

DATED

2023

**PLANNING OBLIGATION BY WAY OF UNILATERAL  
UNDERTAKING UNDER SECTION 106 OF THE TOWN & COUNTRY  
PLANNING ACT 1990**

**RELATING TO  
ORCHARD GATE, NOADS WAY, DIBDEN PURLIEU SO45 4PD**

**KATHLEEN MARY CLARKE, HOWARD JAMES MARSHALL AND  
MICHAEL BRIAN MARSHALL AND AJC DEVELOPMENTS  
(SOUTH) LIMITED**

**TO  
THE DISTRICT COUNCIL OF NEW FOREST**

**APPLICATION SITE ADDRESS:**

ORCHARD GATE, NOADS WAY, DIBDEN PURLIEU, HYTHE SO45 4PD

**LAND REGISTRY TITLE Nos:**

HP854501 and HP813836

**PLANNING APPLICATION No:**

22/10813

**PLANNING APPEAL REF:**

APP/B1740/W/23/3324227

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## CONTENTS

### Clause

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|     |  |    |
|-----|--|----|
| 1.  | Definitions and Interpretation .....                                     | 2  |
| 2.  | Planning Obligations .....   | 11 |
| 3.  | No Restriction.....  | 11 |
| 4.  | Compliance Checking Charges.....   | 11 |
| 5.  | Affordable Housing.....  | 11 |
| 6.  | Air Quality Monitoring Contribution .....                                | 11 |
| 7.  | Habitats Mitigation (Access Management and Monitoring) Contribution..... | 11 |
| 8.  | Habitats Mitigation (Bird Aware Solent) Contribution .....               | 11 |
| 9.  | Habitats Mitigation (Infrastructure) Contribution.....                   | 11 |
| 10. | Public Open Space and Play Equipment Contribution .....                  | 12 |
| 11. | Operative Date .....   | 12 |
| 12. | Indexation of Contribution .....   | 12 |
| 13. | Refund of Contributions .....  | 12 |
| 14. | Developer's Consent.....   | 13 |
| 15. | Notification of Commencement of Development and Occupation.....          | 13 |
| 16. | Nature of this Deed .....  | 13 |
| 17. | Consent to Registration.....   | 13 |
| 18. | Access to the Development .....  | 13 |
| 19. | Ownership .....  | 13 |
| 20. | Release and Liability .....  | 14 |
| 21. | Council's Costs .....  | 14 |
| 22. | S73 Applications .....   | 15 |
| 23. | Determination of this Deed.....  | 15 |
| 24. | Notices .....  | 15 |
| 25. | Third Parties.....   | 15 |
| 26. | Governing Law .....  | 15 |

**BY:**

(1) **KATHLEEN MARY CLARKE** of Pragnells Orchard, London Minstead, Minstead, Lyndhurst, Hampshire SO43 7FT as the executor of the estate of Valerie Marshall and **HOWARD JAMES MARSHALL** of 68 Pereira Road, Birmingham B17 9JN and **MICHAEL BRIAN MARSHALL** of 74 Chapel Fields, Charterhouse Road, Godalming GU7 2AA as the trustees of the A J Marshall Will Trust (the **First Owner**);

(2) **KATHLEEN MARY CLARKE** of Pragnells Orchard, London Minstead, Minstead, Lyndhurst, Hampshire SO43 7FT, **HOWARD JAMES MARSHALL** of 68 Pereira Road, Birmingham B17 9JN and **MICHAEL BRIAN MARSHALL** of 74 Chapel Fields, Charterhouse Road, Godalming GU7 2AA as the trustees of the Settlements (the **Second Owner**)

and the **First Owner** and the **Second Owner** are collectively referred to as the “**Owners**”;  
and

(3) **AJC DEVELOPMENTS (SOUTH) LIMITED** incorporated and registered in England and Wales with company number 11193149 whose registered office is at 4 Joshuas Vista, Sandbanks Road, Poole, England, BH14 8HA (the **Developer**)

**TO:**

(4) **THE DISTRICT COUNCIL OF NEW FOREST** of Appletree Court Lyndhurst Hampshire SO43 7PA (the **Council**)

**WHEREAS**

- (A) Words and phrases appearing in these recitals have the meanings given to them in clause 1 of this Deed.
- (B) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the **Property** is situated.
- (C) The Owners own the Property.
- (D) The Application was made to the Council for the Development.
- (E) The Developer intends to develop the Property pursuant to the Planning Permission and has entered into a sale contract conditional on planning permission dated 8 July 2021 with the Owners which interest is registered at HM Land Registry against title numbers HP813836 and HP854501.
- (F) The Secretary of State has appointed an Inspector to determine the Appeal following the refusal of the Application on 19 December 2022.
- (G) In accordance with the Council’s Local Plan on planning contributions the Owners give this undertaking to perform the obligations set out in this Deed.
- (H) The Development offers the provision of Affordable Housing in accordance with the Local Plan 2016-2036 Part One: Planning Strategy New Forest District (outside of the New Forest) National Park policy HOU2.
- (I) The Development has been screened under the 2017 Regulations and it has been concluded that the likely effects of the Development associated with recreational impacts

on part or parts of the European Nature Conservation Sites cannot be ruled out were it not for the habitats mitigation provisions contained in this Deed.

