

DATED

2021

**NEWARK AND SHERWOOD DISTRICT COUNCIL
AND
NOTTINGHAMSHIRE COUNTY COUNCIL
AND
HARWORTH ESTATES INVESTMENTS LIMITED
AND
KEEPMOAT HOMES LIMITED**

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT**

**RELATING TO LAND AT THE FORMER BILSTHORPE
COLLIERY, EAKRING ROAD, BILSTHORPE, NEWARK**

PLANNING REF: 20/00873/FULM

wardhadaway
lawfirm

wh31177436v3

- (1) **Newark and Sherwood District Council** of Castle House, Great North Road, Newark, Nottinghamshire, NG24 1BY (**Council**)
- (2) **Nottinghamshire County Council** of County Hall, West Bridgford, Nottingham NG2 7QP (**County Council**)
- (3) **Harworth Estates Investments Limited** (Co. Regn. No. 07532134) of Advantage House Poplar Way, Catcliffe, Rotherham S60 5TR (**Owner**)
- (4) **Keepmoat Homes Limited** (Co. Regn. No. 01998780) of The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire, DN4 5PL (**Developer**)

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The County Council is the local highways authority for the purposes of the HA 1980 for the area in which the Property is situated.
- (C) The Owner is the freehold owner of the Property which is registered together with other land with title absolute at HM Land Registry under Title Number NT346242.
- (D) The Developer has an interest in the Property by way of the benefit of an agreement for sale dated 31 January 2020
- (E) The Developer submitted the Application for the Development which was refused by the Council on 04 November 2020
- (F) The Developer submitted the Appeal on 23 December 2020.
- (G) The Owner by entering into this deed does so to create planning obligations in respect of the Property as expressly set out in this deed in favour of the Council and the County Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this deed:

Affordable Housing: means Intermediate Housing and Affordable Rented Housing or such other forms of Affordable Housing as defined in Annex 2 of the National Planning Policy Framework (February 2019) (**NPPF**) or any replacement or amendment thereof or as may be agreed from time to time by the

Council.

- Affordable Housing Units:** means those Dwellings to be constructed on the Property which are to be used for Affordable Housing comprising of 60 % Affordable Rented Housing and the 40% Intermediate Housing to be provided on the Property.
- Affordable Housing Scheme(s):** a scheme to be submitted by the Owner to the Council detailing the number of Affordable Housing Units to be provided on the Property being not less than 10% (unless otherwise agreed in writing by the Council) of the total number of Dwellings to be erected on the Property. The scheme submitted must specify the proposed tenure, type, number of bedrooms, location and design of each of the Affordable Housing Units, save that an approved Affordable Housing Scheme may be varied from time to time with the written approval of the Council.
- Affordable Rented Housing:** means the Affordable Housing Units to be let at an affordable rent being up to 80% of the open market rental value for the unit type, such rent to be in accordance with guidance issued by the Homes and Communities Agency (or any successor agency) from time to time and the NPPF.
- Affordable Housing Provider:** means either:
- (a) a Housing Association;
 - (b) social landlord registered with Homes England or any successive body under the Housing and Regeneration Act 2008 or a Registered Provider; or
 - (c) a person or body that is not a Registered Provider and who may lawfully provide or fund Affordable Housing from time to time approved by the Council including any other person or body awarded grant funding by Homes England for the provision of Affordable Housing within the Development.
- Application:** means the application for full planning permission received by the Council on 10 June 2020 for the Development and allocated reference number 20/00873/FULM
- Appeal:** means the appeal with PINS reference number APP/B3030/W/20/3265876 lodged by the Developer against the Council's refusal of the Application
- Base Rate:** the higher of 2% and the base rate from time to time of the National Westminster Bank PLC
- Bus Stop Infrastructure Contribution:** means the sum of £18,500.00 (Eighteen Thousand and Five Hundred Pounds) for the provision, maintenance, repair or enhancement of bus stop infrastructure in the vicinity of the Property that will serve and accommodate residents from the Development
- Chargee:** means any mortgagee or chargee of the whole or any part of the Affordable Housing Units (or any receiver (including an administrative receiver) or administrator 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) of the whole or any part of the Affordable Housing Units.

