

DATED

2024

- (1) **MALVERN HILLS DISTRICT COUNCIL**
 - (2) **GEORGINA EMMA LALLIA**
 - (3) **HH (MARTLEY) LIMITED**
 - (4) **WORCESTERSHIRE COUNTY COUNCIL**
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SECTION 106 AGREEMENT

Under Section 106 of the Town and Country Planning Act
1990 (as amended) relating to land At (Os 7500 5952)
Berrow Green Road Martley, Worcestershire

M Patel
Director of Legal and
Governance
Malvern Hills District
Council
Council House
Avenue Road
Malvern
Worcestershire
WR14 3AF

Planning Ref no.
M/23/01711/OUT

Appel Ref:
APP/J1860/W/24/3348743

THIS DEED is made the day of Two Thousand and Twenty-Four

BETWEEN:

- (1) **MALVERN HILLS DISTRICT COUNCIL** of Council House, Avenue Road, Malvern, Worcestershire WR14 3AF (“the **Council**”) of the first part;
- (2) **GEORGINA EMMA LALLIA** of 91 Tumbili Road, Karen, Nairobi, Kenya (“the **Owner**”) of the second part;
- (3) **HH (MARTLY) LIMITED** (Company Registration Number: 14154971) of Hayfield House, Arleston Way, Shirley B90 4LH (“the **Developer**”) of the third part;
- (4) **WORCESTERSHIRE COUNTY COUNCIL** of County Hall, Spetchley Road, Worcester, Worcestershire WR5 2NP (“the **County Council**”) of the fourth part

RECITALS

1. **DEFINITIONS**

Wherever the context so permits in this Deed the following shall have the following meanings:

"The 1990 Act"	means the Town and Country Planning Act 1990 (as amended)
"Active Marketing"	means the marketing of a First Home in a manner likely to reach a significant number of people within a short space of time and will usually include among other things featuring the Dwelling on a nationally recognised online property platform/portal such as Rightmove or Zoopla with the proposed method for such marketing to be submitted to the Council in writing in accordance with the provisions of paragraph 6.1 of Part B of Schedule 1 of this Deed and reference to “Actively Marketed” and “Active Marketing” shall be construed accordingly
"Additional First Homes Contribution"	means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 6.8, 6.9 or 8 of Part B of Schedule 1, the lower of the following two amounts: (a) 30% of the proceeds of sale; and (b) the proceeds of sale less the amount due and outstanding to any First Home Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all

	<p>accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the First Home Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home</p> <p>and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home</p>
<p>"Affordable Housing"</p>	<p>means housing of a kind which (having regard to its rent or other consideration) is suitable for occupation by people who are in need of such housing because of their limited means and who are unable to access private rented/owner occupier accommodation on the open market at a cost low enough for them to afford determined with regard to local incomes and local house prices and shall comprise:</p> <ul style="list-style-type: none"> - 69% Social Rented Units (which would equate to 15 Dwellings on the basis of a total number of Dwellings being 55 and there being 22 Affordable Housing Dwellings); and - 25% First Homes Units (which would equate to 6 Dwellings on the basis of a total number of Dwellings being 55 and there being 22 Affordable Housing Dwellings); and - 6% Shared Ownership Housing Unit (which would equate to 1 Dwelling on the basis of a total number of Dwellings being 55 and there being 22 Affordable Housing Dwellings) <p>Unless otherwise agreed in writing by the Council's Head of Housing Services PROVIDED THAT:</p>

	<p>(i) the percentage of Affordable Housing Dwellings shall amount to at least 40% of the Dwellings; and</p> <p>(ii) 25% of those Affordable Housing Dwellings shall be provided as First Homes</p>
“Affordable Housing Fractional Contribution”	<p>means the sum to be calculated in accordance with the Council’s Affordable Housing Supplementary Planning Document (2016), Appendix 5 (or any document updating or replacing the same that is in force at the date of payment of any Affordable Housing Fractional Contribution) if forty percent (40%) of the aggregate number of Dwellings approved pursuant to a Reserved Matters Approval produces a whole number of Affordable Housing Dwellings and a fraction of an Affordable Housing Dwelling the Owner shall pay to the Council sum of money in respect of this fraction (if any) in accordance with provisions of Part 3 of Schedule 2 to this Deed</p>
"Affordable Housing Dwellings"	<p>means those Dwellings which are to provided as Affordable Housing being 40 per cent of the total number of Dwellings (which would equate to 22 Affordable Housing Dwellings on basis of a total number of Dwellings being 55) and their plots and allocated parking spaces/garages to be constructed upon the Land to be provided as Affordable Housing in accordance with the Affordable Housing Scheme as may be agreed in writing by the Council’s Head of Housing Services and in accordance with the provisions of Schedule 1 to this Deed</p>
"Affordable Housing Scheme"	<p>means a scheme to be submitted to the Council in writing for approval prior to Commencement of Development setting out the number, location, size, tenure(s), specification and timing of the Affordable Housing Dwellings to be constructed on the Land such scheme to be in accordance with the definition of Affordable Housing and the provisions of Schedule 1</p>
“Appeal”	<p>means the appeal submitted by the Owner and the Developer against the Council’s refusal of</p>

	the Application and allocated reference; APP/J1860/W/24/3348743
"Application"	means the outline planning application validated by the Council on 15 January 2024 under Council Reference No. M/23/01711/OUT
"Armed Services Member"	means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service
"Commencement of Development"	means the carrying out of any act pursuant to the Planning Permission which constitutes a material operation as defined by Sections 56 (4) and 93 of the 1990 Act other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance (other than demolition), archaeological excavations, works of ecological mitigation, investigations for the purposes of assessing ground conditions, laying of services, remedial work in respect of contamination or other adverse ground conditions, erection of any temporary means of enclosure and the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly
"Completed"	means practical completion of the construction of any Dwelling or Dwellings which shall be deemed to have occurred upon the first of the following to occur: (i) the issue of a cover note by the National House Building Council (NHBC) or equivalent issued by any other reputable warranty provider in respect of such Dwelling or Dwellings or in the alternative; (ii) when the Council's building control consultancy or an approved inspector has certified that such Dwelling or Dwellings are practically complete or has issued a building control inspection certificate;

	and “Completion” shall be construed accordingly
“Compliance Certificate”	means the certificate issued by the Council substantially in the form of the draft in Appendix B confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 6.3 of Part B of Schedule 1 applies the Eligibility Criteria (Local)
“Community Infrastructure”	means the purchase provision improvement and/or maintenance (excluding maintenance which is simply the normal ongoing maintenance costs of existing facilities not attributable to the Development) of off-site public open space including sport and recreation facilities and/or equipment including equipped children’s play, outdoor sports facilities, parks and gardens, semi natural green space, amenity green space, allotments, cemeteries, and civic spaces within the Parish and the Parishes (whether for the avoidance of doubt via the Council or otherwise) including fees and disbursements incurred in connection with such purposes including consultants commissioned in the design of any such facilities and or equipment proposed whether or not such facilities or equipment are thereafter installed or carried out
“Community Infrastructure Contribution”	<p>means the sum calculated in accordance with the formula below:</p> <p>(a) No. of 3+ bedroom General Market Dwellings x £3,913.69 (three thousand nine hundred and thirteen pounds and sixty nine pence); +</p> <p>(b) No. of 2 bedroom General Market Dwellings x £2,935.26 (two thousand nine hundred and thirty five pounds and twenty six pence); +</p> <p>(c) No. of 1 bedroom General Market Dwellings x £1,956.85 (One thousand nine hundred and fifty six pounds and eighty five pence)</p> <p>= contribution payable</p>

	FOR THE AVOIDANCE OF DOUBT there will be no Community Infrastructure Contribution payable in respect of Affordable Housing Dwellings such contribution is payable towards the delivery of the Community Infrastructure and in accordance with the provisions of Part 1 of Schedule 2 to this Deed
“Community Transport Contribution”	means the sum calculated in accordance with the following formula: No. of Dwellings to be provided x £226.80 (per Dwelling cost of Community Transport) Payable in accordance with the provisions of Part 2 of Schedule 3 to this Deed to be provided towards the provision of a community transport service for elderly and disabled residents of the Development to allow access to essential services
"the Council"	means Malvern Hills District Council or any successor to its statutory functions
"the County Council"	means Worcestershire County Council or any successor to its statutory functions
"the Development"	means the construction of up to 55 Dwellings (Use Class C3), and associated access (with all other matters reserved) pursuant to the Planning Permission
“Designated Protected Area”	means provisions for settlements designated by the Secretary of State since 7 September 2009 as being in a protected area defined by the Housing (Right to Enfranchise) (Designated Protected Areas) (England) Order 2009 (or any amendment or re-enactment thereof)
"Development Standard"	means a standard to fully comply with the following:- (d) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015 (e) all national construction standards and planning policy relating to design which

	<p>may be published by the Secretary of State or by the Council from time to time</p> <p>(f) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited and</p> <p>(g) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)</p> <p>and the same may be amended by written agreement of the Parties in accordance with paragraph 5.1 of Part B of Schedule 1</p>
“Disposal”	<p>means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:</p> <p>(a) a letting or sub-letting in accordance with paragraph 7 of Part B of Schedule 1;</p> <p>(b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner;</p> <p>(c) an Exempt Disposal;</p> <p>and “Disposed” and “Disposing” shall be construed accordingly</p>
"Dwelling"	<p>means a residential unit permitted to be constructed on the Land pursuant to the Planning Permission and "Dwellings" shall mean more than one Dwelling and which for the avoidance of doubt shall include the Affordable Housing Dwellings</p>
“Education Contribution”	<p>means together the Primary School Contribution, the Secondary School Contribution and the SEND Contribution-</p>
“Eligibility Criteria (National)”	<p>means criteria which are met in respect of a purchase of a First Home if:</p>