- (J) The parties have agreed to enter into this Deed in respect of the Property to secure the planning obligations required to regulate and mitigate the impacts of the Development, in contemplation that the Secretary of State may grant Planning Permission pursuant to the Appeal.

**NOW THIS DEED WITNESSETH** as follows:

**1. Definitions and Interpretation**

- 1.1 In this Deed the following words and phrases shall have the following meanings:-

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| <b>Access</b>                          | such roads, footpaths and cycleways constructed on the Property as may be necessary to facilitate the construction and occupation of the Affordable Housing Dwellings and to a standard which has approval together with all rights and easements over them as may be necessary;   |
| <b>Act</b>                             | the Town and Country Planning Act 1990;  |
| <b>Affordable Housing</b>              | housing within the meaning of the National Planning Policy Framework or any other statement or circular which may supersede or amend it including Affordable Rented Units, Social Rented Units and Shared Ownership Units and which is to be provided to Eligible Persons;   |
| <b>Affordable Housing Check Charge</b> | a fee of <b>eight hundred and eight pounds</b> (£808.00) for the Council to monitor that the Affordable Housing is maintained in accordance with this Deed;  |
| <b>Affordable Housing Contract</b>     | a contract between the Owners and a Registered Provider for the provision of Affordable Housing within the Development which includes the terms set out in paragraph 2 of <b>Schedule 1</b> to this Deed or such other terms as are agreed between the Owners and the Registered Provider consistent with the operative provisions of this Deed; |
| <b>Affordable Housing Dwellings</b>    | those Dwellings identified in accordance with the Affordable Housing Tenure Mix to be provided for Affordable Housing on the Affordable Housing Land and the expression " <b>Affordable Housing Dwelling</b> " shall be construed accordingly;   |
| <b>Affordable Housing Land</b>         | the land to which the provisions of <b>Schedule 1</b> shall apply which may be on the Application Site and which is for the Affordable Housing Dwellings, their curtilages and parking provision;  |

**Affordable Housing Scheme**

a scheme of not fewer than three (3) Affordable Housing Dwellings showing the physical location, layout, size, typical occupancy and specification of the Affordable Housing Dwellings and whether the Affordable Housing Dwellings have a parking space or a garage and shall also include the following:

- (a) a map or maps illustrating the distribution of Affordable Housing Dwellings;
- (b) a schedule of accommodation including the floor space of each Affordable Housing Dwelling and number of bedrooms;
- (c) 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; and
- (d) full details of proposed Shared Ownership Unit so as to ensure its provision Occupation and retention as Affordable Housing;

**Affordable Housing Tenure Mix**

the mix of Affordable Housing Dwellings tenure types to be built on the Affordable Housing Land to be comprised of a minimum of

- (a) one (1) two-bedroomed house as a Social Rented Unit;
- (b) one (1) two-bedroomed house as an Affordable Rented Unit; and
- (c) one (1) three-bedroomed house as a Shared Ownership Unit.

or other tenure mix of **Affordable Housing Dwellings** that may be agreed in writing between the Council and the Owners;

**Affordable Rent**

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

**Affordable Rent Tenancy**

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

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| <b>Affordable Rented Unit</b>                   | the Affordable Housing Dwelling identified in the Affordable Housing Scheme to be let by an Approved Provider as an Affordable Rented Unit on an Affordable Rent Tenancy and which is to be provided to Eligible Persons and unless otherwise agreed in writing between the Council and the Owners to comprise a minimum of <b>one (1) two-bedroomed house</b> ; |
| <b>Air Quality Monitoring Contribution</b>      | the sum of <b>two thousand four hundred and seventy two pounds</b> (£2,472.00) towards the monitoring of the air quality effects within the European Nature Conservation Sites in accordance with the Local Plan 2016-2036 Part One: Planning Strategy New Forest District outside the New Forest National Park policy ENV1;                                     |
| <b>Air Quality Monitoring Contribution Date</b> | the date of First Occupation;  |
| <b>Appeal</b>                                   | the appeal under section 78 of the Act against the refusal of the Application by the Council in its decision dated <b>19 December 2022</b> and which will be determined by an Inspector having the reference <b>APP/B1740/W/23/3324227</b> ;   |
| <b>Application</b>                              | the application for planning permission for the Development submitted to the Council and allocated application number <b>22/10813</b> ;  |
| <b>Approval</b>                                 | approval in writing by (or on behalf of), as the case may be, the Council's Executive Head of Planning, Regeneration and Economy (or other authorised officer), and the word " <b>Approved</b> " and other cognate expressions shall be construed accordingly;   |
| <b>CIL</b>                                      | the Community Infrastructure Levy introduced by sections 205-225 of the Planning Act 2008 as defined in the CIL Regulations;   |
| <b>CIL Regulations</b>                          | the Community Infrastructure Levy Regulations 2010 (as amended) and " <b>CIL Regulation</b> " means one of them;   |
| <b>Clean Condition</b>                          | free from any contamination which would (in the reasonable opinion of the Council's Chief Planning Officer or other authorised officer) materially prejudice the use of the Affordable Housing Land for Affordable Housing;  |
| <b>Commencement of Development</b>              | the carrying out in relation to the Development of a material operation as defined in Section 56(4) of the Act in respect of the Development other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground     |

