

Dated

202[]

THE CITY COUNCIL OF BRISTOL (1)

and

[Owner] (2)

and

[Developer] (3)

and

[Mortgagee] (4)

A G R E E M E N T

under Section 106 of the Town and Country Planning Act 1990
Sections 111 and 120 of the Local Government Act 1972
Section 1 of the Localism Act 2011
and other statutory provisions relating to land at
[]

Planning ref: []

Tim O’Gara
Service Director - Legal
& Democratic Services City Hall
College Green
Bristol
BS1 5TR
Ref:GD04.[]

Development and are fairly and reasonably related in scale and kind to the Development

7. The Council does not require the Development to provide 100% Affordable Housing to make the Development acceptable in planning terms but that the Council will not prohibit the Development providing 100% Affordable Housing subject to the requirements set out herein (as part of Option A)

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Agreement unless the context indicates otherwise the words and expressions below shall mean as follows:

"1990 Act" the Town and Country Planning Act 1990 (as amended) and that and any other reference to the 1990 Act shall include any amending or replacing legislation for the time being in force

"Commencement" the date on which any material operation (as defined in section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and **"Commencement of Development"** or **"Commence Development"** shall be construed accordingly

“Committed for Expenditure”	the Council has identified a financial contribution for spending in its annual financial forward plan or otherwise allocated the contribution for spending in accordance with its legal duties pursuant to Section 151 of the Local Government Act 1972
"Development"	the development authorised or to be authorised by the Planning Permission
"Director"	the Council's Strategic Director of Growth and Regeneration for the time being or his duly appointed agent
“Expert”	the expert appointed pursuant to clause 18.1 or 18.2
“Index Linked”	shall be construed in accordance with Schedule [xx]
"Land"	the land situated at XXXXX Bristol in respect of which the Owner/Developer has made the Planning Application as shown edged red for the purposes of identification on the Plan and for the avoidance of doubt except where the context otherwise requires shall include each and every part of the land
“Occupation”	the occupation of an individual Residential Unit [and/or commercial building] but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupy” and “Occupied” and “Occupier” shall be construed accordingly
"Plan"	the plan annexed to this Agreement at Annexure 1 and marked with drawing number [XXXX]
"Planning Application"	the application made by the Owner/Developer to the Council (reference number XXXXX) for planning permission to develop the Land for [insert description]
"Planning Permission"	any permission given in respect of the Planning Application or such other permission as may be

granted by the Council in respect of the Land pursuant to an application for planning permission to amend such permission made pursuant to Section 73 of the 1990 Act provided that such permission does not materially alter the obligations contained in this Agreement save that the Council reserves the right to require a supplemental deed pursuant to Section 106/Section 106A (as appropriate) of the 1990 Act at its sole election

“Residential Units” The [XX number] residential properties forming part of the Development which includes the Other Units and the Affordable Housing Units (as both are defined in Schedule 1) and **“Residential Unit”** will be interpreted accordingly

“Working Day” a day other than a Saturday or Sunday or public holiday in England

- 1.2 Any reference to the parties or any other legal or natural person shall include his her its or their heirs assigns and successors in title and in the case of any local authority shall also include any successor in function
- 1.3 Any covenants obligations or other commitments given by more than one party shall be joint and several
- 1.4 Where the Owner/Developer is not a body corporate then neuter words shall include the masculine or feminine gender (as the case may be) and singular words shall include their plural numbers
- 1.5 The headings throughout this Agreement are for convenience only and shall not be taken into account in the construction and interpretation of this Agreement

2. STATUTORY POWERS

2.1 THIS Agreement:

- 2.1.1 will be registered as a Local Land Charge;
- 2.1.2 is entered into pursuant to Section 106 of the 1990 Act Sections 111 and 120 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other statutory and enabling powers;
- 2.1.3 to the extent that the obligations in this Agreement fall within the terms of Section 106 of the 1990 Act the obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the 1990 Act; and
- 2.1.4 to the extent that the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the power contained in Sections 111 and 120 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other statutory and enabling powers

3. ENFORCEMENT

- 3.1 The covenants herein on behalf of the Owner/Developer are planning obligations (as defined in the 1990 Act) and they shall in accordance with Section 106(3) of the 1990 Act be enforceable by the Council against all persons obtaining title to the Land (or any part thereof) through any of those parties
- 3.2 No person shall be bound by any covenant or obligation herein in respect of any period during which that person no longer has an interest in the Land or part thereof except in respect of any breach arising and subsisting prior to parting with such interest
- 3.3 Unless stated specifically herein to the contrary nothing herein shall bind any statutory undertaker whose interest in the Land is held as part of their undertaking
- 3.4 In relation to individual owners and occupiers of a Residential Unit:
 - 3.4.1 nothing herein shall bind an individual owner and/or Occupier of any single Other Unit;

3.4.2 Schedule 1 (as relevant) shall bind an individual owner/Occupier of an individual Affordable Housing Unit

4. THIRD PARTIES

4.1 In accordance with Sections 1(2) and 2(3)(a) of the Contracts (Rights of Third Parties) Act 1999 no term of this Agreement shall be enforceable by a third party and any term may be rescinded or varied without the consent of any third party

5. SUBSTANTIVE COVENANTS

5.1 The Owner/Developer for and on behalf of itself and its heirs assigns and successors in title to its interests in 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 covenants with the Council that it will comply with the covenants contained in the Schedules to this Agreement

5.2 The Council agrees and acknowledges that the covenant on the part of the Owner/Developer in clause 5.1 above shall apply only in the event that the Owner/Developer or anyone on its behalf or with its consent Commences the Development save as provided under clause 12 below and any pre-commencement obligations and conditions required by this Agreement which shall have full force and effect from the date of this Agreement

5.3 The Developer covenants with the Council not to Commence the Development until the Developer has acquired the freehold [leasehold] interest in the Land pursuant to the Purchase Agreement [Option Agreement] [Agreement for Lease]

5.4 SUBJECT TO the Developer acquiring such freehold [leasehold] interest in the Land the Developer hereby covenants with the Council to observe perform and be bound by all of the terms of this Agreement at the date of acquisition as if such freehold [leasehold] interest in the Land had been bound by this Agreement and the Developer had been party to this Agreement as freehold landowner ab initio

5.5 The Developer further agrees that it will enter into a confirmatory deed (on terms substantially similar to those as set out in Annexure 2) and, if required by the

Council at the Council's sole discretion and election, a further section 106 agreement substantially on the same terms as this Agreement subject to completion of the [Purchase Agreement] [Option Agreement] [Agreement for Lease] between the Council and the Developer

6. RIGHT OF ENTRY

6.1 If pursuant to a breach the Council requires to carry out all or any part of the works required under the terms of this Agreement the Owner/Developer (if in possession or if a receiver has been appointed) irrevocably authorises the Council and anyone appointed on its behalf (on giving reasonable notice except in the case of an emergency) to enter any part of the Land reasonably required for that purpose

7. CHANGE OF OWNERSHIP

7.1 Until such time as the provisions of this Agreement have been fully complied with the Owner/Developer will in relation to any freehold or leasehold transfer of all or any part of their respective interests in the Land save for the transfer of individual Residential Units which form part of the Development deliver to the Council notice in writing of the transfer including the following information namely

7.1.1 the name and address of the transferee; and

7.1.2 a description of the land subject of the transfer including a plan; and

7.1.3 the nature of the interest transferred

7.2 Where notice pursuant to clause 7.1 above has been given and subsequently it is identified that the details provided require change (whether due to an error or to a change in the terms of the transfer or otherwise) the Owner/Developer shall serve a further notice in accordance with clause 7.1 save that in the case of a non-material change the Council may in writing and in its absolute discretion waive the need for such further notice

8. WARRANTY

8.1 The Owner/Developer warrants that it is entitled to perform all of the obligations provided for in this Agreement in under or upon the Land and to carry out the Development

9. NOTICES

9.1 Any notices to be served on or document to be submitted to any party to this Agreement:

9.1.1 In the case of the Owner/Developer shall be delivered or posted to that party at the following address: [] (or as may otherwise be advised by the Owner/Developer in writing to the Council);

9.1.2 in the case of the Council shall be addressed to the Planning Obligations Manager Strategic Planning Team quoting the planning reference number unless the Council advises the other parties hereto of an alternative address for service; and

9.1.3 in the case of any other person shall be delivered or posted to the address for service notified by or on behalf of that person

10. CONFIRMATION OF INTERESTS

10.1 The Owner/[Developer] confirms that to the best of its information apart from the parties to this Agreement there are no other persons with any interest (legal or equitable) in the Land or any part thereof

11. LOCAL AUTHORITY'S STATUTORY POSITION

11.1 Nothing herein contained or implied shall limit prejudice or affect the rights duties and obligations of the Council under all statutes byelaws statutory instruments orders and regulations in the exercise of its function as a local authority

12. OPERATIVE DATE

12.1 Save in respect of obligations requiring compliance prior to Commencement of Development this Agreement shall not become operative until the Commencement of Development

13. COMMENCEMENT OF DEVELOPMENT

13.1 The Owner/Developer shall give to the Council seven (7) days written notice of its intention to Commence Development and shall confirm in writing within seven (7) days following Commencement that Development has Commenced PROVIDED THAT failure to provide either of the said notifications shall not render this Agreement inoperative

14. COSTS

- 14.1 The Owner/Developer shall pay to the Council on the date hereof its reasonable legal costs incurred in connection with this Agreement

15. INDEMNITY

- 15.1 The Owner/Developer will without prejudice to the Council's statutory and common law powers and rights hold the Council harmless and keep the Council indemnified from and against any claim in connection with or incidental to the carrying out of any works required by this Agreement or in respect of any other requirement or covenant with the Council contained in this Agreement

16. INTEREST

- 16.1 If any sum payable under this Agreement is not paid within fourteen (14) days of the date when it is due then save in the case of a manifest error by the Council in calculating the due sum the Owner/Developer shall in addition to any payment in respect of the sum due pay interest on the sum from the due date until actual payment at the rate of 3% above the base rate from time to time of National Westminster Bank Plc

17. OBLIGATIONS OF THE COUNCIL

- 17.1 The Council agrees:
- 17.1.1 to issue the Planning Permission on the date hereof or as soon as reasonably practicable thereafter
- 17.1.2 that if any of the Contributions (or any part thereof) (as defined in Schedule [xx]) is not applied or Committed for Expenditure by the Council for the purposes as specified in Schedule 3 (as the case may be) within five (5) years of the date of receipt of each payment to repay the relevant Contribution (or such part as has not been applied or committed) to the person who paid such Contribution(s) together with interest thereon at the annual average local authority seven day rate as published in The Financial Times calculated from the date of receipt of each payment (as applicable) until repayment

18. DISPUTE PROVISIONS

- 18.1 In the event of any dispute or difference arising between any of the parties to this Agreement in respect of any matter contained in this Agreement such dispute or difference may be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an Expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 18.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 18.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an Expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 18.3 Any Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days after the conclusion of any hearing that takes place or twenty (20) Working Days after he has received each party's final written representation.
- 18.4 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten (10) Working Days.
- 18.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific

performance, payment of any sum, damages or any other means of enforcing this Agreement and consequential and interim orders and relief.

19. JURISDICTION

19.1 This Agreement is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England.

20. MISCELLANEOUS

20.1 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement

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

21. [CONSENT OF THE MORTGAGEE

21.1 The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner/Developer with its consent to the intent that the planning obligations shall be binding on the Land and that the security of the Charge over the Land shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall only be liable for any breach that itself caused whilst mortgagee in possession but shall not be liable for any pre-existing breach]

EXECUTED as a deed by the parties and delivered the day and year first before written

SCHEDULE 1
AFFORDABLE HOUSING

(Part 1)

1. DEFINITIONS

1.1 In this Schedule 1 and elsewhere in this Agreement the words below shall mean as follows:-

“Access” the provision of roads footpaths and cycleways together with all rights and easements over the said roads footpaths and cycleways as are necessary to provide access to the Affordable Housing Units or any one of them

“Affordable Housing” affordable housing within the meaning of the National Planning Policy Framework 2021 (NPPF) Annex 2 Glossary or any amendment thereto or any Planning Policy Statement Guidance Notes or Circulars which may supersede it

“Affordable Housing Units” those Affordable Housing provided in accordance with either Option A or Option B together with Access and such entrance ways corridors parking areas and other ancillary areas as are necessary for the enjoyment of such units and ‘Affordable Housing Unit’ shall mean any one of such units

“Affordable Mix” If the Owner elects to deliver:

- i) Option A: the number size and tenure mix of Affordable Housing Units [set

out at Parts [7a-c]/to be agreed in writing with the Council];

- ii) Option B the number size tenure and mix of Affordable Housing Units set out at Parts [8a, b and/or c] of this Schedule 1 or such other size tenure and mix as may be agreed in writing with the Council

“Affordable Rent“

a rent (inclusive of any Service Charge) for the relevant property type which shall not at the time of each and every letting to a new tenant exceed the published Local Housing Allowance and in the rental market area allowing for any modifications to the level of such allowance as published from time to time by the Government and current at the time of signing of a tenancy agreement for the specific property type provided that the rent may be increased by no more than the requirements of the Department for Levelling Up, Housing and Communities Policy Statement on Rents for Social Housing and the Regulator of Social Housing Rent Standard (or any document which may supersede it) unless agreed otherwise with the Council (such approval not to be unreasonably withheld or delayed)

“Affordable Rented Units”

affordable rented units within the meaning of the definition of “affordable housing for rent” at Annex 2 (Glossary) of the NPPF or any successor document thereto for let at the Affordable Rent capped at the Local Housing Allowance

**“Category 2:
Accessible and
Adaptable
Dwellings”**

dwellings which are built to standards which require that:

1. reasonable provision must be made for people to:
 - (a) gain access to; and
 - (b) use the dwellings and its facilities; and

2. the provisions must be sufficient to:
 - (a) meet the needs of occupiers with differing needs, including some older or disabled people; and
 - (b) allow adaptation of the dwellings to meet the changing needs of occupants over time

as specified in the ‘Optional Requirement M4(2) Category 2: Accessible and Adaptable dwellings’ section of the Building Regulations 2010 Approved Document M 2016 edition or such similar standards and regulations that may replace these

**“Category 3:
Wheelchair User
Dwellings”**

dwellings which are built to standards which require that:

1. reasonable provision must be made for people to:
 - (a) gain access to; and
 - (b) use the dwellings and its facilities; and

2. the provisions must be sufficient to:
 - (a) allow simple adaptation of the dwellings to meet the needs of

occupants who are wheelchair users; or

- (b) meet the needs of occupants who use wheelchairs

as specified in the 'Optional Requirement M4 (3) Category 3: Wheelchair User Dwellings' section of the Building Regulations 2010 Approved Document M2016 edition or such similar standards and regulations that may replace these

AND

dwellings that comply with the requirements of the Council's Local Plan Policy DM4 (Core Strategy BCS18) that two per cent (2%) of new housing within a development scheme of fifty (50) units or more should be designed to be wheelchair accessible or easily adaptable for residents who are wheelchair users

“Council’s Approved Allocation Policy”

the Council's approved allocation policy from time to time in force for the allocation of residential accommodation to persons in need of such accommodation

“CPI”

the Consumer Price Index or any such alternative index or comparable measure of price inflation as may be agreed in writing with the Council

“Development Standard”

means a standard to fully comply with the following:-

- (a) "Technical housing standards – nationally described space standards" published by the Department for

Communities and Local Government in
March 2015

- (b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time
- (c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited
- (d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)
- (e) local requirements as set out in adopted local plan]

or such replacement or superseding standards as are in force at the time of this Agreement

“Director”

the Director of Growth and Regeneration for the time being of the Council or such other officer of the Council as shall be substituted therefor and notified in writing to the Owners

“Enabling Fee”

the fee of [£570.00 (five hundred and seventy pounds)] charged by the Council for each Affordable Housing Unit and payable on Practical Completion of each Affordable Housing Unit

“Estate Charges”

any rentcharge imposed on a freehold property/owner pursuant to The Rentcharges Act 1977

“Ground Rent Charges”	any charges or payments that can legally be imposed on a leasehold property/owner pursuant to the Leasehold Reform (Ground Rent) Act 2022
“Homes and Communities Agency(HCA)/Homes England”	the national housing and regeneration delivery agency for England established pursuant to the Housing and Regeneration Act 2008 (now known as “Homes England” (trading name)) which shall include any successor body in substitution for the Homes and Communities Agency and the terms “Homes England” shall mean the same for the purposes of this Agreement
“Homes England Guidance”	The guidance issued by Homes England known as “The Capital Funding Guide” first published on 4 November 2016 and as updated from time to time
“Homes West”	the group of RPs chosen by the West of England Local Authorities to develop and manage Affordable Housing within the West of England sub-region who have entered into a West of England Joint Working Agreement dated 2015 and agreed to comply with the group’s publication “West of England Standards Agreement” of October 2011 or any publication or document which may supersede it
“Layout Plan”	<ul style="list-style-type: none"> i) if Option A is pursued the plan to be approved by the Director illustrating the location and the size of the Affordable Housing Units secured by

- ii) this Agreement such approval not to be unreasonable delayed or withheld if Option B is pursued, the plan referenced [drawing XXXX] at Annexure [2] illustrating the location and the size of the Affordable Housing Units secured by this Agreement or such other layout plan(s) as the Director shall approve such approval not to be unreasonably delayed or withheld

“Lease Model Agreements”

The model leases published by Homes England as part of the Homes England Guidance, as updated from time to time

“Local Housing Allowance”

the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department for Work and Pensions or such similar framework that may replace it

““Long Lease”

shall mean a lease for a term of at least 990 (nine hundred and ninety) years

“National Rent Regime”

the rent policy set out in the Department for Levelling Up, Housing and Communities Policy Statement on Rents for Social Housing and the Regulator of Social Housing Rent Standard (or any other document which may supersede it)

“Option A”

[this will be the 100% option with the amount of Affordable Housing to be secured under this Agreement being an amount up to the policy requirement and the mix being whatever is agreed with the Council]

the provision of all xx (xxxx) Residential Units as affordable tenure housing with xx (xx) of those Residential Units to be provided as Affordable Housing Units comprising xx (xx) Affordable Rented Units, xx (xx) Social Rented Units and xx (xx) Shared Ownership Units in accordance with this Agreement

“Option B”

[this will be the fall-back position so will be a policy compliant amount/mix i.e. 30/40% with 75 Social Rent/25 Shared Ownership [or First Homes] split]

“Other Units”

those Residential Units that are not identified as ‘Affordable Housing Units’ in this Agreement (including in the Layout Plan) and being either open market units or other affordable housing units

“Perpetuity”

a minimum term of 125 (one hundred and twenty five) years from the date of first Occupation of the first Affordable Housing Unit

“Practical Completion”

the practical completion of the Affordable Housing Unit(s) as evidenced by the issue of a certificate by an architect, surveyor or other suitably qualified professional person confirming that the construction of the Affordable Housing Units or any one of them is completed internally and externally and further evidenced by Building Regulation approval and **“Practically Completed”** shall have the same meaning

“Regulator of Social Housing”	the Government’s agency for regulating RPs and publishing rent standards which definition shall include any successor body or bodies taking over such functions
“Retained Equity”	the equity in a Shared Ownership Unit that is retained by the RP, i.e. the share of the property that the RP holds after selling the balance to the occupant
“RP”	a provider of Affordable Housing registered with the Regulator of Social Housing or Homes West as shall be approved by the Council such approval not to be unreasonably withheld or delayed or such other body as may be proposed by the Owner/Developer and approved by the Council (such approval not to be unreasonably withheld or delayed)
“Service Charges”	a sum (which expression shall include any Estate Charge(s) and/or Ground Rent Charges) that covers the contributions required from time to time for those services and facilities which are of a nature and to a standard reasonably required in connection with the Affordable Housing Unit(s) such as maintaining, repairing and servicing any communal parts related to the Affordable Housing Unit(s), the cleaning and lighting of common parts and the maintenance of any communal gardens or landscaping areas or shared highways that directly benefit the Affordable Housing Unit(s).

“Service Charge Cap”	the sum of £650.00 (Six Hundred and Fifty Pounds) per annum per unit Index Linked. For the avoidance of the doubt the Service Charge Cap shall not include Sinking Fund Charges for Shared Ownership.
“Service Installations”	(without prejudice to the generality of this expression) shall include sewers drains culverts channels outlets mains wires cables ducts flues soakaways and other conducting media for the supply of Services
“Services”	(without prejudice to the generality of this expression) shall include electricity telephone gas water foul drainage surface water drainage cable television and other cable services
“Shared Ownership Units”	those Affordable Housing Units in respect of which the occupier purchases an agreed percentage of the equity sale and pays a rent of up to one and a half per cent (1.5%) of the Retained Equity value and is permitted to Staircase and “Shared Ownership” shall mean any one of such units
“Sinking Fund Charges”	any charges required to cover the costs of replacing items or areas of a building at their expected ‘end of life’ as part of programmed repairs for that building
“Social Rented Units”	social rented units owned and managed by local authorities or an RP for which guideline target rents are determined through the National Rent Regime and shall bear the same meaning as described in the definition Of “Affordable housing

for rent” in the NPPF and “**Social Rented Unit**” shall mean any one of such units

“Staircase”

the method by which the occupier of a Shared Ownership Unit pays a premium in order to acquire an equity (or a further equity) in such unit and “**Staircasing**” shall be construed accordingly

“Staircasing Receipts”

payments made to the RP (less reasonable costs) by a shared ownership lessee tenant or any other person for the acquisition of equity in a Shared Ownership Unit pursuant to a Staircase event

“West of England Local Authorities”

the Council, Bath and North East Somerset Council, North Somerset Council and South Gloucestershire Council

(Part 2)

Owner/Developer Covenants

1. The Owner/Developer hereby covenants with the Council as follows:
 - 1.1. not to Commence the Development until the Owner/Developer has:
 - 1.1.1. confirmed to the Council in writing whether the Development will be provided in accordance with Option A or Option B
 - 1.1.2. submitted to and obtained the written approval of the Director to:
 - (a) a programme and timetable for the provision of the Affordable Housing Units; and
 - (b) the location (if Option A applies) cost standard and level of servicing (as applicable) of the Affordable Housing Units; and

- (c) a rent and affordability scheme for the Affordable Housing Units demonstrating how the proposed rental structure and review mechanisms will (as applicable) do as follows:
 - (i) meet the Affordable Rent (as defined herein) requirements;
 - (ii) accord with the National Rent Regime and Service Charge Cap in respect of the Social Rented Units; and
 - (iii) accord with the limit of up to [XX%] rent on Retained Equity in respect of the Shared Ownership Units as applicable; and
 - (iv) not exceed Local Housing Allowance levels at each let of an Affordable Housing Unit to a new tenant
- (d) the number and location of Category 2: Accessible and Adaptable Dwellings and Category 3: Wheelchair User Dwellings

such approval not to be unreasonably withheld or delayed

- 1.2. to provide the Affordable Housing Units in accordance with the Affordable Mix and in accordance with the Layout Plan
- 1.3. upon Commencement of the Development to construct the Affordable Housing Units together with the Services Service Installations and Access in accordance with:
 - 1.3.1. the Development Standard; and
 - 1.3.2. the approval of the Director issued pursuant to paragraph 1.1.2
- 1.4. not to Commence the Development until the Owner/Developer has entered into a contract with an RP for either:
 - 1.4.1. the grant to such RP of a Long Lease of the Affordable Housing Units; or
 - 1.4.2. the transfer to such RP of the freehold of the Affordable Housing Units(as appropriate)

together with (in either case) all Services Service Installations and Access and provide evidence in writing to the Council of such contract PROVIDED THAT this provision shall not apply where the Owner is an RP

- 1.5. not to Occupy nor permit to be Occupied more than 40% (forty per cent) of the Other Units until the Owner/Developer has either granted a Long Lease of the Affordable Housing Units or has transferred the freehold of the Affordable Housing Units (as appropriate) to an RP in accordance with the contract referred to in paragraph 1.4 above and has provided evidence in writing to the Council of such Long Lease or transfer
- 1.6. not to Occupy nor permit to be Occupied more than 60% (sixty per cent) of the Other Units until the Owner/Developer has substantially completed 75% (seventy-five per cent) of the Affordable Housing Units
- 1.7. not to Occupy nor permit to be Occupied more than 80% (eighty per cent) of the Other Units until the Owner/Developer has substantially completed 100% of the Affordable Housing Units
- 1.8. to notify the Director of the Practical Completion of all of the Affordable Housing Units
- 1.9. if Option B is pursued and subject to the right of any occupier of a Shared Ownership Unit to Staircase to 100% and any statutory right of any occupier of an Affordable Housing Unit to buy or acquire their Affordable Housing Unit to ensure and procure that the Affordable Housing Units shall be provided as such in Perpetuity
- 1.10. to observe the terms and requirements of this Schedule 1
- 1.11. that (unless otherwise permitted in writing by the Director or as otherwise permitted by this Agreement) the Owner/Developer will not vary the Affordable Mix of Affordable Housing Units

(Part 3)

Agreements between the Council and the Owner/Developer

1. IT IS HEREBY AGREED between the parties to this Agreement as follows:-
 - 1.1. that in relation to this Schedule 1 the obligations contained therein shall not bind:
 - 1.1.1. a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a “**Receiver**”)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
 - (a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another RP or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documents including all accrued principal monies, interest and costs and expenses; and
 - (b) if such disposal has not completed within the three (3) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely; or
 - 1.1.2. any tenant of an Affordable Housing Unit who (notwithstanding the provision of paragraph 1.4 of Part 4 and paragraph 1.4 of Part 5 of this Schedule 1) acquires and exercises a right to acquire such Affordable Housing Unit or any successor in title of such tenant or any mortgagee or chargee of such tenant or successor in title or any receiver appointed by such mortgagee or chargee and the said obligations shall thereafter cease to have effect in relation to the Affordable Housing Units or such of them as may be affected; or

- 1.1.3. a leaseholder of a Shared Ownership Affordable Housing Unit who has exercised a right to Staircase up to 100% ownership or any successor in title of such leaseholder or any mortgagee or chargee of such leaseholder or successor in title or any receiver appointed by such mortgagee or chargee and the said obligations shall thereafter cease to have effect in relation to the Affordable Housing Units or such of them as may be affected

(Part 4)

Owner obligations in relation to the Social Rented Units

1. The Owner and/or the Developer (as appropriate) hereby covenants with the Council to ensure and/or procure the delivery of the Social Rented Units in accordance with this Schedule 1 and to ensure and/or procure as follows:
 - 1.1. that the Social Rented Units shall at all times be occupied and managed in accordance with the objects of an RP and will procure that the Social Rented Units shall not be used otherwise than for the purpose of providing dwellings for rent to those persons referred to in paragraphs 1.2 and 1.3 below
 - 1.2. that in respect of those Social Rented Units for which the Council is from time to time granted nomination rights by the RP that such units shall not be occupied otherwise than by a person or persons who are considered by the Council and the RP to be in need of such accommodation and to whom such units shall have been allocated in accordance with the Council's Approved Allocation Policy
 - 1.3. that in respect of those Social Rented Units for which the Council has not been granted nomination rights by the RP that such units shall not be occupied otherwise than by a person or persons who are considered by the RP to be in need of such accommodation and to whom such units shall have been allocated in accordance with the RP's approved allocation policy
 - 1.4. (where Option B applies) that the Social Rented Units shall be excluded (so far as legally possible) from:-

- 1.4.1. any voluntary purchase grant scheme; and/or
- 1.4.2. any right to acquire or right to buy schemes introduced in favour of the occupiers of the Social Rented Units

- 1.5. that no occupier of a Social Rented Unit shall be charged a Service Charge in excess of the Service Charge Cap unless as agreed in writing between the affordable housing provider and the Council.

- 1.6. not to charge the tenant of a Social Rented Unit a rent in excess of the target rent determined in accordance with the National Rent Regime

- 1.7. that the Enabling Fee is paid to the Council on Practical Completion of each Social Rented Unit in accordance with the Council's Affordable Housing Practice Note 2022 or such other document that may supersede it

- 1.8. that an obligation is included in the Long Lease or transfer of the Affordable Housing Units to an RP to comply with the provisions of this Part 4 of this Schedule 1 subject to the exclusions in Part 3 of this Schedule 1 and subject to any later variation or amendment that may be made to this Agreement

2. For the avoidance of doubt the provisions in this Part 4 of this Schedule 1 shall not be binding on:
 - 2.1. a sale to a tenant exercising their right to acquire or purchase under a statutory power;
 - 2.2. the purchaser or successor in title to any person specified in paragraph 2.1 above

(Part 5)

Owner/Developer obligations in relation to the Affordable Rented Units

1. The Owner and/or the Developer (as appropriate) hereby covenants with the Council to ensure and/or procure the delivery of the Affordable Rented Units in accordance with this Schedule 1 and to ensure and/or procure as follows:
 - 1.1. that the Affordable Rented Units shall at all times be occupied and managed in accordance with the objectives of an RP and will procure that the Affordable Rented Units shall not be used otherwise than for the purpose of providing units for rent to those persons referred to in paragraphs 1.2 and 1.3 below
 - 1.2. that in respect of those Affordable Rented Units for which the Council is from time to time granted nomination rights by the RP that such units shall not be occupied otherwise than by a person or persons who are considered by the Council and the RP to be in need of such accommodation and to whom such units shall have been allocated in accordance with the Council's Approved Allocation Policy and the Regulator of Social Housing's eligibility criteria
 - 1.3. that in respect of those Affordable Rented Units for which the Council has not been granted nomination rights by the RP that such units shall not be occupied otherwise than by a person or persons who are considered by the RP to be in need of such accommodation and to whom such units shall have been allocated in accordance with the RP's approved allocation policy
 - 1.4. (where Option B applies) that the Affordable Rented Units shall be excluded (so far as legally possible) from:
 - 1.4.1. any voluntary purchase grant scheme;
 - 1.4.2. any right to acquire or right to buy scheme introduced in favour of the occupiers of the Affordable Rented Units; and/or
 - 1.4.3. any other mechanism that could result in any of the Affordable Rented Units becoming available for sale in the Private Housing Market

- 1.5. that no occupier of an Affordable Rented Unit shall be charged a rent higher than the Affordable Rent which for the avoidance of doubt shall include any Service Charge (subject to paragraph 1.6 below))
- 1.6. that no occupier of an Affordable Rented Unit shall be charged a Service Charge in excess of the Service Charge Cap unless as agreed in writing between the affordable housing provider and the Council)
- 1.7. that the Enabling Fee is paid to the Council on Practical Completion of each Affordable Rented Unit in accordance with the Council's Affordable Housing Practice Note 2022 or such other document that may supersede it
- 1.8. that an obligation is included in the Long Lease or transfer of the Affordable Housing Units to an RP to comply with the provisions of this Part 5 of this Schedule 1 subject to the exclusions in Part 3 of this Schedule 1 and subject to any later variation or amendment that may be made to this Agreement

(Part 6)

Owner/Developer obligations in relation to Shared Ownership Units

1. The Owner and/or Developer (as appropriate) hereby covenants with the Council to ensure and/or procure the delivery of the Shared Ownership Units in accordance with this Schedule 1 and to ensure and/or procure as follows:
 - 1.1. that the Shared Ownership Units shall be made available for shared equity leasing by an RP under the HCA's standard form of shared ownership lease (or any subsequent standard form of shared ownership lease as may be issued by Homes England from time to time in force) to persons who are considered by the RP to be in need of such accommodation;
 - 1.2. that the RP will notify the Council in writing each time a purchaser of a Shared Ownership Unit acquires a further equity in such Shared Ownership Unit;
 - 1.3. that no occupier of a Shared Ownership Unit shall be charged a Service Charge in excess of the Service Charge Cap and no element of such Service Charge shall be included in any rent for such unit unless as agreed in writing between the affordable housing provider and the Council.
 - 1.4. that no occupier of a Shared Ownership Unit shall be charged a rent on the Retained Equity in excess of up to one and half per cent (1.5%) of the Retained Equity value and such occupier shall not be required to make an initial purchase of equity of more than as is set out in the Homes England Guidance and Lease Model Agreements applicable at the time of the initial purchase unless otherwise agreed with the Council
 - 1.5. that the RP shall use all Staircasing Receipts received from the purchaser of a Shared Ownership Unit (as a result of the occupiers exercising the right to Staircase) to enable the provision of Affordable Housing within either:
 - 1.5.1. the same electoral ward in which the Shared Ownership Units are situated;
or
 - 1.5.2. the City of Bristol generally; or
 - 1.5.3. as previously agreed in writing with the Council

- 1.6. that the Enabling Fee is paid to the Council on Practical Completion of each Shared Ownership Unit in accordance with the Council's Affordable Housing Practice Note 2022 or such other document that may supersede it

- 1.7. that an obligation is included in the Long Lease or transfer of the Shared Ownership Units to an RP to comply with the provisions of this Part 6 of this Schedule 1 subject to the exclusions in Part 3 of this Schedule 1 and subject to any later variation or amendment that may be made to this Agreement

(Part 7(a))

Details of Social Rented Units – OPTION A

The Social Rented Units shall comprise the following:

Property Type	Plot Numbers/Location	Minimum Size m2	Accessibility Standard	Number of Units
[]- bed [house/flat]	[]	[]	M4(2)/(3)	
TOTAL				

(Part 7(b))

Details of Affordable Rented Units – OPTION A

The Affordable Rented Units shall comprise the following:-

Property Type	Plot Numbers/Location	Minimum Size m2	Accessibility Standard	Number of Units
[]- bed [house/flat]	[]	[]	M4(2)/(3)	
TOTAL				

(Part 7(c))

Details of Shared Ownership Units – OPTION A

The Shared Ownership Units shall comprise the following:

Property Type	Plot Numbers/Location	Minimum Size m2	Accessibility Standard	Number of Units
[]- bed [house/flat]	[]	[]	[] M4(2)/(3)	
TOTAL				

Part 8(a)

Details of Social Rented Units – OPTION B

The Social Rented Units shall comprise the following:

Property Type	Plot Numbers/Location	Minimum Size m2	Accessibility Standard]	[Number of Units
[]- bed [house/flat]	[]	[]	[] M4(2)/(3)]	
TOTAL				

(Part 8(b))

Details of Affordable Rented Units – OPTION B

The Affordable Rented Units shall comprise the following:-

Property Type	Plot Numbers/Location	Minimum Size m2	Accessibility Standard	[Number of Units
[]- bed [house/flat]	[]	[]	M4(2)/(3)]	
TOTAL				

(Part 8(c))

Details of Shared Ownership Units – OPTION B

The Shared Ownership Units shall comprise the following:

Property Type	Plot Numbers/Location	Minimum Size m2	Accessibility Standard	[Number of Units
[]- bed [house/flat]	[]	[]	[] M4(2)/(3)]	
TOTAL				

(Part 9)

1. For the avoidance of doubt, if Option A is taken forward, the Other Units shall be permitted to be delivered and used as affordable tenures (in accordance with Annex 2 (Glossary) to the National Planning Policy Framework (February 2019 as amended)) but Schedule 1 of this Agreement shall not apply to such units

SCHEDULE 2
AFFORDABLE HOUSING - VIABILITY REVIEW

1. DEFINITIONS

1.1. In this Schedule, the following definitions shall have the following meaning:

“Affordable Housing Review Date”	The date which is exactly 18 (eighteen) calendar months after the date of grant of the Planning Permission
“Additional On-Site (Viability Review) Affordable Housing”	All additional Affordable Housing (if any) identified by a Viability Review as required to be provided on the Land in addition to the Affordable Housing Units described under [Parts 8a 8b 8c and 8d] of Schedule 1 to this Agreement and “Additional On-Site (Viability Review) Affordable Housing Units” shall mean the same
“Affordable Housing Contribution”	the financial contribution (Index Linked) of up to the Affordable Housing Contribution Cap in lieu of provision of complete units of Additional On-Site (Viability Review) Affordable Housing on the Land to be used by the Council to enable the provision of Affordable Housing within the Council’s Area (excluding the Land)
“Affordable Housing Contribution Cap”	The level of Surplus necessary to fund one on-site Affordable Housing Unit which would form part of the Development
“CIL Commencement Notice”	A notice given to the Council that the Development has commenced in accordance with Regulation 67 of the Community Infrastructure Levy Regulations 2010 (as amended)
“Council’s Area”	The administrative area of the City of Bristol Council

“Council’s Valuer”	The Council’s appointed valuer who is a suitably qualified and experienced valuer and a professional member of the Royal Institution of Chartered Surveyors (RICS)
“Implementation”	the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Development begins to be carried out
“Surplus”	the sum calculated as being available for the provision of Additional On-Site (Viability Review) Affordable Housing or an Affordable Housing Contribution as a result of a Viability Review and as then agreed between the parties (or by the Expert if determined in accordance with clause 18)
“Viability Assessment”	an upwards only viability assessment prepared by or on behalf of the Owner/Developer to be undertaken in accordance with the relevant provisions in the NPPF, the Planning Practice Guidance on Viability and the “Financial Viability in Planning, Royal Institute of Chartered Surveyors (RICS) Guidance Note 1 st Edition (GN 94/2012) or such other superseding guidance
“Viability Review”	the upward-only review of the Viability Assessment by the Council’s Valuer

2. NOTICE OF IMPLEMENTATION

- 2.1. The Owner/Developer shall notify the Council in writing of Implementation of the Development within seven (7) Working Days of such Implementation.
- 2.2. For the purposes of paragraph 2.1 above, the Council shall accept a CIL Commencement Notice as notice of Implementation.

3. TRIGGER EVENT

- 3.1. If Implementation of the Development has not occurred by the Affordable Housing Review Date then the Owner/Developer shall provide a Viability Assessment to the Council in accordance with the provisions of this Schedule.

4. SUBMISSION OF VIABILITY ASSESSMENT

- 4.1. If a Viability Assessment is triggered pursuant to paragraph 3.1 of this Schedule the Owner/Developer shall submit the Viability Assessment to the Council within twenty (20) Working Days of the Affordable Housing Review Date

5. VIABILITY REVIEW

- 5.1. On receipt of the Owner's/Developer's Viability Assessment, the Council shall:

5.1.1. within 20 (twenty) Working Days of receipt of the Viability Assessment commission the Council's Valuer to undertake an independent Viability Review of the Viability Assessment PROVIDED THAT the Owner/Developer shall pay to the Council the costs of the Council and the Council's Valuer which are reasonably and properly incurred in carrying out the Viability Review (up to a maximum of £15,000 (fifteen thousand pounds)) and such payment shall be made within 20 (Working Days) of receipt of a written request by the Council;

5.1.2. provide a copy of the report of the Council's Valuer to the Owner/Developer within 20 Working Days of its receipt by the Council; and

5.1.3. confirm the amount of the Surplus and whether in the opinion of the Council any Additional On-Site (Viability Review) Affordable Housing Units are required to be delivered as part of the Development or whether an Affordable Housing Contribution should be paid

6. REQUESTS FOR FURTHER INFORMATION

- 6.1. Within 20 Working Days of a written request by the Council or the Council's Valuer the Owner/Developer will provide to the Council such further information and evidence as is reasonably required by the Council to enable the Council's Valuer to carry out the Viability Review and this process may be repeated until the Council's Valuer has all the information it reasonably requires

7. AGREEMENT ON THE SURPLUS

- 7.1. In the event that the Owner/Developer does not agree with the Council's conclusions in paragraph 5.1.3 above as to the amount of the Surplus, the Developer shall notify the Council in writing within 20 Working Days from its receipt of such conclusions identifying those areas of disagreement
- 7.2. On its receipt of a notice pursuant to para 7.1 above, the Council shall use reasonable endeavours to agree the amount of the Surplus with the Owner/Developer
- 7.3. In the event that the parties are not able to agree the Surplus, either party may refer the matter for determination to an independent Expert in accordance with Clause 18 of this Agreement
- 7.4. If the parties agree the Surplus or such amount is determined by an Expert, the Owner/Developer acknowledges and agrees that PROVIDED THAT the Surplus is more than the Affordable Housing Contribution Cap the Surplus shall be provided by the Owner/Developer as Additional On-Site (Viability Review) Affordable Housing in accordance with paragraph 8 below
- 7.5. If the parties agree the Surplus (or such amount as is determined by an Expert), is less than the Affordable Housing Contribution Cap the Surplus shall be provided by the Owner/Developer as an Affordable Housing Contribution in accordance with paragraph [9] below

7.6. In the event that the parties agree (or it is determined by the Expert) that there is no Surplus or that the Development is in deficit then the Affordable Housing Deferred Contribution shall be £0 (zero pounds)

8. **PROPOSALS FOR THE SURPLUS – ADDITIONAL ON-SITE (VIABILITY REVIEW) AFFORDABLE HOUSING UNITS**

8.1. Where the Owner/Developer is to provide Additional On-Site (Viability Review) Affordable Housing Units as part of the Development, the Owner/Developer covenants with the Council as follows:

8.1.1. to provide such Additional Affordable On-Site (Viability Review) Affordable Housing on the Land on the same terms as and in accordance with the provisions of Schedule 1 to this Agreement which FOR THE AVOIDANCE OF DOUBT shall include submitting for the Council's approval:

8.1.2. a programme and timetable for the provision of the Additional Affordable On-Site (Viability Review) Affordable Housing;

8.1.3. the location tenure cost standard and level of servicing of the Additional Affordable On-Site (Viability Review) Affordable Housing;

8.1.4. a rent and affordability scheme for the Affordable Housing Units demonstrating how the proposed rental structure Service Charge and review mechanisms will (as applicable) do as follows:

8.1.4.1. meet the Affordable Rent (as defined herein) requirements;

8.1.4.2. accord with the National Rent Regime and Service Charge Cap;
and

8.1.4.3. accord with the limit of up to [1.5%] rent on Retained Equity in respect of the Shared Ownership Units as applicable; and

8.1.4.4. not exceed Local Housing Allowance levels at each new let of an Affordable Housing Unit

8.1.5. the number and location of Category 2 (M4(2)) (Accessible and Adaptable Dwellings) and Category 3 (M4(3)) (Wheelchair User Dwellings)

8.2. to Practically Complete the Additional On-Site Affordable Housing Units in accordance with the details approved in paragraph 8.1.1 and to make such units available for Occupation in accordance with the requirements set out in Schedule 1

9. PROPOSALS FOR THE SURPLUS – AFFORDABLE HOUSING CONTRIBUTION

9.1. In the event that the Surplus shall be provided as an Affordable Housing Contribution the Owner/Developer shall pay the Affordable Housing Contribution upon first Occupation of any Residential Property

9.2. Upon payment of the Affordable Housing Contribution the Council covenants to use the contribution only for the purpose specified in paragraph 1.1 of this Schedule above.

SCHEDULE [xx]
FINANCIAL CONTRIBUTIONS

1. DEFINITIONS

1.1. In this Schedule [] the words below shall mean as follows:

“Bus Stops Contribution” the sum of £[] Index Linked to be used by the Council towards the Council’s costs and expenses incurred by the Council in the [upgrading/provision of [number XXXX] bus stops in the vicinity of the Development

“Carbon Offset Contribution” the sum of £ [] Index Linked for expenditure by the Council on the reduction of carbon dioxide emissions from the existing building stock (other than the buildings comprising the Development) in the Council’s administrative area

“Contributions” together the [Bus Stops Contribution] [the Fire Hydrant Contribution] [the Carbon Offset Contribution] [the Footpath Contribution] [the Travel Plan Monitoring Fee] [the Traffic Order Contribution] [the Tree Replacement Contribution] [the Transport Infrastructure Contribution]

“Fire Hydrant Contribution” the sum of £[] Index Linked [at £1500 per hydrant] for expenditure by the Council on the provision installation and five (5) years maintenance of XX new fire hydrant(s) and related appropriately-sized water mains for fire-fighting purposes at a location within the vicinity of the Development to be agreed between the parties acting reasonably

“Footpath Contribution” shall mean the sum of £ [] Index Linked to be spent on access improvements in the immediate vicinity of the Land

“Residential Travel Plan” the residential travel plan to be prepared by and provided to the Council for its approval by the Owner/Developer in accordance with Schedule [XX]

“Travel Plan Monitoring Fee” the sum of £[] Index Linked to be used by the Council towards the Council’s costs and expenses incurred by the Council in the [monitoring] [preparation and implementation] of the Residential Travel Plan

“Traffic Order Contribution” the sum of £[] Index Linked to be used by the Council for the making and implementation of traffic regulation orders for the Development comprised as follows:[]