	<p>(a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and</p> <p>(b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National)</p>
<p>“Eligibility Criteria (Local)”</p>	<p>means criteria (if any) published by the Council at the date of the Disposal of a First Home which are met in respect of a Disposal of a First Home if:</p> <p>(a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and</p> <p>(b) any or all of criteria (i) and (ii) below are met:</p> <p>(i) the purchaser is a Qualifying Resident (or in the case of a joint purchase at least one of the joint purchasers is a Qualifying Resident); and/or</p> <p>(ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and</p> <p>it being acknowledged that at the date of this Deed the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home</p>
<p>“Exempt Disposal”</p>	<p>means the Disposal of a First Home in one of the following circumstances:</p> <p>(a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner;</p> <p>(b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner;</p>

	<p>(c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order;</p> <p>(d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 8 of Part B of Schedule 1 shall apply to such sale);</p> <p>PROVIDED THAT in each case other than (d) the person to whom the Disposal is made complies with the terms of paragraph 7 of Part B of Schedule 1</p>
“First Home”	means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the First Home Discounted Price and which on its first Disposal does not exceed the Price Cap and reference to “First Homes” shall be construed accordingly
“First Home Discounted Price”	means a sum which is the Open Market Value discounted by at least 30%
“First Homes Mortgagee”	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a First Home
“First Homes Owner”	<p>means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:</p> <p>(a) the Developer; or</p> <p>(b) a developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made</p>

	<p>available and is disposed of for occupation as a First Home; or</p> <p>the freehold a tenant or sub-tenant of a permitted letting under paragraph 7 of Part B of Schedule 1</p>
“First Time Buyer”	means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
“General Market Dwellings”	means Dwellings other than the Affordable Housing Dwellings constructed on the Land pursuant to the Planning Permission and for sale or potentially for sale on the open market
“Homes England Model Shared Ownership Protected Area Restricted Staircasing Lease”	shall mean a form of lease prepared by a Registered Provider in a form which has been approved and/or prescribed by Homes England current at the date of this Deed as being an appropriate lease (or any replacement thereto) in a Designated Protected Area restricting the purchase of equity to 80% (eighty percent) in a Shared Ownership Housing Unit
“Homes England Model Shared Ownership Protected Area Mandatory Buyback Lease”	means a form of lease prepared by a Registered Provider in a form which has been approved and/or prescribed by Homes England current at the date of this Deed as being an appropriate lease (or any replacement thereto) in a Designated Protected Area allowing the purchase of equity in a Shared Ownership Housing Unit to exceed 80% (eighty percent) subject to a buyback obligation by the Registered Provider at Open Market Value
"The Housing Act"	means the Housing Act 1985 or any statutory modification or re-enactment thereof
“Housing For You Register”	shall mean the register for allocating Social Rented Units administered by the Council or any equivalent or similar replacement from time to time in existence
“Income Cap (Local)”	means such local income cap as may be published from time to time by the Council and is in force at the time of the relevant Disposal of the First Home
“Income Cap (National)”	means eighty thousand pounds (£80,000) or such other sum as may be published for this purpose

	from time to time by the Secretary of State and is in force at the time of the relevant Disposal of the First Home
"Inspector"	Means the inspector appointed by the Secretary of State to determine the Appeal or the Secretary of State in the event that the Secretary of State determines the Appeal
"the Land"	means the area of land shown edged red on the Plan against which this Deed may be enforced
"Management Company"	means a management company the principal objects of which are to maintain and enhance the On Site Public Open Space (including any play areas) in accordance with all statutory requirements and to the reasonable satisfaction of the Council in perpetuity and if the management company is structured such that the occupants of the Dwellings are required to contribute financially to the maintenance of the On Site Public Open Space, the On Site Public Open Space must be maintained to the reasonable satisfaction of the occupants of the Dwellings
"Mortgagee"	shall mean any mortgagee chargee or lender with a charge secured on a Completed Dwelling or Completed Dwellings constructed on any part of the Land and the expression Mortgagee shall include any receiver or manager or other party pursuant to any statutory or contractual right and the expression Mortgagee shall include any mortgagee or chargee or lender acting as a security trustee
"Occupation"	means the date at which a Dwelling is first occupied for the purposes permitted by the Planning Permission but excluding occupation of a Dwelling where that Dwelling is being used solely for the purpose of a show home/flat (where no persons are resident) in the course of marketing the Development and not including occupation by personnel engaged in construction fitting out or decoration or occupation in relation to security operations and "Occupied" and "Occupy" will be construed accordingly
"On Site Public Open Space"	means the public open space and appropriate access to and egress from it for the general public

	and for maintenance purposes in accordance with Schedule 4 of this Deed together with a natural play area to be provided on the Land in the general location shown on the Parameter Plan with the precise boundaries and area to be determined under the Reserved Matters Approval and to be provided in accordance with the On Site Public Open Space Plan
"On Site Public Open Space Plan"	means the plan to be submitted by the Owner to the Council showing the layout and design of the Public Open Space which shall include a natural play area and details of landscaping, paths and access arrangements, street furniture and fencing (if any) together with details of the proposed future management and to be provided in accordance with the provisions of Schedule 4 to this Deed;
"Open Market Value"	means the open market value as assessed by a Valuer of a Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the reduction in value imposed by the First Homes Discounted Price and "Open Market Valuations" shall be construed accordingly
"Parameter Plan"	means the Indicative Land Use Master Plan (drawing number P22-1974_DE_003_A_06) attached to this Deed at Appendix C or any revision of this plan from time to time
"The Parish"	means the parish of Martley
"The Parishes"	means the following parishes: (Great Witley and Hillhampton, Wichenford and Kenswick, Doddenham and Knightwick, Clifton upon Teme
"Plan"	means the Location Plan (drawing number DRWG: P22-1974_DE_003_B_01) attached to this Deed at Appendix C
"The Planning Permission"	means the permission to be granted pursuant to the Appeal and any approved non material amendment(s) to it

<p>“Practical Completion”</p>	<p>means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and the First Home can be Occupied</p>
<p>“Price Cap”</p>	<p>means the amount for which the First Home is sold after the application of the First Homes Discounted Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State</p>
<p>“Primary Health Care Contribution”</p>	<p>means the sum</p> <p>to be calculated as follows:</p> <p>$A \times £4000 = \text{Contribution amount due}$</p> <p>Where:</p> <ul style="list-style-type: none"> • A (floorspace required) = B (additional population) x 120 (m² per 1750 patients); and • B (additional population) = (number of Dwellings x 2.4 (average residents per Dwelling)) / 1750 (average list size for single GP) <p>payable in accordance with Part 2 of Schedule 2 to this Deed</p>
<p>"Primary School Contribution"</p>	<p>means the sum calculated as follows:</p> <p>Where N = the number of Dwellings to be provided within the Development, excluding one-bedroom Dwellings;</p> <p>$(N \times 0.05 \times 7) \times 0.97$ (rounded up to a whole number) x £23,113</p> <p>payable in accordance with Schedule 3 Part 1 Paragraph 1 (subject to paragraph 6 of Schedule 3 Part 1) towards the expansion of facilities or other educational facilities at Martley CE Primary School</p>
<p>“Protected Tenant”</p>	<p>means any tenant or leaseholder who;</p>

	<ul style="list-style-type: none"> a) has exercised any statutory right to buy or acquire in respect of a particular Affordable Housing Dwelling (which expression excludes any tenant or leaseholder who has exercised a Voluntary Right to Buy); or b) is a leaseholder of a Shared Ownership Housing Unit and has subsequently purchased from the freeholder all the remaining equitable shares in that Shared Ownership Housing Unit so that the said tenant or leaseholder owns the entire Shared Ownership Housing Unit
<p>"Qualifying Resident"</p>	<p>(A) <u>Social Rented Units</u></p> <p>shall mean in the case of Social Rented Units a person who is in need of Affordable Housing and who is on the Housing For You Register and:</p> <ul style="list-style-type: none"> (a) Has lived in the Parish by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or (b) Has close family living in the Parish, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or (c) Has permanent paid employment in the Parish; or (d) Has a local connection to the Parish as a result of special circumstances (subject to the approval by the Head of Housing Services) <p>To the extent that no persons qualify pursuant to (A) (a) – (d) above then a person who is on the Housing For You Register and is in need of Affordable Housing and:</p> <ul style="list-style-type: none"> (e) Has lived in any of the Parishes by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or