Commencement Date:	the date on which there is a Commencement of Development.
Commencement of Development:	the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations for the purposes of assessing ground conditions; remedial work in respect of any contamination or other adverse ground conditions, diversion and/or laying of services, site survey works; temporary access construction works; archaeological investigation and erection of any fences and hoardings around the Property. Commence and Commences shall be construed accordingly.
Community Facilities Contribution:	the sum of £191,600.00 (One Hundred and Ninety One Thousand and Six Hundred Pounds) such sum to be used toward the provision, maintenance, repair or enhancement of the Village Hall complex in Bilsthorpe.
Decision Letter:	means the decision letter issued by or on behalf of the Secretary of State in determination of the Appeal and may if relevant include any conclusions and recommendations contained within any report issued by an Inspector appointed by the Secretary of State to the extent that such conclusions and recommendations are adopted by the Secretary of State in the decision letter
Default Interest Rate:	3% per annum above the Base Rate.
Development:	the development of the Property for residential development of up to 103 dwellings and associated access and infrastructure.
Dwelling:	any dwelling erected on the Property pursuant to the Planning Permission.
HA 1980:	the Highways Act 1980 (as amended).
Housing Association:	a registered social landlord or landlord registered with the Homes and Communities Agency and/or Homes England under the provisions of the Housing and Regeneration Act 2008.
Individual Completed Properties:	a Dwelling or Dwellings occupied or ready for immediate occupation with the exception of the Affordable Housing Units.
Intermediate Housing:	means homes for discounted sale or rent provided at a cost above social rent but below market levels and which can include (but not be limited to)

shared equity (Shared Ownership Housing and equity loans) other low cost homes for sale and intermediate rent but not Affordable Rented Housing.

Management Company: means a company approved in writing by the Council (such approval not to be unreasonably withheld or delayed) that has, or shall have, full responsibility for maintaining and managing the On-Site Open Space in perpetuity .

Management Plan: means a management plan for the On-Site Open Space which must contain:

- (a) an assessment of the estimated costs based on the information currently available of the permanent funding of the maintenance and repair of the On- Site Open Space which may include one or more of the following:
 - (i) the creation of an estate rent charge or other service charge arrangements (including details as to how such charges should will be secured);
 - (ii) appropriate arrangements for provision of security for the funding;
- (b) any contracting of management or other activities to bodies having relevant and proven expertise in the relevant area;
- (c) confirmation that the Management Company will be required to comply with the provisions of this deed so far as they relate to future management and maintenance obligations such obligations to be directly enforceable by the Council against the Management Company;
- (d) any reasonable restrictions on use including opening times; and
- (e) the maintenance requirements for the On-Site Open Space including all ongoing maintenance operations, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the On-Site Open Space (including any drainage features, sustainable drainage systems, watercourse, ditches, ponds, swales, drainage channels and play equipment) and which shall provide that any trees or shrubs which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, and that any equipment provided on the On-Site Open Space shall be maintained to a reasonable and safe standard and shall be repaired or replaced as necessary.

Occupation: means occupation of the Development but shall not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the terms "Occupy" and "Occupied" and cognate expressions shall be construed accordingly.

On-Site Open Space: means the amenity green space of not less than 1,854sqm to be provided on the Property as part of the Development

Play Parks Contribution:	means the sum of £47,900.00 (Forty Seven Thousand and Nine Hundred Pounds) to be used towards the provision, maintenance, repair or enhancement of Play Parks in the vicinity of the Property.
Plan:	the plan attached to this deed at Annex A and marked [P-01 Revision P].
Planning Permission:	the full planning permission subject to conditions to be granted pursuant to the Appeal.
Practical Completion:	means the completion of a Dwelling on the Property in such a manner as to satisfy building regulations to a standard whereby the building could be beneficially occupied and "Practically Complete" and "Practically Completed" shall be construed accordingly.
Property:	the land shown edged red on the Plan.
Protected Tenant:	means any tenant who: <ul style="list-style-type: none"> (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit (c) has been granted a shared ownership lease by an Affordable Housing Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Affordable Housing Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit.
Registered Provider:	a registered provider of social housing within the terms of Section 80 of the Housing and Regeneration Act 2008 or any other body whose object is the provision and operation of affordable housing.
Shared Ownership Housing:	means those Affordable Housing Units which are occupied by persons under shared ownership leases as defined by section 70(4) of the Housing and Regeneration Act 2008 where the shared ownership lessee for the time being has the right to carry out staircasing (from an initial ownership of the equity in a unit of between 25% and 75%) provided always that any sale contract and/or lease must contain the conditions prescribed under paragraph 4A(l)(c) of Schedule 4A to the Leasehold Reform Act 1967 and as set out in Regulation 8 of The Housing (Shared Ownership Leases) (Exclusion from Reform Act 1967) (England) Regulation 2009 and also include a provision that allows for a resale of the Affordable Housing to the Registered Provider once the leaseholder has acquired a 100% share
Specification:	a specification or specifications for the carrying out of the works to set out the On-Site Open Space, the details of which shall include:

(a) a schedule (including planting plans and written specifications, including cultivation and other operations associated with plant and grass establishment) of trees, shrubs and other plants, noting species, plant sizes, proposed numbers and densities so as to enhance the nature conservation value of the site, including the use of locally native plant species.