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|  | conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “ <b>Commence Development</b> ” shall be construed accordingly;   |
| <b>Commencement of Development Monitoring Check Charge</b> | a fee in the sum of <b>eight hundred and eight pounds</b> (£808.00) for the Council to monitor Commencement of the Development and collect payment of the Habitats Mitigation (Access Management and Monitoring) Contribution and the Air Quality Monitoring Contribution;  |
| <b>Contributions</b>                                       | means <ul style="list-style-type: none"> <li>(a) the Air Quality Monitoring Contribution;</li> <li>(b) the Council Compliance Checking Charges;</li> <li>(c) the Habitats Mitigation (Access Management and Monitoring) Contribution;</li> <li>(d) the Habitats Mitigation (Bird Aware Solent) Contribution;</li> <li>(e) the Habitats Mitigation (Infrastructure) Contribution; and</li> <li>(f) the Public Open Space and Play Equipment Contribution;</li> </ul> |
| <b>Council Compliance Checking Charges</b>                 | the Affordable Housing Check Charge and the Commencement of Development Monitoring Check Charge;  |
| <b>Council Compliance Checking Charges Date</b>            | the date of Commencement of Development;  |
| <b>Development</b>   | the demolition of the existing buildings and the erection of <b>twenty five</b> (25) dwellings with associated access, landscaping and parking at the Property;   |
| <b>Dwelling</b>  | any house, and its curtilage forming part of the Development and “ <b>Dwellings</b> ” means more than one of the same;  |
| <b>Eligible Person</b>                                     | any person who is: <ul style="list-style-type: none"> <li>(a) on the Homesearch Register of the Council; or</li> </ul>  |

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|   | <ul style="list-style-type: none"> <li>(b) certified by the Council as being homeless; or</li> <li>(c) a person whom the Council is under a statutory obligation to re-house; or</li> <li>(d) otherwise certified by the Council as being appropriate to reside in an Affordable Housing Dwelling; or</li> <li>(e) in the case of Shared Ownership Unit complies with the requirements in paragraphs 1.7 and 1.8 of <b>Schedule 1</b>;</li> </ul> |
| <b>European Nature Conservation Sites</b>                                       | <ul style="list-style-type: none"> <li>(i) the New Forest Special Area of Conservation;</li> <li>(ii) the New Forest Special Protection Area; and</li> <li>(iii) the New Forest Ramsar site;</li> </ul>   |
| <b>First Occupation</b>   | the first Occupation of a Dwelling;   |
| <b>Habitats Mitigation (Access Management and Monitoring) Contribution</b>      | the sum of <b>twenty one thousand seven hundred and sixteen pounds</b> (£21,716.00) (towards non-infrastructure projects) in accordance with the Local Plan 2016-2036 Part One: Planning Strategy New Forest District outside the New Forest National Park policy ENV1 and the Mitigation for Recreational Impacts on New Forest European sites Supplementary Planning Document 2021;   |
| <b>Habitats Mitigation (Access Management and Monitoring) Contribution Date</b> | the date of First Occupation;   |
| <b>Habitats Mitigation (Bird Aware Solent) Contribution</b>                     | the sum of <b>nineteen thousand eight hundred and twenty pounds</b> (£19,820.00) towards Bird Aware Solent in accordance with the Local Plan 2016-2036 Part One: Planning Strategy New Forest District outside the New Forest National Park policy ENV1 and the Solent Recreation Mitigation Strategy 2017.   |
| <b>Habitats Mitigation (Bird Aware Solent) Contribution Date</b>                | the date of First Occupation;   |
| <b>Habitats Mitigation (Infrastructure) Contribution</b>                        | the sum of <b>one hundred and forty five thousand four hundred and seventy six pounds</b> (£145,476.00) (towards infrastructure projects) in accordance with the Local Plan 2016-2036 Part One: Planning Strategy New Forest District outside the New Forest National Park policy ENV1 and the Mitigation for Recreational Impacts on New Forest European sites Supplementary Planning Document 2021;   |



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| <b>Habitats Mitigation (Infrastructure) Contribution Date</b> | the date of First Occupation;  |
| <b>Homes England</b>  | Homes England or other government body established to oversee Affordable Housing provision policy and regulation and such expression shall include successors to the functions and powers of <b>Homes England</b> ;  |
| <b>Index</b>  | the “ <b>All Items</b> ” index figure of the <b>Index of Retail Prices</b> published by the Office for National Statistics or any successor ministry or department of government;  |
| <b>Index Linked</b>   | any sum expressed in this Deed to be Index Linked shall be increased by an amount (if any) by which the Index for the month preceding the date on which any sum is required by this Deed to be paid exceeds the Index for the month preceding the date of this Deed (except as otherwise provided);  |
| <b>Inspector</b>  | any person appointed by the Secretary of State to determine the Appeal;  |
| <b>Interest in Default</b>                                    | interest at the rate of 4% over Lloyds Bank base lending rate from time to time in force;  |
| <b>Market Dwellings</b>                                       | any Dwelling forming part of the Development which is general market housing for sale on the open market and which is not an Affordable Housing Dwelling and the expression “ <b>Market Dwelling</b> ” shall be construed accordingly;   |
| <b>Obligations</b>  | the planning obligations of the Owners set out in clauses <b>4, 5, 6, 7, 8, 9</b> and <b>10</b> and in <b>Schedule 1</b> of this Deed;   |
| <b>Occupation</b>   | the completion of a tenancy agreement, shared ownership or shared equity lease or any physical occupation in respect of the whole or any part or parts of any one or more of the Affordable Housing Dwellings or the completion of a tenancy agreement, lease, licence or transfer or any physical occupation in respect of the whole or any part or parts of any one or more of the Market Dwellings and the word “ <b>Occupied</b> ” shall be construed accordingly; |
| <b>Plan</b>   | the plan attached to this Deed at <b>Appendix A</b> ;  |
| <b>Planning Permission</b>                                    | the planning permission to be granted by the Secretary of State in respect of the Appeal;  |
| <b>Property</b>   | the freehold property at Orchard Gate, Noads Way, Dibden Purlieu registered at HM Land Registry with title absolute under title number   |

