

DATED

25th October

2017

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**

- and -

**CAMBRIDGESHIRE COUNTY COUNCIL**

- and -

**CASTLEFIELD INTERNATIONAL LIMITED**

**AGREEMENT MADE PURSUANT TO  
SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990**

IN RESPECT OF

**LAND AT TEVERSHAM ROAD, FULBOURN**

**APPLICATION REFERENCE S/0202/17/OL**



Ref: C2/DMW/CD/157124.000002

Hogan Lovells International LLP, Atlantic House, Holborn Viaduct, London EC1A 2FG

## CONTENTS

CLAUSE	PAGE
<b>RECITALS</b>	<b>1</b>
<b>1. DEFINITIONS AND INTERPRETATION</b>	<b>1</b>
<b>2. ENFORCEABILITY</b>	<b>9</b>
<b>3. AGREEMENTS AND DECLARATIONS</b>	<b>10</b>
<b>4. COVENANTS AND OBLIGATIONS</b>	<b>11</b>
<b>5. NOTICES</b>	<b>11</b>
<b>6. DISPUTE RESOLUTION</b>	<b>11</b>
<b>7. COMMENCEMENT AND OCCUPATION NOTICES</b>	<b>12</b>
<b>8. CALCULATION DATE AND USE OF CONTRIBUTIONS</b>	<b>12</b>
<b>9. WAIVER</b>	<b>13</b>
<b>10. INTEREST</b>	<b>13</b>
<b>11. VAT</b>	<b>13</b>
<b>12. VERIFICATION AND ENFORCEMENT</b>	<b>13</b>
<b>13. JURISDICTION</b>	<b>13</b>
<b>SCHEDULE 1</b>	<b>14</b>
<b>Plan 1</b>	<b>14</b>
<b>SCHEDULE 2</b>	<b>15</b>
<b>Owner's Covenants</b>	<b>15</b>
<b>SCHEDULE 3</b>	<b>22</b>
<b>Affordable Housing Tenure Mix</b>	<b>22</b>
<b>SCHEDULE 4</b>	<b>23</b>
<b>Nomination Agreement</b>	<b>23</b>

THIS DEED is made on

25th October

2017

**BETWEEN:**

- (1) South Cambridgeshire District Council of South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge CB23 6EA (the "Council");
- (2) Cambridgeshire County Council of Shire Hall, Castle Hill, Cambridge CB3 0AP (the "County Council"); and
- (3) Castlefield International Limited (incorporated in the British Virgin Islands) (company registration number 616079) (the "Owner") care of Hutchison Property Group (UK) Limited, Hutchison House, 5 Hester Road, London SW11 4AN and whose address for service is as provided for in clause 5.1

**RECITALS**

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Land is situated.
- (B) The County Council is a local planning authority within the meaning of the 1990 Act and is a principal council within the meaning of section 270(1) of the Local Government Act 1972 and the education authority for the area in which the Land is situated.
- (C) The Owner owns the freehold interest in the Land which is comprised in title numbers CB292379 and CB344724.
- (D) On 17 January 2017 the Owner made the Planning Application.
- (E) The Parties have agreed to enter into this Deed:
  - (a) pursuant to the provisions of Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011;
  - (b) as a pre-requisite to the grant of Planning Permission;
  - (c) upon the terms and conditions hereinafter appearing; and
  - (d) with the further intent that the same shall be a local land charge and registered as such upon its completion.

**NOW THIS DEED** made in pursuance of Section 106 of the 1990 Act, Section 111 of Local Government Act 1972 and Section 1 of the Localism Act 2011 witnesses as follows:

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed the following words and expressions shall unless the context otherwise requires have the following meaning:

"**the 1990 Act**" means the Town and Country Planning Act 1990 as amended;

"**Affordable Housing**" means subsidised low-cost housing provided to eligible households whose needs are not met by the market as defined in Annex 2 of the National Planning Policy Framework dated 27 March 2012 and which housing should meet the needs of eligible households, such eligibility to be determined with regard to local incomes and local housing prices;

"**Affordable Housing Land**" means such part or parts of the Land on which the Affordable Housing Units will be constructed in accordance with the Planning Permission;

"**Affordable Housing Scheme**" means a scheme for the provision of the Affordable Housing Units which shall specify the Affordable Housing Tenure Mix, the location of the different types and tenure of the Affordable Housing Units within the Development (and for the avoidance of doubt no more than 20 Affordable Housing Units may be clustered together and no such clusters are to adjoin or neighbour each other) and (if applicable) details of any prospective Registered Provider known at the time of submission of the scheme;

"**Affordable Housing Tenure Mix**" means the provision of the Affordable Housing Units in accordance with the mix and tenure set out in Schedule 3 to this Deed;

**"Affordable Housing Units"** means the 30% (thirty per cent) of the Dwellings forming part of the Development (rounded up as necessary where the number is .5 or above or rounded down where the number is less than .5) to be provided in the Affordable Housing Tenure Mix and which includes the Affordable Rented Units and the Shared Ownership Units but excludes the Open Market Units;

**"Affordable Rented Housing"** means rented housing provided either directly by the Owner or by a Registered Provider to households who are eligible for affordable rented housing and provided at a rent of no more than 80% of the local market rent including service charges (where local market rents are calculated using the Royal Institution of Chartered Surveyors approved valuation methods) provided always that in any event (unless otherwise agreed in writing by the Council) the rental levels of any individual Dwelling which is part of the Affordable Rented Housing shall not exceed the Local Housing Allowance Level (or equivalent benefit level) for the relevant Dwelling;

**"Affordable Rented Units"** means the 50% (fifty per cent) of the Affordable Housing Units (rounded down as necessary where the number is .5 or below) to be made available as Affordable Rented Housing;

**"the Calculation Date"** means the date of each relevant Reserved Matters Approval and if there is more than one Reserved Matter Approval there should not be any double counting where a Dwelling has already been approved under an earlier Reserved Matters Approval;

**"Commencement of the Development"** means the carrying out on the Land of a material operation as defined by Section 56(4) of the 1990 Act in connection with the Development save that for the purposes of this Deed none of the following operations shall constitute a material operation:

- (a) archaeological or site inspections;
- (b) site or soil surveys or investigations;
- (c) decontamination works;
- (d) works to the existing public highways and the provision of site access and temporary access roads;
- (e) demolition or site clearance;
- (f) the laying and diversion of services and service media;
- (g) the erection of a site compound;
- (h) the erection of temporary fences or hoardings including the erection of an enclosure for the purposes of site security;
- (i) the display of advertisements including the erection of advertisement hoardings; and
- (j) interim landscaping works

and **"Commence"** and **"Commences"** shall be construed accordingly;

**"Commencement Notice"** means a notice served by the Owner on the Council and the County Council notifying the Council and the County Council that it intends to Commence the Development;

**"Contributions"** means the Early Years Contribution, the Healthcare Contribution, the Indoor Community Space Contribution, the Libraries and Lifelong Learning Contribution, the Monitoring Fee, the Primary Education Contribution, the Secondary Education Contribution, the Sports Space Contribution and the Waste Receptacle Contribution;

**"Development"** means the development of the Land for high quality residential development of up to 110 dwellings with areas of landscaping and public open space and associated infrastructure works carried out pursuant to the Planning Permission;

**"Dwelling"** means a residential unit constructed as part of the Development;

**"Early Years Contribution"** means a contribution towards the expansion of early years education provision at Fulbourn Primary School the total to be calculated at the Calculation Date on the following basis:

(a) for Open Market Units and Shared Ownership Units:

£737 for each 2 bedroom Dwelling

£1,473 for each 3 bedroom Dwelling

£2,578 for each 4+ bedroom Dwelling

(b) for Affordable Rented Units:

£2,946 for each 2 bedroom Dwelling

£4,420 for each 3 bedroom Dwelling

£5,156 for each 4+ bedroom Dwelling;

**"General Open Space"** means unless otherwise agreed by the Council all areas of open space and landscaping (and including but not limited to hedgerows green infrastructure links, buffer zones and/or footpath links and any existing or new pond areas) within the boundaries of the Land which do not fall within the boundary of a Dwelling nor comprise part of any LEAP, Public Open Space or road way;

**"General Open Space Scheme"** means a document detailing the location, proposed layout and specification of the General Open Space together with a programme and specification for the maintenance of the General Open Space;

**"HCA"** means the Homes and Communities Agency having its principal office at 2 Marsham Street, London SW1P 4DF or its successors;

**"HCA Standards"** means the HCA's Design and Quality Standards or other equivalent or replacement standards in place at the grant of the Planning Permission;