(b) the design and layout of the On-Site Open Space;

(c) the timing and delivery of the On-Site Open Space;

(d) the specification of any play, sport or other equipment;

(e) the surface treatment and fencing; and

(f) the details of the SUDs to include any drainage features and sustainable drainage systems.

SUDs: means the sustainable drainage systems for the Development dealing specifically with the drainage of surface water from the Property.

TCPA 1990: Town and Country Planning Act 1990 (as amended).

Working Day: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

- 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 **A** reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council and the County Council the successors to its respective statutory functions.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; provided that, as between the parties, no such amendment, extension or re-enactment shall apply to this deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.9 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** does not include faxes or e-mail,
- 1.11 A reference to "this deed" or to any other agreement or document referred to in this deed is a reference to this deed or such other document or deed 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, plans, schedules and appendices are to the clauses, plans, schedules and appendices of this deed.
- 1.13 An obligation in this deed on a person not to do something includes an obligation not to agree, allow or suffer that thing to be done.
- 1.14 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.15 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.

2. LEGAL BASIS

- 2.1 This deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all powers so enabling.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as Local Planning Authority against the Owner and the County Council as Local Highway Authority against the Owner.
- 2.3 If the Secretary of State in a Decision Letter expressly concludes that any of the planning obligations set out in this Deed are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the CIL Regulations, and accordingly makes a finding that no weight should be attached 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 Owner shall be under no obligation to comply with them.

3. CONDITIONALITY

- 3.1 This deed is conditional upon:
- (i) the grant of the Planning Permission; and
 - (ii) the Commencement of Development

SAVE for the provisions of this clause and clauses 5, 6, 7, 8, 10, 14, 16 which shall take effect upon the completion of this deed.

4. COVENANTS TO THE COUNCIL AND THE COUNTY COUNCIL AND FROM THE COUNCIL AND THE COUNTY COUNCIL

- 4.1 The Owner covenants with the Council to:
- (a) observe and perform the covenants, restrictions and obligations contained in Schedule 1, Part 1;

- (b) to give at least 5 working days' written notice to the Council of the:
- (i) Commencement Date
 - (ii) date upon which Occupation takes places of 30% (thirty Percent) of the Individual Completed Properties
 - (iii) date upon which Occupation takes places of 40% (thirty Percent) of the Individual Completed Properties
 - (iv) date upon which Occupation takes place of 50% (Fifty Percent) of the Individual Completed Properties
 - (v) date upon which Occupation takes place of 60% (Sixty Percent) of the Individual Completed Properties
 - (vi) date upon which Occupation takes place of 75% (Seventy Five Percent) of the Individual Completed Properties
- 4.2 The Owner covenants with the County Council to observe and perform the covenants, restrictions and obligations contained in Schedule 1, Part 2
- 4.3 The Developer acknowledges that the Site will be bound by the obligations set out in Schedule 1 of this deed
- 4.4 The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 2, Part 1.
- 4.5 The County Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 2, Part 2.

5. NON-ENFORCEMENT

- 5.1 The obligations contained in this deed shall not be binding upon or enforceable against:
- (a) any statutory undertaker or other person who acquires any part of the Property or any interest in it for the purposes of the supply of electricity, gas, water, drainage or telecommunication services;
 - (b) the Owner or any successor or successors in title after they have disposed of their interest in the Property or the part in respect of which the relevant breach occurs other than disposal of an interest in the nature of an easement or the benefit of a restriction or similar, but not so as to release the Owner from any antecedent breach, non-performance or non-observance of his obligations;
 - (c) the owner lessee or tenant of any individual Dwelling constructed on the Property nor those deriving title from them, provided always that the Affordable Housing Units will be bound by the occupancy restrictions contained in paragraph 4 of Schedule 1 subject to the exemptions contained in paragraph 4. of Schedule 1;
 - (d) any Affordable Housing Provider and any Chargee provided always that the occupancy restrictions contained in paragraph 4 of Schedule 1 shall be enforceable against any Affordable Housing Provider and any Chargee subject always to the exemptions contained in paragraph 4. of Schedule 1;

6. DETERMINATION OF THIS DEED

6.1 The obligations in this deed shall cease to have effect if before the Commencement of Development the Planning Permission:

(a) expires;

(b) is quashed following a successful legal challenge;

(c) is revoked; or

(d) is otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure

7. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

8. COSTS

8.1 The Developer shall pay to the Council on or before the date of this deed the Council's reasonable and proper legal costs up to the sum of £2,000.00 (Two Thousand Pounds) together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed;

8.2 The Developer shall pay to the County Council on or before the date of this deed the County Council's reasonable and proper legal costs up to the sum of £1,000.00 (One Thousand Pounds) together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed

8.2 The Developer shall pay to the Council prior to the Commencement of Development the sum of £810 as a contribution towards the Council's costs of monitoring the implementation of this deed.