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|   | <b>HP813836</b> and <b>HP854501</b> shown for identification purposes only edged red on the Plan;  |
| <b>Public Open Space and Play Equipment Contribution</b>      | the sum of <b>forty eight thousand nine hundred and thirty two pounds</b> (£48,932.00) towards the provision by the Council of an equipped area of play area of not less than 186 m <sup>2</sup> which is policy compliant for the Development;  |
| <b>Public Open Space and Play Equipment Contribution Date</b> | the date of <b>First Occupation</b> ;  |
| <b>Registered Provider</b>                                    | any company or organisation whose aim or function includes the provision and management of Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) which is or any other body which is, from time to time, included in the Council's list of Registered Providers with which the Council has a partnership agreement or as otherwise Approved by the Council;   |
| <b>Secretary of State</b>                                     | the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function;   |
| <b>Section 73 Permission</b>                                  | a planning permission granted by the Council pursuant to an application made under section 73 or section 73A of the Act to vary the Planning Permission;   |
| <b>Service Installations</b>                                  | include sewers, drains, culverts, channels outlets mains, wires, cables, ducts, flues soakaways and other conducting media for the supply of Services, substations, regulator valves and all other infrastructure whatsoever for Services;   |
| <b>Services</b>   | include electricity, telephone, gas (or other means of heating and/or cooling), water, foul drainage, surface water drainage, broadband and any other services running through the Service Installation that are required for the Dwellings;   |
| <b>Settlements</b>  | <p>the six settlements made on 31 January 1988 made between (1) Valerie Marshall and (2) David Arthur Rule and Robert James Perkins (in respect of the first three) and (1) Anthony Joseph Marshall and (2) David Arthur Rule and Robert James Perkins (in respect of the second three) known as:</p> <ul style="list-style-type: none"> <li>(a) Mrs V. Marshall No. 1 Settlement;</li> <li>(b) Mrs V. Marshall No. 2 Settlement;</li> <li>(c) Mrs V. Marshall No. 3 Settlement;</li> <li>(d) A.J. Marshall No. 1 Settlement;</li> </ul> |

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|                                   | (e) A.J. Marshall No. 2 Settlement; and   |
|                                   | (f) A.J. Marshall No. 3 Settlement;   |
| <b>Shared Ownership Unit</b>      | the housing which is occupied by persons under shared ownership arrangements and which is to be provided to Eligible Persons and as defined by the Localism Act 2011 (or any successor legislation) where those persons have the opportunity to purchase a share of the equity in the Shared Ownership Unit up to 100% at a later date or such other equity sharing or retention terms from time to time Approved by the Council and unless otherwise agreed in writing between the Council and the Owners shall comprise a minimum of <b>one (1) three-bedroomed house</b> ;   |
| <b>Social Rented Housing</b>      | Affordable Housing let to eligible households for which comply with guideline target rents that are determined through the national rent regime where the rent to be charged by the Registered Provider for the Social Rented Housing Unit when first let shall not exceed target rent levels as set out in current Homes England guidance as issued from time to time or such other amount as may be permitted by any successor organisation or subsequent publication then in force and the rate of increase shall be no greater than the rate stipulated by such guidance for Registered Providers or such other rate as may be permitted by any successor organisation or subsequent publication; |
| <b>Social Rented Housing Unit</b> | each of the Affordable Housing Dwellings identified in the Affordable Housing Scheme to be let by an Approved Provider as a Social Rented Housing Unit and unless otherwise agreed in writing between the Council and the Owners shall comprise a minimum of <b>one (1) two-bedroomed house</b> ;   |
| <b>Transfer</b>                   | the transfer of the Affordable Housing Land that shall include but not exclusively the terms set out in <b>Schedule 2</b> ;   |
| <b>Trustees</b>                   | <b>Howard James Marshall</b> of 68 Pereira Road, Birmingham B17 9JN and <b>Michael Brian Marshall</b> of The Mews Flat, Chilworth Manor, Halfpenny Lane, Chilworth, Guildford GU4 8NN as the trustees of the <b>A J Marshall Will Trust</b> ;   |
| <b>Working Day</b>                | any day that is not a Saturday, a Sunday, a bank holiday or a public holiday in England;  |
| <b>2017 Regulations</b>           | the Conservation of Habitats and Species Regulations 2017.  |

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this Deed** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.12 References to clauses are to the clauses of this Deed.
- 1.13 Unless otherwise stated references to schedule recital and paragraph numbers are references to the schedule recital and paragraph numbers in this Deed.
- 1.14 The singular includes the plural and vice versa. The masculine gender includes the feminine and neuter genders and vice versa.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.16 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.17 If any provision in this Deed shall be 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 Deed.
- 1.18 Where reference is made in this Deed to any position or title of a person appointed or employed by the Council such references shall be interpreted as being from time to time to any successor in function or to such other person as may be appointed in their place by the Council.

