

DATED

2013

EAST STAFFORDSHIRE BOROUGH COUNCIL

- and -

STAFFORDSHIRE COUNTY COUNCIL

**AGREEMENT**

under section 106 of the Town and Country  
Planning Act 1990 (as amended) relating to  
land at Tutbury Road and Rolleston Road  
Burton upon Trent

Draft: 29th November 2013



“Affordable Housing Provider”	means a housing association or registered social landlord which has (unless otherwise agreed in writing with the Council) a Nomination Agreement in place with the Council and is registered in accordance with Part 1 Chapter 1 of the Housing Act 1996 or any other registered provider of social housing as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Acts) or any company or other body approved by the Tenant Services Authority or Homes and Communities Agency for receipt of social housing grant
“Affordable Housing Scheme”	means the scheme for the provision of the Affordable Housing Units to be submitted to and approved by the Council pursuant to paragraphs ... of Schedule 2
“Affordable Housing Units”	means those Dwellings within the Development which are to be provided as Affordable Housing comprising Affordable Rented Housing Units and “Affordable Housing Unit” shall be construed accordingly
“Affordable Rented Housing”	has the meaning given to it in Annex 2 of the NPPF and “Affordable Rented Housing Units” shall be construed accordingly
“Application”	means the outline application for ..... ..... registered on ..... under reference .....
“Commencement of Development”	means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services and estate roads, or temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" and “Commenced” shall be construed accordingly
“Contracts Act”	means the Contracts (Rights of Third Parties) Act 1999
“Development”	means the development proposed by the

Application

“Dwelling”	means any dwelling (including a house flat or masonette) falling within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) which is to be constructed as part of the Development pursuant to the Planning Permission and “Dwellings” shall be construed accordingly
“Education Contribution”	means the sum of £..... (..... pounds) to be paid to the County for improvements to local primary, secondary and tertiary schools
“Homes and Communities Agency”	means the Homes and Communities Agency or any successor government agency that funds and is responsible for the delivery of new Affordable Housing in England
“Market Dwellings”	means those Dwellings which comprise general market housing for sale on the open market and which are not Affordable Housing and “Market Dwelling” shall be construed accordingly;
“Nomination Agreement”	means a nomination agreement between the Council and an Affordable Housing Provider [in the form of Agreement annexed hereto at Schedule ...]
“NPPF”	means the Department for Communities and Local Government document entitled “National Planning Policy Framework” (March 2012) or any replacement or modification thereof in force from time to time
“Occupation” and “Occupied”	means (unless expressly stated otherwise in this Deed) occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
“Plan”	means the plan annexed to this Agreement
“Planning Permission”	means the planning permission which the Council has resolved to grant pursuant to the Application in the form annexed hereto as Schedule ....
“POS Scheme”	means a document to be submitted to the Council for approval prior to Commencement of Development setting out the general provision of Public Open Space for the Development which shall include, where appropriate, an equipped

children's play area and which shall include a phasing and delivery programme

- "Public Open Space" means the areas of the Site to be used for the purposes of amenity recreation and outdoor enjoyment by members of the public as of right and not within the ownership of any private individual as shown coloured [green] on the Layout Plan] and which shall comprise ..... hectares in total
- "Reserved Matter" means any one of, appearance, landscaping, layout and scale as defined by Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and "Reserved Matters" shall be construed accordingly
- "Reserved Matters Approval" means the approval or approvals pursuant to the Planning Permission of the Reserved Matters required for the carrying out of the Development
- "Site" means the land east of Tutbury Road, west of Rolleston Road, and north of Harehedge Lane, Burton upon Trent shown edged red on the Plan
- "Tenant Services Authority" means the Tenant Services Authority or any replacement government agency that regulates Affordable Housing and housing associations in England
- "Travel Plan" means the travel plan [submitted by First City Ltd as part of the Application]
- "Travel Plan Monitoring Fee" means the sum of [£..... (.....)] to be paid to the County for the purpose of monitoring the delivery of the Travel Plan
- "Working Day" means any day of the week other than Saturday Sunday or any bank holiday and "Working Days" shall be construed accordingly

## **2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 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.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council any successor to their respective statutory functions.