9. OWNERSHIP

The Owner confirms that so far as they are aware no person other than the Owner has any legal interest in the Property save as already disclosed prior to the date of this deed and as identified on the register of title for title number NT346242

10. DISPUTES

If any dispute arises out of this deed, the dispute shall be referred to an arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Town Planning Institute. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

11. NO FETTER OF DISCRETION

Nothing (contained or implied) in this deed shall fetter or restrict the Council's or the County Council's statutory rights, powers, discretions and responsibilities.

12. NO COMPENSATION PAYABLE

No compensation shall be payable by the Council or the County Council as a result of the obligations contained in this deed.

13. WAIVER

No waiver (whether express or implied) by the Council or the County Council of any breach or default by the Owner in performing or observing any of the covenants, restrictions or obligations of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing any of the relevant terms or conditions contained in this deed or acting on any subsequent breach or default of this deed.

14. FUTURE PERMISSIONS

Nothing in this deed shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission) granted after the date of this deed SAVE THAT subject to a variation pursuant to section 106A of the 1990 Act this deed shall apply to any planning permission subsequently granted under section 73 or 73A of the 1990 Act ("Subsequent Permission") which permits the modification of or non-compliance with any of the conditions attached to the Planning Permission and the Planning Permission shall be construed to include the Development as stated in the Subsequent Permission.

15. AGREEMENTS AND DECLARATIONS

15.1 The parties agree that:

- (a) nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this deed grants planning permission or any other approval, consent or permission required from the Council and or the County Council in the exercise of any other statutory function.

16. SEVERANCE

- 16.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or enforceable, that provision or part -provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of this deed shall not be affected.
- 16.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17. VALUE ADDED TAX

- 17.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.
- 17.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

18. INDEXATION

- 18.1 The Bus Stop Infrastructure Contribution payable to the County Council in accordance with this deed shall be increased by an amount equivalent to the increase in the Building Costs information Service All-in Tender Price Index (the "BCIS All-in TPI Index") from the date of this deed until the date on which the sum is paid. For the avoidance of doubt, in the case of a decrease in the BCIS All-in TPI the change in the Index shall be deemed to be nil.
- 18.2 The Community Facilities Contribution payable to the Council in accordance with this deed shall be increased by an amount equivalent to the increase in the Building Costs Information Service PUBSEC Tender Price Index (the "Index") or such other Index the Council may approve from the date of this deed until the date on which the sum is paid. For the avoidance of doubt, in the case of a decrease in the Index the change in the Index shall be deemed to be nil.
- 18.3 The Play Parks Contribution payable to the Council in accordance with this deed shall be increased by an amount equivalent to the increase in the index for the soft landscaping work category of the Building Costs Information Service PUBSEC Tender Price Index (the "Landscaping Index") or such other Index the Council may approve from the date of this deed until the date on which the sum is paid. For the avoidance of doubt, in the case of a decrease in the Landscaping Index the change in the Landscaping Index shall be deemed to be nil.
- 18.4 Where reference is made in this deed 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 or the County Council shall advise the Owner in writing.

19. INTEREST ON LATE PAYMENT

Where any sum or amount has not been paid to the Council or the County Council by the date on which it is due, the Owner shall pay the Council or the County Council interest at the Default Interest Rate on that amount for the period from the due date to and including the date of payment.

20. NOTICES

- 20.1 Any notice or other communication to be given under this deed must be in writing and must be:
- (a) Delivered by hand; or
 - (b) Sent by pre-paid first class post or other next working day delivery service.
- 20.2 Any notice or other communication to be given to the Council under this deed must be sent to Newark and Sherwood District Council, Castle House, Great North Road, Newark, Nottinghamshire NG24 1BY or such other location as the Council may notify the Owner from time to time marked for the attention of the Council's Infrastructure Officer.

20.3 Any notice other communication to be given to the County Council under this deed must be sent to the Planning Obligations Practitioner Nottinghamshire County Council at County Hall, West Bridgford, Nottingham. NG2 7QP or such other location as the County Council may notify the Owner from time to time marked for the attention of the County Council's Infrastructure Officer

20.4 Any notice or other communication given in accordance with clause 20.1, clause 20.2 and clause 20.3 will be deemed to have been received:

- (a) If delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) If sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

20.5 A notice given under this deed shall not be validly given if sent by e-mail.

20.6 This clause 20 does not apply to the service of any proceedings or other documents in any legal action or,
Where applicable, any arbitration or other method of dispute resolution.