1.19 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

1.20 Nothing in this Deed 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 Deed.

## **2. Planning Obligations**

2.1 This Deed is made under 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 and powers.

2.2 The planning obligations entered into by way of the covenants in this Deed are obligations under Section 106 of the Act to be discharged by the Owners with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns and are enforceable by the Council against the Owners and any person deriving title from any of them.

## **3. No Restriction**

3.1 Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or under any other Act **PROVIDED ALWAYS THAT** this Deed shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may be or has been issued by the Council or any other appropriate person or authority pursuant to the provisions of that Act.

## **4. Compliance Checking Charges**

The Owners covenant with the Council to pay to the Council the Compliance Checking Charges on or before the Compliance Checking Charges Date.

## **5. Affordable Housing**

The Owners covenant with the Council as set out in **Schedule 1**.

## **6. Air Quality Monitoring Contribution**

The Owners covenant with the Council to pay to the Council the Air Quality Monitoring Contribution on or before the Air Quality Monitoring Contribution Date.

## **7. Habitats Mitigation (Access Management and Monitoring) Contribution**

The Owners covenant with the Council to pay to the Council the Habitats Mitigation (Access Management and Monitoring) Contribution on the Habitats Mitigation (Access Management and Monitoring) Contribution Date.

## **8. Habitats Mitigation (Bird Aware Solent) Contribution**

The Owners covenant with the Council to pay to the Council the Habitats Mitigation (Access Management and Monitoring) Contribution on the Habitats Mitigation (Access Management and Monitoring) Contribution Date.

## **9. Habitats Mitigation (Infrastructure) Contribution**

9.1 The Owners covenant to pay to the Council the Habitats Mitigation (Infrastructure) Contribution on the Habitats Mitigation (Infrastructure) Contribution Date.

9.2 In the event that there is a CIL liability pursuant to the Community Infrastructure Levy Regulations 2010 (as amended) in respect of the Development **equal to or greater than** the Habitats Mitigation (Infrastructure) Contribution then the amount of the contribution payable under clause 9.1 shall be credited towards the total amount of CIL payable.

9.3 In the event that there is a CIL liability in respect of the Development **less than** the Habitats Mitigation (Infrastructure) Contribution then the amount of the contribution payable under clause 9.1 shall reduce the CIL amount due to nil and the balance shall remain paid as the Habitats Mitigation (Infrastructure) Contribution.

## **10. Public Open Space and Play Equipment Contribution**

The Owners covenant to pay to the Council the Public Open Space and Play Equipment Contribution on the Public Open Space and Play Equipment Contribution Date.

## **11. Operative Date**

11.1 This Deed shall take effect on the date of this Deed save for the Obligations which shall come into effect as follows:

11.1.1 those obligations which expressly require something to be done prior to the Commencement of Development or prohibit the Commencement of Development before something has been done shall come into effect on the date of the Planning Permission; and

11.1.2 all remaining obligations and provisions shall come into effect on the Commencement of Development to the extent that the Inspector decides that such of the Obligations is necessary to make the Development acceptable.

11.2 If the Inspector, in this decision letter, concludes that any of the Obligations set out in this Deed are incompatible with any one of the tests for planning obligations set out at Regulation 122 or 123 of the CIL Regulations, and accordingly attaches no weight to that obligation in determining the Appeal then the relevant obligation shall, from the date of the decision letter, cease to have effect and the Owners and the Developer shall be under no obligation to comply with them.

## **12. Indexation of Contribution**

12.1 All Contributions payable to the Council shall be Index Linked.

12.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owners and the Developer in writing.

## **13. Refund of Contributions**

Where the Contributions made to the Council under this Deed have not been expended or committed contractually or otherwise in accordance with the provisions of this Deed within ten (10) years of the date of receipt of such payment of each relevant Contribution by the Council on the receipt of a written request from the Owners to do so the unexpended sums shall be repayable to the **First Owner** and the **Second Owner** jointly.

**14. Developer's Consent**

The Developer acknowledges and declares that this Deed has been entered into by the Owners with its consent and that the Property shall be bound by the obligations contained in this Deed **PROVIDED THAT** the Developer shall otherwise have no liability under this Deed (other than under **clause 21 Council's Costs**) unless and until it becomes a successor in title to the Owners or derives title to the Property or to a part of the Property to which the obligations restrictions and/or covenants in this Deed apply in which case it will be bound by the obligations restrictions and/or covenants as if that person had been an original covenanting party to this Deed.

**15. Notification of Commencement of Development and Occupation**

15.1 The Owners covenant with the Council that it will:

15.1.1 notify the Council in writing of the date of Commencement of Development within five (5) Working Days of it occurring;

15.1.2 notify the Council and the in writing of the date of First Occupation (and if that is not a Market Dwelling the date of the first Occupation of a Market Dwelling).