**"Healthcare Contribution"** means a contribution of £41,630 towards the extension, refurbishment and/or reconfiguration to improve capacity at the Cherry Hinton Medical Centre;

**"Index"** means the All-in Tender Price Index (as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors or any successor organisation);

**"Index Linked"** means linked to movements in the Index between the date of this Deed and the date of payment so that the particular payments all referred to above in this definition are adjusted in accordance with the following formula:

Amount Payable = Relevant Amount x (A÷B)

Where:

Relevant Amount = the payment specified in this Deed

A = the figure for the Index which applied when the Index was last published prior to the date that the Relevant Amount is payable

B = the figure for the Index which applied when the Index was last published prior to the date of signing of this Deed;

**"Indoor Community Space Contribution"** means a contribution towards the provision by or on behalf of the Council or the Parish Council of a new indoor community facility at Fulbourn recreational ground to provide meeting rooms, youth facilities, music tuition and sporting and social facilities being the sum of the products derived from multiplying the number of each type of Dwelling (by bedroom numbers) to be provided at the Development (Column A) by the figure shown in Column B:

Column A – Dwelling type	Column B – contribution per Dwelling
1 bed	£284.08
2 bed	£371.00
3 bed	£513.04
4 bed	£703.84

**"Interest"** means interest calculated at 3% above the base rate of the Bank of England from time to time;

**"Land"** means the land at Teversham Road, Fulbourn being the whole of the land which is the subject of the Planning Application and which is shown for purposes of identification only edged red on Plan 1;

**"LEAP"** means a landscaped and equipped play area of a size and type approved pursuant to a Reserved Matters Approval and to be of a minimum size to be determined in accordance with paragraph 2.6 of Schedule 2 to be provided within the boundaries of the Land and which LEAP shall accord with the Open Space SPD;

**"LEAP Scheme"** means a document detailing the location, proposed layout and specification of the LEAP together with a programme and specification for the laying out, completion and maintenance of the LEAP;

**"Libraries and Lifelong Learning Contribution"** means a contribution towards the provision of additional libraries and lifelong learning resources to serve the Development the total to be calculated at the Calculation Date on the following basis:

(a) for Open Market Units and Shared Ownership Units:

£6.12 for each 1 and 2 bedroom Dwelling

£10.40 for each 3 bedroom Dwelling

£13.47 for each 4+ bedroom Dwelling

(b) for Affordable Rented Units:

£6.94 for each 1 and 2 bedroom Dwelling

£14.69 for each 3 bedroom Dwelling

£22.03 for each 4+ bedroom Dwelling;

**"Local Connection"** means a person will be considered to have a local connection to any of the localities listed in paragraph 1.3 of Part 1 of the Second Schedule if they meet one of the following criteria:

(a) The person has worked in paid employment in the locality for the last twelve (12) months for sixteen (16) hours or more per week; or

(b) The person has lived in the locality for at least five (5) years out of the last eight (8) years; or

(c) The person has family members who are resident in the village. Family members are defined as parents, children or brothers or sisters who have been resident in the village for a period of 5 years or longer. Other close family ties will be considered in agreement with the Council on a case by case basis; or

(d) There are special circumstances that the Council considers gives rise to a local connection;

**"Management Company"** means an entity established and constituted for the management of the Land or any part of it (including but not limited to) maintaining the LEAP, the Public Open Space and the General Open Space;

**"Monitoring Fee"** means the sum of £4,500 to be applied by the Council in relation to all purposes relevant and connected with monitoring, compliance and checking with regard to the obligations set out in this Deed;

**"Nomination Agreement"** means an agreement in substantially the form as the draft agreement set out in Schedule 4 to this Deed which may be entered into between the Council and either the Owner or the Registered Provider (as applicable) under which the Council exercises its right to nominate prospective tenants or lessees for the Affordable Housing Units in accordance with Part VI of the Housing Act 1996;

**"Occupation"** means the first beneficial occupation of any part of the Development for the purposes for which the Planning Permission has been granted but does not include occupation for the purposes of construction, fitting out, decoration, security, marketing or display and "Occupy" and "Occupied" shall be construed accordingly;

**"Open Market Units"** means the 70% (seventy per cent) of the Dwellings for private sale or rent forming part of the Development and which excludes the Affordable Housing Units;

**"Open Space SPD"** means the Council's supplementary planning document entitled **"Open Space in New Developments"** adopted in January 2009;

**"Parish Council"** means Fulbourn Parish Council of Home End, Fulbourn, Cambridge CB21 5BS;

**"Parties"** means the parties to this Deed and "Party" shall be construed accordingly;

**"Permitted Closure"** means the temporary closure by the Owner of the LEAP, Public Open Space and/or General Open Space or any part thereof in the following circumstances (and in the case of (b) (c) and (d) as first agreed in writing by the Council other than in the case of an emergency where up to five days' closure may be allowed before seeking agreement from the Council as to any longer period):

- (a) in respect of any parts of the General Open Space only closure for at least one day per year to assert rights of proprietorship preventing public rights of way coming into being by means of prescription or other process of law;
- (b) in respect of any parts of the LEAP, Public Open Space and/or General Open Space where necessary for the purposes of maintenance, repair, cleansing, renewal or resurfacing works or for any other reasonable and proper management purpose;
- (c) in respect of any parts of the LEAP, and/or the Public Open Space where necessary for the purpose of carrying out works of construction including for the placing of underground services but only where such works are carried out prior to those areas being laid and completed;
- (d) in respect of any parts of the General Open Space where necessary for the purpose of carrying out works of construction including for the placing or replacing of underground services;
- (e) in respect of any parts of the LEAP, Public Open Space and/or General Open Space in the case of emergency where necessary in the interests of public safety or otherwise for reasons of public safety including for the prevention of anti-social behaviour; and/or
- (f) in respect of any parts of the LEAP, Public Open Space and/or General Open Space in accordance with any lawful requirements of the police or a statutory body having a proper locus in relation to the LEAP, Public Open Space and/or General Open Space;

**"Plan 1"** means the plan annexed hereto and marked "Plan 1";

**"Planning Application"** means the application dated 17 January 2017 for planning permission for the Development registered by the Council under the Council's reference number S/0202/17/OL;

**"Planning Challenge"** means an application for judicial review challenging the grant of the Planning Permission lodged within 6 weeks of the date of the grant of the Planning Permission or such longer period as the courts may allow;

**"Planning Obligations"** means the obligations contained in clause 7 and Schedule 2;

**"Planning Permission"** means the planning permission to be granted by the Council pursuant to the Planning Application;

**"Practical Completion"** means the issue of a certificate of practical completion issued by the Owner's architect, engineer or other certifying officer as the case may be under the relevant contract entered into in respect of the Development or part thereof and

**"Practically Complete"** shall be construed accordingly;

**"Primary Education Contribution"** means a contribution towards the cost of expanding Fulbourn Primary School to allow for additional primary education provision the total to be calculated at the Calculation Date on the following basis:

(a) for Open Market Units and Shared Ownership Units:

£737 for each 2 bedroom Dwelling

£2,946 for each 3 bedroom Dwelling

£5,893 for each 4+ bedroom Dwelling

(b) for Affordable Rented Units:

£2,210 for each 2 bedroom Dwelling

£11,785 for each 3 bedroom Dwelling

£17,678 for each 4+ bedroom Dwelling;

**"Public Open Space Scheme"** means a document detailing the location, proposed layout and specification of the Public Open Space together with a programme and specification laying out completion and for the maintenance of the Public Open Space;

**"Public Open Space"** means such areas of informal open space and landscaping within the boundaries of the Land approved under one or more Reserved Matters Approval which do not fall within the boundary of a Dwelling nor comprise part of any LEAP or General Open Space or road way and which are of a type and minimum area to be determined in accordance with paragraph 2.6 of Schedule 2;

**"Qualifying Person"** shall mean:-

(a) an individual who shall satisfy the Council that he or she is in housing need as defined by and/or described in the Council's latest adopted policies (for far as may be relevant) and who shall prior to the grant of any tenancy or lease or any agreement for a tenancy or a lease or any assignment produce to the Registered Provider or other grantor written confirmation by the Council that such an individual is a Qualifying Person for this purpose; and/or

(b) an individual on the current list (if any) of Qualifying Persons (deemed pre-certificated by the Council) provided by the Council ("Council's List") provided that the circumstances of the Qualifying Person shall not have materially changed from the date of the certificate or the Council's List (as the case may be) to the date of grant of a tenancy, lease or assignment such that he or she would cease to be in housing need (as defined) or on the Council's List; and/or

