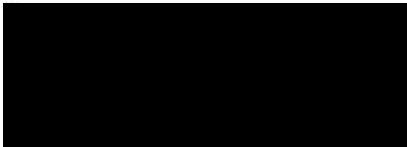
- i. be a transfer of the entire freehold interest of the School Drop Off Area;
- ii. be free from any pre-emption or option agreement;
- iii. be free from any mortgage, charge, lien or other such encumbrance;
- iv. be free from any lease, licence or any other third-party interests save for any lease, easements or other rights to a statutory undertaker or utility company;
- v. be subject to a covenant which prohibits the use of the School Drop Off Area for any purpose other than for use as a school drop off area;
- vi. include all necessary rights of way with or without vehicles for the benefit of the School Drop Off Area and if appropriate, reserve in favour of the Owner any necessary rights and easements to enable the proper construction, maintenance and use of the Development and to use existing services in so far as they are necessary based upon the final approved layout of the Development and location of the School Drop Off Area and all easements wayleaves licences rights and privileges granted or to be granted at any time in the future by the Owner to any statutory undertakers or utility companies in connection with any Conducting Media of whatever nature provided or to be provided for the benefit of the Development or any part thereof;
- vii. reserve in favour of the Owner, if appropriate, the right to install lay and use new Conducting Media as may be reasonably necessary for the benefit of the Development or any Part thereof together with any rights of entry to inspect, repair, renew, cleanse and maintain the same;
- viii. declare that boundary structures separating the Dwellings from the School Drop Off Area shall belong to and be maintained by the owners of the relevant Dwellings which adjoin the School Drop Off Area;
- ix. not require consideration in excess of one pound (£1); and
- x. contain a covenant for the benefit of the Council for the Parish Council or the Diocese of Salisbury or the Management Company (as may be appropriate) to manage and maintain the School Drop Off Area.

THE COMMON SEAL of)
DORSET COUNCIL was)
affixed in the presence of:)



Authorised Signatory

SIGNED as a DEED by



VERNON ROGER CHRISTOPHER)

in the presence of:-)

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