21. 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.

22. EXECUTION

This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1, Part 1

Covenants to the Council

The Owner covenants with the Council as follows:

1. COMMUNITY FACILITIES CONTRIBUTION

- 1.1 to pay 30% (Thirty Percent) of the Community Facilities Contribution to the Council prior to the Occupation of 30% (Thirty Percent) of the Individual Completed Properties to be constructed on the Property
- 1.2 not to Occupy any more than 30% (Thirty Percent) of the Individual Completed Properties to be constructed on the Property unless and until 30% (Thirty Percent) of the Community Facilities Contribution has been paid to the Council
- 1.3 to pay a further 30% (Thirty Percent) of the Community Facilities Contribution to the Council prior to the Occupation of 50% (Fifty Percent) of the Individual Completed Properties to be constructed on the Property
- 1.4 not to not to Occupy any more than 50% (Fifty Percent) of the Individual Completed Properties to be constructed on the Property unless and until the further 30% (Thirty Percent) of the Community Facilities Contribution has been paid to the Council
- 1.5 to pay the remaining 40% (Forty Percent) of the Community Facilities Contribution to the Council prior to the Occupation of the remaining 20% (Twenty Percent) of the Individual Completed Properties to be constructed on the Property
- 1.6 not to Occupy the remaining 20% (Twenty Percent) of the Individual Completed Properties to be constructed on the Property unless and until the remaining 40% (Forty Percent) of the Community Facilities Contribution has been paid to the Council

2. PLAY PARKS CONTRIBUTION

- 2.1 to pay the Play Parks Contribution to the Council prior to the Occupation of 40% (Forty Percent) of the Individual Completed Properties to be constructed on the Property
- 2.2 not to Occupy any more than 40% (Forty Percent) of the Individual Completed Properties to be constructed on the Property unless and until the Play Parks Contribution has been paid to the Council

3. OPEN SPACE

- 3.1 not to Commence Development until the Specification and the Management Plan for the On Site Open Space to be provided have been submitted to and approved in writing by the Council (hereinafter referred to in its or their approved form as the "**Approved Specification**" and the "**Approved Management Plan**");
- 3.2 to implement the Approved Specification in accordance with the approved delivery

programme;

- 3.3 not to Occupy any more than 40% (Forty Percent) of the Individual Completed Properties unless and until the On-Site Open Space to be provided has been provided in a good and workmanlike manner and in accordance with the Approved Specification;
- 3.4 following completion of the laying out, construction or landscaping and equipping of the On-Site Open Space in accordance with the Approved Specification (and any relevant condition attached to the Planning Permission) the Owner shall serve written notice of such completion on the Council;
- 3.5 within twenty eight days of receiving notice pursuant to paragraph 3.4 the Council shall inspect the On-Site Open Space and notify the Owner as soon as reasonably practical from the date of such inspection either that the works have been satisfactorily carried out or further works are reasonably required to cause the same to be made fit for use in accordance with the Approved Specification and until such time as the Council certifies in writing that the outstanding work has been completed or the defects have been remedied as the case may be the Owner will take reasonable steps to remedy the same to the reasonable satisfaction of the Council;
- 3.6 the Owner will complete such works as have been notified by the Council pursuant to paragraph 3.5 within a period of 3 months beginning on the date when notice has been given by the Council pursuant to paragraph 3.5 or such longer period as the Council shall agree having regard to the nature of the works required and all other material factors;
- 3.7 paragraphs 3.4 to 3.6 inclusive shall be repeated until such time as the Council and the Owner agree that the On-Site Open Space has been provided in accordance with the Approved Specification;
- 3.8 the Owner shall maintain the On-Site Open Space to the satisfaction of the Council for a period of twelve months from the date on which the Council confirms in writing that the On-Site Open Space has been satisfactorily laid out in accordance with the Approved Specification, or until the On Site Open Space has been transferred to the Management Company in accordance with paragraphs 3.9 to 3.11 (inclusive), whichever is the later;
- 3.9 as soon as reasonably practicable following the date on which the Council confirms that the On Site Open Space has been completed in accordance with the Approved Specification the Owner must transfer the On-Site Open Space or each part thereof as it is completed to the Management Company, or such other person or body as is identified in the Approved Management Plan and shall enter into an arrangement with that person or body to secure in perpetuity the on-going maintenance of the On-Site Open Space in accordance with the Approved Management Plan.
- 3.10 the transfer of the On Site Open Space shall:
 - (a) be a transfer of the entire freehold interest in the On-Site Open Space;
 - (b) be free from any pre-emption or option agreement;
 - (c) be free from any mortgage, charge, lien or other such incumbrance;
 - (d) include all usual and necessary unobstructed rights of way for the public with or without vehicle;
 - (e) be subject to rights of reasonable access to the public;
 - (f) reserve any usual and necessary rights to use existing services and to lay and use new services

together with any rights of entry to inspect, repair, renew, cleanse and maintain the same;