	<p>(f) Has close family living in any of the Parishes, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or</p> <p>(g) Has permanent paid employment in any of the Parishes; or</p> <p>(h) Has a local connection to the Parishes as a result of special circumstances (subject to the approval by the Head of Housing Services)</p> <p>To the extent that no persons qualify pursuant (A) (e) to (h) above then a person who is on the Housing For You Register and is in need of Affordable Housing and:</p> <p>(i) Has lived in the district of Malvern Hills by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or</p> <p>(j) Has close family living in the district of Malvern Hills who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or</p> <p>(k) Has permanent paid employment in the district of Malvern Hills; or</p> <p>(l) Has a local connection to the district of Malvern Hills as a result of special circumstances (subject to the approval by the Head of Housing Services)</p> <p>To the extent that no persons qualify pursuant to (A) (i) to (l) above then any person who is ordinarily resident in the United Kingdom who is approved in writing by the Council as being in need of Affordable Housing (such approval not to be unreasonably withheld or delayed)</p> <p>(B) <u>First Homes</u></p>
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	<p>shall mean in the case of First Home a person who is first approved in writing by the Council as having met the Eligibility Criteria (National) and who:</p> <ul style="list-style-type: none"> (a) has lived in the Parish by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or (b) has close family living in the Parish, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or (c) has permanent paid employment in the Parish; or (d) has a local connection to the Parish as a result of special circumstances (subject to the approval by the Head of Housing Services) <p>to the extent that no persons qualify pursuant to (B) (a) to (d) above then a person who is first approved in writing by the Council and:</p> <ul style="list-style-type: none"> (e) has lived in any of the Parishes by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or (f) has close family living in any of the Parishes, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or (g) has permanent paid employment in any of the Parishes; or (h) has a local connection to the Parishes as a result of special circumstances (subject to the approval by the Head of Housing Services)
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to the extent that no persons qualify pursuant to (B) (e) to (h) above then a person who is first approved in writing by the Council and:

- (i) has lived in the district of Malvern Hills by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or
- (j) has close family living in the district of Malvern Hills who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or
- (k) has permanent paid employment in the district of Malvern Hills; or
- (l) has a local connection to the district of Malvern Hills as a result of special circumstances (subject to the approval by the Head of Housing Services)

References to a person first being approved by the Council at (B) above shall not be unreasonably withheld or delayed

(C) Shared Ownership Housing Unit

shall mean in the case of Shared Ownership Housing Units a person who is in need of Affordable Housing and:

- (m) Has lived in the Parish by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or
- (n) Has close family living in the Parish, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or
- (o) Has permanent paid employment in the Parish; or
- (p) Has a local connection to the Parish as a result of special circumstances (subject to

	<p>the approval by the Head of Housing Services)</p> <p>To the extent that no persons qualify pursuant to (C) (m) – (p) above then a person who is in need of Affordable Housing and:</p> <ul style="list-style-type: none"> (q) Has lived in any of the Parishes by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or (u) Has close family living in any of the Parishes, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or (s) Has permanent paid employment in any of the Parishes; or (t) Has a local connection to the Parishes as a result of special circumstances (subject to the approval by the Head of Housing Services) <p>To the extent that no persons qualify pursuant to (C) (q) to (t) above then a person who is in need of Affordable Housing and:</p> <ul style="list-style-type: none"> (u) Has lived in the district of Malvern Hills by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or (v) Has close family living in the district of Malvern Hills who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or (w) Has permanent paid employment in the district of Malvern Hills; or (x) Has a local connection to the district of Malvern Hills as a result of special
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	<p>circumstances (subject to the approval by the Head of Housing Services)</p> <p>To the extent that no persons qualify pursuant to (C) (u) to (x) above then any person who is ordinarily resident in the United Kingdom who is in need of Affordable Housing PROVIDED THAT if contracts have not been exchanged to sell/lease the Shared Ownership Housing Unit to any persons listed above at open market value taking into account the existence of this Deed (or completion effected where there is to be no exchange of contracts) through no fault of the seller for not less than three months of the Shared Ownership Housing Unit being marketed for sale, but not before one month has expired following Completion of the Shared Ownership Housing Unit, then Qualifying Resident shall mean any person who is registered with and approved by the Registered Provider as being in need of Affordable Housing</p>
“Registered Provider”	means a provider of social housing as defined by Part 2 of the Housing and Regeneration Act 2008 or other entity providing Affordable Housing under equivalent arrangements who is approved or accredited by the Regulator of Social Housing or similar successor body
“Regulator of Social Housing”	means the Regulator of Social Housing established under section 80A of the Housing and Regeneration Act 2008 (as amended) or such successor body from time to time
“Reserved Matters Approval”	means the approval of details of any one or more of appearance, landscaping, layout and scale reserved under the terms of the Planning Permission
“Retail Prices Index”	means the Retail Prices Index for “All Items” published by the Office for National Statistics or in the event that the Office for National Statistics shall cease to compile or publish the said Retail Prices Index such other index as the parties hereto shall agree or in default of agreement such Index as shall be determined for the purposes of this Deed as being an Index which gives an

	accurate indication of the rate of inflation of prices in the United Kingdom from month to month
“Rounding”	means in relation to determining any whole number where the requirement is set out as a percentage in this Deed, that if the residual fraction is under one half then the amount required is rounded down to the nearest whole number and if the residual fraction is a half or more the amount required is rounded up to the nearest whole number and references to ‘Rounded’ shall be construed accordingly.
“SDLT”	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
"Secondary School Contribution"	<p>means the sum calculated as follows:</p> <p>Where N = the number of Dwellings to be provided within the Development, excluding one-bedroom Dwellings;</p> <p>$(N \times 0.04 \times 6) \times 0.97$ (rounded up to a whole number) x £31,790</p> <p>payable in accordance with Schedule 3 Part 1 Paragraph 1 towards the expansion of facilities or other educational facilities at The Chantry School</p>
“Secretary of State”	means the Secretary of State for Housing and Communities and Local Government or any other minister appointed to determine appeals from time to time
"SEND Contribution"	<p>means the sum calculated as follows:</p> <p>Where N = the number of Dwellings to be provided within the Development, excluding one-bedroom Dwellings;</p> <p>$(N \times 0.05 \times 7) \times 0.03$ (rounded to a whole number) x £23,113</p> <p>payable in accordance with Schedule 3 Part 1 Paragraph 1 to provide SEND facilities within a mainstream school or at stand-alone SEND settings within Worcestershire</p>

<p>“Shared Ownership Housing Unit”</p>	<p>means the Affordable Housing Dwelling including its plot and allocated parking space and/or garage as shall be constructed on the Land pursuant to the provisions of Schedule 1 and the Affordable Housing Scheme where a proportion of the equity is sold on a long lease to the purchaser and the remainder of the equity is retained by the Registered Provider subject to rent being charged on the retained equity on terms that are set out in the Homes England Model Shared Ownership Protected Area Mandatory Buyback Lease or the Homes England Model Shared Ownership Protected Area Restricted Staircasing Lease (at the discretion of the Registered Provider)</p>
<p>“Social Rented Units”</p>	<p>means the Affordable Housing Dwellings constructed pursuant to Schedule 1 where the rents are calculated in accordance with the formula for setting social rent levels in The Policy Statement on Rents for Social Housing issued by the Ministry of Housing Communities and Local Government February 2019 Chapter 2 and Appendices A and B the document entitled “Limit on Annual Rent Increases 2020 -2021” issued by The Regulator of Social Housing April 2020 and the document entitled Rent Standard April 2020 issued by the Regulator of Social Housing or any amendment to or replacement of these from time to time</p>
<p>"Valuer"</p>	<p>means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity</p>
<p>“Voluntary Right to Buy”</p>	<p>means a scheme whereby a tenant of an Affordable Housing Dwelling purchases the Affordable Housing Dwelling by way of a voluntary agreement rather than through the exercise of a statutory right</p>
<p>"Working Day"</p>	<p>means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory bank holiday or a day falling within the period 24 December to the immediately following 2nd January (inclusive)</p>

2. **CONSTRUCTION**

- 2.1 Words of masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice-versa and words denoting persons shall include bodies companies incorporated associations and partnerships and vice versa
- 2.2 Reference to any statute or statutory provisions includes a reference to:-
- 2.2.1 that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and
- 2.2.2 all statutory instruments or orders made pursuant to it whether before or after the date of this Deed
- 2.3 The term "the Owner" and "the Developer" shall include their assigns and successors in title to their legal interest in the Land or any part or parts thereof at the date hereof and to the rights and obligations created by this Deed
- 2.4 A covenant not to do something includes a covenant not to permit or suffer that thing to be done
- 2.5 Any covenants obligations or other commitments given by more than one party to this Deed shall be joint and several and where any party consists of two or more persons obligations expressed to be made by or with that party are deemed to be made by or with such persons jointly and severally
- 2.6 The headings in this Deed are for ease of reference only and cannot be taken into account in its interpretation
- 2.7 Where the agreement, consent, approval or expression of satisfaction (or anything of a like nature) from the Council or the County Council is required by the Owner or any other party then such agreement, consent, approval or expression of satisfaction shall not be unreasonably or arbitrarily withheld or delayed
- 2.8 Where there is reference to an officer of the Council or County Council in this Deed such reference shall include the officer referred to and any future officer (howsoever named) that carries on the same or similar function to the officer referred to AND any officer to whom such officers have delegated responsibility

3. **HISTORY**

- 3.1 The Council is the appropriate Local Planning Authority for the purpose of the 1990 Act in respect of the area which includes the Land
- 3.2 The Council is also the housing authority for the purposes of the Housing Act and as housing authority is required by Section 8 of the Housing Act to consider housing conditions in its district and the needs of the district with respect to the provision of further housing accommodation
- 3.3 The County Council is the Strategic Planning Authority for the County of Worcestershire and is a Local Planning Authority for the purposes of section 106 of the 1990 Act and is the

Education Authority as defined in the Education Act 1996 and is also the Highway Authority as defined in the Highway Act 1980 for the area in which the Land is situated and by whom the obligations in this Deed in respect of highway matters are enforceable