(c) is currently enrolled on the choice based letting scheme for housing allocations as administered by or on behalf of the Council; and/or

(d) In the case of an Affordable Housing Unit to be sold on a Shared Ownership Lease an individual registered on the HomeBuy Shared Ownership scheme (or where the individual is registered on an alternative eligibility scheme agreed with the Council and which scheme is intended to achieve similar results to HomeBuy);

**"Registered Provider"** means a registered provider of social housing within the meaning of Section 80(1) of the Housing and Regeneration Act 2008 approved by the Council (such approval not to be unreasonably withheld or delayed);

**"Reserved Matters"** has the same meaning as in the Town and Country Planning (Development Management Procedure) (England) Order 2015;



**"Reserved Matters Application"** means an application for approval of Reserved Matters;

**"Reserved Matters Approval"** means approval pursuant to a Reserved Matters Application;

**"Secondary Education Contribution"** means a contribution towards the cost of expanding Bottisham Village College to allow for additional secondary education provision the total to be calculated at the Calculation Date on the following basis:

(a) for Open Market Units and Shared Ownership Units:

£3,500 for each 3 bedroom Dwelling

£7,000 for each 4+ bedroom Dwelling

(b) for Affordable Rented Units:

£9,333 for each 3 bedroom Dwelling

£21,000 for each 4+ bedroom Dwelling;

**"Secretary of State"** means the Secretary of State for Communities and Local Government (as that title is used in the Secretary of State for Communities and Local Government Order 2006 (FI 2006/1926)) or such other office holder who at the relevant time is the person to whom an appeal may be made under Section 78 (1) of the 1990 Act;

**"Shared Ownership Housing"** means housing occupied partly for rent and partly by way of owner occupation on shared ownership terms as defined in Section 2(6) of the Housing Act 1996 under a Shared Ownership Lease;

**"Shared Ownership Lease"** means a lease in respect of any of the Shared Ownership Units in a form approved in writing by the Council in accordance with the HCA standard lease which shall be a shared ownership lease (granted on payment of a premium calculated by reference to a percentage of the value of the Shared Ownership Unit or of the cost of providing it) subject to the following:

(a) the initial term of the Shared Ownership Lease shall not be less than 125 years;

(b) there shall be no rent or other payment (other than the maintenance contributions referred to at paragraph (d) below) for use and occupation in respect of the landlord's retained interest unless otherwise agreed in writing by the Registered Provider and which rent or payment in any event shall not exceed 3% of the landlord's retained interest subject to increases and indexation in line with HCA standards;

(c) the initial share of the Shared Ownership Lessee shall be set at a minimum of twenty-five per cent (25%) to a maximum of seventy-five per cent (75%) but the Shared Ownership Lessee may at his or her option subsequently staircase to one-hundred per cent (100%) subject otherwise to the terms of the lease;

(d) maintenance contributions in respect of management of the common parts of the Development attributable to the relevant Shared Ownership Unit and any charges upon the Shared Ownership Lessee of the landlord's reasonable costs of repairs or insurance or the performance of other obligations for which the landlord shall be responsible under any Shared Ownership Lease shall not be regarded as rent for the purposes of this Deed; and

(e) the Shared Ownership Lease, in the case of receipt from the Shared Ownership Lessee of notice of intention to assign, may make provision to restrict the price of any assignment to a proportion of the market value not greater than the Shared Ownership Lessee's interest in the Shared Ownership Unit;

**"Shared Ownership Lessee"** means a lessee under a Shared Ownership Lease;

**"Shared Ownership Units"** means the 50% (fifty per cent) of the Affordable Housing Units (rounded up as necessary where the number is .5 or above) to be made available as Shared Ownership Housing and "Shared Ownership Unit" shall be construed accordingly;

**"Sports Space Contribution"** means a contribution towards the provision by or on behalf of the Council or the Parish Council of a refurbished and extended sports pavilion at Fulbourn recreation ground comprising a single storey extension, access improvements and upgrades to changing rooms and shower facilities being the sum of the products derived from multiplying the number of each type of Dwelling (by bedroom numbers) to be provided at the Development (Column A) by the figure shown in Column B:

Column A – Dwelling type	Column B – contribution per Dwelling
1 bed	£625.73
2 bed	£817.17
3 bed	£1,130.04
4 bed	£1,550.31

**"Staircasing"** means the acquisition by a Shared Ownership Lessee of additional equity in a unit of Shared Ownership Housing up to a maximum of 100 per cent equity and **"Staircased"** shall be construed accordingly;

**"SUDS"** means surface water drainage measures/features which will be located within the Land and which shall where applicable include each of the following:

- (a) attenuation ponds and any surface water pumping measures;
- (b) swales, watercourses and ditches;
- (c) ponds and infiltration basins;
- (d) soakaways;
- (e) all associated inlet/outlet structures, control devices, headwalls, silt traps, catchpits, culverts and manholes;

PROVIDED ALWAYS that for the purposes of ongoing maintenance SUDS shall exclude any specific surface water drainage measures/features which (a) are located wholly within and only serving a publically adopted highway or (b) which are accepted in writing by a statutory water authority as their responsibility

**"Waste Receptacle Contribution"** means a contribution paid by the Owner to the Council towards the provision of household waste receptacles necessitated by the Development in accordance with the RECAP Waste Management Design Guide as has been adopted by the Council and being the sum of £73.50 for each Dwelling as a house and £150 for each Dwelling as a flat;

**"Working Days"** means Monday to Friday excluding Bank Holidays.

1.2 Where the context so permits:

- (a) the expression the "Owner" shall include its respective successors in title and assigns save where specifically provided to the contrary by this Deed;
- (b) the expressions the "Council" and the "County Council" shall include any successor to their respective functions;
- (c) words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons;
- (d) wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;
- (e) any reference to a specific statute includes any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute unless otherwise stated;

- (f) references in this Deed to any clause subclause paragraph of a schedule or schedule without further designation shall be construed as a reference to the clause subclause paragraph of a schedule or schedule to this Deed so numbered; and
- (g) the clause paragraph and schedule headings do not form part of this Deed and shall not be taken into account in its construction or interpretation.

1.3 This Deed is a planning obligation for the purposes of Section 106 of 1990 Act.

## **2. ENFORCEABILITY**

2.1 The Owner enters into the obligations in this Deed for itself and its successors in title for the benefit of the Council and the County Council to the intent that the obligations in this Deed shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Land or any part thereof PROVIDED THAT:

- (a) no party shall be liable for any breach of this Deed relating to any part of the Land over which it has no control occurring after it shall have parted with its interest in the Land save in respect of breaches subsisting at the date it parts with its interest; and
- (b) subject to subclauses (i) (ii) and (iii) below the obligations contained in this Deed shall not be binding or enforceable against owners, occupiers or tenants of individual Dwellings on the Development nor against those deriving title from them nor their mortgagees or chargees:
  - (i) except in the case of paragraph 1 of Schedule 2 where the relevant Dwelling is an Affordable Housing Unit and where the owners, occupiers or tenants of such Affordable Housing Unit(s) shall be bound by the Affordable Housing Provisions set out in that paragraph 1 of Schedule 2;
  - (ii) except for the provisions of paragraphs 2.3 and 3.3 of Schedule 2 where the residents of the Development shall each be responsible for payment of the costs on-going maintenance of the LEAP and/or the Public open space and/or the General Open Space if the Management Company were to cease to exist or otherwise fail to properly maintain the said areas;
  - (iii) where there are restrictions on the Occupation of the Dwellings to prevent Occupation taking place where there would otherwise be a continuing breach because of the non-delivery of the LEAP and/or the Public Open Space and/or the General Open Space, the non-payment of a Contribution or because of the non-delivery of Affordable Housing then such restrictions on the Occupation of the Dwellings (but not the obligation to deliver any of the LEAP and/or the Public Open Space and/or the General Open Space, the obligation to pay a Contribution or to deliver Affordable Housing) shall subject as hereinafter provided bind the owner, occupiers or tenants of the Dwellings who shall not Occupy any Dwelling in breach of such restrictions pending the delivery of the LEAP and/or the Public Open Space and/or the General Open Space or the Affordable Housing or the payment of the relevant Contribution (as appropriate) provided always that where a Dwelling has been lawfully Occupied (i.e. because there has been no breach of an Occupation restriction at the time of completion of the legal transfer of a relevant individual Dwelling) then the owner, occupier or tenant of that Dwelling (or their successors in title or mortgagees) will not be liable for a breach of an Occupation restriction which becomes effective at a later date and such Occupation restriction will bind only the owner, occupiers or tenants of those Dwellings which have not been transferred at the time the further Occupation Restriction becomes applicable;
- (c) the obligations contained in this Deed shall not be binding upon any and all statutory undertakers who have as part of their statutory undertaking any interest

in the Land nor the mortgagee or chargee of any such persons nor any receiver appointed by a mortgagee or chargee of any such persons or any persons deriving title from them; and

- (d) a Registered Provider owning all or any part of the Affordable Housing Land or any Affordable Housing Unit shall not at any time be liable as a successor in title to the Owner for any of the obligations set out in this Deed other than those set out in paragraph 1 of Schedule 2.