**16. Nature of this Deed**

This Deed is a Local Land Charge and the Council may register it in its Register of Local Land Charges in accordance with the provisions of the Local Land Charges Act 1975 and Section 106(11) of the Act.

**17. Consent to Registration**

The Owners hereby consent to the registration of this Deed in the Charges Register of the title to the Property.

**18. Access to the Development**

The Owners hereby **AGREE AND DECLARE** that permission is hereby granted to authorised officers of the Council upon reasonable written notice and written request and at reasonable times (except in an emergency) and subject to any instructions which the Owners may give to ensure safety for officers of the Council (or their nominated representatives) at their own or at the Council's risk to gain access to the Property in order to monitor compliance with this Deed.

**19. Ownership**

19.1 The Owners warrant to the Council that the title details referred to in the recitals are complete and accurate in every respect. Further the Owners warrant that there are no other persons to their knowledge who have an interest in the Property that have not been disclosed to the Council.

19.2 The Owners shall make good any loss to the Council as a result of a breach of this warranty within twenty-eight (28) days of receipt of an itemised written request by the Council to do so.

19.3 Until the Obligations have been complied with the Owners will give to the Council within twenty (20) Working Days, the following details of any conveyance, transfer, lease,

assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

19.3.1 the name and address of the person to whom the disposition was made; and

19.3.2 the nature and extent of the interest disposed of.

## **20. Release and Liability**

20.1 No person shall be liable for any breach of an obligation, restriction or covenant contained in this Deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

20.2 The obligations contained in this Deed shall not be binding on nor enforceable against:

20.2.1 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 for the Development; or

20.2.2 an individual residential owner, or purchaser, lessee or occupier of any individual Dwelling within the Development or their mortgagees or successors in title save as specifically required in relation to the obligations contained in **Schedule 1** in respect of the Affordable Housing Dwellings; or

20.2.3 anyone whose only interest in the Property or any part of either of them is in the nature of the benefit of an easement or covenant, or as the owner of the sub-soil of any highway within the Property.

20.3 Notwithstanding any other provision in this Deed,

20.3.1 **Kathleen Mary Clarke** shall have no personal liability whatsoever arising out of or in connection with this Deed and the liability of Kathy Clarke shall be limited to the assets of the estate of Valerie Marshall in her possession from time to time.

20.3.2 the **Trustees** shall have no personal liability whatsoever arising out of or in connection with this Deed and the liability of the Trustees shall be limited to the assets of the A J Marshall Will Trust in their possession from time to time.

20.3.3 the **Second Seller** shall have no personal liability whatsoever arising out of or in connection with this Deed and the liability of the Second Seller shall be limited to the assets of the Settlements in their possession from time to time.

## **20.4 Interest on Late Payment**

If any financial contribution payable by the Owners under this Deed has not been paid to the Council by its due date, the Owners shall pay the Council **Interest in Default** on the outstanding sum both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

## **21. Council's Costs**

If Planning Permission is granted, the Developer shall pay to the Council the Council's reasonable legal costs properly incurred together with all and disbursements reasonably and properly incurred in connection with the preparation, completion and registration of this Deed (if any) within ten (10) Working Days of the agreement of such costs and disbursements between the Owners and the Council each acting reasonably.



## **22. S73 Applications**

In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under Section 73 of the Act in respect of the conditions in the Permission then references in this Deed to the Application and the Planning Permission shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Deed shall take effect and be read and construed accordingly **PROVIDED THAT** this shall not fetter the Council's discretion in determining any Section 73 application or prejudice its ability to require further s106 obligations.

## **23. Determination of this Deed**

23.1 This Deed shall be determined and have no further effect if the Planning Permission:

23.1.1 expires before the Commencement of Development;

23.1.2 is varied or revoked other than at the request of the Owners or the Developer; or

23.1.3 is quashed following a successful legal challenge,

and the registration of this Deed as a Local Land Charge should be cancelled by the Council on application by the Owners.

## **24. Notices**

24.1 A notice or other communication to be given under or in connection with this Deed must be in writing and must be delivered by hand or sent by pre-paid first class post or other next Working Day delivery service to

24.1.1 the **Council** at Appletree Court Lyndhurst Hampshire SO43 7PA marked "For the attention of Legal Services" and bearing the planning reference **PL1/22/10813**;

24.1.2 the **Developer** at 4 Joshuas Vista, Sandbanks Road, Poole, England, BH14 8HA or such other address as may have been notified to the Council marked "For the **URGENT** attention of **Simon Mcfarlane**".

24.1.3 the **Owners** at Pragnells Orchard, London Minstead, Minstead, Lyndhurst, Hampshire SO43 7FT or such other address as may have been notified to the Council marked "For the attention of: **Kathy Clarke**".

## **25. Third Parties**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Deed is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions **SAVE FOR** the Council.

## **26. Governing Law**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

**IN WITNESS** whereof the Owners and the Developer have duly executed and delivered this Deed as a Deed the date first before written

**First Owner**

**SIGNED** as a **DEED** by )  
**KATHLEEN MARY CLARKE** )  
in the presence of: )

.....

**Witness**

Sign Name .....

Print Name .....

Address .....

.....

.....

Occupation .....

**SIGNED** as a **DEED** by )  
**MICHAEL BRIAN MARSHALL** )  
in the presence of: )

.....

**Witness**

Sign Name .....