- 3.4 The County Council in its capacity as highway authority has identified the need for works to the adopted highway as part of the Development and conditions are to be imposed on the Planning Permission in respect of these works
- 3.5 The Owner is the freehold owner of the Land registered with title absolute at the Land Registry under title no WR98091
- 3.6 The Owner and the Developer have entered into an agreement for sale in respect of the Land dated 15 November 2022.
- 3.7 The Owner submitted the Application to the Council in respect of the Development.
- 3.8 The Council refused the Application and the Owner has Appealed to the Secretary of State for a determination
- 3.9 The Council the Owner the Developer and the County Council are entering into this Deed to make provision for regulating the Development in manner hereinafter appearing
- 3.10 The Owner and the Developer have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council and the County Council against the Owner and subject to clause 16 the Developer

4. PLANNING OBLIGATIONS

The covenants contained in Schedules 1 – 4 (inclusive) to this Deed are planning obligations for the purposes of Section 106 of the 1990 Act

NOW THIS DEED WITNESSETH as follows:

5. BINDING EFFECT OF THIS DEED

- 5.1 This Deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Sections 8 and 9 of the Housing Act and all other enabling powers and it and the covenants contained in it are enforceable by the Council pursuant to such Acts
- 5.2 The Owner in respect of the Land hereby covenants and undertakes in respect of each and every part of the land to observe and perform the covenants which are contained in Schedules 1 – 4 (inclusive) to this Deed with the intent that the same shall bind the Land and be enforceable without limit of time not only against the Owner but also against each and any of their successors in title and any person claiming any legal or equitable estate or interest in the Land or any part or parts of it as if that successor and person had also been an original covenanting party

6. EFFECTIVE DATE

- 6.1 The provisions of this Deed shall come into effect upon:

6.1.1 The grant of the Planning Permission; and

6.1.2 The Commencement of Development

save for the provisions of this clause 6 and clauses 7.1, 8, 10, 11, 12, 14, 15, 16 and Schedule 1 Part A paragraph 1, Schedule 2 Part 3 paragraph 1 and Schedule 4 paragraph 1 which shall come into effect immediately upon completion of this Deed.

6.2 Should the Secretary of State or his appointed Inspector in their decision letter make a finding that any of the covenants or obligations in this Deed do not meet the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and accordingly attaches no weight to that obligation in determining the Appeal then such covenant(s) or obligation(s) as so identified by the Secretary of State or his appointed Inspector shall be deemed to be of no effect notwithstanding the remaining provisions of this Deed which for the further avoidance of doubt shall remain in effect and enforceable

7. **WARRANTIES**

7.1 The Owner hereby warrants to the Council and the County Council that in respect of the Land:

7.1.1 they remain at the date of this Deed seised in fee simple of the Land registered with title absolute at the Land Registry under Title No. WR98091 free from any encumbrances other than those noted in the Land Registry official copy of the register dated 5 September 2024

7.1.2 they have obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that they enter into this Deed with full capacity and ability to observe and perform the obligations hereunder; and

7.1.3 there have been no dealings with the Land between the 5th September 2024 and the date hereof

8. **DECLARATIONS**

IT IS HEREBY AGREED AND DECLARED

8.1 The planning obligations on the part of the Owner shall be in addition to and not in derogation of the Planning Permission

8.2 Nothing in this Deed shall be construed as restricting the exercise by the Council and the County Council of any powers exercisable by it under the 1990 Act or any other Act regulation or byelaws

8.3 This Deed shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may be or has been at any time issued by the Council or any other appropriate person or authority pursuant to the provisions of the 1990 Act

8.4 Subject only to clause 15 and to the provisions of Sections 106A and 106B of the 1990 Act the terms and conditions of this Deed can only be varied by a supplemental deed

- 8.5 No waiver whether express or implied by the Council and/or the County Council of any breach or default by the Owner in performing or observing any of the covenants of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council and/or the County Council from enforcing any of the said covenants or from acting upon any subsequent breach or default in respect thereof by the Owner
- 8.6 The Owner waives any rights to claim compensation arising from any limitation or restriction on the planning use of the Land under the terms of this Deed
- 8.7 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it
- 8.8 If any individual clause or paragraph in this Deed is subsequently held to be unenforceable by a court the parties agree that the offending clause or paragraph shall cease to be binding and will be severed from this Deed PROVIDED THAT the severing of such a clause or paragraph shall not affect the continuing enforceability of the remainder of this Deed
- 8.9 The validity construction and performance of this Deed shall be governed by English law and each party agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under this Deed
- 8.10 Notwithstanding anything to the contrary contained or referred to elsewhere in this Deed nothing in this Deed shall be binding on nor enforceable against;
- 8.10.1 A Protected Tenant (including their Mortgagee) nor against anyone deriving title from any of them and
- 8.10.2 A mortgagee or chargee or receiver of a Registered Provider (as defined in Clause 13 of this Deed) which has first complied with the requirements of Clause 13.2 of this Deed and
- 8.10.3 A Registered Provider complying with any statutory or contractual rights of a Protected Tenant to acquire the freehold in any Affordable Housing Dwellings
- 8.10.4 The successors in title to all of the foregoing including any Mortgagee lender or chargee to any such successors in title

And for the avoidance of doubt this Clause 8.10 shall not apply to anyone exercising a Voluntary Right to Buy of an Affordable Housing Dwelling and such Affordable Housing Dwellings shall continue to be bound by this Deed

- 8.11 Notwithstanding anything to the contrary contained or referred to elsewhere in this Deed the provisions of Schedule 1 of this Deed shall not be enforceable against the owner occupiers tenants or any Mortgagee of the General Market Dwellings constructed pursuant to the Planning Permission and purchased and occupied as private dwellings nor their successors in title so as to require them to construct or procure the construction and completion of the Affordable Housing Dwellings

- 8.12 The provisions of Schedules 2 – 4 (inclusive) of this Deed shall not be binding on any occupier tenant or lessee of an Affordable Housing Dwelling or any Mortgagee or successor in title of the foregoing
- 8.13 No person shall be liable for a breach of this Deed:
- 8.13.1 after he shall have parted with all interest in the Land or that part in respect of which such breach occurred but without prejudice to liability for any subsisting breach which occurred prior to parting with such interest; and
- 8.13.2 to the extent that such breach relates to any part of the Land in which the person has no interest
- 8.14 Statutory undertakers or other utility suppliers with an interest in the Land only by virtue of the location of their structures or other apparatus on the Land (including electricity substations, poles stays gas governor stations and/or pumping stations) are specifically excluded from liability under this Deed
- 8.15 The Council covenants with the Owner as set out in Schedule 5
- 8.16 The County Council covenants with the Owner as set out in Schedule 6
- 8.17 Nothing in this Deed shall be construed as prohibiting or limiting any right to develop the Land (or any part or parts thereof) in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed which does not require the variation or revocation of this Deed
- 8.18 The Owner shall pay any contributions or fees to the Council and County Council in advance of the date that they are due to be paid.

9. **NOTICE OF DEED**

- 9.1 The Council will on completion of this Deed register it in the local land charges register pursuant to the provisions of the Local Land Charges Act 1975

10. **COSTS OF PREPARATION OF THIS DEED AND MONITORING FEES**

- 10.1 The Developer covenants to pay the Council's reasonable and proper legal costs in relation to this Deed on the date hereof;
- 10.2 The Developer covenants to pay the Council its monitoring fees in the sum of one thousand nine hundred pounds (£1,900.00) within 10 Working Days of the issue of the Planning Permission;
- 10.3 The Developer covenants to pay the Council its administrative fee in the sum of one hundred and twenty five pounds (£125.00) on the date hereof;
- 10.4 The Developer covenants to pay the Council a disbursement fee of registering this Deed as a notice against the title in the sum of £40.00 (forty pounds) on the date hereof

10.5 The Developer covenants to pay the County Council its highways monitoring fees in the sum of Two Thousand and Forty-Three Pounds (£2,043.00) and its education monitoring fees in the sum of Four Hundred and Ninety Pounds (£490.00) within 10 Working Days of the issue of the Planning Permission;

10.6 The Developer covenants to pay the County Council's reasonable and proper legal costs in relation to this Deed on the date hereof

11. **DISPUTES**

11.1 In the event of there being any dispute between the parties hereto in respect of any of the terms of this Deed such dispute shall be determined in accordance with this clause and either party to the dispute may at any time require by notice in writing to the other party to the dispute an independent expert to be appointed to resolve the dispute

11.2 The expert (who shall be an appropriately qualified person to resolve the dispute in question) may be agreed upon by the parties to the dispute and in default of such agreement within one month of a requirement being made pursuant to this clause shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors on the application of either party to the dispute made at any time after the said period of one month

11.3 Notice in writing of his appointment shall be given by the expert to the parties to the dispute and he shall invite each to submit within a specified period (which will not exceed four weeks) any written representations each wishes to make to him

11.4 The expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgment

11.5 The expert shall give notice in writing of his decision to the parties to the dispute within 2 months of his appointment or within such extended period as the parties may together allow

11.6 The decision of the expert shall be final on all matters referred to him save in the case of manifest error

11.7 If for any reason the expert shall fail to make a decision and give notice thereof within the time and in the manner herein before provided either party to the dispute may apply to the President of the Royal Institution of Chartered Surveyors for a substitute to be appointed in his place which procedure may be repeated as many times as necessary

11.8 Each party to the dispute shall bear its own costs save that the fees of the expert and of the Royal Institution of Chartered Surveyors shall be in the expert's determination

11.9 Nothing in this clause shall be construed as ousting the jurisdiction of the courts to enforce the provisions of this Deed

12. **NOTICES**

12.1 Any notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class post or recorded delivery post

12.2 The address for service of any such notice consent or approval as aforesaid shall in the case of service upon the Council and the County Council be at the address aforesaid or such other address for service as shall have been previously notified by the Council and/or the County Council to the Owner and in the case of service upon the Owner will be at their last known address (if an individual) or then current registered office (if a company)

12.3 A notice consent or approval under this Deed shall be deemed to have been served as follows:

12.3.1 If personally delivered at the time of delivery; and

12.3.2 If posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a prepaid first class or recorded delivery envelope (as appropriate) as the case may be

13. **MORTGAGEE PROTECTION**

13.1 For the avoidance of doubt, this clause 13 applies only to the mortgagee or chargee or receiver of a Registered Provider.