- (g) not require consideration in excess of one pound (£1); and
- (h) contain covenants by a Management Company in favour of the Council and pursuant to section 33 of the Local Government (Miscellaneous Provisions) Act 1982 to the effect that the Management Company shall maintain, repair, replace as necessary and generally manage the On-Site Open Space in strict accordance with the Approved Management Plan and the principles of good estate management to the intent that the On-Site Open Space remains fit for purpose and available for safe use by the public at all times during which any part of the Development is Occupied and for the avoidance of doubt where such clause(s) are not incorporated into the transfer the Owner will remain liable for the management and maintenance of the On-Site Open Space until such time as such covenants in favour of the Council are secured;

3.11 to procure that the buyer of each Dwelling shall enter into covenants substantially in the following form directly with the Management Company under which the buyer shall:-

- (a) covenant to pay to the Management Company a pro rata proportion (according to the number of dwellings comprised in the Development to be constructed on the Property) 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 On-Site Open Space in accordance with the Approved Management Plan; and
- (b) covenant that upon any subsequent sale of such Dwelling to procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 3.11(a) and 3.11(b) of this Schedule 1, Part 1;

4. AFFORDABLE HOUSING

4.1 that 10% of the Dwellings on the Property shall be provided as Affordable Housing Units

4.2 not to Commence Development until it has submitted the Affordable Housing Scheme for approval in writing by the Council (such approval not to be unreasonably withheld or delayed) and to then construct the Affordable Housing in compliance with the approved Affordable Housing Scheme; (“ Approved Affordable Housing Scheme”)

4.3 not to Occupy or permit to be Occupied more than 60% (Sixty Percent) (or such other percentage as shall be agreed in writing between the relevant owner for the time being and the Council) of the Individual Completed Properties until all of the Affordable Housing Units have been provided in accordance with the applicable approved Affordable Housing Scheme and the Affordable Housing Units have been transferred to an Affordable Housing Provider in accordance with the Approved Affordable Housing Scheme;

4.4 to give notice to the Council when 60% (Sixty Percent) (or such other percentage as may be agreed pursuant to paragraph 4.3 above) of the Individual Completed Properties have been constructed;

4.5 that the transfer or the disposal of the Affordable Housing Units to the Affordable Housing Provider shall (subject as herein after provided) include a grant of such rights of way, drainage and use, repair and renewal of services as the Affordable Housing Provider shall reasonably require and

commensurate with the terms of transfer of the Individual Completed Properties;

- 4.6 not to use or Occupy the Affordable Housing Units otherwise than for the purpose of providing Affordable Housing to persons in need in accordance with Core Policy 1 of the Council's Core Strategy adopted in March 2019 or (in the case of the Intermediate Housing and Shared Ownership Housing to be transferred to an Affordable Housing Provider Affordable Housing Provider) in accordance with such other criteria as may be agreed between the Affordable Housing Provider and the Council from time to time;
- 4.7 the basis of occupation of the Affordable Housing Units shall be in accordance with the respective definitions contained within this deed and the approved Affordable Housing Scheme unless otherwise agreed in writing with the Council;
- 4.8 if the Affordable Housing Provider wishes to dispose of an interest in the Affordable Housing or part of it other than by creation of a mortgage or charge then, subject to it not being contrary to law, it will not dispose of the interest except to an Affordable Housing Provider (as defined) or other person approved by the Council (such approval not to be unreasonably withheld or delayed) as being willing and able to comply with the terms of this deed;
- 4.9 unless otherwise agreed in writing between the Affordable Housing Provider and the Council the Affordable Housing Provider will give the Council six weeks written notification of availability on the first occasion any dwelling forming part of the Affordable Rented Housing and the Intermediate Housing becomes available for occupation and three weeks' written notification of future availability on the second and subsequent occasions that such a dwelling becomes available (but limited to three in every four dwellings after the first occasion) and during the said period of six or three weeks as appropriate the Council may nominate to the Affordable Housing Provider a prospective tenant from the Council's housing waiting list or register or who is in identified housing need and who is a person who:
 - (a) was born in Bilsthorpe;
 - (b) lives in Bilsthorpe;
 - (c) has lived in Bilsthorpe but has been forced to move away because of lack of Affordable Housing;
 - (d) whose work provides important services and who needs to work closer to the local community;
 - (e) who meets the Affordable Housing Providers letting criteria as notified from time to time to the District council; and/or
 - (f) any other person agreed between the District Council and the Affordable Housing Provider;