### **3. AGREEMENTS AND DECLARATIONS**

- 3.1 It is agreed and declared by and between the Parties that nothing contained or implied in this Deed shall prejudice or otherwise affect the rights powers duties and obligations of the Council or the County Council in their exercise of their functions either as local planning authority, local education authority or in any other capacity and that all rights powers duties and obligations under any public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council or County Council was not a party to this Deed.
- 3.2 This Deed is conditional upon:
  - (a) the grant of the Planning Permission; and
  - (b) the Commencement of the Developmentsave for the provisions of this clause 3 and clauses 5, 6, 7.1(a), 10 to 12 inclusive and 14 which shall come into effect immediately upon completion of this Deed.
- 3.3 This Deed shall be registered by the Council in the Register of Local Land Charges.
- 3.4 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the Commencement of the Development or is modified (other than by agreement with or at the request of the Owner) this Deed shall forthwith determine and cease to have effect and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 3.5 The Council will upon the written request of the Owner at any time after the Planning Obligations have been fully discharged or performed issue the Owner with written confirmation and effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 3.6 Nothing in this Deed shall be construed as affecting prohibiting or limiting any rights to develop any part of the Land in accordance with any other planning permission granted whether before or after the date of this Deed by the Council or the Secretary of State or any other competent authority.
- 3.7 Insofar as any clause of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 3.8 Where any approval, agreement, consent, confirmation or expression of satisfaction is required under the terms of this Deed the request for it shall be made in writing and such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.
- 3.9 No person may enforce any provision of this Deed solely by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 3.10 In the event of a Planning Challenge by any person other than the signatories to this Deed the provisions of this Deed shall be suspended on the cessation of Development until such time as the final determination of the Planning Challenge.
- 3.11 If the Council or the County Council at any time commence the provision or provide in whole or in part any of the facilities for which a financial contribution is to be made under the terms of this Deed then in such case the Owner shall pay the relevant contribution in accordance with the provisions of this Deed so as to reimburse the Council or the County Council as appropriate the cost incurred in respect of each provision as referred to in this

Deed PROVIDED THAT the Owner shall not be required to pay the relevant contribution earlier than the date on which it is due (or at all if the relevant date is not reached) and neither shall it pay any greater contribution than is referred to in this Deed.

- 3.12 It is agreed by the parties that any reference to areas to be provided as LEAP Public Open Space and/or General Open Space shall be deemed to incorporate both for the purposes of (i) laying out and (ii) ongoing maintenance, any SUDS within each of such areas unless in relation to any particular area the SUDS or part of the SUDS is adopted by a public or other statutory authorised body in which case the SUDS or relevant part thereof to be adopted shall be excluded for the purposes of on-going maintenance from the LEAP, the relevant Public Open Space and/or General Open Space.
- 3.13 The Owner agrees with the Council and the County Council to give the Council and County Council written notice within 10 Working Days of any change in ownership of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to the sale or lease of any individual Dwelling or any disposal to any of the statutory utilities for their operational purposes or to any mortgage or charge on the Land.
- 3.14 The Owner shall on completion of this Deed pay the reasonable legal costs incurred by the Council and the County Council in the preparation and negotiation hereof.
- 3.15 All sums (other than legal costs) payable pursuant to this Deed shall be Index Linked.

#### **4. COVENANTS AND OBLIGATIONS**

- 4.1 The Owner covenants with the Council and the County Council as set out in clause 7 and Schedule 2.
- 4.2 The Council covenants with the Owner as set out in clause 8.
- 4.3 The County Council covenants with the Owner as set out in clause 8.

#### **5. NOTICES**

- 5.1 Any notice to be delivered to a party under this Deed shall be in writing and be sent to it at the address referred to below or instead, to such alternatives as may be substituted for them from time to time by written notification from the party making such substitution to all other Parties.

The Council: The s.106 monitoring officer, South Cambridgeshire District Council, South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge CB23 6EA

The County Council: Head of Growth and Economy, Cambridgeshire County Council, Shire Hall, Castle Hill, Cambridge, CB3 9AP

The Owner: Castlefield International Limited, c/o Hutchison Property Group (UK) Limited, Hutchison House, 5 Hester Road, London SW11 4AN (marked for the attention of: Legal Counsel).

- 5.2 Any such notice must be delivered by hand or recorded delivery post and if delivered by hand, will conclusively be deemed to have been received on the next Working Day after the date of delivery, if that is not a Working Day, on the next Working Day and if sent by recorded delivery post and posted within the United Kingdom will conclusively be deemed to have been received two (2) Working Days after the date of posting.

#### **6. DISPUTE RESOLUTION**

- 6.1 If any dispute arises between any or all of the Parties with respect to a matter arising out of the terms of this Deed (other than over an issue of law or the construction or interpretation of this Deed) and the dispute persists 15 Working Days after it is raised in writing by any Party then:
- (a) the dispute may at the instance of any disputing Party be referred to a person of relevant technical expertise agreed between the disputing Parties (an "Expert"); or

- (b) in the absence of agreement within 10 Working Days of the notice invoking this clause then any disputing Party may seek nomination of an Expert by the President for the time being of the Royal Institution of Chartered Surveyors and such nomination shall be final.

6.2 An Expert shall:

- (a) have at least 10 years' post-qualification experience in the subject matter of the dispute;
- (b) not be liable in the making of his or her decision save to the extent in law as provided in relation to the decisions of an expert;
- (c) allow each disputing Party the opportunity to make written representations within 10 Working Days of his or her appointment and shall copy the written representations to the other Party;
- (d) give each disputing Party the opportunity of a further 10 Working Days to comment on the representations of the other;
- (e) be replaced by a fresh appointee in the event of him or her becoming at any time unable or unwilling for any reason to proceed to discharge his or her functions such fresh appointee to be appointed in the manner prescribed in clause 6.1; and
- (f) make and provide in writing his or her decision within 25 Working Days of being appointed and give reasons for his or her decision.

6.3 The costs of appointing an Expert under clause 6.1 shall be shared equally between the Parties involved in the dispute except where the Expert takes the view that one Party has acted unreasonably in which case the Expert shall have binding discretion as to the apportionment of those costs.

**7. COMMENCEMENT AND OCCUPATION NOTICES**

7.1 The Owner covenants with the Council and the County Council that it shall:

- (a) serve the Commencement Notice no later than 5 Working Days prior to the date the Owner intends to Commence the Development;
- (b) within 10 Working Days of Commencement of the Development notify the Council of the date on which it has Commenced the Development; and
- (c) serve written notice on the Council and the County Council confirming the date of Occupation of the first Dwelling within 10 Working Days of the event occurring;
- (d) serve written notice on the County Council no later than 10 Working Days prior to each of the Occupation trigger dates in Schedule 2 occurring; and
- (e) serve written notice on the County Council within 5 Working Days of the Calculation Date and provide simultaneously confirmation of the approved development mix pursuant to the relevant Reserved Matters Approval by completing the following table:

	Open Market and Shared Ownership Units	Affordable Rented Units	TOTAL
1-bed dwellings			
2-bed dwellings			
3-bed dwellings			
4+-bed dwellings			
TOTAL			

**8. CALCULATION DATE AND USE OF CONTRIBUTIONS**

8.1 The County Council covenants with the Owner that upon receiving notification pursuant to clause 7.1(e) it will as soon as practicable thereafter calculate the quantum of the

respective obligations due to it and inform the Owner in writing and within no more than 15 Working Days of the Calculation Date.