13.2 The affordable housing provisions in this Deed 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 its Affordable Housing Dwellings or any persons or bodies deriving title through such mortgagee or chargee or receiver PROVIDED THAT:

13.2.1 such mortgagee or chargee or Receiver shall first give written notice to the Head of Legal Services at the Council of its intention to dispose of the Affordable Housing Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of its Affordable Housing Dwelling(s) 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

13.2.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of its Affordable Housing Dwelling(s) free from the affordable housing provisions in this Deed, which provisions shall determine absolutely.

14. **TERMINATION OF THIS DEED**

14.1 This Deed will come to an end if:

14.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn or modified at any time so as to render this Deed or any part of it irrelevant, impractical or unviable; or

14.1.2 the Planning Permission expires before the Commencement of Development

15. **SECTION 73 VARIATION**

15.1 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the 1990 Act and unless otherwise agreed between the parties, with effect from the date that the new planning permission is granted pursuant to Section 73 of the 1990 Act:

15.1.1 The obligations in this Deed shall (in addition to continuing to bind the Land in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Land granted pursuant to Section 73 of the 1990 Act and the Land itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to Section 106 of the 1990 Act;

15.1.2 The definitions of Application, Development and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the 1990 Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permission(s); and

15.1.3 This Deed shall be endorsed with the following words in respect of any future Section 73 application:

“The obligations in this Deed relate to and bind the Land in respect of which a new planning permission reference [] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)”

ALWAYS PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations insofar as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to Section 106 of the 1990 Act

16. **DEVELOPER’S CONSENT**

16.1 The Developer hereby consent to the completion of this Deed and declares that its interest in the Land shall be bound by the terms of this Deed as if it had been executed and registered as a local land charge prior to the creation of its interest in the Land and that its interest in the Land shall take effect subject to this Deed PROVIDED THAT the Developer shall otherwise have no liability under this Deed other than pursuant to clause 10 unless it takes possession of the Land in which case it will be bound by the obligations as if it were a person deriving title from the Owner

SCHEDULE 1

AFFORDABLE HOUSING

PART A

The Owner covenants with the Council as follows:

1. Prior to the Commencement of Development to submit the Affordable Housing Scheme to the Head of Housing Services at the Council for approval and for the avoidance of doubt the Commencement of Development shall not take place until such time as the Affordable Housing Scheme has been approved in writing by the Head of Housing Services at the Council (such approval not to be unreasonably withheld or delayed)
2. To construct and lay out the Affordable Housing Dwellings in accordance with the approved Affordable Housing Scheme and the provisions of this Schedule
3. The Owner will or will procure the construction and completion at their own cost and expense of 50% of the Affordable Housing Dwellings together with all necessary services connections and infrastructure ready for occupation prior to Occupation of fifty per cent (50%) of the General Market Dwellings
4. The Owner will or will procure the construction and completion at their own cost and expense of all the Affordable Housing Dwellings together with all necessary services connections and infrastructure ready for occupation prior to Occupation of eighty per cent (80%) of the General Market Dwellings
5. Completion of the Affordable Housing Dwellings shall be deemed to be either when the NHBC Buildmark Certificate (or similar equivalent certification) shall have been issued in respect of all of the Affordable Housing Dwellings or when the local authority building control consultancy or approved inspector certifies them all complete if earlier
6. Not to sublet or otherwise part with possession of the whole or any part of the Affordable Housing Dwellings unless in accordance with the provisions of this Deed and to ensure that all of the Affordable Housing Dwellings are sold and/or leased and/or occupied in accordance with this Deed, the Affordable Housing Scheme and in accordance with the timescales and arrangements set out in the document entitled Allocation of Affordable Housing Dwellings (or any replacement document from time to time) at Appendix A to this Deed
7. Not to allow fifty percent (50%) or more of the General Market Dwellings to be Occupied until there has been a freehold transfer or grant of a long headlease of 50% of the Affordable Housing Dwellings (save for First Homes in respect of which Part B of Schedule 1 shall apply) to a Registered Provider subject to the terms of this Deed together with rights being granted over all access roads and footpaths services and conducting media serving the Affordable Housing Dwellings and appropriate written evidence thereof is provided to the reasonable satisfaction of the Head of Legal Services at the Council
8. Not to allow eighty percent (80%) or more of the General Market Dwellings to be Occupied until there has been a freehold transfer or grant of a long headlease of the Affordable Housing Dwellings (save for First Homes in respect of which Part B of Schedule 1 shall apply) to a

Registered Provider subject to the terms of this Deed together with rights being granted over all access roads and footpaths services and conducting media serving the Affordable Housing Dwellings and appropriate written evidence thereof is provided to the reasonable satisfaction of the Head of Legal Services at the Council

9. Not to allow the Affordable Housing Dwellings (save for First Homes in respect of which Part B of Schedule 1 shall apply) to be Occupied otherwise than by a person who at the date of his first Occupation is a Qualifying Resident (together with members of his immediate family) who occupies the Affordable Housing Dwelling as his sole residence
10. Not initially to dispose of any of the Affordable Housing Dwellings (save for First Homes in respect of which Part B of Schedule 1 shall apply) otherwise than by way of a mortgage or charge or to a Registered Provider by way of a freehold transfer or the grant of a long headleasehold interest for the purposes of providing Affordable Housing Dwellings
11. To give notice in writing to the Head of Legal Services at the Council of:
 - (a) completion of the freehold sale or grant of a long headleasehold interest in the Affordable Housing Dwellings; and
 - (b) the expected date of first Occupation of fifty percent (50%) of the General Market Dwellings at least 3 weeks prior to such expected date
 - (c) the expected date of first Occupation of eighty percent (80%) of the General Market Dwellings at least 3 weeks prior to such expected date
12. If the Development is one which will involve the creation or employment of a management company where there shall be a management company for all of the common parts which serve the Dwellings for the sake of clarity nothing in this Deed shall operate so as to prevent or prohibit the Affordable Housing Dwellings from being exclusively owned and managed by the Registered Provider (which has acquired such Dwellings) and provided further that details of such management arrangements shall be submitted to the Head of Legal Services at the Council prior to the transfer of any Affordable Housing Dwellings to a Registered Provider and agreed in writing by the Head of Legal Services at the Council (such agreement not to be unreasonably withheld or delayed) at least 2 months prior to Occupation of any Affordable Housing Dwelling
13. Not to charge an occupier of any of the Affordable Housing (excluding the First Homes) a service charge unless details of all items covered under the service charge have been submitted to the Head of Housing Services at the Council at least two months prior to Occupation of any Affordable Housing Dwelling and have been approved in writing by the Head of Housing Services at the Council
14. If the Registered Provider at any time while having a legal interest in the Affordable Housing Dwellings ceases to be accredited or approved by the Regulator of Social Housing:
 - 14.1 To give notice immediately in writing to the Head of Legal Services at the Council of the cessation of accreditation or approval; and

- 14.2 To transfer all legal interest in its Affordable Housing Dwellings to another Registered Provider subject to the provisions of this Deed
- 14.3 A Registered Provider that has ceased to be accredited or approved by the Regulator for Social Housing may dispose of its freehold or long headleasehold interest in the Affordable Housing Dwellings subject to any subsisting leases and the terms of the Deed but otherwise free from the terms of paragraph 14.2 above and thereupon the provisions of paragraph 14.2 above shall become null and void but only in respect of that particular transfer of that or those Affordable Housing Dwellings PROVIDED THAT:
- 14.3.1 the Registered Provider notifies the Head of Legal Services at the Council in writing that it is seeking a purchaser of its freehold or long headleasehold interest in the Affordable Housing Dwellings; AND
- 14.3.2 the Registered Provider thereafter uses reasonable endeavours to sell and transfer its freehold interest or long headleasehold interest in the Affordable Housing Dwellings to a new Registered Provider subject to the terms of this Deed including the terms of this paragraph 14 at a price equal to its market value taking into account the existence of the Deed; AND
- 14.3.3. at least four months have elapsed since the said Head of Legal Services at the Council received the written notice referred to at paragraph 14.3.1 above and a contract for the disposal of the freehold or long headleasehold in the relevant Affordable Housing Dwellings has not been exchanged with a new Registered Provider (or completion effected where there is to be no exchange of contracts) despite the current Registered Provider's reasonable efforts such efforts being evidenced in writing to the satisfaction of the Head of Legal Services at the Council
15. If paragraph 14 applies then until such time as the Affordable Housing Dwellings are transferred pursuant to paragraph 14 not to increase the rent or service charge of the Affordable Housing Dwellings above the levels prevalent at the time that the Registered Provider ceased to be approved or accredited without the prior written consent of the Council
16. In the event that a tenant or other occupier of a Social Rented Unit exercises the right to buy under applicable legislation to procure that any Registered Provider shall unless the legislation otherwise requires use or procure the use of the net proceeds of sale as defined in section 24(3) of the Housing Act 1996 (and any amendment, re-enactment or successor provision) to fund the provision of further Affordable Housing and to make such provision within the District of Malvern Hills (and in the event that the said section 24(3) is repealed then the definition in any amendment, re-enactment or successor provision shall apply and if there is no such provision then the definition in section 24(3) of the Housing Act 1996 as it was in force the day before it was repealed shall apply)
- 17. Shared Ownership Housing Unit**
- 17.1 This paragraph 17 applies to a Registered Provider, landlord and the lessee of any Shared Ownership Housing Unit