## **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers to the intent that it is enforceable against any person deriving title to the Site from through or under the Owners.
- 3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the 1990 Act which bind the Site and are enforceable by the Council as local planning authority against the Owners.

## **4. CONDITIONALITY**

- 4.1 This Deed shall take effect upon the date hereof but the covenant from the Owners in clause 5 of this Deed is conditional upon:
  - 4.1.1 the grant of the Planning Permission; and
  - 4.1.2 the Commencement of Development.

## **5. THE OWNERS' COVENANT**

- 5.1 The Owner covenants with the Council and the County as set out in Schedules [1, 2, and 3].

## **6. THE COUNCILS' COVENANT**

6.1 The Council and the County Covenant as set out in Schedule [4]

## **7. MISCELLANEOUS**

7.1 The County shall pay to the Council on completion of this Deed the reasonable legal and planning costs of the Council incurred in the negotiation, preparation and execution of this Deed up to a maximum sum of £.....

7.2 No provisions of this Deed shall be enforceable under the Contracts Act.

7.3 This Deed shall be registrable as a local land charge by the Council.

7.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed upon receipt of a written request from the Owner.

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

7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed:

(a) to the extent that such breach relates to any part of the Site in which that person has no interest; and/or

(b) which occurs after it shall have parted with its interest in the Site or if it be part only the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest for which it shall continue to be liable

7.8 The obligations in this Deed will not be enforceable against the buyers, tenants or occupiers of Dwellings erected on the Site pursuant to the Planning Permission nor their mortgagee or chargee or any person deriving title from them

7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

7.10 The parties agree with one another:

(a) to act reasonably and in good faith in fulfilment of the objectives of this Deed;

- (b) that where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council or the County Council by the Development Control Services Manager or the officer of the Council for the time being responsible for this function; and
- (c) that any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

## **8. WAIVER**

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

## **9. JURISDICTION**

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

## **10. DELIVERY**

- 10.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

## **11. DISPUTES**

- 11.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference may be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 11.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 11.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society of England and Wales for him to appoint an appropriate person to determine the dispute such person acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the



dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

- 11.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation.
- 11.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.

## **12. COMMUNITY INFRASTRUCTURE LEVY**

- 12.1 For the purposes of this clause, “**CIL**” means a tax, tariff or charge introduced by the Council pursuant to regulations enabled by the Planning Act 2008 or any subsequent proposed legislation to fund the delivery of infrastructure known as the “community infrastructure levy” or known by any other name.
- 12.2 If, after the date of this Deed, a CIL is introduced that is applicable to the Development then the parties to this Deed will use reasonable endeavours to agree variations to this Deed with the intent that:
- 12.2.1 the planning benefits secured by this Deed should (subject to the terms of this Deed) continue to be secured and delivered; and
- 12.2.2 the Owners should not be in a position where it is in a financially worse or better position because of CIL in respect of the obligations contained in this Deed than it would be if it performed the obligations in this Deed and no CIL had been introduced.

**SCHEDULE 1**  
(Owners' Covenants)

The Owner hereby covenans with the Council and the County:

**1. PUBLIC OPEN SPACE**

- 1.1 The Owner shall not Commence Development until the Council has approved the POS Scheme for the Development.
- 1.2 The Public Open Space as shown edged [...] on drawing number .... shall be laid out in accordance with the POS Scheme prior to the Occupation of the [ ] Dwelling on the Site.