PROVIDED ALWAYS that if no person falls within categories (a) – (f) above then those categories shall be read as the District of Newark and Sherwood and the Affordable Housing Provider shall either offer to sell or offer a tenancy (if appropriate) of the Affordable Rented Housing and the Intermediate Housing in question to the nominee PROVIDED FURTHER THAT if no person falls within categories (a) – (f) above even when the categories are extended to refer to the District of Newark and Sherwood then the Affordable Housing Provider may offer to sell or offer a tenancy (if

appropriate) to any person who meets its lending criteria;

4.10 the provisions of this paragraph 4 of schedule 1a shall not be binding on:

4.10.1 any Chargee or any persons deriving title from such Chargee provided that the Chargee shall first have complied with the provisions outlined in paragraph 4.11 below;

4.10.2 any Protected Tenant or any mortgagee or chargee of the Protected Tenant; or

4.10.3 any person deriving title from any such person as is mentioned in paragraphs 4.9.1 to 4.9.2 above and their respective mortgagees and chargees;

4.11 The Affordable Housing provisions in this Agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

4.11.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

4.11.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Agreement which provisions shall determine absolutely

SCHEDULE 1. Part 2

Covenants to the County Council

The Owner covenants with the County Council as follows:

1. BUS STOP INFRASTRUCTURE CONTRIBUTION

1.1 to pay 50% (Fifty Percent) of the Bus Stop Infrastructure Contribution to the County Council prior to the Occupation of the 1st of the Individual Completed Properties to be constructed on the Property

1.2 not to Occupy the 1st Individual Completed Properties to be constructed on the Property unless and until 50% (Fifty Percent) of the Bus Stop Infrastructure Contribution has been paid to the County Council

1.3 to pay the remaining 50%(Fifty Percent) of the Bus Stop Infrastructure Contribution to the County Council prior to the Occupation of the remaining 50% (Fifty Percent) of the Individual Completed Properties to be constructed on the Property

1.4 not to Occupy the remaining 50% (Fifty Percent) of the Individual Completed Properties to be constructed on the Property unless and until the remaining 50%% (Fifty Percent) of the Bus Stop Infrastructure Contribution has been paid in full to the County Council

SCHEDULE 2. Part 1

Council Covenants

The Council covenants with the Owner as follows:

1. to inspect and provide the requisite notices relating to the provision of the On-Site Open Space pursuant to paragraph 3 of Schedule 1, part 1;
2. to provide information when reasonably requested to do so to explain the manner and purpose for which the contributions have been spent to verify compliance with this deed;
3. to apply the Community Facilities Contribution as stated and for no other purpose;
4. to apply the Play Parks Contribution as stated and for no other purpose;
5. all financial contributions payable to the Council under this deed shall be held by the Council in an interest bearing account at all times throughout the period that any part of the said monies remain unspent;
6. that it will pay to the person who paid the same such amount of any of the contributions paid to it pursuant to the deed which has not been expended in accordance with the provisions of this deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten years of the date of receipt by the Council of the final instalment of any such contribution together with interest at a rate equal to the daily average rate of return on the Councils in-house investment activity calculated from the date of payment to the Council to the date of payment;

SCHEDULE 2, Part 2

County Council Covenants

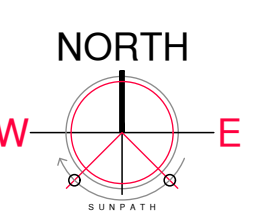
The County Council covenants with the Owner as follows:

1. to provide information when reasonably requested to do so to explain the manner and purpose for which the contributions have been spent to verify compliance with this deed;
2. to apply the Bus Stop Infrastructure Contribution as stated and for no other purpose
3. all financial contributions payable to the County Council under this deed shall be held by the County Council in an interest bearing account at all times throughout the period that any part of the said monies remain unspent;
4. that it will pay to the person who paid the same such amount of any of the contributions paid to it pursuant to the deed which has not been expended in accordance with the provisions of this deed (and money shall be deemed to be expended if the County Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten years of the date of receipt by the County Council of the final instalment of any such contribution together with interest at a rate equal to the daily average rate of return on the County Councils in-house investment activity calculated from the date of payment to the County Council to the date of payment;