- 17.2 The Registered Provider, landlord and lessee (from time to time) of any given Shared Ownership Housing Unit shall throughout the duration of that lease observe and perform their respective obligations stipulations rights and covenants contained in the Homes England Model Shared Ownership Protected Area Mandatory Buyback Lease or the Homes England Model Shared Ownership Protected Area Restricted Staircasing Lease (as the case maybe)
- 17.3 Where a lessee of any Shared Ownership Housing Unit who has entered into Homes England Model Shared Ownership Protected Area Mandatory Buyback Lease wishes to acquire more than 80% of the freehold equity to this Dwelling and wishes to sell the equity in this Dwelling then;
- 17.3.1 the Registered Provider or landlord (as the case may be) shall notify the Council's Head of Housing Services in writing of the lessee's intention to sell its equity in the Shared Ownership Housing Unit; and
- 17.3.2 without prejudice to paragraph 17.2 of this Schedule shall comply fully with the mandatory buyback provisions, obligations and procedures contained in the Homes England Model Shared Ownership Protected Area Mandatory Buyback Lease

PART B

FIRST HOMES

1. Obligations

The Owner covenants with the Council (unless otherwise agreed in writing by the Council and the Owner) for and on behalf of itself and its successors in title to the Land with the intention that the following provisions shall bind the Land and every part of it into whosoever's hands it may come to save for the avoidance of doubt that:

- 1.1 paragraphs 2, 3, 4 and 5 of this Part B shall be the responsibility of the Owner and shall not apply to a First Homes Owner;
- 1.2 paragraphs 6 and 7 of this Part B apply as set out therein but for the avoidance of doubt where a First Home is owned by a First Homes Owner paragraphs 6 and 7 of this Part B shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and
- 1.3 paragraph 8 applies as set out therein.

2. Quantum of First Homes

- 2.1 To provide a minimum 25 per cent of the Affordable Housing Dwellings on the Land as First Homes in accordance with the Affordable Housing Scheme and shall be provided and retained as First Homes in perpetuity subject to the terms of this Deed and in accordance with the Affordable Housing Scheme.

3. Specifications

- 3.1 The First Homes shall not be visually distinguishable from the General Market Dwellings based upon their external appearance
- 3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent General Market Dwellings but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted

4. Type and Distribution

The size location mix (and shared access arrangements if any) of First Homes provided within the Land shall be provided in accordance with the approved Affordable Housing Scheme (pursuant to paragraph 1 of Part A of this Schedule).

5. Development Standard

All First Homes shall be constructed to:-

- 5.1 the Development Standard current at the date of this Deed (or such alternative standard as may be agreed in writing by the Owner and the Council); and

5.2 no less than the standard applied to the General Market Dwellings.

6. Delivery Mechanism

6.1 Prior to Disposal of the First Homes the Owner shall submit to the Council in writing the method for Actively Marketing the First Homes for sale

6.2 The First Homes shall be Actively Marketed for sale in accordance with the methods submitted to the Council and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

6.2.1 the Eligibility Criteria (National); and

6.2.2 the Eligibility Criteria (Local) (if any)

6.3 If after a First Home has been Actively Marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), sub-paragraph 6.2.2 shall cease to apply.

6.3.1 Subject to paragraphs 6.6 to 6.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Mortgagee

6.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

6.4.1 the Council has been provided with evidence that:

6.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 6.3 applies meets the Eligibility Criteria (Local) (if any);

6.4.1.2 the Dwelling is being Disposed of as a First Home at the First Homes Discounted Price; and

6.4.1.3 the transfer of the First Home includes:

a) a definition of the "Council" which shall be 'Malvern Hills District Council';

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs 6.1 to 6.12 of Part B of Schedule 1 of the S106 Agreement a copy of which is attached hereto as the Annexure."

c) A definition of " S106 Agreement" means;

the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between

(1) the Council (2) Georgina Emma Lallia (3) HH (Martley) Limited and (4) Worcestershire County Council

d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions

e) a copy of the First Homes Provisions in an Annexure

6.4.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 6.3.1 and 6.4.1 (inclusive) of this Part B of this Schedule 1 have been met

6.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Malvern Hills District Council of Council House, Avenue Road, Malvern, Worcestershire WR14 3AF or their conveyancer that the provisions of Part B of Schedule 1 (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

6.6 The owner of a First Home (which for the purposes of this paragraph shall include the Promoter and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

6.6.1 the Dwelling has been Actively Marketed as a First Home for six (6) months in accordance with paragraphs 6.1 and 6.2 Part B of this Schedule 1 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 6.3 and 6.4.1 Part B of this Schedule 1; or

6.6.2 requiring the First Homes Owner to undertake Active Marketing for the period specified in paragraph 6.6.1 of this Part of this Schedule before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

6.7 Upon receipt of an application served in accordance with paragraph 6.6 Part B of this Schedule the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the First Homes Discounted Price

6.8 If the Council is satisfied that either of the grounds in paragraph 6.6 of this Part B of this Schedule 1 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 that the relevant Dwelling may be Disposed of:

6.8.1 to the Council at the First Homes Discounted Price; or

6.8.2 (if the Council confirms in writing that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 6.10 Part B of this Schedule 1 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home

6.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 6.6 of this Part of this Schedule have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 serve notice on the owner setting out the further steps it requires the owner of a First Home to take to secure the Disposal of the Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner of a First Home has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 6.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home

6.10 Where a Dwelling is Disposed of other than as a First Home or to the Council at the First Homes Discounted Price in accordance with paragraphs 6.8 or 6.9 Part B of this Schedule 1 the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution

6.11 Upon receipt of the Additional First Homes Contribution the Council shall:

6.11.1 within 15 Working Days provide a completed application to enable the removal of the restriction on the title set out in paragraph 6.5 where such restriction has previously been registered against the relevant title

6.11.2 apply all monies received towards the provision of Affordable Housing

6.12 Any person who purchases a First Home free of the restrictions in this Part B of Schedule 1 of this Deed pursuant to the provisions in paragraphs 6.9 and 6.10 shall not be liable to pay the Additional First Homes Contribution to the Council

7. USE

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 7.1 – 7.4 below:

- 7.1 a First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years;
- 7.2 a First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:
- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
 - b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
 - c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 7.3 A letting or sub-letting permitted pursuant to paragraph 7.1 or 7.2 Part B of this Schedule 1 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 7.4 Nothing in this paragraph 7 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

8. First Home Mortgagee Exclusion

The obligations in paragraphs 1-7 of this Part of this Schedule in relation to First Homes shall not apply to any First Home Mortgagee or any receiver (including an administrative receiver appointed by such First Home Mortgagee or any other person appointed under any security documentation to enable such First Home Mortgagee to realise its security or any administrator (howsoever appointed (each a First Home Receiver)) of any individual First Home or any persons or bodies deriving title through such First Home Mortgagee or First Home Receiver PROVIDED THAT:

- 8.1 such First Home Mortgagee or First Home Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 8.2 once notice of intention to Dispose of the relevant First Home has been given by the First Home Mortgagee or First Home Receiver to the Council the First Home Mortgagee or First Home Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 8.3 Part B of this Schedule 1;
- 8.3 following the Disposal of the relevant First Home the First Home Mortgagee or First Home Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution;
- 8.3.1 following receipt of notification of the Disposal of the relevant First Home the Council shall:
- 8.3.1.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.5; and
- 8.3.1.2 apply all such monies received towards the provision of Affordable Housing within the district of Malvern Hills.

SCHEDULE 2

FINANCIAL CONTRIBUTIONS TO THE COUNCIL

PART 1

COMMUNITY INFRASTRUCTURE CONTRIBUTION

The Owner covenants with the Council as follows:

1. Prior to the Occupation of the 18th (eighteenth) Dwelling to pay to the Council the Community Infrastructure Contribution (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from the date of this Deed until the date of payment) and to be used towards the Community Infrastructure
2. To give notice in writing to the Legal Services Manager at the Council of the expected date of first Occupation of the first Dwelling at least 10 Working Days prior to the expected date of the first Occupation of the 18th (eighteenth) Dwelling
3. If the Community Infrastructure Contribution is not paid as set out in paragraph 1 of Part 1 of this Schedule 2 then interest upon the Community Infrastructure Contribution shall become payable to the Council in addition to the said contribution from the date when the Community Infrastructure Contribution became due until the date of payment to the Council at the rate of 4% above the base lending rate of Barclays Bank PLC
4. Without prejudice to paragraph 1 of Part 1 of this Schedule not to cause or allow or permit the Occupation of the 18th (eighteenth) Dwelling until the Community Infrastructure Contribution together with any increase in the Retail Prices Index pursuant to paragraph 1 of Part 1 of this Schedule and any interest pursuant to paragraph 3 of Part 1 of this Schedule 2 has been paid in full to the Council

PART 2

PRIMARY HEALTHCARE CONTRIBUTION

The Owner covenants with the Council as follows:

1. Prior to the first Occupation of the first Dwelling to pay to the Council the Primary Care Contribution (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from the date of this Deed until the date of payment) and to be applied towards the expansion of the service provision of Great Witley and Knightwick surgeries and increasing capacity, such funding to be used towards infrastructure, extension to existing premises or improved digital or telehealth infrastructure
2. To give notice in writing to the Legal Services Manager at the Council of the expected date of first Occupation of the first Dwelling at least 10 Working Days prior to the expected date of first Occupation of the first Dwelling
3. If the Primary Care Contribution is not paid as set out in paragraph 1 of Part 2 of this Schedule 2 then interest upon the Primary Care Contribution shall become payable to the Council in addition to the said contribution from the date when the Primary Care Contribution became due until the date of payment to the Council at the rate of 4% above the base lending rate of Barclays Bank PLC
4. Without prejudice to paragraph 1 of Part 2 of this Schedule 2 not to cause or allow or permit the first Occupation of the first Dwelling until the Primary Care Contribution together with any increase in the Retail Prices Index pursuant to paragraph 1 of Part 2 of this Schedule 2 and any interest pursuant to paragraph 3 of Part 2 of this Schedule 2 has been paid in full to the Council

PART 3

AFFORDABLE HOUSING FRACTIONAL CONTRIBUTION

The Owner covenants with the Council as follows:

1. Prior to the Commencement of Development to pay to the Council the Affordable Housing Fractional Contribution (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from the date of this Deed until the date of payment) and to be used towards the provision of Affordable Housing in the district of Malvern PROVIDED THAT for the avoidance of doubt the payment of an Affordable Housing Fractional Contribution shall not be required where forty per cent (40%) of the aggregate number of Dwellings approved pursuant to the Reserved Matters Approval produces a whole number of Affordable Housing Dwellings with no fraction of an Affordable Housing Dwelling
2. To give notice in writing to the Legal Services Manager at the Council of the expected date of the Commencement of Development at least 10 Working Days prior to the expected date of the Commencement of Development
3. If the Affordable Housing Fractional Contribution is not paid as set out in paragraph 1 of Part 3 of this Part 3 Schedule 2 then interest upon the Affordable Housing Fractional Contribution shall become payable to the Council in addition to the said contribution from the date when the Affordable Housing Fractional Contribution became due until the date of payment to the Council at the rate of 4% above the base lending rate of Barclays Bank PLC
4. Without prejudice to paragraph 1 of Part 3 of this Schedule 2 not to cause or allow or permit the Commencement of Development until the Affordable Housing Fractional Contribution together with any increase in the Retail Prices Index pursuant to paragraph 1 of Part 3 of this Schedule 2 and any interest pursuant to paragraph 3 of Part 3 of this Schedule 2 has been paid in full to the Council

SCHEDULE 3

FINANCIAL CONTRIBUTIONS TO THE COUNTY COUNCIL

PART 1

EDUCATION CONTRIBUTION

The Owner covenants with the County Council as follows:

1. Prior to first Occupation of one third of the Dwellings to pay to the County Council the Education Contribution (the Education Contribution shall be increased in line with the percentage increase in the Retail Prices Index from the date of this Deed until the date of payment).
2. To give notice in writing to the Head of Legal and Democratic Services at the County Council at the address herein of the expected date of first Occupation of one third of the Dwellings at least 10 Working Days prior of the expected date of first Occupation of one third of the Dwellings.
3. If the Education Contribution is not paid to the County Council as set out in paragraph 1 of this Part 1 above then interest upon the said contribution shall become payable to the County Council in addition to the said contribution from the date when the Education Contribution became due until the date of payment to the County Council at the rate of 4% above the base lending rate of Barclays Bank PLC.
4. Without prejudice to paragraph 1 of this Part 1 not to cause or allow or permit the Occupation of more than one third of the Dwellings forming part of the Development until the Education Contribution together with an amount equivalent to any increase in the Retail Prices Index (and such increase being calculated from the date of this Deed to the date of payment) pursuant to paragraph 1 of this Part 1 above and any interest pursuant to paragraph 3 of this Part 1 above has been paid in full to the County Council
5. In the event that the County Council is minded to undertake the provision of these infrastructure works as set out in the Schedule ahead of the receipt of the funds the Owner has no objection to the County Council undertaking the work and backfilling with this contribution.
6. In the event that the Planning Permission is granted pursuant to the Appeal ahead of planning application MH/24/01236/OUT the Primary School Contribution will not be payable under this Deed and will be excluded from the Education Contribution payable under paragraph 1 to Part 1 of this Schedule.

PART 2

COMMUNITY TRANSPORT CONTRIBUTION

The Owner covenants with the County Council as follows:

1. Prior to first Occupation of the first Dwelling to pay to the County Council the Community Transport Contribution (which Contribution shall be increased in line with the percentage increase in the Retail Prices Index from the date of this Deed until the date of payment).
2. To give notice in writing to the Head of Legal and Democratic Services at the County Council at the address herein of the expected date of first Occupation of the first Dwelling at least 10 Working Days prior of the expected date of first Occupation of the first Dwelling
3. If the Community Transport Contribution is not paid to the County Council as set out in paragraph 1 of this Part 2 above then interest upon the said Contribution shall become payable to the County Council in addition to the said Contribution from the date when the Community Transport Contribution became due until the date of payment to the County Council at the rate of 4% above the base lending rate of Barclays Bank PLC
4. Without prejudice to paragraph 1 of this Part 2 not to cause or allow or permit the Occupation of any Dwelling forming part of the Development until the Community Transport Contribution together with an amount equivalent to any increase in the Retail Prices Index (any such increase being calculated from the date of this Deed to the date of payment) pursuant to paragraph 1 of this Part 2 above and any interest pursuant to paragraph 3 of this Part 2 above has been paid in full to the County Council
5. In the event that the County Council is minded to undertake the provision of these infrastructure works as set out in the Schedule ahead of the receipt of the funds the Owner has no objection to the County Council undertaking the work and backfilling with this contribution.

SCHEDULE 4

ON SITE PUBLIC OPEN SPACE

The Owner covenants with the Council as follows:

1. Prior to Commencement of Development to submit to the Head of Housing and Planning Services Manager the On Site Public Open Space Plan for approval and for the avoidance of doubt Commencement of Development on the Land shall not take place until such time as the said plan has been approved in writing by the Council
2. To lay out the On Site Public Open Space in accordance with the approved On Site Public Open Space Plan referred to in paragraph 1 of this Schedule, and any conditions attached to the Planning Permission and to the reasonable satisfaction of the Joint Head of Economy and Environment and in accordance with all current health and safety requirements from the date that the same is provided until the date of its transfer pursuant to the provisions of this Schedule
3. To remedy any defects in the On Site Public Open Space and replace any planting that is diseased or dying or items that are broken or damaged from the date that the same is provided until the date the On Site Public Open Space is transferred pursuant to the provisions of this Schedule
4. Until such time as the On Site Public Open Space is transferred to a Management Company to ensure that the On Site Public Open Space is maintained in accordance with the approved On Site Public Open Space Plan any conditions attached to the Planning Permission and with all health and safety requirements in force from time to time and is available at all times for use by the general public at large
5. Not to allow or permit Occupation of more than 30 (thirty) Dwellings (or such later trigger as may be agreed in writing by the Council) until the On Site Public Open Space has been transferred to the Management Company free from encumbrances and together with all necessary rights of access and easements to enable the general public to access and egress it freely and with or without vehicles and machinery for maintenance purposes and the On Site Public Open Space shall be transferred upon the following terms:
 - (a) consideration of £1 (one pound); and
 - (b) such transfer to contain a restrictive covenant expressed to be for the benefit of the freehold of the remainder of the Land and each and every part thereof to the effect that the On Site Public Open Space shall not be used for purposes other than public recreation
6. To ensure that the On Site Public Open Space together with access and egress to and from it is available at all times for use by the general public at large in perpetuity and is maintained in accordance with any conditions attached to the Planning Permission and with all health and safety requirements in force from time to time to the satisfaction of the Joint Head of Economy and Environment

SCHEDULE 5

COUNCIL'S COVENANTS

Repayment of Contributions

1. The Council hereby covenants with the Owner to use all of the contributions received by it from the Owner pursuant to Schedule 2 of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council (both acting reasonably) shall agree in writing provided that such purposes comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended substituted extended or replaced from time to time)
2. The Council covenants with the Owner that it will pay to the person that paid the contribution such amount of any contribution made by the Owner to the Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within ten years of the date of receipt by the Council with the exception of; (i) the Primary Care Contribution whereby the Council will only repay any amount under this clause 2 that has been received from NHS Herefordshire and Worcestershire Integrated Care Board (or any successor thereto) that has not been expended or committed in accordance with the provisions of this Deed
3. The Council shall provide to the Owner such evidence as the Owner shall reasonably request in writing in order to confirm the expenditure or commitment of the contribution(s) paid by the Owner to the Council under this Deed

SCHEDULE 6

COUNTY COUNCIL'S COVENANTS

Repayment of Contributions

1. The County Council hereby covenants with the Owner to use all Contributions received by it from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the County Council (both acting reasonably) shall agree in writing provided that such purposes comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended substituted extended or replaced from time to time)
2. The County Council covenants with the Owner that it will pay to the person that paid the relevant contribution such amount of any contribution made by the Owner to the County Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within ten years of the date of final receipt by the County Council of the relevant contribution
3. The County Council shall provide to the Owner such evidence as the Owner shall reasonably request in writing to confirm the expenditure or commitment of the contribution(s) paid by the Owner to the County Council under this Deed