- 8.2 The Council and the County Council (as appropriate) covenant with the Owner to use or procure the use of the Contributions only for the purposes for which they are specified to be paid in this Deed unless otherwise agreed in writing by the Owner.
- 8.3 The Council and the County Council shall within 20 Working Days of any reasonable written request by the Owner provide information on the amount of any Contribution held and expended and the purposes on which it has been expended.
- 8.4 In the event that any Contribution or part thereof remains unexpended ten years after payment then subject as hereinafter provided the Council and the County Council (as appropriate) covenant with the Owner to return within 20 Working Days of written request from the company or body which made the relevant payment any such unexpended sums together with a sum equal to the interest which the unexpended sum would have earned had it been invested in an interest earning account from the date of such payment to the date of such return to the company or body which made such payment to the Council or the County Council (or such other party as is nominated by that company or body) notwithstanding that such company or body may no longer have an interest in the Land at the date of any such repayment PROVIDED ALWAYS that if before the expiry of the said ten year period there is any contract or contracts in existence to which the said contribution is attributable and which contract or contracts shall be completed after the expiry of the said ten year period then any sum to be repaid shall be repaid following payment of the final account in respect of any and all such contracts and the sum to be repaid shall be less all costs incurred and/or paid to provide the relevant infrastructure pursuant to such contract or contracts.

**9. WAIVER**

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

**10. INTEREST**

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

**11. VAT**

All payments made in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable. The payor shall only be required to pay VAT on any sum following receipt from the payee of a valid VAT invoice addressed to the payor for the full amount.

**12. VERIFICATION**

The Owner shall permit the Council and/or the County Council and their authorised employees and agents upon five Working Days' written notice to enter the Land (save for any occupied building and its curtilage) at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.

13. The Owner covenants with the Council and the County Council that once the Development has been Commenced the Owner will not enter into any covenant and/or agreement relating to any part of the Land whose effect would be to preclude the carrying out of the Owner's obligations and covenants contained in this Deed.

**14 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and the Parties submit to the non-exclusive jurisdiction of the courts of England.

**Schedule 1**

**Plan 1**



The scaling of this drawing cannot be ascertained

Revision	Date	Drawn	Checked
A	23.07.13	SK	CA
B	15.06.14	HS	CA
C	15.06.14	SK	CA

**LEGEND**

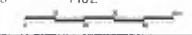
- Application Site Boundary
- Other land in applicant's ownership



*Handwritten signature*

Project  
**Land at Teversham Road  
 Fulbourn**  
 Drawing Title  
**Site Boundary Plan**

Date	Scale	Drawn by	Checked by
06.06.14	1:1250@A1	AA	CA
Project No.	Drawing No.	Revision	
22430	M02	C	



**BARTON  
 WILLMORE**

Planning • Master Planning & Urban Design  
 Architecture • Landscape Planning & Design • Project Services  
 Environmental & Sustainability Assessment • Geomatics

bartonwillmore.co.uk



## **Schedule 2 Owner's Covenants**

### **1 AFFORDABLE HOUSING**

#### **1.1 The Owner covenants with the Council:**

- (a) not to Commence the Development until the Affordable Housing Scheme has been submitted to the Council for approval;
- (b) to construct or procure the construction of the Affordable Housing Units as part of the Development in accordance with the Affordable Housing Scheme once such Affordable Housing Scheme has been approved by the Council;
- (c) to provide the Affordable Housing Units in accordance with the Affordable Housing Tenure Mix;
- (d) to provide the Affordable Housing Units to HCA Standards;
- (e) not to Occupy or cause or permit to become Occupied more than 50% of the Open Market Units until 50% of the Affordable Housing Units have been Practically Completed and made available for Occupation in accordance with the Nomination Agreement;
- (f) not to Occupy or cause or permit to become Occupied more than 75% of the Open Market Units until 100% of the Affordable Housing Units have been Practically Completed and made available for Occupation in accordance with the Nomination Agreement;
- (g) to ensure that any disposal of the Affordable Housing Units to a Registered Provider pursuant to paragraphs 1.1(e) and 1.1(f) above is by way of a freehold sale or if acceptable to a Registered Provider by way of grant of a lease of not less than 125 years in either case subject to a condition that the Registered Provider enters into the Nomination Agreement with the Council within 20 Working Days of the Affordable Housing Units in question being disposed of to the Registered Provider; and
- (h) not to Occupy or cause or permit to become Occupied the Affordable Housing Units for any other purpose other than for Affordable Housing in perpetuity with the exception of any Shared Ownership Lessee that has Staircased to 100% ownership of a Shared Ownership Unit or any occupier who has exercised his or her statutory right to buy the Affordable Housing Unit (or a successor to such occupier).

#### **1.2 The Occupation of any Affordable Housing Unit shall subject to paragraphs 1.3, 1.4, 1.5 below be limited to a Qualifying Person in the District of South Cambridgeshire PROVIDED THAT (i) Qualifying Persons within the "Cambridgeshire Sub-Region" (meaning the geographical area covered by the following Councils; Cambridge City Council, East Cambridgeshire District Council, Fenland District Council, Forest Heath District Council, Huntingdonshire District Council, South Cambridgeshire District Council and St Edmundsbury Borough Council) may have 10% of the allocations in accordance with the Council's allocation policy and (ii) that after a period of 8 weeks the Registered Provider may allow persons who are not Qualifying Persons to Occupy any Affordable Housing Unit if throughout such period of 8 weeks there are no Qualifying Persons available and willing to take up Occupation or an assignment of the lease when an Affordable Housing Unit becomes vacant or any Lease becomes available for assignment and provided that such disposition is in accordance with the objects of the Registered Provider or the terms of the lease.**

#### **1.3 Priority Arrangements for Allocation**

The first 8 Affordable Housing units on the Development will be allocated to those with a Local Connection, the allocation of any additional Affordable Housing Units will be split 50/50 between those with a Local Connection and Qualifying Persons in the District of South Cambridgeshire.

When allocating properties for those with a Local Connection priority will be given to Qualifying Persons in order of the priorities listed below. In the event that a Qualifying Person cannot be found within the relevant priority then cascade arrangements will apply to move to the next priority order, and so on.

- 1st Priority – Qualifying Persons with a Local Connection to Fulbourn
- 2nd Priority – Qualifying Persons with a Local Connection to Teversham
- 3rd Priority – Qualifying Persons with a Local Connection to Great Wilbraham
- 4th Priority – Qualifying Persons in the District of South Cambridgeshire

1.4 The Registered Provider should for the purposes of paragraph 1.3 above make all reasonable efforts to verify the relevant information:

- Evidence of Local Connection should be requested by the Registered Provider such as proof of address and length of residence for the applicant or relative, or proof of employment;
- Any cases assessed by the Registered Provider under criteria (d) of the definition of “Local Connection” are to be specifically agreed in writing with the Council.

1.5 Where an applicant has a Local Connection (as defined) applicants with the highest housing need will be given priority in accordance with any allocations policy then in place by the Council.

1.6 Before applying the cascade criteria set out above, the Council’s allocating officer has discretion to allocate Affordable Dwellings to those person(s) who would have a Local Connection as defined but who do not meet the time limitations specified in the definition.

1.7 The obligations and restrictions contained in this paragraph 1 of this Schedule 2 shall not bind:

- (a) a mortgagee or chargee of the Affordable Housing Land provided that the mortgagor is a Registered Provider or any receiver appointed by such mortgagee or chargee who has first complied with the provisions of paragraphs 1.8 (i) – (iv) below;
- (b) any person acquiring an interest in an Affordable Housing Unit under a statutory right to buy or acquire the said Affordable Housing Unit;
- (c) any mortgagee or chargee of a Shared Ownership Unit lawfully exercising the mortgagee protection provision within a Shared Ownership Lease;
- (d) any Shared Ownership Lessee that has Staircased to 100% ownership of a Shared Ownership Unit; or
- (e) any person or body deriving title through or from any of the parties mentioned in paragraphs 1.7 (a) to (d).

1.8 Any mortgagee or chargee of the Affordable Housing Land or any receiver appointed by such mortgagee or chargee claiming protection granted by paragraph 1.7(a) of this Schedule 2 must first:

- (i) comply with the restrictions and obligations contained in Sections 144 to 159 of the Housing and Regeneration Act 2008;
- (ii) provide the Council as soon as reasonably practicable with copies of any notices served on or by the HCA or the regulator (or its successor) pursuant to Sections 144 to 148 or Section 151 of the Housing and Regeneration Act 2008;
- (iii) provide the Council with copies of any proposals or directions that the mortgagee received from the HCA under Sections 152 to 155 of the Housing and Regeneration Act 2008 (or where any part of those proposals are of a confidential nature such details of the proposals as are appropriate in all the circumstances) and provide the Council with further details of progress reached towards implementing such agreed proposals from time to time; and
- (iv) give the Council the opportunity to purchase the relevant Affordable Housing Unit(s) from the mortgagee or alternatively nominate another Registered Provider

to purchase the relevant Affordable Housing Unit(s) for a period commencing on the date that the mortgagee gives the Council notice and ending on the later of six weeks (or such other period as may be agreed by the parties) after the date of that notice or the end of any moratorium period pursuant to Section 155 of the Housing and Regeneration Act 2008 if such period is agreed between the parties. The Council (or its nominated Registered Provider) shall be entitled to complete the purchase of the relevant Affordable Housing Unit at any time up seven weeks after the expiry of the option period.

- 1.9 The price payable by the Council or its nominated Registered Provider for the Affordable Housing Unit(s) pursuant to paragraph 1.8 of this Schedule 2 shall be the open market value of the relevant Affordable Housing Unit(s) including the land on which the Affordable Housing Unit(s) is constructed subject to the restrictions contained within this paragraph 1 of this Schedule 2 or all sums due to the mortgagee pursuant to the terms of the mortgagee's charge together with reasonable legal and administrative fees, whichever is the greater.
- 1.10 The Owner and the Council shall use reasonable endeavours to agree the open market value of the Affordable Housing Unit(s) but in the event of failure to agree the open market value shall be determined by an independent surveyor having at least ten years' experience in the valuation of affordable housing and will be appointed by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy, due regard being had to all the restrictions imposed upon the Affordable Housing Unit(s).
- 1.11 The Affordable Housing Units shall be Occupied pursuant to the provisions of the Nomination Agreement if such Nomination Agreement is required by the Council or pursuant to the Home-Link choice based lettings scheme in the case of the Affordable Rented Units or the HomeBuy scheme in the case of Shared Ownership Units or such other equivalent or replacement scheme/nomination as is approved by the Council.

## **2. LEAP, PUBLIC OPEN SPACE**

2.1 The Owner covenants for the benefit of the Council:

- (a) prior to Commencement of the Development to submit the LEAP Scheme and the Public Open Space Scheme to the Council for approval and not to carry out any works to the Development until the LEAP Scheme and the Public Open Space Scheme has been approved in writing by the Council acting reasonably;
- (b) not to allow or permit the Occupation of:
  - (i) any Dwellings fronting or otherwise adjacent to the LEAP and the Public Open Space; and
  - (ii) more than 50% of the Dwellings.

until the whole of the LEAP and the Public Open Space have been properly and fully laid out and made available for use by the residents of the Development in accordance with the relevant approved Scheme and all current health and safety requirements and notice of such Practical Completion and also in the case of the LEAP notice of a satisfactory ROSPA inspection has been served on the Council by the Owner.

- 2.2 Subject to paragraph 2.3 of this Schedule 2 the Owner covenants for the benefit of the Council to maintain the LEAP and the Public Open Space in accordance with the relevant approved Scheme after notice of Practical Completion of the works for the construction of the LEAP and the Public Open Space has been served on the Council pursuant to paragraph 2.1 of this Schedule 2 provided that the provision of the LEAP and Public Open Space shall be subject to Permitted Closure.
- 2.3 The Owner covenants for the benefit of the Council that it will not transfer the LEAP and/or the Public Open Space to (i) any third party other than a third party who purchases the whole or the majority of the Land (for the avoidance of doubt excluding the Affordable Housing Land where such land has been transferred to a Registered Provider) for the purposes of carrying out and completing the whole or majority of the Development or (ii) a Management Company until the expiry of a minimum of 12 months after notice of

Practical Completion has been served on the Council pursuant to paragraph 2.1 of this Schedule 2 and provided always that before any transfer to any third party (other than to a Registered Provider or to a third party who purchases the whole or the majority of the Land and does so for the purposes of carrying out and completing the whole of the Development) and/or a Management Company fall-back arrangements by way of covenants shall first be put in place in the plot documentation for each of the Dwellings (and which covenants shall be enforceable by the Council and/or the Parish Council if so nominated) whereby each of the residents of the Development are to be responsible for payment of a proportionate part of all proper and reasonable costs associated with on-going maintenance of the LEAP and the Public Open Space including the provision that such costs would be payable to the Council (or the Parish Council if so designated by the Council) if the relevant third party (or the Management Company as appropriate were to cease to exist or otherwise fail to properly maintain the LEAP or the Public Open Space provided always for the avoidance of doubt that no costs for a particular year shall be payable to the Council or the Parish Council where the costs for that particular year have been paid to the Management Company.

- 2.4 In the case of any material default of compliance by the Owner or any Management Company in respect of the on-going maintenance of the LEAP and/or the Public Open Space the Owner acknowledges that the Council (and separately the Parish Council if so designated by the Council) shall have the right (but shall be under no obligation in respect thereof) so far as is reasonably necessary to rectify any default in addition to all or any statutory powers it may have in this regard to do any of the following in respect of the LEAP and/or the Public Open Space subject to (i) the Council having first given (other than in the case of emergency works where no such notice need be given) written notice to the Owner and any Management Company specifying any default and its intention so to exercise the said rights or any of them (the "Council's Notice") and (ii) allowing the Owner and/or the Management Company a period of not less than 20 Working Days to rectify any specified default:
- (a) enter upon the LEAP and/or Public Open Space with or without vehicles and equipment; and
  - (b) carry out such works as shall be appropriate to remedy any default specified in the Council's Notice in respect of such area including the removal of any matter or thing on that part of the LEAP and/or Public Open Space or the demolition of any building or structure thereon.
- 2.5 The Owner covenants for the benefit of the Council to dedicate or procure the dedication of the LEAP and the Public Open Space for the use by the public for recreational purposes as public open space as defined by the Open Spaces Act 1906 on compliance with the requirements of paragraph 2.1(b) of this Schedule 2 provided always that for the avoidance of doubt the use of such land as public open space shall not preclude the rights of the Council (or the Parish Council if so designated by the Council) to secure the good management of the same including:
- (a) the right to exclude any persons, animals, vehicles or equipment therefrom either temporarily or permanently (so far as is consistent with public open space amenity use);
  - (b) to prescribe such reasonable charges either for general or for particular use of all or any part thereof by non-residents of the Land; and
  - (c) otherwise to make reasonable management or proprietary conditions governing the use thereof.
- 2.6 To calculate the minimum area and composition of the LEAP and Public Open Space to be submitted as part of an application for Reserved Matters Approval the minimum area of the LEAP and Public Open Space to be provided per Dwelling type (Column 2) is to be multiplied by the number of Dwellings of each Dwelling type by number of bedrooms (Column 1):

Column 1	Column 2		
Dwelling type	Area of formal play space (LEAP) to be provided	Area of Public Open Space comprising informal play space to be provided	Area of Public Open Space comprising informal open space to be provided
One bed	Nil	Nil	5.4m2
Two bed	7.0m2	7.0m2	7.0m2
Three bed	9.7m2	9.7m2	9.7m2
Four bed	13.3m2	13.3m2	13.3m2

**3 GENERAL OPEN SPACE**

3.1 The Owner covenants for the benefit of the Council:

- (a) prior to Commencement of the Development to submit the General Open Scheme to the Council for approval and not to carry out any works to the Development until the General Open Space Scheme has been approved in writing by the Council acting reasonably;
- (b) not to allow or permit the Occupation of more than 50 Dwellings until 50% of the General Open Space (including all areas of the General Open space where there are surface water and/or drainage arrangements approved for the purposes of condition 8 of the planning permission has been properly and fully laid out and made available for use by the residents of the Development in accordance with the approved Scheme and all current health and safety requirements and notice of such Practical Completion has been served on the Council by the Owner;
- (c) not to allow or permit the Occupation of more than 75 Dwellings until the whole of the General Open Space has been properly and fully laid out and made available for use by the residents of the Development in accordance with the approved General Open Space Scheme and all current health and safety requirements and notice of such Practical Completion has been served on the Council by the Owner.

3.2 Subject to paragraph 3.3 of this Schedule 2 the Owner covenants for the benefit of the Council to maintain the General Open Space in accordance with the approved General Open Space Scheme after notice of Practical Completion of the works for the construction of the General Open Space has been served on the Council pursuant to paragraph 3.1 of this Schedule 2 provided that the provision of the General Open Space shall be subject to Permitted Closure.

3.3 The Owner covenants for the benefit of the Council that it will not transfer the General Open Space to (i) any third party other than a third party who purchases the whole or the majority of the Land (for the avoidance of doubt excluding the Affordable Housing Land where such land has been transferred to a Registered Provider) for the purposes of carrying out and completing the whole or majority of the Development or (ii) a Management Company until the expiry of a minimum of 12 months after notice of Practical Completion has been served on the Council pursuant to paragraph 3.1 of this Schedule 2 and provided always that before any transfer to any third party (other than to a Registered Provider or to a third party who purchases the whole or the majority of the Land and does so for the purposes of carrying out and completing the whole of the Development) and/or a Management Company fall-back arrangements by way of covenants shall first be put in place in the plot documentation for each of the Dwellings (and which covenants shall be enforceable by the Council and/or the Parish Council if so nominated) whereby each of the residents of the Development are to be responsible for payment of a proportionate part of all proper and reasonable costs associated with on-going maintenance of the General Open Space including the provision that such costs would be payable to the Council (or the Parish Council if so designated by the Council) if the relevant third party (or the Management Company as appropriate were to cease to

exist or otherwise fail to properly maintain the General Open Space provided always for the avoidance of doubt that no costs for a particular year shall be payable to the Council or the Parish Council where the costs for that particular year have been paid to the Management Company.

- 3.4 In the case of any material default of compliance by the Owner or any Management Company in respect of the on-going maintenance of the General Open Space the Owner acknowledges that the Council (and separately the Parish Council if so designated by the Council) shall have the right (but shall be under no obligation in respect thereof) so far as is reasonably necessary to rectify any default in addition to all or any statutory powers it may have in this regard to do any of the following in respect of the General Open Space subject to (i) the Council having first given (other than in the case of emergency works where no such notice need be given) written notice to the Owner and/or any Management Company specifying any default and its intention so to exercise the said rights or any of them (the "Council's Notice") and (ii) allowing the Owner and/or the Management Company a period of not less than 20 Working Days to rectify any specified default:
- (a) enter upon the General Open Space with or without vehicles and equipment; and
  - (b) carry out such works as shall be appropriate to remedy any default specified in the Council's Notice in respect of such area including the removal of any matter or thing on that part of the General Open Space or the demolition of any building or structure thereon.
  - (c) maintain the General Open Space in line with the General Open Space Scheme;
  - (d) claim all its or their reasonable costs of entry and/or carrying out works of default including the cost of any Court proceedings and/or the costs of maintenance.

#### **4. CONTRIBUTIONS**

4.1 The Owner covenants with the Council:

- (a) to pay the Monitoring Fee to the Council on Commencement of the Development;
- (b) to pay the Waste Receptacle Contribution to the Council prior to the Occupation of any Dwelling;
- (c) to pay the Healthcare Contribution to the Council prior to the Occupation of the 50th Dwelling;
- (d) to pay the Indoor Community Space Contribution to the Council prior to the Occupation of the 20th Dwelling;
- (e) to pay the Sports Space Contribution to the Council prior to the Occupation of the 50th Dwelling.

4.2 The Owner covenants with the County Council in respect of the number of Dwellings approved under each Reserved Matters Approval:

- (a) to pay the Early Years Contribution to the County Council in the following instalments:
  - (i) for the number of Dwellings approved under the first Reserved Matters Approval:
    - (1) 50% prior to Commencement of the Development pursuant to that Reserved Matters Approval; and
    - (2) 50% prior to Occupation of 50% of the Dwellings pursuant to that Reserved Matters Approval;
  - (ii) for the number of Dwellings approved under each subsequent Reserved Matters Approval, 100% prior to Commencement of the Development pursuant to the relevant Reserved Matters Approval;

- (b) to pay the Primary Education Contribution to the County Council in the following instalments:
  - (i) for the number of Dwellings approved under the first Reserved Matters Approval:
    - (1) 50% prior to Commencement of the Development pursuant to that Reserved Matters Approval; and
    - (2) 50% prior to Occupation of 50% of the Dwellings pursuant to that Reserved Matters Approval;
  - (ii) for the number of Dwellings approved under each subsequent Reserved Matters Approval, 100% prior to Commencement of the Development pursuant to the relevant Reserved Matters Approval;
- (c) to pay the Secondary Education Contribution to the County Council in the following instalments:
  - (i) for the number of Dwellings approved under the first Reserved Matters Approval:
    - (1) 50% prior to Commencement of the Development pursuant to that Reserved Matters Approval; and
    - (2) 50% prior to Occupation of 50% of the Dwellings pursuant to that Reserved Matters Approval;
  - (ii) for the number of Dwellings approved under each subsequent Reserved Matters Approval, 100% prior to Commencement of the Development pursuant to the relevant Reserved Matters Approval;
- (d) to pay the Libraries and Lifelong Learning Contribution to the County Council in the following instalments:
  - (i) for the number of Dwellings approved under the first Reserved Matters Approval, 100% prior to Occupation of 50% of the Dwellings pursuant to that Reserved Matters Approval; and
  - (ii) for the number of Dwellings approved under each subsequent Reserved Matters Approval, 100% prior to Commencement of the Development pursuant to the relevant Reserved Matters Approval.



**Schedule 3**

**Affordable Housing Tenure Mix**

Based on 110 Dwellings:

Unit size	Affordable Rented Units	Shared Ownership Units
1 bed	8	0
2 bed	8	12
3 bed	0	5
4 bed	0	0
Total	16	17

## Schedule 4

### Nomination Agreement

Parties

- (1) South Cambridgeshire District Council (the "**Council**")
- (2) [ ] (the "**RPSH**")]

A. BACKGROUND

- A.1 The RPSH is a registered provider of social housing within the meaning of Section 80 of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) and as registered with the Tenant Services Authority pursuant to Section 116 of the Housing and Regeneration Act 2008 and approved in writing by the Council
- A.2 The RPSH will provide affordable housing at the Site in accordance with the terms of the Section 106 Agreement (as herein defined)

1. Interpretation

In this Nominations Agreement:-

"**1990 Act**" - means the Town and Country Planning Act 1990;

"**Affordable Housing**" - means housing that is affordable to those people who cannot afford to rent or buy housing generally available on the open market which is to be provided through the involvement of an Registered Provider of Affordable Housing and which secures the provision of such housing in perpetuity (where legally permissible) to include the following types of tenure or combination thereof:-

- (a) Affordable Rented Housing;
- (b) Intermediate Housing; and
- (c) any other tenure or combination of tenure approved by the Council;

"**Affordable Housing Scheme**" - means the scheme submitted by [ ] to the Council in accordance with the terms of the Section 106 Agreement or as varied from time to time by agreement between the Council and the Developer in accordance with the terms of the Section 106 Agreement;

"**Affordable Rented Housing**" - means housing provided pursuant to a tenancy and through the involvement of an RPSH at rents below market rents and at levels controlled by the HCA and set at a level not exceeding the HCA rent restructuring guidelines;

"**Affordable Rented Housing Units**" - means the ( ) housing units which are to be constructed on the Site and to be let as Affordable Rented Housing in accordance with the Affordable Housing Scheme;

"**Council**" – includes any successor to its statutory functions and any duly appointed servant or agent of the Council or such successor;

"**Developer**" - means Castlefield International Limited (incorporated in the British Virgin Islands) (Company Registration Number 616079 whose address for service is at care of Hutchison



arising from a statutory obligation or court order. Non-True Voids will be disregarded from the calculation of the Council's Nominations Rights in any year between 1 April and 31 March.

- 1.1 Any reference to an enactment includes any statutory modification or re-enactment of it for the time being in force.
- 1.2 Headings in this Nominations Agreement are for convenience only and shall not be taken into account in its construction and interpretation.
- 1.3 Reference to clauses, sub-clauses and schedules such are references to clauses, sub-clauses and schedules to this Nominations Agreement.
- 1.4 Where the context so requires:
  - 1.4.1 the singular includes the plural and vice versa;
  - 1.4.2 the masculine includes the feminine and vice versa; and
  - 1.4.3 persons includes bodies corporate, associations and partnerships and vice versa.
- 1.5 Where a party includes more than one person any obligation on that party shall be joint and several.
- 1.6 Any term not specifically defined in this Nominations Agreement shall bear the meaning as defined in the Section 106 Agreement unless the context otherwise requires.