ANNEX A

PLAN

wh31177436v3



ACCOMODATION SCHEDULE

Eaking Road, Bilsthorpe				
HOUSE TYPE	NUMBER	BEDS	SQ. FOOTAGE	
Danbury	2	3B5P	832	1664
Caddington	19	3B5P	850	16150
Wentworth	8	3B5P	842	6736
Warwick	3	3B5P	858	2574
Windsor	6	3B5P	869	5214
Stratten	16	3B5P	1061	16976
Staveley	4	3B6P	1031	4124
Rothway	19	4B6P	1028	19532
Eaton	6	4B6P	1279	7674
Burton	10	4B7P	1297	12970
AFFORDABLE				
Halstead - Rented	4	2B4P	651	2604
Halstead - Shared Ownership	6	2B4P	651	3906
TOTALS:	103			100124

Area Gross:	36522	Sq.Metres
Area Gross:	9.02	Acres
Undevelopable Area:	6944.82	Sq.Metres
Area Nett:	29577.18	Sq.Metres
Area Nett:	7.31	Acres
Density:	14.09	Units / Acre
Sq. Footage:	13699.81	Sq Ft / Acre

Comments:

- Issued for comment 01-02-19. Ew
- Rev A - Comments incorporated 06-02-19 Ew
- Rev B - Internal comments incorporated 08-02-19 Ew
- Rev C - Internal comments incorporated 26-02-19 Ew
- Rev D - Revised numbers to 97 15.03.19
- Rev E - Pump stations added, layout adjusted 25.09.19
- Rev F - Official Issue 03.10.19
- Rev H - Layout revised, numbers increase to internal comments.
- Rev J - Buffer to northern boundary added 10.02.20
- Rev K - Pre app comment incorporated 18.02.20
- Rev L - Layout finished off by GPA 15.05.20
- Rev M - Site entrance amended (GPA) 29.07.20
- Rev N - Amended to clients comments (GPA) 31.07.20
- Rev O - Amended to clients comments (GPA) 03.09.20
- Rev P - Amended to clients comments (GPA) 11.09.20

Signed:

Legend.

- Application Boundary - to be verified by Land Registry / Client
- Indicates 1.8m high Close Boarded Fencing
- Indicates 1.8m Brick Screen Wall to match plot
- Pedestrian crossing points where footway ends - Charcoal block paviours
- All private drives to be Tarmac parking spaces to have block paved demarcation strip
- Private drives to adoptable standards - allow for fire attenuation turning
- Affordable dwellings
- Collapsible bollards
- Illustrative trees
- Illustrative planting

P	Garages added to plots 25,28,37,38,41,42,85,86,87,88 (GPA)	11.09.20
O	Amended in accordance with clients comments (GPA)	03.09.20
N	Amended in accordance with clients comments (GPA)	31.07.20
M	Site entrance amended (GPA)	29.07.20
L	Layout finished off by GPA	15.05.20
K	Pre-App comments incorporated	18.02.20
J	Landscape buffer to northern boundary	10.02.20
H	Layout revised, numbers increased to internal comments	14.01.20
G	Attenuation pond & pumpstation adjusted	10.10.19
F	Official issue	03.10.19
E	Pump stations incorporated, layout adjusted	25.09.19
D	Schema increased to 97 plots	15.03.19
C	Internal comments incorporated	26.02.18
B	Internal comments incorporated	08.02.19
A	First issue	06.02.19

Keepmoat Homes, Nottingham Business Park
Nottingham NG8 6PX
Tel: 0115 8587930 www.keepmoat.com

**EAKRING ROAD
BILSTHORPE**

PLANNING LAYOUT

Date	01/02/2019	Scale	1:500 @ A1	Drawn	EW
Dwg. Ref.	P-01	Rev.			P

THE COMMON SEAL of)
NEWARK AND SHERWOOD DISTRICT COUNCIL)
was affixed to this document in the presence of:)

.....
Deputy-Chief Executive / Director Safety

EXECUTED as a DEED by
NOTTINGHAMSHIRE COUNTY COUNCIL
whose COMMON SEAL was
hereunto affixed
in the presence of

..... Authorised Signatory

Executed as a deed by
**HARWORTH ESTATES
INVESTMENTS LIMITED**
acting by [a director] [its attorney
under a power of attorney dated
1 September 2020]

.....

Name:

[(as attorney of Harworth Estates Investments Limited)]

in the presence of a witness:

Witness signature:

Witness name:

Witness address:

EXECUTED AS A DEED by)
KEEPMOAT HOMES LIMITED acting by)
a director in the presence of:)

.....
Director

Witness signature:

Name:

Address:

.....

.....

Occupation: