

18/664

DATE: 21st December 2018

THE WYGGESTON'S HOSPITAL AND HOSPITAL BRANCH TRUSTEE

AND

EAST STAFFORDSHIRE BOROUGH COUNCIL

AND

STAFFORDSHIRE COUNTY COUNCIL

AGREEMENT

SECTION 106

TOWN AND COUNTRY PLANNING ACT 1990

RELATING TO:

**LAND AT HARBURY STREET, BURTON UPON TRENT
STAFFORDSHIRE**

File Ref. 1800

Planning Application Ref. P/2016/00980

THIS AGREEMENT is made as a deed the 25th day of December 2018

1 PARTIES

- 1.1 **THE WYGGESTON'S HOSPITAL AND HOSPITAL BRANCH TRUSTEE** of Wyggeston's House, Hinckley Road, Leicester LE3 0UX (Company Registration Number 7718817) ("**the Owner**").
- 1.2 **EAST STAFFORDSHIRE BOROUGH COUNCIL** whose principal office is at Town Hall, Burton upon Trent, Staffordshire ST16 2DH ("**the Council**").
- 1.3 **STAFFORDSHIRE COUNTY COUNCIL** whose principal office is at 2 Staffordshire Place, Tipping Street, Stafford ST16 2DH ("**the County**").

2 DEFINITIONS

In this Agreement (except where the context otherwise requires):

- 2.1 "**the Act**" means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991)
- 2.2 "**the Application**" means the application in outline only numbered P/2016/00980 registered on 4th October 2016
- 2.3 "**Commencement of the Development**" means the earliest date upon which any material operations are begun in accordance with the provisions of Section 56(4) of the Act save for the purposes of this Agreement none of the following operations shall constitute a material operation:
- 2.3.1 site clearance works;
 - 2.3.2 archaeological investigations;
 - 2.3.3 investigations for the purpose of assessing ground conditions;
 - 2.3.4 remedial work in respect of any contamination or other adverse ground conditions;
 - 2.3.5 diversion and laying of services;
 - 2.3.6 erection of any temporary means of enclosure;
 - 2.3.7 temporary display of site notices or advertisements;

and “**Commence the Development**” shall be construed accordingly.

2.4 “**the Development**” means the development authorised by the Planning Permission.

2.5 “**Dwellings**” means all houses, maisonettes, flats, bungalows and all other varieties of accommodation which may be built or are intended to be built on the Land to be used as individual units of accommodation for independent occupation by one or more people.

2.6 “**the Head of Service (Section 151 Officer)**” means the person the Council shall appoint as the Head of the Department responsible for Planning Services for the time being.

2.7 “**the Index**” means the All Items Group (item reference CHAW) of the Retail Prices Index published by H M Government Office for National Statistics provided that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties or, in default of agreement, fixed by the President for the time being of the Law Society on the application of any party) shall be used.

2.8 “**Index Linked**” means increased (if applicable) in proportion to movements in the Index between the date of this Agreement and the date the particular payment is made.

2.9 “**the Land**” means the Land at Harbury Street Burton upon Trent Staffordshire shown for the purposes of identification only edged red on the Plan.

2.10 “**Occupation of the Development**” means beneficial occupation of any part of the Development for the purposes permitted by the Planning Permission other than the carrying out of the Development and “**Occupy the Development**” shall be construed accordingly.

2.11 “**Plan 1**” means the plan annexed to this Agreement marked Plan 1.

2.12 “**Plan 2**” means the plan annexed to this Agreement marked Plan 2.

16234

PLAN 1



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P/2016/00980

Received 12/07/16

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Summary of Accommodation
14 no. Units - 8 no. x 2 bed 4 person house - 87.4m² (22Sept)
6 no. x 3 bed 6 person house - 82m² (82Sept)
(2 allocated parking spaces, plus 10 additional parking spaces)
Total Site Area = 3,720m² (0.849 acres)

PLAN 2
18/06/16

1/2016/0960
Received 12/07/16

Rev.	Description	By	Date
Project: Development of the land at Harbury Street, Burton on Trent			
Client: Andrew Granger and Co Ltd			
Scale: 0 1.5m 3m 7.5m 15m 30m 1:250			
Drawn by: JAE	Checked:	Date: Feb 2016	Paper Size: A1
Drawing Title: Proposed Site Plan			
Drawing Status: FOR DISCUSSION			
Drawing Number: 3973/AG/16/003			Revision Number: -



CORPORATE ARCHITECTURE LIMITED
CHARTERED ARCHITECTS

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Proposed Site Plan

1:250

2.13 **“Planning Permission”** means the planning permission to be granted by the Council pursuant to the Application.