## 2. **Preliminary**

- 2.1 The RPSH has by way of a transfer of even date acquired the Site from the Developer and will provide Affordable Housing on the Site in accordance with the terms of the Section 106 Agreement and the Affordable Housing Scheme.
- 2.2 The Council is the local planning authority for the purposes of the 1990 Act and the housing authority for the area in which the Site is situated.
- 2.3 The Section 106 Agreement requires the RPSH to enter into this Nominations Agreement.
- 2.4 The objectives of this Nominations Agreement are:-
  - 2.4.1 to meet the legal requirements for letting affordable rented housing;
  - 2.4.2 to create a mixed and balanced community and within this context to assist applicants in the highest assessment need;
  - 2.4.3 to ensure that the Affordable Rented Housing properties are let as quickly as possible to appropriate nominees;
  - 2.4.4 to make the best use of the housing stock;
  - 2.4.5 to provide increased choice and information about available properties to applicants;
  - 2.4.6 to support vulnerable applicants in accessing available properties;
  - 2.4.7 to ensure that applicants are not discriminated against whether directly or indirectly; and
  - 2.4.8 to promote social inclusion and help achieve sustainable communities.
- 2.5 The Nominations Agreement is to cover all permanent lettings by the RPSH and it is agreed that where housing care and support is to be provided as a condition of the tenancy then the relevant dwelling or dwellings may be excluded from this Nominations Agreement with the prior written consent of the Council which shall not be unreasonably withheld.

2.6 The RPSH will make the Affordable Rented Housing Units available for letting to people nominated by the Council in accordance with the procedures set out in Clause X and it is agreed that the Council may nominate applicants in respect of 100% of initial lettings and thereafter it may make nominations in respect of 75% of any subsequent vacancies (except for True Voids) PROVIDED ALWAYS THAT subject to the Council not being in breach or default of any of its statutory obligations the Council may in its absolute discretion and either on a temporary or permanent basis accept a lesser nomination right in relation to:-

2.6.1 the initial allocation of each Affordable Rented Housing Unit which has not been allocated or the subject of a nomination; or

2.6.2 the allocation of an Affordable Rented Housing Unit which has been the subject of an initial allocation.

2.7 It is agreed that the Intermediate Housing Units will be allocated by the RPSH and where appropriate in agreement with the relevant Home Buyer Agency.

### 3. **Covenants**

3.1 The RPSH covenants not to cause or permit the disposal or occupation of any of the Affordable Rented Housing Units otherwise than strictly in accordance with the procedures set out in Clause 4 PROVIDED ALWAYS THAT all persons nominated by the Council shall be within the categories of person which the RPSH's Rules permit it to accommodate.

### 4. **Nominations Procedure**

4.1 The RPSH, will advertise the available Affordable Rented Housing Units (other than where a sensitive direct let has been agreed with the Council) through the Sub-Region Homelink.

4.2 Properties will be advertised on a fortnightly cycle via the Homelink CBL computer system, Locata. Within the cycle, the property will be advertised from 9:00 am Friday until 12 noon Wednesday, starting from the first Friday in the fortnightly cycle. Properties may be advertised on the internet before 9:00 am on the Friday.

4.3 The RPSH will access the Locata IT system directly in accordance with the timescales agreed with Homelink and load the information regarding void properties onto the system, labelling those applicants eligible to express an interest in the property in accordance with the approved Local Lettings Plan, or as otherwise agreed with the Council.

4.4 In respect of the initial lettings the parties agree that 85% of vacancies will be advertised six months in advance in order to facilitate tenants' choice of fixtures and fittings from the available range. The remaining 15% will be advertised one month in advance of the anticipated tenancy commencement date.

4.5 Once the advertisement is approved by the Council properties will be advertised on the Homelink website, in the Sub-Regional property magazine and information will be available in the Council offices and other access points.

4.6 After the close of advertising, at 12 noon on Thursday, a shortlist of eligible applicants will be taken by the RSHP from the Locata IT system promptly (if we need to be specific it is within four hours). The shortlisting will be undertaken in line with the Sub-Regional policy and procedures including any of the Local Lettings Plan.

- 4.7 If an applicant at the top of the shortlist does not meet the Local Lettings Plan, or the RPSH's Rules, the applicant can be bypassed, with the agreement of the Council managing the housing registered, and the next person will be considered for the vacancy.
- 4.8 The RPSH will arrange an accompanied viewing with the applicant(s) at the top of the shortlist.
- 4.9 The applicant at the top of the shortlist as generated in accordance with Clauses 4.5 and 4.6 above will be given 24 hours after viewing a property and receiving a verbal offer of tenancy to accept or reject the offer. If the offer is refused or not accepted within the deadline above the next person on the shortlist will be offered the property and this process shall be repeated until an offer is so accepted.
- 4.10 The RPSH may reject an applicant following a viewing where it identifies that:-
- 4.10.1 the property is not suitable for the nominee or a member of their household, for example, on the grounds of ill health, location or unspent conviction making the nomination unsuitable; or
  - 4.10.2 there has been a change of circumstances, previously unknown to the Council; or
  - 4.10.3 the nomination does not comply with the RPSH's Rules; or
  - 4.10.4 proceeding with the letting could put a vulnerable person at risk of harm.
- 4.11 The RPSH will advise the Council within two working days of the reason for rejecting any nomination, or failing to offer the property to any applicant with the highest priority on the shortlist, that the Council believes to be eligible.
- 4.12 Should the Council wish to enforce a nomination that the RPSH has rejected then a panel of senior officers of the Council and the RPSH will meet within five working days to agree a decision; all parties to act reasonably in considering the presenting information.
- 4.13 The RPSH will be responsible for communicating with the applicant any decision to bypass an applicant, or reject a nominee and for managing any resulting complaint.
- 4.14 Once an eligible applicant has confirmed that they want to accept the offer of tenancy, the RPSH will give the applicant the formal offer of tenancy on behalf of the RPSH and conclude the tenancy sign up.
- 4.15 In the event that no applicant from the shortlist wishes to accept a tenancy then the RPSH, in consultation with the Council, may advertise the vacancy on a Sub-Regional basis, or make it available to applicants without a connection to the Sub-Region.
- 4.16 The RPSH and the Council will monitor all lettings and the operation of this Nominations Agreement on a regular basis.
5. **Council's Powers**
- 5.1 For the avoidance of doubt nothing contained in this Agreement or implied in consequence of it shall prejudice or affect in any way whatsoever the Council's rights, powers and duties in the exercise of its functions as a local authority or a local planning authority.
6. **Assignment of Disposal**
- 6.1 If the RPSH disposes of its freehold interest in the Site (except by way of legal charge transfer to a tenant exercising a statutory right to acquire or to a shared owner staircasing to 100%) the RPSH will procure (as a condition of the disposal) that the purchaser will enter into an agreement with the Council in the same terms as this Nominations

Agreement. Upon the completion of that agreement the Council will enter into a deed releasing the RPSH from its obligations under this Nominations Agreement.

**7. Mortgagees and Tenants Acquiring under Statutory Right to Acquire**

7.1 The Council and the RPSH agree that the provisions of this Nominations Agreement are not binding on:-

7.1.1 a mortgagee exercising a power of sale but subject to Clauses X and X of the Section 106 Agreement;

7.1.2 anyone deriving title through any such mortgagee; or

7.1.3 a tenant of the RPSH who has acquired a dwelling under a statutory right to acquire or any person acquiring an interest in any Intermediate Housing Unit.

**8. Contracts (Rights of Third Parties) Act 1999**

8.1 A person who is not a party to this Nominations Agreement has no right to enforce any of its terms.

**9. The Section 106 Agreement**

9.1 The Council agrees that the requirements at paragraph 1.1(g) of the Second Schedule of the Section 106 Agreement shall be satisfied by the RPSH complying with the terms of this agreement.

**10. No restrictions on Council's powers**

10.1 Nothing in this agreement, and nothing in consequence of it, prejudices the Council's rights, powers and duties in the exercise of its functions as a local authority or as a local planning authority.

**11. Disputes**

11.1 If there shall be any dispute under the terms of this Nominations Agreement which shall not be resolved within a reasonable period of either party having notified the other that a dispute exists, either party shall have the right to refer the same for decision to an arbitrator to be appointed by the President for the time being of the Chartered Institute of Housing in accordance with the provisions of the Arbitration Act for the time being subsisting.

In witness whereof the parties hereto have by affixing their respective common seals executed this document as Deed upon the date hereof.

The Common Seal of South )  
Cambridgeshire District Council was )  
affixed to this Deed in the presence of: )

*Steph V Ken*  
Authorized signatory



M00080

The Common Seal of Cambridgeshire )  
County Council was affixed to this Deed )  
in the presence of: )

Authorized signatory

*Paul*



992/17

Signed as a deed on behalf of )  
Castlefield International Limited a )  
company incorporated in the British )  
Virgin Islands, by ~~Chow Wai Kan (Raymond)~~ )  
being a person who, in accordance )  
with the laws of that territory, is )  
acting under the authority of the )  
company: )

*[Signature]*