“Tree Replacement Contribution” the sum of £ [] Index Linked to be used by the Council towards the Council’s costs and expenses incurred by the Council in the planting off-site of replacement trees in mitigation of the loss of trees arising from the Development of the Land such Tree Replacement Contribution calculated in accordance with the tree replacement standards provided for in policies BCS9 and BCS11 of the Council’s Core Strategy (adopted June 2011)

“Transport Infrastructure Contribution” the sum of £ [] Index Linked to be used for expenditure by the Council on [improvements to

the local highways network including cycle paths
in the vicinity of the Development]

[.....Contribution]

[details]

2. The Owner/Developer covenants to pay xxx Contribution within xxx of Implementation/Occupation/Completion

3. The Council covenants to apply the [Footpath Contribution] [the Travel Plan monitoring fee] [the Traffic Order Contribution] [the Tree Replacement Contribution] [the [Carbon Offset Contribution] and [the Fire Hydrant Contribution] only to the purposes identified in paragraph 1 above

SCHEDULE [xxx]

INDEXATION

1. DEFINITIONS

1.1. For the purposes of this Schedule [xx], “**Index**” means:

1.1.1. in relation to the Affordable Housing Units, the indices based on the CPI Index in respect of the rent and Service Charge Cap payable for the Affordable Housing Units under this Agreement; and

1.1.2. in relation to the Contributions, [*and the Affordable Housing Contribution (if payable in accordance with Schedule 2)*] the indices means the All items Index of Retail Prices published by the Office for National Statistics or any publication substituted therefor

2. CALCULATION OF INDEXATION

CONTRIBUTIONS

2.1. All Contributions [*(excluding the Affordable Housing Contribution)*] will be subject to indexation based on increases in the Index and calculated using the following formula:

$$C = \text{£Y} \times (B / A)$$

Where:

A is the value of the Index for the month immediately preceding the date of this Agreement in respect of the relevant Contribution

B is the value of the Index for the month immediately preceding payment of a Contribution pursuant to the provisions of this Agreement

£Y is the Contribution

C is the level of the Contribution after the application of the Indexation formula

[AFFORDABLE HOUSING CONTRIBUTION

2.2. *This contribution will be subject to indexation based on increases in the Index and calculated using the following formula:*

$$C = \text{£}Y \times (B / A)$$

Where:

A is the value of the Index for the month in which the amount of the Affordable Housing Contribution is agreed (either between the parties or by the Expert)

B is the value of the Index for the month immediately preceding payment of the Affordable Housing Contribution pursuant to the provisions of this Agreement

£Y is the Contribution

C is the level of the Contribution after the application of the Indexation formula]

AFFORDABLE HOUSING UNITS

2.3. The Service Charge Cap for the Affordable Housing Units will be subject to indexation in April of every financial year ('the Indexation Trigger') based on increases in the Index and calculated using the following formula:

$$C = \text{£}Y \times (B / A)$$

Where:

A is the value of the Index for September 2018

- B is the value of the Index for September of the financial year preceding the Indexation Trigger
- £Y is the Service Charge Cap payable in respect of the Affordable Housing Units on each new let
- C is the level of Service Charge Cap payable in respect of the Affordable Housing Units after application of the Indexation formula

EXECUTED as a DEED by affixing THE COMMON SEAL of **THE CITY COUNCIL OF BRISTOL** in the presence of:

Authorised signatory

EXECUTED as a DEED by [] acting by two Directors or one Director and its Company Secretary:

Director

Director/Company Secretary

ANNEXURE 1

(The Plan)

(“Council”); and
(2) [] (Company reg. no.[]) of [] (“Covenantor”)

RECITALS

1. This Confirmatory Deed relates to the Covenantor's interest in land at [xxxxxxxxxxxxxx] which is shown hatched blue on the plan annexed to this Confirmatory Deed ("Land")
2. The Council is the local planning authority for the area within which the Land is located
3. The Covenantor has entered into an agreement with the Council (“Planning Agreement”) details of which are set out in the Schedule to this Confirmatory Deed and which is to regulate the Development of the Land but at the date of the Planning Agreement the Covenantor did not have a freehold or long leasehold interest in the Land
4. The planning obligations covenants and other provisions contained in the Planning Agreement are intended to be enforceable by the Council against the Covenantor and to be binding in respect of the Covenantor's interests in the Land in accordance with the terms of this Confirmatory Deed and the Planning Agreement
5. On the date hereof and immediately prior to the completion hereof the Covenantor became the owner of a freehold/leasehold interest of the whole of the Land

OPERATIVE PROVISIONS

1. Operation of this Confirmatory Deed

1.1. This Confirmatory Deed and the obligations contained in it are:

1.1.1. to the extent that they fall within its terms made pursuant to section 106 of the Town and Country Planning Act 1990 as planning obligations and these and the other provisions referred to in the Planning Agreement are made pursuant to that section and such other enabling powers (statutory or otherwise) as may be relevant and appropriate;

1.1.2. executed by the Covenantor so as to bind its estate or interest in the Land to the obligations covenants and other provisions contained in the Planning Agreement (if and to the extent that they remain to be observed performed and complied with);

1.1.3. enforceable in accordance with the Planning Agreement by the Council acting as the local planning authority

2. The Covenantor's Obligations

2.1. The Covenantor hereby covenants and undertakes that its said estate or interest in the Land shall henceforth be bound by the obligations covenants and other provisions contained in the Planning Agreement in accordance with the terms of the Planning Agreement if and insofar as such terms and obligations covenants and other provisions remain to be complied with as at the date hereof

3. Miscellaneous Provisions

3.1. All words and phrases in this Confirmatory Deed shall bear the same meaning as defined in the Planning Agreement except where defined otherwise in this Confirmatory Deed

3.2. This Confirmatory Deed shall be registrable as a local land charge

3.3. Any invalidity illegality or unenforceability of any clause or paragraph in the Planning Agreement shall not affect the validity or enforceability of the remaining provisions in this Confirmatory Deed

3.4. This Confirmatory Deed shall immediately cease to have effect if and to the extent that the Planning Agreement shall cease to have effect.

IN WITNESS of which this Confirmatory Deed has been executed and delivered on the day and year above written

SCHEDULE

The Planning Agreement

Date	Parties	Details of interests in the Land bound by the Planning Agreement
------	---------	--

	(1) The City Council of Bristol; (2) [xxxx] (3) [xxxxx]	The relevant part(s) of freehold titles [xxxxxx]
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**ANNEXURE [x]
LAYOUT PLAN FOR THE AFFORDABLE HOUSING UNITS - OPTION B**