Print Name .....

Address .....

.....

.....

Occupation .....

**SIGNED** as a **DEED** by )  
**HOWARD JAMES MARSHALL** )  
in the presence of: )

.....

**Witness**

Sign Name .....

Print Name .....

Address .....

.....

.....

Occupation .....

**Second Owner**

**SIGNED** as a **DEED** by )  
**KATHLEEN MARY CLARKE** )  
in the presence of: )

.....

**Witness**

Sign Name .....

Print Name .....

Address .....

.....

.....

Occupation .....

**SIGNED** as a **DEED** by )  
**MICHAEL BRIAN MARSHALL** )  
in the presence of: )

.....

**Witness**

Sign Name .....

Print Name .....

Address .....

.....

.....

Occupation .....

**SIGNED** as a **DEED** by )  
**HOWARD JAMES MARSHALL** )  
in the presence of: )

.....

**Witness**

Sign Name .....

Print Name .....

Address .....

.....

.....

Occupation .....

EXECUTED as a DEED by AJC )  
DEVELOPMENTS (SOUTH) LIMITED )  
acting by )

.....  
Director

PRINT full name:.....

a director, in the presence of:

Witness

Sign Name .....

Print Name .....

Address .....

.....

.....

Occupation .....

## Schedule 1

### Affordable Housing

#### 1. Affordable Housing

- 1.1 The Owners shall not **Commence Development** until it has first obtained Approval from the Council of the Affordable Housing Scheme and thereafter to comply with the Affordable Housing Scheme and construct no less than **three (3) Dwellings** constructed pursuant to the Planning Permission as Affordable Housing Dwellings.
- 1.2 The Affordable Housing Land shall not be used other than for the purpose of Affordable Housing save as qualified in paragraph 1.4 of this **Schedule 1** and subject to paragraph 3 of this **Schedule 1**.
- 1.3 Unless otherwise agreed with the Council and subject to paragraph 3 of this **Schedule 1** the Owners shall not go into Occupation of or allow or permit Occupation of more than **twelve (12)** of the Market Dwellings unless and until
  - 1.3.1 the Owners have entered into a legally binding contract with an Approved Provider for the Transfer to such Approved Provider (by way of freehold transfer of the Affordable Housing Land and the construction of the Affordable Housing Dwellings; and
  - 1.3.2 the Affordable Housing Dwellings have been constructed and are fit for occupation.
- 1.4 The provisions in paragraph 1 of this **Schedule 1** and paragraph 1.7 of **Schedule 2** shall not apply to or be binding upon:
  - 1.4.1 a mortgagee or chargee (or any receiver (including an administrative receiver)) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **"Receiver"**) of the whole or any part of the Affordable Housing Land (following the transfer of the whole or any part of the Affordable Housing Land to an Approved Provider) and/or of the whole or any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver **PROVIDED THAT:**
    - (a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Land and/or Affordable Housing Dwellings (as the case may be) and shall have used reasonable endeavours over a period of **three (3) months** from the date of the written notice to complete a disposal of the Affordable Housing Land to another Approved Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and all costs and expenses; and
    - (b) if such disposal has not completed within the **three (3) month period** stated in sub-paragraph (a) above, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Land free from the provisions in this **Schedule 1** which provisions shall determine absolutely;
  - 1.4.2 a lessee of an Affordable Housing Dwelling let by an Approved Provider under a shared ownership or shared equity lease who has exercised his right to staircase to 100% and its mortgagees, chargees and successors in title;

- 1.4.3 a tenant of an Approved Provider who has exercised a statutory right under the right to acquire provisions of the Housing Act 1996 (or any legislation amending or replacing the same) or right to buy in respect of an Affordable Housing Dwelling and its mortgagees, chargees and successors in title;
- 1.4.4 any mortgagee or chargee holding a mortgage or legal charge over an individual Shared Ownership Unit if either a power of sale has arisen and become exercisable in favour of the mortgagee or such mortgagee or its receiver enters into possession.
- 1.5 Each and every Shared Ownership Unit shall on the initial sale to an individual of that Shared Ownership Unit only be occupied by households nominated or approved by the Council in accordance with paragraphs 1.7 and 1.8 of this **Schedule 1**.
- 1.6 Each and every Shared Ownership Unit shall on a subsequent sale of that Shared Ownership Unit (except where paragraph 1.4 of this **Schedule 1** applies and subject to paragraph 3 of this **Schedule 1**) only be occupied by households nominated or approved by the Council in accordance with paragraphs 1.7 and 1.8 of this **Schedule 1** unless:
  - 1.6.1 the Council has been notified in writing that the Shared Ownership Unit is available for nomination; and
  - 1.6.2 a period of one (1) month has elapsed since written notification was served upon the Council; and
  - 1.6.3 the Council or a body approved by the Council has failed to nominate within the one (1) month period in which case the Owners shall on that occasion only be entitled to dispose of the Shared Ownership Unit without complying with paragraphs 1.7 and 1.8 of this **Schedule 1**.
- 1.7 Each Shared Ownership Unit shall be Occupied (except where paragraph 1.4 of this **Schedule 1** applies) only by a person or persons who are considered by the Council to be in need of such accommodation and in its consideration of such need the Council shall have regard to those applicants on the Housing Needs Register maintained by the Council for the purpose of Affordable Housing and to paragraph 1.8 of this **Schedule 1**.
- 1.8 Each Shared Ownership Unit shall be Occupied (except where paragraph 1.4 of this **Schedule 1** applies) only by a person or persons who:
  - 1.8.1 immediately prior to Occupation of the Shared Ownership Unit is a resident within the Council's administrative area and has been a resident for a period of two (2) years; or
  - 1.8.2 were not resident in the Council's administrative area immediately prior to Occupation of the Shared Ownership Unit but who have a strong local connection with the Council's administrative area and in determining whether a person has a strong local connection with the Council's administrative area the Council shall consider:
    - (a) any period of prior ordinary residence within the Council's administrative area not immediately before the date upon which any Shared Ownership Unit becomes vacant; and
    - (b) employment within the Council's administrative area immediately before the date upon which any Shared Ownership dwelling becomes vacant.