2.14 **“Satisfaction of the Council”** means to the normal standards of the Council applied elsewhere within their administrative area in respect of similar matters.

3 INTERPRETATION

3.1 References to the masculine, feminine and neuter genders shall include the other genders.

3.2 References to the singular include the plural and vice versa unless the contrary intention is expressed.

3.3 References to natural persons are to include corporations and vice versa.

3.4 Headings in this Agreement are for reference purposes only and shall not be taken into account in its construction or interpretation.

3.5 The expression “the Owner” shall include their respective successors in title and assigns and the expressions “the County” and “the Council” shall include their respective successors in title and assigns and the successors to their statutory functions.

3.6 A reference to a Clause, Paragraph or Schedule is (unless the context otherwise requires) a reference to a Clause, Paragraph or Schedule of this Agreement.

3.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.

3.8 Where in this Agreement a party includes more than one person any obligations of that party shall be joint and several.

3.9 Any reference in this Agreement to any statute, or to any section of a statute, includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

4 INFORMATION

- 4.1 The Owner owns the freehold interest in the Land and is registered as proprietor of it with Title Absolute at H M Land Registry free from incumbrances other than those matters contained or referred to in the Property and Charges Registers of Title Numbers SF509680, SF574840 and SF571130 at the date of this Agreement.
- 4.2 The Council is the local planning authority for the purposes of the Act for the Land.
- 4.3 The County is the local education authority for the purposes of the Education Act 1996 for Staffordshire and considers that the Development will necessitate a requirement for a contribution towards the provision of educational facilities.
- 4.4 The Council is satisfied that the Development is such as may be approved by the Council under the Act and planning permission granted (subject to conditions) subject to the Owner covenanting in the terms of this Agreement.

5 STATUTORY AUTHORITY AND LEGAL EFFECT

- 5.1 This Agreement is made pursuant to:
- 5.1.1 Section 106 of the Act; and
- 5.1.2 Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011
- and all other enabling powers and enactments which may be relevant for the purpose of giving validity to this Agreement.
- 5.2 The obligations of the Owner in this Agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority.
- 5.3 Subject to clause 5.4, the Owner hereby covenants with the Council to the intent that this Agreement shall be enforceable without limit of time (other than as expressly mentioned in this Agreement) against them and any person deriving title through or under them to the Land or any part or parts of it as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.

- 5.4 No person shall be bound by any obligations, rights and duties contained in this Agreement and/or be liable for any breach of a covenant and/or obligation contained in this Agreement after they shall have parted with all interest in the Land or the part in respect of which such obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.
- 5.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this Agreement and/or be liable for any breach of a covenant and/or obligation contained in this Agreement in respect of any site used only as an electricity substation, gas governor or pumping station.
- 5.6 If the Planning Permission expires (within the meaning of Sections 91, 92 or 93 of the Act) or is revoked or otherwise withdrawn before Commencement of the Development, this Agreement shall forthwith determine and cease to have effect.
- 5.7 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 5.8 Nothing in this Agreement shall be construed as restricting the exercise by the Council or the County of any powers exercisable by them under the Act or under any other Act or any statutory instrument, order or byelaw in the exercise of their functions as a local authority.

6 WAIVER

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

7 CONDITION PRECEDENT

The planning obligations contained in this Agreement shall not be enforceable by the Council until the grant of the Planning Permission by the Council.

8 OBLIGATIONS

8.1 The Owner, the County and the Council further covenant, agree and declare as set out in this Agreement and the Schedules.

8.2 The Council agrees with the Owner to grant the Planning Permission as soon as is reasonably practicable after completion of this Agreement.

9 COSTS

9.1 The Owner agrees to pay to the Council and the County on the signing of this Agreement their reasonable costs and disbursements of and incidental to the preparation and execution of this Agreement.

10 INVALIDITY

It is agreed and declared that if any clause or sub-clause of this Agreement shall be deemed to be unenforceable or ultra vires the remainder of this Agreement shall remain in full force and effect provided severance from this Agreement is possible.

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing contained in this Agreement shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council and the County and to the specific person executing this Agreement as the Owner and its successors (if any) as defined in this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Agreement.

12 OTHER MATTERS

- 12.1 In the event of a breach by the Owner of any obligations contained in this Agreement the owner shall keep the Council and the County fully indemnified against all liability, proceedings, costs, claims, demands and expenses incurred or arising under this Agreement.
- 12.2 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and parties to this Agreement and shall cite the number and clause of this Agreement to which it relates.
- 12.3 Payment of any money under this Agreement shall be made by the Owner sending the full amount payable in the form of a Banker's Draft or Solicitors' client account cheque within the time specified in this Agreement together with a letter specifically referring to the name, date and parties to this Agreement and citing the number and clause of this Agreement to which the relevant sum relates and identifying which portion of the amount relates to any sum calculated to take account of Index Linking.
- 12.4 This Agreement shall be registered as a Local Land Charge.

IN WITNESS of which the Parties have executed this Agreement as a deed and have delivered it upon dating the day and year first before written.

SCHEDULE 1
General Obligations

The Owner covenants with the Council and the County with the intent that these are planning obligations for the purposes of Section 106 of the Act:

1. To permit the Head of Service (Section 151 Officer) and any person or persons authorised by him access to the Land or any part of it at all reasonable times, on reasonable notice and in compliance with the Owner's reasonable requirements, and to permit him or them to inspect the Development and all materials intended for use in it.
2. To give the Council and the County notice in writing no later than 7 days prior to the anticipated Commencement of the Development.
3. To give the Council and the County notice in writing of the Commencement of the Development within 7 days of Commencement of the Development.
4. To give the Council and the County notice in writing no later than 7 days prior to the anticipated Occupation of the Development.
5. To give the Council and the County notice in writing of the Occupation of the Development within 7 days of Occupation of the Development.

SCHEDULE 2
EDUCATION PROVISIONS

1. DEFINITIONS

1.1 “Education Sums” means collectively the Primary Education Sum and the Secondary Education Sum Index Linked

1.2 “Primary Education Sum” means £33,093 (thirty three thousand and ninety three pounds) Index Linked PROVIDED THAT this sum shall be recalculated by the County in the event that the number of Dwellings is amended from 14 in accordance with the following formula:-

$A \times 0.21 \times B =$ the Primary Education Sum which shall be rounded to the nearest whole pupil and Index Linked

where

“A” is the number of Dwellings as are agreed through Reserved Matters Approvals to be constructed as part of the Development

and

“B” is the sum of £11,031 (eleven thousand and thirty one pounds)

1.3 “Secondary Education Sum” means £33,244 (thirty three thousand two hundred and forty four pounds) Index Linked PROVIDED THAT this sum shall be recalculated by the County in the event that the number of Dwellings is amended from 14 in accordance with the following formula:-

$C \times 0.15 \times D =$ the Secondary Education Sum which shall be rounded to the nearest whole pupil and Index Linked

where

“C” is the number of Dwellings as are agreed through Reserved Matters Approvals to be constructed as part of the Development

and

“D” is the sum of £16,622 (sixteen thousand six hundred and twenty two pounds)

1.4 “Reserved Matters Approvals” means the approval of any reserved matters application pursuant to the Planning Permission

2. PLANNING OBLIGATIONS

The Owner covenants with the Council and as a separate covenant with the County with the intent that this is a planning obligation for the purposes of Section 106 of the Act not to Commence the Development without having first:-

2.1 paid the Education Sums to the County; and

2.1.1 notified the Council that such payment has been made.

3. THE COUNTY'S COVENANTS

The County covenants with the Owner and as a separate covenant with the Council:-

3.1 To use the Primary Education Sum towards 1 form of entry of provision in a new primary school on the residential housing development known as Upper Outwards Farm, Beamhill Road, Burton upon Trent.

3.2 To use the Secondary Education Sum towards a project to provide additional accommodation and/or associated infrastructure for an additional ½ form of entry of provision at Paulet High School or Blessed Robert Sutton Catholic High School (or any successor schools or establishments following a change in name or school type) to accommodate the additional demand as a result of the Development.

3.3 In the event that any part of the Education Sums has not been expended within 7 years of receipt of those sums then the County shall return the said unexpended part to the person who paid the Education Sums together with interest credited at the Local Authority 7 day Offer Rate in force from time to time (as published in the Financial Times) such interest to be calculated from the date of receipt of the payment by the County to the date of its repayment.

4. DECLARATIONS

The parties hereby agree and declare that:-

4.1 The Owner shall comply with the obligations in paragraph 2 of this Schedule 2 notwithstanding that at the date for payment of the Education Sums the County may have already commenced, carried out and/or completed the purpose for which the Primary Education Sum and/or the Secondary Education Sum is payable; and

4.2 for the purposes of paragraph 3.3 of this Schedule 2:-

4.2.1 the County shall be deemed to have expended the Primary Education Sum and/or the Secondary Education Sum (or any part thereof) if it has incurred and met expenditure for the purpose for which the Primary Education Sum and/or the Secondary Education Sum is to be used prior to those amounts actually being received or due under this Agreement; and

4.2.2 any part of the Primary Education Sum and/or the Secondary Education Sum which has not yet been paid out by the County but has been committed to be paid by a contract prior to the expiry of the 7 year period shall be deemed to have been expended.

SCHEDULE 3
AFFORDABLE HOUSING PROVISIONS

1. DEFINITIONS

1.1. Housing Definitions

“Affordable Housing” means affordable housing as defined in Annex 2 of the National Planning Policy Framework July 2018 or its successor in title.

“Affordable Housing Contribution” means the amount of Affordable Housing to be built within the Development.

“Affordable Housing Unit” means a Rented Social Housing Unit or an Intermediate Housing Unit, and reference to **“Affordable Housing Units”** shall be construed accordingly.

“Allocations Policy” means the Council’s policy for the time being for the allocation of rented housing owned by Registered Providers of Social Housing.

“Capital Value” of a housing unit means the price at which the Dwelling would be sold on the open market as a Market Housing Unit.

“Discounted Sale Housing Unit” means a Dwelling which shall be sold to an Eligible Person at a price not exceeding 60% of the Capital Value, and which shall not be extended, and which shall not be let whether by way of a tenancy or a lease or otherwise other than to an Eligible Person with a Local Connection at a rent no greater than 60% of the Market Rent, and reference to **“Discounted Sale Housing Units”** shall be construed accordingly.

“Eligible Person” means a person and their household who is unable to pay the Capital Value of the Affordable Housing Unit as verified in writing by a financial advisor or a mortgage advisor and who intends to occupy the Dwelling as his/her home.

“Housing Market Area” means the area comprised of East Staffordshire.

“Intermediate Housing Units” means Shared Ownership Housing Units and Rent to Shared Ownership Housing Units and Discounted Sale Housing Units.

“Local Connection” means one of:

- Continuously resident in the Housing Market Area for at least the last 5 years;
- Cumulative residency in the Housing Market Area of at least 30 years;
- Resident in the Housing Market Area for at least 5 of the last 7 years and with family (parent, child, brother or sister) currently living in the Housing Market Area;
- A need to move to the Housing Market Area to be close to relatives or local facilities in order to give or receive appropriate support or care;
- A need to move to the Housing Market Area because of a specific need for a household member to live close to their place of employment.

“Market Housing Unit” that part of the Development which is housing for sale on the open market and which is not Affordable Housing and **“Market Housing Units”** shall be construed accordingly.

“Market Rent” is what a willing landlord might reasonably expect to receive and what a willing tenant might reasonably expect to pay for an assured shorthold tenancy of the relevant Affordable Housing Unit, in comparison with similar properties in Burton upon Trent.

“Practical Completion” means the issue of a certificate of practical completion by the Owner’s architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect.

“Registered Provider of Social Housing” means a registered landlord as defined in Part 1 of the Housing and Regeneration Act 2008 who is registered with the regulator pursuant to Section 116 of that Act and has not been removed from the register pursuant to Section 118 or Section 119 of that Act provided that if there is no statutory definition of registered provider of social housing then **“Registered Provider of Social Housing”** shall mean a provider of social housing approved by the Council (such approval not to be unreasonably withheld or delayed on application to the Council for approval)

“Rented Social Housing Unit” means a Dwelling which shall be let by a Registered Provider of Social Housing to a person allocated that Dwelling in accordance with the Council’s Allocations

Policy (unless the Council does not have an Allocations Policy), and reference to "**Rented Social Housing Units**" shall be construed accordingly.

"Rent to Shared Ownership Housing Unit" means a Dwelling which shall be let at a rent which is not greater than 80% of the Market Rent to an Eligible Person who expects to be able to purchase a share of the Dwelling within 5 years and who will be permitted to purchase a share of the Dwelling as a Shared Ownership Housing Unit during that timescale, and reference to **"Rent to Shared Ownership Housing Units"** shall be construed accordingly.

"Shared Ownership Housing Unit" means a Dwelling which shall be occupied by an Eligible Person on a part rent/part sale (lease) basis where the rent does not exceed 3% of the balance of the Capital Value and annual rent increases are limited to the Index plus 0.5%, and reference to **"Shared Ownership Housing Units"** shall be construed accordingly.

"Substantially Complete/Substantial Completion" means that Dwellings are sufficiently complete for occupation for their intended use except for minor defects.

1.2. Definitions for Provisos

"Chargee" any mortgagee or chargee of the Registered Provider of Social Housing to which Affordable Housing is transferred or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 in respect of that Registered Provider of Social Housing.

"Chargee's Duty" the tasks and duties set out in section 4 of this Schedule.

"Protected Tenant" any tenant who:

- (1) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Rented Social Housing Unit or
- (2) was granted a shared ownership lease by the freeholder in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the freeholder all the remaining shares so that the tenant owns the entire Unit.

2. PLANNING OBLIGATIONS

The Owner covenants with the Council with the intent that these are planning obligations for the purpose of Section 106 of the Act:

2.1. Affordable Housing Contribution

- 2.1.1. To provide an Affordable Housing Contribution equivalent to 25% of Dwellings in accordance with paragraphs 2.1.2 to 2.1.4 below.
- 2.1.2 To designate 25% of the total number of dwellings (rounded up to the nearest whole number) to be constructed as part of the Development for use as Affordable Housing
- 2.1.3 To designate in the Reserved Matters Application for approval of the numbers, design and location of the Dwellings which of those Dwellings shall be Rented Social Housing Units and Intermediate Housing Units by type, size and plot to the satisfaction of the Council in accordance with the planning policy and relevant supplementary planning document and needs evidence at that time.

2.2. Construction and Standard of Affordable Housing

- 2.2.1. To construct the Affordable Housing in a good and workmanlike manner
- 2.2.2. To provide fixtures and fittings within the Affordable Housing to the standard normally expected by Registered Providers of Social Housing
- 2.2.3. Not to construct more than 50% of the Market Housing Units unless the Affordable Housing Units have been constructed to practical completion.

2.3. Occupation of Housing

2.3.1. Not to permit the beneficial occupation of more than 60% of the Market Housing Units unless all the Affordable Housing Units have been transferred to a Registered Provider of Social Housing or been Occupied in accordance with this schedule and written notification of such has been received by the Council.

2.3.2. Subject to paragraph 3 of this Schedule not to permit the beneficial occupation of any Affordable Housing Unit unless it has been let as a Rented Social Housing Unit or a Rent to Shared Ownership Housing Unit or leased as a Shared Ownership Housing Unit or sold as a Discounted Sale Housing Unit.

2.4. Discounted Sale Housing Units

2.4.1. Not to sell the freehold or a leasehold interest in a Discounted Sale Housing Unit without first asking the Council whether it wishes to nominate an Eligible Person to acquire the property and allowing the Council 14 days in which to respond.

2.4.2. Not to sell the freehold or a leasehold interest in a Discounted Sale Housing Unit other than to an Eligible Person.

2.4.3. Not to sell, except to an Eligible Person nominated by the Council, the freehold or a leasehold interest in a Discounted Sale Housing Unit other than to an Eligible Person with a Local Connection unless and until the Dwelling has been advertised for sale in the Local Housing Market Area for a period of no less than twelve weeks without a sale being agreed.

2.4.4. Not to sell the freehold or a leasehold interest in a Discounted Sale Housing Unit at more than 60% of the Capital Value, this value being the average of no less than two written valuations obtained by the owner from two Chartered Surveyors of not less than 5 years standing and with relevant experience.

2.4.5. Not to dispose of the freehold or a leasehold interest in a Discounted Sale Housing Unit EXCEPT subject to a covenant in the following terms:

The Purchaser hereby covenants with East Staffordshire Borough Council for himself and his successors in title and assigns pursuant to Section 106 of the Town and Country Planning Act 1990 so as to bind the property into whosoever hands the same may come that:

- he shall not advertise the freehold or a leasehold interest in the property for sale without first asking the Council whether it wishes to nominate an Eligible Person to acquire the property and allowing the Council 14 days in which to respond, and
- he shall not dispose of the freehold or leasehold interest in the property other than to an Eligible Person, and
- he shall not, except for disposal to an Eligible Person nominated by the Council, dispose of the freehold or leasehold interest in the property other than to an Eligible Person with a Local Connection unless and until the Dwelling has been advertised for sale as a Discounted Sale Housing Unit in the Local Housing Market Area for a period of no less than twelve weeks without a sale being agreed, and
- he shall not dispose of the freehold or leasehold interest in the property at a price exceeding 60% of the Capital Value, this value being the average of no less than two written valuations obtained by the occupier from two Chartered Surveyors of not less than 5 years standing and with relevant experience, and
- he shall not extend the property or permit it to be extended, and
- he shall not let or offer to let the property whether by way of a tenancy or a lease or otherwise without first asking the Council whether it wishes to nominate an Eligible Person to rent the property and allowing the Council 14 days in which to respond, and
- he shall not, other than to an Eligible Person nominated by the Council, let or offer to let the property whether by way of a tenancy or a lease or otherwise other than to an Eligible Person with a Local Connection, and
- he shall not let or offer to let the property whether by way of a tenancy or a lease or otherwise other than at a rent no greater than 60% of the Market Rent, where
- Eligible Person and Local Connection are as defined in an Agreement made under section 106 of the Town and Country Planning Act 1990 on [the date of this agreement] between (1) [the name of owner] and (2) East Staffordshire Borough Council and (3) Staffordshire County Council.

2.5. Rent to Shared Ownership Housing Units

- 2.5.1. Not to let a Rent to Shared Ownership Housing Unit without first asking the Council whether it wishes to nominate an Eligible Person to occupy the property and allowing the Council 14 days in which to respond.
- 2.5.2. Not to permit the occupation of a Rent to Shared Ownership Housing Unit other than by an Eligible Person.
- 2.5.3. Not to permit, except for occupation by an Eligible Person nominated by the Council, the occupation of a Rent to Shared Ownership Housing Unit other than by an Eligible Person with a Local Connection unless and until the Dwelling has been advertised for rent as a Rent to Shared Ownership Housing Unit in the Local Housing Market Area for a period of no less than twelve weeks without a let to an Eligible Person being agreed.

2.6. Rented Social Housing Units

- 2.6.1. Not to permit the occupation of a Rented Social Housing Unit other than at a rent determined through the national rent regime (Rent Influencing Regime guidance) unless the Council has agreed with the Registered Provider owning the Rented Social Housing Unit that it may, subject to the approval of the Homes and Communities Agency, let it at an Affordable Rent of up to 80% of Market Rent, which the Council will agree provided that the additional income is used by the Registered Provider of Social Housing to fund investment in providing additional affordable housing in East Staffordshire.

2.7. Shared Ownership Housing Units

- 2.7.1. Not to dispose as freeholder of an initial leasehold interest in a Shared Ownership Housing Unit other than a 25% to 75% share of the Capital Value.
- 2.7.2. Not to dispose as freeholder of an interest in a Shared Ownership Housing Unit other than with provision that the occupier of a Shared Ownership Housing Unit shall have the right to increase his ownership share in the Dwelling by purchasing additional equity over time at minimum points of 5% and at a price

reflecting the Capital Value of the share being acquired at the date of acquisition but subject to statutory restriction of the maximum share which can be acquired.

2.7.3. Not to dispose as freeholder of a leasehold interest exceeding 50% of the Capital Value unless the proceeds of sale above 50% shall be recycled into provision of alternative affordable housing in East Staffordshire.

2.7.4. Not to dispose as freeholder of a leasehold interest in the property other than under a lease containing the Mortgagee Protection Clause contained in the Homes and Communities Agency's (or successor body's) model shared ownership lease.

2.7.5. Not to dispose as freeholder of a leasehold interest in the property without first asking the Council whether it wishes to nominate an Eligible Person to acquire the leasehold interest and allowing the Council 14 days in which to respond.

2.7.6. Not to assign as leaseholder a leasehold interest in the property without first asking the landlord and the Council whether they wish to nominate an Eligible Person to acquire the leasehold interest in the property or wish to purchase the leasehold interest and allowing them 14 days in which to respond.

2.7.7. Not to dispose of or assign a leasehold interest in a Shared Ownership Housing Unit other than to an Eligible Person.

2.7.8. Not to dispose of or assign a leasehold interest in a Shared Ownership Housing Unit, except to an Eligible Person nominated by the landlord or the Council, other than to an Eligible Person with a Local Connection or to a Registered Provider of Social Housing unless and until the leasehold interest has been advertised for sale in the Local Housing Market Area for a period of no less than twelve weeks without a sale being agreed.

3. PROVISOS

3.1. The obligations contained in this schedule shall not be binding on a mortgagee or chargee in possession of the Open Market Dwellings on the Site or a receiver appointed by such mortgagee or chargee or a bona fide purchaser for value thereof from such a mortgagee or chargee in possession or receiver appointed (except in the case of a purchaser

which is a Registered Provider of Social Housing) or the successors in title of such purchaser with the intent that the clauses in this Agreement relating to Affordable Housing shall cease to bind the Open Market Dwellings on the Site in perpetuity.

3.2. The obligations contained in this schedule shall not be binding upon

3.2.1. Any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and Chargees; or

3.2.2. Any Chargee who shall have first complied with the Chargee's Duty

3.2.3. Any purchaser from a Chargee who has complied with the Chargee's Duty or any successor in title thereto

3.3. The obligation contained in paragraph 2.4.3 of this schedule shall not be binding on the mortgagee or chargee of a Discounted Sale Housing Unit which has taken possession of that Dwelling.

3.4. The obligation contained in paragraph 2.7.8 of this schedule shall not be binding on the mortgagee or chargee of a Shared Ownership Housing Unit which has taken possession of the lease.

3.5 The obligations contained in paragraph 2.1.2 and 2.6.1 of this schedule shall not be binding upon the Owner in relation to an individual Rented Social Housing Unit if he has satisfied the Head of Service (Section 151 Officer) (Section 151 Officer) that he is unable to secure a sale of that Unit to a Registered Provider of Social Housing after making reasonable efforts to secure such a sale as follows:

3.5.1 advertising the Rented Social Housing Units for sale to Registered Providers of Social Housing for at least three months following their completion;

3.5.2 actively attempting to enter into serious negotiations with Registered Providers of Social Housing who operate in the borough of East Staffordshire and neighbouring districts to secure sale of the Rented Social Housing Units;

3.5.3 reducing the price of Rented Social Housing Units to a price which reflects the rental income which will accrue to a Registered Provider of Social Housing.

3.6 In the event that the Council is satisfied that the Owner has made reasonable efforts in accordance with paragraph 3.5 of this Schedule to transfer a Rented Social Housing Unit to a Registered Provider of Social Housing and that there are no reasonable prospects of securing the transfer of that Rented Social Housing Unit to a Registered Provider of Social Housing then the Owner shall be permitted to dispose of that Rented Social Housing Unit on the open market free from the restrictions and obligations contained in this Schedule.

4. CHARGEES DUTY

4.1. A Chargee prior to seeking to dispose of Affordable Housing pursuant to any default under the terms of its mortgage or charge must give prior notice to the Head of Service (Section 151 Officer) with responsibility for Planning of its intention to dispose and the notice must make specific reference to this Deed and:

4.2. If the Council responds within one month from receipt of the notice given in accordance with paragraph 4.1 indicating that it is seeking arrangements for the transfer of the Affordable Housing in such a way as to safeguard it as Affordable Housing then the Chargee shall co-operate with such arrangements and use its best endeavours to secure such transfers, and

4.3. If the Council does not respond within one month from receipt of the notice given in accordance with paragraph 4.1 then the Chargee shall be entitled to dispose of the Affordable Housing free of the restrictions set out in this Schedule and

4.4. If the Council responds in accordance with paragraph 4.2 but neither it or any other person secures such transfer within three months of receipt of the notice given in accordance with paragraph 4.1 then provided that the Chargee shall have complied with its obligations under paragraph 4.2 the Chargee shall be entitled to dispose of the Affordable Housing free of the restrictions set out in this Schedule.

4.5. PROVIDED THAT at all times the rights and obligations in this section 4 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council

must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

SCHEDULE 4
OPEN SPACE

1. DEFINITION

In this Schedule the following words shall have the following meanings:

“the Open Space Contribution” a contribution calculated at £250.00 per bedroom of each Dwelling constructed within the Development and Index Linked to be used by the Council solely for the provision and/or maintenance of public open space and play areas within the vicinity of the Land

2. PLANNING OBLIGATIONS

The Owner undertakes to the Council with the intent that this is a planning obligation for the purposes of Section 106 of the Act:

- 2.1 Not to first Occupy any of the Dwellings without having first paid the Open Space Contribution to the Council.

3 COUNCIL OBLIGATIONS

The Council covenants with the Owner as follows:

- 3.1 To apply the Open Space Contribution towards the provision and/or maintenance of public open space within the vicinity of the Land
- 3.2 In the event that any part of the Open Space Contribution has not been expended within five years of receipt of that sum then the Council shall return the same to THE WYGGESTON'S HOSPITAL AND HOSPITAL BRANCH TRUSTEE of Wyggeston's House, Hinckley Road, Leicester LE3 0UX (Company Registration Number 7718817) or such person nominated by them the Open Space Contribution (or its or their nominee) together with the interest credited at the Local Authority 7 day Offer Rate in force from time to time (as published in the Financial Times) such interest to be calculated from the date of receipt of the payment by the Council to the date of its repayment.

SCHEDULE 5
REFUSE CONTAINERS

1 DEFINITIONS

- 1.1 **“the Refuse & Recycling Containers”** means three external storage containers for refuse and recycling collection and reusable bag for recycling to be provided by the Council for each Dwelling in accordance with Council’s specification contained in the Waste and Collection Guidance for New Developments (April 2012).
- 1.2 **“the Refuse & Recycling Storage Container Contribution”** means the sum of £1,050.00 Index Linked.

2 PLANNING OBLIGATIONS

The Owner covenants with the Council with the intent that these are planning obligations for the purposes of Section 106 of the Act:

- 2.1 Not to Occupy or permit Occupation of the 1st Dwelling unless and until the the Refuse & Recycling Storage Container Contribution (as Index Linked) has been paid in full to the Council prior to first Occupation of the first Dwelling.

3 COUNCIL OBLIGATIONS

The Council covenants with the Owner as follows:

- 3.1 To apply the Refuse & Recycling Storage Container Contribution towards the provision of the Refuse & Recycling Containers.
- 3.2 To provide each Dwelling with the required Refuse & Recycling Containers prior to the first Occupation of that Dwelling.
- 3.3 In the event that any part of the Refuse & Recycling Storage Container Contribution has not been expended within five years of receipt of that sum then the Council shall return the same to THE WYGGESTON’S HOSPITAL AND HOSPITAL BRANCH TRUSTEE of Wyggeston’s House, Hinckley Road, Leicester LE3 0UX (Company Registration Number 7718817) or such person nominated by them the Refuse &

Recycling Storage Container Contribution (or its or their nominee) together with the interest credited at the Local Authority 7 day Offer Rate in force from time to time (as published in the Financial Times) such interest to be calculated from the date of receipt of the payment by the Council to the date of its repayment.

SCHEDULE 6

PARKING PROVISIONS

1. DEFINITIONS

1.1 “the Car Parking Spaces” means the car parking spaces shown edged blue on Plan 2 on land in the Owners control and ownership

1.2 “Existing Garages” means the garages on the land delineated in blue on Plan 1

2. PLANNING OBLIGATIONS

The Owner covenants with the Council with the intent that these are planning obligations for the purposes of Section 106 of the Act:

2.1 Not to Occupy or permit Occupation of any Dwelling unless and until the Car Parking Spaces have been laid and marked out as parking spaces

2.2 Not to Occupy or permit Occupation of any Dwelling unless and until the Car Parking Spaces have been offered for let at reasonable market value in writing to the current occupiers of the Existing Garages on the Site

2.3 In the event that any or all the current occupiers of the Existing Garages do not want to let the Car Parking Space on the Land to offer to let at a reasonable market value in writing the Car Parking Spaces to persons living in the following roads surrounding the Land as follows and for the AVOIDANCE OF DOUBT the list below is not in priority order:

- Belvedere Road, Horninglow and Eton
- Branston Road, Burton
- The Park Pale, Tutbury
- Harehedge Lane, Outwoods
- Lower Outwoods Road, Outwoods
- Swannington Street, Horninglow and Eton

- Foston Avenue, Horninglow and Eton
- Harbury Street, Horninglow and Eton
- Calais Road, Horninglow and Eton
- Norton Road, Horninglow and Eton

2.4 The Car Parking Spaces shall be retained as car parking spaces for use by the users of the Existing Garages and or for persons living in the roads in paragraph 2.3 of this Schedule 6 for the lifetime of the Development

Executed and delivered as a Deed)
on behalf of the directors of)
THE WYGGESTON'S HOSPITAL)
AND HOSPITAL BRANCH)
TRUSTEE by)

)
)
)
)
two of their number, under an)
authority conferred pursuant to)
section 333 of the Charities Act 2011)
in the presence of:

Signature of witness:

Witness' name:

Witness' address:

Browne Jacobson LLP
Mowbray House
Castle Meadow Road
Nottingham
NG2 1BJ

THE COMMON SEAL of EAST)
STAFFORDSHIRE BOROUGH)
COUNCIL was affixed to this)
deed in the presence of:)



16234

Authorised Signatory

THE COMMON SEAL of)
STAFFORDSHIRE COUNTY)
COUNCIL was affixed to this)
deed in the presence of:)



18/664

Authorised Signatory