*[Note: further detailed paragraphs to be included regarding maintenance and transfer obligations.]*

**3. EDUCATION CONTRIBUTION**

- 3.1 The Owner shall pay the Education Contribution to the County Council as follows:
  - 3.1.1 £..... (..... pounds) on Occupation of the 1<sup>st</sup> Dwelling on the Site
  - 3.1.2 £,,,,,,,,,,,,, (..... pounds) on completion of the 201<sup>st</sup> Dwelling on the Site
  - 3.1.3 £..... (..... pounds) on completion of the 500<sup>th</sup> Dwelling on the Site

**SCHEDULE 2**  
(Affordable Housing)

1. The Owner shall provide Affordable Housing as part of the Development in accordance with the provisions of this Schedule 2.
2. That 15% (fifteen per cent) of the total number of Dwellings to be constructed on the Development (rounded up or down to the nearest Dwelling on a “round half up” basis) shall be provided as Affordable Housing in accordance with the Affordable Housing Scheme.
3. Not to Commence Development of that part of the Development identified on a Reserved Matters Approval as falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 until the Owner has submitted to the Council and the Council has approved in writing the Affordable Housing Scheme.
4. The Affordable Housing Scheme submitted pursuant to paragraph ... of this Schedule 2 (above) shall:
  - 4.1 identify the Dwellings to be constructed within the Development as Affordable Housing Units which shall accord with paragraph ... of this Schedule 2 (above);
  - 4.2 identify the location of the Affordable Housing Units (including plot numbers); and
  - 4.3 identify the house type and number of bedrooms of each Affordable Housing Unit.
5. From the Commencement of Development of that part of the Development identified on a Reserved Matters Approval as falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 to proceed to construct the Affordable Housing Units as part of the Development in accordance with the approved Affordable Housing Scheme subject to such variations as may be agreed between the Owners and the Council from time to time.

*[Triggers for provision of Affordable Housing:*

- *[ ] Affordable Rented Housing Units to be available for Occupation prior to the Occupation of the [ ] Market Dwelling*
  - *[ ] Affordable Rented Housing Units to be available for Occupation prior to the Occupation of the [ ] Market Dwelling*
  - *[ ] Affordable Rented Housing Units to be available for Occupation prior to the Occupation of the [ ] Market Dwelling]*
6. The Owners shall ensure that any transfer of an Affordable Housing Unit to an Affordable Housing Provider shall contain the following provisions:

- 6.1 A covenant that the Affordable Housing Provider shall not use the Affordable Housing Unit otherwise than for Affordable Housing; and

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**SCHEDULE 3**  
(Highways)

1. Prior to the Occupation of the 1<sup>st</sup> Dwelling on the Site the Owner shall:
  - 1.1 construct the ..... Site Access Junction
  - 1.2 pay to the County .....of the Travel Plan Monitoring Fee
  
2. Prior to the Occupation of the 101<sup>st</sup> Dwelling on the Site the Owner shall:
  - 2.1 construct the ..... Site Access Junction
  - 2.2 construct to Tutbury Road roundabout
  - 2.3 realign Harehedge Lane and construct the dual mini roundabouts, including the off-street car park
  - 2.2 pay to the County ..... of the Travel Plan Monitoring Fee

*[Note 1: highway works to be shown on a drawing and/or described in definitions section]*

*[Note 2: trigger points for defined highway works to be subject to agreement with the Highway Authority]*
  
3. The Owner shall appoint a Travel Plan Co-ordinator prior to the completion of the 1<sup>st</sup> Dwelling.

**SCHEDULE 4**  
(Councils' Covenants)

The Council and the County hereby covenant with the Owner in the following terms:

1. The Councils hereby covenant to use all sums received under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree in writing.
2. If any part of the Education Contribution or the Affordable Housing Contribution remains unexpended by the Councils at the end of a period of [five years] following the payment of such contribution the Councils shall upon receipt of a written request from the Owner repay the unexpended part of the relevant contribution or contributions as the case may be to the Owners together with any Interest accrued upon such unexpended sum.
3. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

**SCHEDULE 5**  
(Planning Permission)

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**EXECUTED AS A DEED** by the Council and the County Council as Highway and Education authority and the Owner on the day and year first hereinbefore appearing

**THE COMMON SEAL** of )  
**EAST STAFFORDSHIRE BOROUGH COUNCIL** )  
was affixed in the presence of: )

Authorised Signatory:

**THE COMMON SEAL** of )  
**STAFFORDSHIRE COUNTY COUNCIL** )  
was affixed in the presence of: )

Authorised Signatory:

DRAFT