## **2. Affordable Housing Contract**

The Owners shall use reasonable endeavours to enter into an Affordable Housing Contract with a Registered Provider within **six (6) months** from Commencement of Development on such terms as may be agreed between the Owners and the Registered Provider but which Affordable Housing Contract shall (unless otherwise agreed with the Council) include as a minimum the appropriate provisions from the Affordable Housing Scheme and the terms of **Schedule 2** for the Transfer.

## **3. Failure to contract**

- 3.1 If having used reasonable endeavours to enter into an Affordable Housing Contract with a Registered Provider in accordance with paragraph 2 of this **Schedule 1**, the Owners have failed to secure an Affordable Housing Contract containing the minimum terms (or such other terms agreed with the Council) in respect of all or any of the Affordable Housing Dwellings then the Owners and the Council shall work together to agree an alternative solution for the delivery of the Affordable Housing (or part thereof) which options may include the following:
  - 3.1.1 the Owners seeking the approval of the Council to enter into an alternative arrangement in respect of the Owner's delivery of all or any part of the Affordable Housing Dwellings;
  - 3.1.2 the Owners serving written notice on the Council together with evidence as reasonably required by the Council of its attempts to contract with a Registered Provider in respect of all or such part of the Affordable Housing Dwellings identified in the notice and shall offer to transfer to the Council such Affordable Housing Dwellings on such terms as are agreed with the Council.
- 3.2 If an alternative option to deliver the Affordable Housing is required through the operation of paragraph 3 of this **Schedule 1** the decision to deliver this alternative option shall be documented in a deed of variation of this Deed pursuant to section 106A of the TCPA 1990 varying the terms of this Deed.

## Schedule 2

### Transfer of the Affordable Housing Land

- 1.1 Title to the Affordable Housing Land shall be deduced in accordance with the provisions of Section 44 of the Law of Property Act 1925 as amended or Section 67 of the Application Site Registration Act 2002 whichever is applicable and the Affordable Housing Land shall be transferred with full title guarantee.
- 1.2 The Affordable Housing Land shall be transferred **SUBJECT TO:**
  - 1.2.1 as to unregistered land all matters of title except charges to secure money;
  - 1.2.2 as to registered land all matters of title referred to in the title number under which the Affordable Housing Land is registered at the Land Registry except charges to secure money;
  - 1.2.3 all Local Land Charges whether registered or not;
  - 1.2.4 all necessary rights to enter the Affordable Housing Land to carry out any development on the remainder of the Property or any part of it (subject to making good any damage caused) and a right of way on foot over any footways and with vehicles over and along the roadways now or in the future to be constructed on the Affordable Housing Land;
  - 1.2.5 subject to the provisions of paragraph 1.4 of **Schedule 1**, a restrictive covenant that it shall not be used other than for the purpose of Affordable Housing.
- 1.3 The Standard Conditions of Sale (Fifth Edition) shall apply insofar as they are not inconsistent with the terms of this Deed.
- 1.4 The Affordable Housing Land shall be transferred together with all such rights or easements (including, as necessary, a right of way with or without vehicles at all times and such rights as necessary to park vehicles, machinery and equipment on the estate roads, pathways and any visitor parking bays) as are required to enable the use of the Affordable Housing Land for the purpose for which it is being transferred including:
  - 1.4.1 a right to pass and repass on foot and/or with or without vehicles (as appropriate) for the purpose of access to and egress from the Affordable Housing Land over the Access;
  - 1.4.2 a right of taking passage and running (as appropriate) of Services;
  - 1.4.3 a right to maintain enjoy and use any Services over on or under the remainder of the Property so far as may be necessary for any purpose connected with the Affordable Housing Land;
  - 1.4.4 a right to enter upon such part of the remainder of the Property including any Access so far as may be necessary for any purpose connected with the Affordable Housing Land and the Service Installations;
  - 1.4.5 such necessary rights of support, shelter and protection from the remainder of the Property.
- 1.5 The Affordable Housing Land shall be transferred together with provision for all Services and Service Installations and Access to be provided up to at least the boundary of the Affordable Housing Land.
- 1.6 The Affordable Housing Land shall be transferred in a **Clean Condition**.



- 1.7 Subject to paragraph 1.4 of **Schedule 1**, the Registered Provider shall satisfy itself that prospective occupiers meet the relevant criteria and that the Affordable Housing Dwellings shall only be occupied by such person.

## **APPENDIX A**

### **Plan**