APPENDIX A

ALLOCATION OF AFFORDABLE HOUSING DWELLINGS

Allocation of Affordable Housing Dwellings

Timescales for applying the Local Connection cascade

This document sets out the Councils expected timescales for moving from one part of the cascade to the next. This will guide Council and RP officers in terms of operational practice and ensure effective monitoring and is as follows:

- For initial lets of rented units advertising can commence at least 2 months prior to allocation to seek expressions of interest. The property should not be allocated until completion or handover to RP.
- For re-lets of rented units the property can be advertised on Housing for You when notice is received from the existing tenant.
- For initial sale of shared ownership and discount market sales units advertising, to seek expressions of interest and exchange of contracts can commence prior to handover. It is encouraged that the property is advertised via Housing for You as part of any wider package of promotion.
- For re-sales of shared ownership and discount market sales units advertising can commence at the point the value has been agreed between the relevant parties. (NB The Council must agree discount market sales valuations).
- Advertising of all properties - for the first two weeks preference should be given to applicants with a Local Connection to the Parish, if necessary for the next two weeks, preference should be extended to applicants with a Local Connection to the adjoining Parishes followed by the relevant District area:

Wk 1	Wk2	Wk3	Wk4	Wk5	Wk 6	Wk 7	Wk 8
Parish		Adjacent Parishes		District			

After 8 weeks the property may be allocated to an applicant registered on Housing for You (where relevant) and who has a need for affordable housing and is resident in the UK.

NB Sometimes there may be a need to add further steps after week 8. For example where a neighbouring district is in close proximity to the Parish, residents of that district should be given priority following the relevant District Council and before extending to the UK. If this is necessary it would be agreed by the Director of Housing and Communities and Director of Planning for Malvern Hills and Wychavon Councils.

APPENDIX B

FIRST HOMES COMPLIANCE CERTIFICATE

DRAFT COMPLIANCE CERTIFICATE

FIRST HOMES DRAFT COMPLIANCE CERTIFICATE

Date:	[]
To:	[Buyer's conveyancer]
	[Builder's conveyancer]
	[Buyer's mortgage advisor]
	[First Home buyer(s)]
First Homes Buyer(s) name(s) the proposed First Homes Owner(s):	[]
First Home property to be purchased:	[plot & address]
Copied to:	[First Homes Buyer(s) current address before purchase] [First Homes house builder]

1. The homebuyer(s) (the proposed First Homes Owner(s)) First Homes application has been approved by [local authority] name] subject to the [local authority] First Homes planning agreement addendum/supplementary deed between [builder and [local authority] date] and confirmed in this Authority Exchange and this Compliance Certificate issued to the proposed First Homes Owner and their conveyancer by [local authority] as follows:

First Homes Buyer(s) name(s) the proposed First Homes Owner(s)	[Full Names]
Builder (current First Homes Owner)	[Builder]
First Home property to be purchased:	[plot & address]
First Home forecast purchaser legal completion date:	
Market value (100% of value)	[£]
First Homes discount %	[30%]
First Homes Purchase Price (price to be paid by the proposed First Homes Owner applying the First Homes discount to the Market value)	[£]
Date of exchange of contracts	
Date of completion	

2.COMPLIANCE CERTIFICATE

3. This Authority to Exchange and COMPLIANCE CERTIFICATE is issued by the [local authority] confirming that a Dwelling is being disposed of to a First Home purchaser(s) specified in this Authority to Exchange meeting the:
- Eligibility Criteria (National)
 - First Time Buyer;
 - Having Household income no more than £80,000 per annum [; and if applicable
 - the Eligibility Criteria (Local)
 - Lives or works in [local authority] district; or

- ii. A Key worker/essential worker defined by [local authority]; or
- iii. Member of United Kingdom armed forces.]

4.The national and local criteria set out in full in the [local authority] First Homes planning agreement addendum/supplementary deed between [builder and [local authority] date], the Planning Obligations.

5.And the First Homes Purchaser, the new First Homes Owner has provided all the necessary First Homes confirmations and declarations of eligibility required by [local authority] and will comply with the covenant in the transfer to comply with the Planning Obligations in relation to the Property.

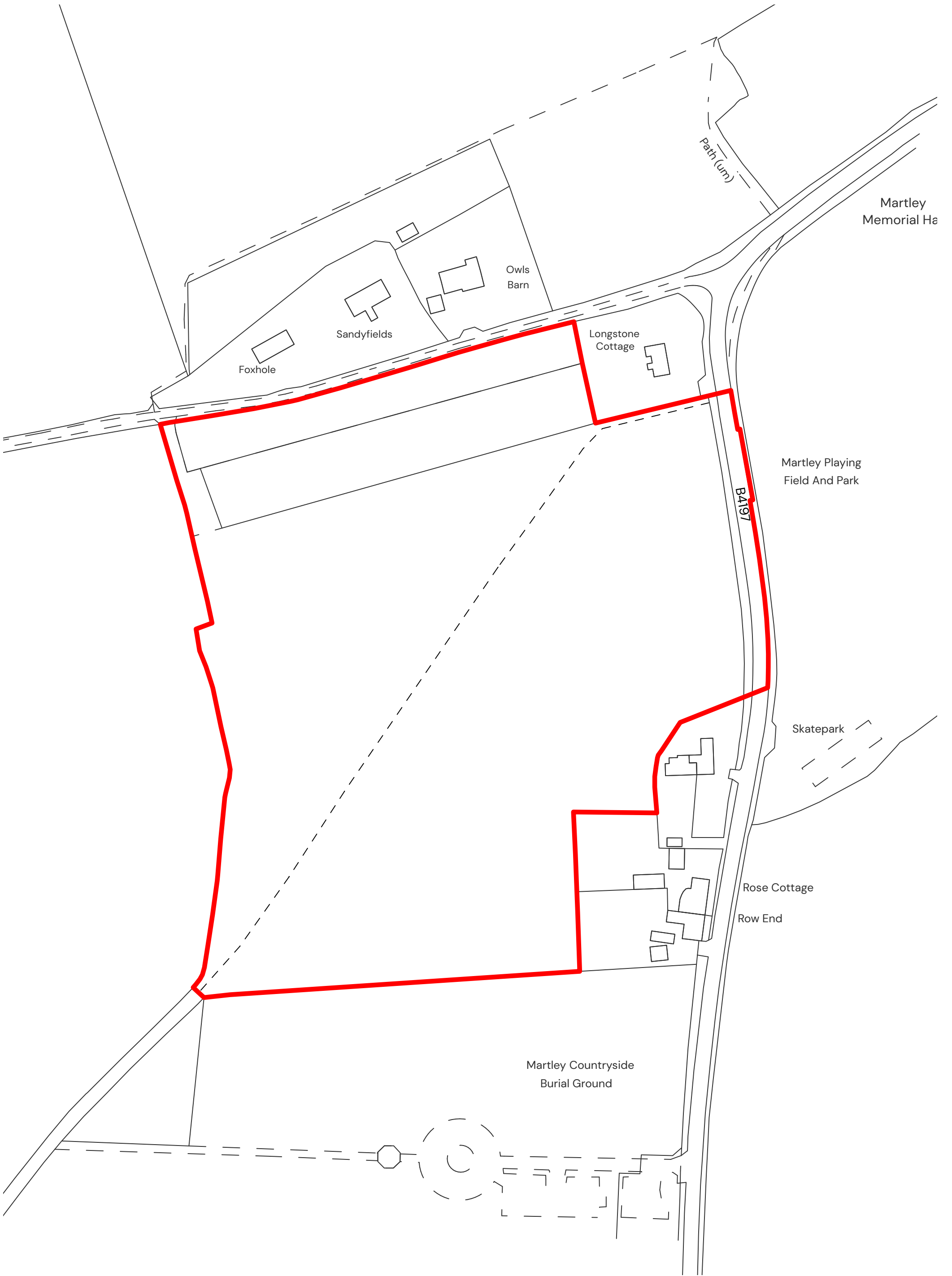
6.WARNING: This First Homes Authority to Exchange and COMPLIANCE CERTIFICATE may be withdrawn at any time if the homebuyer does not comply with, or satisfy, [local authority's] eligibility criteria).

Yours sincerely

Name:	
Signed:	
For and on behalf of	[Local authority]
Dated:	

APPENDIX C






PLANS

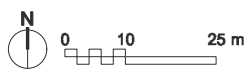


MARTLEY - SITE LOCATION PLAN





-  SITE BOUNDARY
-  RESIDENTIAL DEVELOPMENT AREA
-  ALLOTMENTS
-  GREEN INFRASTRUCTURE
-  EXISITNG TREES/HEDGEROWS



MARTLEY - INDICATIVE LAND AREA 

In witness whereof the Council the Owner the Developer and the County Council have duly executed this Deed

THE COMMON SEAL OF **MALVERN HILLS**)
DISTRICT COUNCIL was hereto affixed)
in the presence of:)

Monitoring Officer/Chief Executive / Deputy Chief Executive

EXECUTED AS A DEED by)
HH (MARTLEY) LIMITED)
acting by one Director)
in the presence of)

Name of Witness

Signature of Witness

Occupation of Witness

Address of Witness

THE COMMON SEAL of WORCESTERSHIRE)
COUNTY COUNCIL was hereunto)
affixed in the presence of:-)

EXECUTED AS A DEED by)
GEORGINA EMMA LALLIA)
in the presence of;)

Name of Witness:

Signature of Witness:

Occupation of Witness:

Address of Witness: