

Herefordshire Council template S106 [26/09/2024]

Standard clauses for affordable housing, contributions, phosphate credits, Open Space etc

Dated

202[]

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

AND

[]

AND

[]

**PLANNING OBLIGATION BY AGREEMENT PURSUANT TO SECTION 106
OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND ASSOCIATED POWERS**

RELATING TO

[]

Herefordshire Council

Legal Services

Plough Lane

Herefordshire

HR4 0LE

Council's Legal Ref: []

THIS DEED is made the _____ day of _____ 202[]

BETWEEN

- (1) **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Plough Lane Offices, Plough Lane, Hereford HR4 0LE (the **Council**);

- (2) [] incorporated and registered in England and Wales with company number [] whose registered office is at [] (the **Owner**)

- (3) [] incorporated and registered in England and Wales with company number [] whose registered office is at [] (the **Lender**)

BACKGROUND

- A.** For the purposes of the 1990 Act the Council is the local planning authority for the area within which the Site is situated and the party who is entitled to enforce the obligations contained in this Deed.

- B.** The Owner is the freehold owner of the Site under title [] at HM Land Registry [subject to the charge in favour of the Lender and dated [] but otherwise] free from encumbrances.

- C.** The Owner submitted the Planning Application to the Council for permission to develop the Site for the purposes and in the manner described in the Planning Application.

- D.** The Council is minded to grant Planning Permission subject to conditions and the prior completion of this Deed.

- E.** The Council has considered the provisions of the development plan and taken into account material planning considerations affecting the site and considers that in the interests of the proper planning of its area the Development of the Site ought to be only

permitted subject to the terms of this Deed and for that purpose the parties are expressly willing to enter into this Deed.

- F. [Pursuant to its statutory duty under section 63 of the 2017 Regulations the Council is required to undertake an appropriate assessment of the implications of the Development and is satisfied that the Mitigation secured by the allocation of Phosphate Credits to the Development will ensure the Development is Phosphate Neutral and will not adversely affect the integrity of the Catchment Area of a Habitat Site]¹
- G. [The Owner agrees to secure the Mitigation in accordance with the Council's Interim Phosphate Policy by the purchase of Phosphate Credits from the Council, in respect of the Development and enters into this Deed accordingly]²
- H. The Owner has agreed that the Development shall be carried out only in accordance with the rights and obligations set out in this Deed and that they may be enforced by the Council against the Owner and its respective successors in title.
- I. THIS DEED is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 as amended, Section 1 of the Localism Act 2011 as amended and all other enabling powers and enactments which may be relevant for the purposes of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Site.

THIS DEED WITNESSES AS FOLLOWS:-

OPERATIVE PROVISIONS

INTERPRETATION

- 1.1 For the purposes of the recitals and the covenants in the Agreement, in this Deed the following words and expressions have the following meanings:

“Act”	means the Town and Country Planning Act 1990 (as amended);
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¹ Delete as appropriate for phosphate credits only

² Delete as appropriate for phosphate credits only

“2017 Regulations”	means the Conservation of Habitats and Species Regulations 2017 (as amended);
“Catchment Area”	means the [River Lugg][River Wye] ³ catchment area which is an integral part of the River Wye Special Area of Conservation;
“Additional First Homes Contribution”⁴	<p>means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 6.7, 6.8 or 8 of Part 3 of the Third Schedule, the lower of the following two amounts:</p> <p>(a) 30% of the proceeds of sale; and</p> <p>(b) the proceeds of sale less the amount due and outstanding to any First Homes Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the First Homes Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First home; and</p> <p>which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home;</p>
“Affordable Housing”	means housing provided to eligible households whose needs are not met by the Open Market. Eligibility is determined with regard to local incomes and local house prices. Affordable Housing should remain at an affordable price for future eligible households or the subsidy recycled for alternative Affordable Housing provision. The descriptions

³ Amend in accordance with instructions

⁴ Applicable to First Homes only

	of all types of Affordable Housing in Herefordshire are contained in the Technical Data;
“Affordable Housing Units”	<p>means (unless otherwise agreed in writing by the Council) [no or %⁵] of the residential units and ancillary areas comprised within the Development and intended for occupation [in accordance with the Affordable Housing Mix]⁶ comprising:</p> <ul style="list-style-type: none"> (i) [] Affordable Rented Units (ii) [] Social Rented Unit (iii) [] Rent to Buy (iv) [] Shared Ownership Units (v) [] Low Cost Market Housing Units (vi) [] Discount Market Sale Units (vii) [] First Homes (viii) [] Intermediate Units <p>(to include [x] Wheelchair Accessible Unit[s] that meet the Wheelchair Standards Category [2] [3]) to be constructed on the Site pursuant to the Planning Permission and to the Development Standard and “Affordable Housing Unit” means any one of the said dwellings;</p>
[“Affordable Housing Mix”]⁷	means the tenure mix of Affordable Housing to be provided within the Development as [set out at Annex [2] to this Deed] [shown on the drawing at Annex [2] to this Deed] unless otherwise agreed in writing with the Council;
“Affordable Rented Housing”	means housing let by local authorities or Registered Providers to persons who are eligible for Affordable Housing and Affordable Rented Housing is subject to rent controls that require a rent of no more than 80% of the Open Market rent (including service charges,

⁵ Insert unit numbers or percentage

⁶ Amend as appropriate

⁷ Amend/delete in accordance with instructions

	where applicable) and “Affordable Rented Unit” means any Affordable Housing Unit designated for Affordable Rented Housing
“Armed Services Member”	means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service;
“Chargee”	means any legal person exercising a power of sale in respect of a mortgage or charge and shall include mortgagee or chargee (or any receiver (including administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or an administrator (each a Receiver)) exercising a power of sale in respect of the whole or any part of the Dwelling or any persons or bodies deriving title through such mortgagee or chargee or receiver;
“Cluster”⁸	means a group of Affordable Housing Units which does not have contiguous boundaries with another group of Affordable Housing Units
“Commencement Notice”⁹	means a written notice to be in the form set out in [Eighth] Schedule to be served by the Owner on the Council
“Contributions”	means together the ¹⁰ <ul style="list-style-type: none"> • Education Contribution; • Libraries Contribution; • Play Contribution; • Primary Care Contribution; • Recycling and Waste Contribution; • Sports Contribution; and

⁸ Applicable to First Homes only

⁹ Applicable to the payment triggers for Contributions amend or delete as appropriate

¹⁰ Amended in accordance with instructions

	<ul style="list-style-type: none"> • Transport Contribution;
“Commencement Date”	<p>means the carrying out in relation to the Development of any material operation (as defined within section 56(4) of the 1990 Act) on the Site pursuant to the Planning Permission but (for the purposes of this Agreement) excluding operations consisting of:</p> <ul style="list-style-type: none"> - site clearance, - demolition work, - environmental site investigations, - archaeological investigations, - site survey works; - investigations for the purpose of assessing ground conditions, - preparatory and remedial work in respect of any decontamination or other adverse ground conditions; - erection of any temporary means of enclosure and the temporary display of site notices or advertisements. <p>The words “Commence”, “Commenced” “Commencement” shall be construed accordingly;</p>
“Compliance Certificate”¹¹	<p>means the certificate issued by the Council in the form at Annex [4] confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and where applicable the Eligibility Criteria (Local);</p>
“County”	<p>means the county of Herefordshire;</p>
“Development”	<p>means the development of the Site as authorised by the Planning Permission for</p>
“Development Standards”	<p>means a standard to fully comply with the following:</p>

¹¹ Applicable to First Homes only

	<p>(a) “Technical housing standards – nationally described space standards” published by the Department for Communities and Local Government in March 2015</p> <p>(b) All national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time</p> <p>(c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited</p> <p>(d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings);</p>
“Discount Market Price”¹²	means a sum which is the Market Value discounted by at least 30% for First Homes;
“Discount Market Sale Units”	means housing sold to a Qualifying Purchaser in need of affordable housing at a discount of [30%¹³] below the Open Market Value;
“Disposal”¹⁴	means any disposition of whole of the Site under a transfer of the freehold title or grant of leasehold of at least 125 years;
“Dwelling”	means any residential unit constructed on the Site pursuant to the Planning Permission;
“Education Contribution”	<p>means the sum of []¹⁵ Index Linked based on the following;</p> <ul style="list-style-type: none"> • £ (Index Linked) for a 2 bedroom Open Market Unit • £ (Index Linked) for a 3 bedroom Open Market Unit • £ (Index Linked) for a 4+ bedroom Open Market Unit

¹² Applicable to First Homes only

¹³ Amended as instructed

¹⁴ Applicable to phosphate provisions

¹⁵ Insert sum or delete

	towards the Education Facilities;
“Education Facilities”	means enhanced educational infrastructure at [] ¹⁶ ;
“Eligibility Criteria (National)”¹⁷	<p>means criteria which are met in respect of a purchase of a First Home if:</p> <ul style="list-style-type: none"> (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and (b) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (National);
“Eligibility Criteria (Local)”¹⁸	<p>means criteria published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:</p> <ul style="list-style-type: none"> (a) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (Local); and (b) any or all of criteria (i) and (ii) below are met: <ul style="list-style-type: none"> (i) the purchaser meets the Local Connection (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection); and/or (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member

¹⁶ Insert details or delete in accordance with instructions

¹⁷ Applicable to First Homes only

¹⁸ Applicable to First Homes only

<p>“Exempt Disposal”¹⁹</p>	<p>means the First Homes Disposal of a First Home in one of the following circumstances: (a) a First Homes Disposal to a spouse or civil partner upon the death of the First Homes Owner; or</p> <p>(b) a First Homes Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner; or</p> <p>(c) First Homes Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order; or</p> <p>(d) First Homes Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling;</p> <p>Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 7²⁰ of the Third Schedule.</p>
<p>“First Home”²¹</p>	<p>means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its initial First Homes Disposal does not exceed the Price Cap</p>
<p>“First Homes Disposal”²²</p>	<p>means a transfer of the freehold or (in the case of a flat only) the grant or assessment of a leasehold interest in a First Home other than:</p> <p>(a) a letting or sub-letting;</p> <p>(b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made</p>

¹⁹ Applicable to First Homes only

²⁰ Refer to First Homes USE para

²¹ Applicable to First Homes only

²² Applicable to First Homes only

	<p>available for occupation except where the transfer is to a First Homes Owner; and</p> <p>(c) an Exempt Disposal and “Dispose” “Disposed” and “Disposing” shall be construed accordingly</p>
“First Homes Mortgagee”²³	<p>means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a First Home</p>
“First Homes Owner”²⁴	<p>means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:</p> <p>(a) the Developer; or</p> <p>(b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or</p> <p>(c) a tenant or sub-tenant of a permitted letting under paragraph 7 of the Third Schedule;</p>
“First Time Buyer”²⁵	<p>means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003 as amended;</p>
“Habitat Site”²⁶	<p>means any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community</p>

²³ Applicable to First Homes only

²⁴ Applicable to First Homes only

²⁵ Applicable to First Homes only

²⁶ Applicable to phosphate provisions

	Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites;
“Home Point” ²⁷	means the agency or body (or any successor agency or body) that on behalf of the Council holds the common housing register and operates a choice based lettings system (or any subsequent lettings system) through which Affordable Housing in the administrative area of the Council is advertised
“Income Cap (Local)” ²⁸	means a member of a household having an annual income of less than £40,000 as a sole income and £80,000 as joint income or such other local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home;
“Income Cap (National)” ²⁹	means £80,000 or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home;
“Index Linked”	means the increase as calculated in accordance with [clause 16] of this Deed;
“Interim Phosphate Policy”	means the Council’s Interim Phosphate Pricing Credit Pricing and Allocation Policy dated May 2022;
“Intermediate Rent” ³⁰	means a rent which does not exceed 80% of the local Open Market rent (inclusive of any service charges) for the relevant property type and that the rent charged under all lettings may be increased annually by a proportion equivalent to an increase by the United Kingdom

²⁷ Applicable to rented units

²⁸ Applicable to First Homes

²⁹ Applicable to First Homes

³⁰ Rent to Buy units

	Consumer Price Index plus 1% with the United Kingdom Consumer Price Index being taken as at the September of the previous year;
["Intermediate Unit"]³¹	means either [a Shared Ownership Unit] or a [Discount Market Sale Unit] or [a Rent to Buy Unit] or [a Low Cost Market Housing Unit]
"Interest"	means interest at 4.5% above the base lending rate of National Westminster Bank PLC from time to time;
"Letting Period"³²	means a minimum period of letting of 5 years from the date of the first letting following completion of the construction of the Rent to Buy Unit;
"Libraries Contribution"	means the sum of [] ³³ Index Linked [based on the following: <ul style="list-style-type: none"> • £ (Index Linked) 1 bedroom open market dwelling • £ (Index Linked) for a 2 bedroom Open Market Unit • £ (Index Linked) for a 3 bedroom Open Market Unit • £ (Index Linked) for a 4+ bedroom Open Market Unit] towards the Library Facilities
"Library Facilities"	means the provision of improved library infrastructure at [] ³⁴ library;
"Local Connection"	means having a connection to one of the parishes specified because that person: <ul style="list-style-type: none"> • is or in the past was normally resident there (having resided in one of the parishes in the County of Herefordshire for 6 out of the last 12 months or 3 out of the last 5 years); or • is employed there (in the employ of another (or a formal offer of such employment) not being of a casual nature but shall not exclude part-time employment of 16 hours or more per week or self-employment); or

³¹ Delete if intermediate tenure known

³² Rent to Buy units

³³ Insert sum or delete

³⁴ Insert details or delete in accordance with instructions

	<ul style="list-style-type: none"> • has a family association there (where a person or a member of his household has parents, adult children, brothers or sisters, step-parents, grandparents, grandchildren, aunts or uncles or such other person as defined in the Housing Act 1996 or such other successor legislation as amended currently residing in one of the parishes of the County of Herefordshire and who have been resident for a period of at least 5 years and that person indicates a wish to be near them); or • a proven need to give support to or receive support from family members (need to provide or receive personal and physical care to enable a person or a family member to live independently in the community and includes people who are in need of such support but are not normally resident but have long standing links with the local community); or <p>because of special circumstances (this shall not normally apply but special circumstances amount to circumstances which in the view of the Council may give rise to a Local Connection);</p>
<p>“Low Cost Market Housing”</p>	<p>means housing sold to a Qualifying Purchaser in need of Affordable Housing at a discounted price in perpetuity determined by reference to the Technical Data and ‘Low Cost Market Housing Unit’ shall mean any one of such units forming part of the Development in locations [agreed by the Council] [to be approved by the Council pursuant to the approval of reserved matters]³⁵;</p>
<p>“Management Company”³⁶</p>	<p>means a body with a registered office in England or Wales that is nominated or established by the Owner in accordance with the Management Company Plan for the acquisition and long term management and maintenance of the Open Space Facilities in accordance with the provisions of the [] Schedule and the Package Treatment Plant in accordance with the provisions of the [] Schedule such body to be adequately self-funded or will be funded</p>

³⁵ Amend as appropriate

³⁶ Relevant to Open Space and/or Package Treatment Plant

	through on-going arrangement or through local arrangements the details of which are to be provided to the Council for approval in writing (such approval not to be unreasonably withheld or delayed)
“Management Company Plan”³⁷	<p>means (unless otherwise agreed with the Council in writing) a written scheme demonstrating the way in which the Management Company is or will be set up and maintained in order to fulfil its ongoing obligations and functions in relation to the Open Space Facilities as set out in the [] Schedule and the Package Treatment Plant as set out in the [] Schedule including:</p> <p>(a) its objects (to be reflected in the memorandum and articles of association);</p> <p>(b) governance of the Management Company including how it is or will be incorporated;</p> <p>(c) how key appointments will be made and renewed (the Owner may be appointed as Managing Director during the development period);</p> <p>(d) how shares in the Management Company will be issued and to whom and when;</p> <p>(e) how professional appointments will be made and funded including the company secretary; (f) how and when meetings will be convened;</p> <p>(g) how monies will be paid into it by way of service charges pursuant to the terms of this Deed and details of how sufficient funds will be maintained for any emergency or replacement works to the Open Space Facilities and the Package Treatment Plant; and</p> <p>(h) how assets of the Management Company will be safeguarded for use only for the purpose of the long term management and maintenance of the Open Space Facilities and the Package Treatment Plant and for no other purpose;</p>
“Marketing Plan”³⁸	Means a written scheme detailing the strategy for the disposal of [First Homes, Discount Market Sale Units and Low Cost Market Housing Units] ³⁹ such scheme to be approved in writing by the Council (such approval not to be unreasonably withheld or delayed);

³⁷ Relevant for Open Space and/or Package Treatment Plan

³⁸ Applicable to First Homes, Discount Market and Low Cost Market

³⁹ Amend as relevant

“Mitigation”⁴⁰	means measures to reduce the input of phosphates to the Catchment Area to off-set the adverse impact of the phosphate output of development, to ensure that the Development is Phosphate Neutral in line with Natural England’s policy requirements;
“Occupation”	means occupation for any purpose for [residential purposes] ⁴¹ for which Planning Permission has been granted but not including occupation by personnel engaged in the construction, fitting out or occupation for marketing or display purposes and for security purposes and “Occupied” “Occupy” and “Occupier” shall be construed accordingly;
“Open Market”	means the open market for the sale or letting of housing by a person or body other than: (a) a local housing authority; (b) a Registered Provider; or (c) any other person or body offering housing accommodation to the public at less than the prevailing market sale/rent price;
“Open Market Units”	means those Dwellings in the Development that are not Affordable Housing Units and which are intended for sale or letting on the Open Market and ‘Open Market Unit’ shall mean any one of such units;
“Open Market Value” and “Open Market Valuation”	mean the price at which a sale of the freehold interest or long leasehold interest (which here means a leasehold interest of not less than 99 years at a premium and a peppercorn rent) in a relevant Low Cost Market Housing Unit or Discount Market Sale Unit would fetch if sold on the Open Market by a willing vendor and disregarding the restrictions and obligations contained in this Deed and approved by the Council;

⁴⁰ Applicable to phosphate provisions

⁴¹ Amend as appropriate

“Open Space Facilities” ⁴²	means the area within the Development the extent of which is edged/coloured [] on Plan [] being:- xx hectares (xx sqm) of on-site green infrastructure comprising:- xx hectares (xx sqm) of public open space [including a pumping station and areas of sustainable drainage] xx hectares (xxsqm) of children’s play of which xx hectares (xxsqm) should be formal children’s play
“Open Space Facilities Plan” ⁴³	means (unless otherwise agreed with the Council in writing) a written scheme demonstrating the way in which the future management and maintenance requirements for the Open Space Facilities have been identified and how an ongoing maintenance regime (including but not limited to task timing and frequency of the operations for all the features of the Open Space Facilities) specially fulfils the Management Company objectives;
“Parish”	means the parish of [] ⁴⁴ ;
“Phosphate Neutral” ⁴⁵	means that a development plan or project does not add to existing phosphate burdens within the Catchment Area, so there is no net increase in phosphates as a result of the plan or project;
“Phosphate Credit” ⁴⁶	means the instrument which represents the removal or offsetting of 1Kg at [insert] of phosphates per annum from the Catchment Area;
“Phosphate Credit Deposit” ⁴⁷	means 10% of the Phosphate Credit Sum
“Phosphate Credit Final Payment” ⁴⁸	means 90% of the Phosphate Credit Sum

⁴² Open Space only delete as appropriate

⁴³ Open Space only delete as appropriate

⁴⁴ Insert parish name in accordance with instructions

⁴⁵ Applicable to phosphate provisions only

⁴⁶ Applicable to phosphate provisions only

⁴⁷ Delete if phosphate credit to be made upfront

⁴⁸ Delete if phosphate credit to be made upfront

“Phosphate Credit Reservation”⁴⁹	means the provisional reservation by the Council of the Phosphate Credit Requirement to the Development following receipt of the Phosphate Credit Deposit from the Owner
“Phosphate Credit Requirement”⁵⁰	means the []kg Phosphate Credits required pursuant to the calculations to secure the Mitigation and ensure that the Development will be Phosphate Neutral;
“Phosphate Credit Sum”⁵¹	a payment of [] paid by the Owner to the Council to meet the Phosphate Credit Requirement;
“Plan”⁵²	means the plan annexed hereto;
“Planning Application”	means the application for planning permission under the Planning Reference and validated by the Council on [] ⁵³ , for planning permission for the [outline/full] ⁵⁴ permission for the Development;
“Planning Obligations Manager”	means the Council employee who manages, implements and monitors Section 106 agreements;
“Planning Permission”	means the planning permission under the Planning Reference subject to conditions which may be granted in respect of the Planning Application;
“Planning Reference”	means planning reference [] ⁵⁵

⁴⁹ Delete if phosphate credit to be made upfront

⁵⁰ Applicable to phosphate provisions only

⁵¹ Applicable to phosphate provisions only

⁵² Amend if more than one plan

⁵³ Insert validation date

⁵⁴ Amended as appropriate

⁵⁵ Insert planning reference number

“Play Contribution”	means the sum of [] ⁵⁶ Index Linked based on the following; <ul style="list-style-type: none"> • £ (Index Linked) for a 2 bedroom Open Market Unit • £ (Index Linked) for a 3 bedroom Open Market Unit • £ (Index Linked) for a 4+ bedroom Open Market Unit towards the Play Facilities;
“Play Facilities”	Means the provision of public open space and children’s play and recreation at [] ⁵⁷
“Practical Completion”⁵⁸	means the stage reached when the construction of the First Home is sufficiently complete that, where necessary a certificate of practical completion can be issued and it can be Occupied;
“Price Cap”⁵⁹	means the amount for which the First Home is sold after the application of the Discount Market Price which on its initial First Homes Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000);
“Primary Care Contribution”	means a financial contribution of £ ⁶⁰ (Index Linked) [per Dwelling] towards the Primary Care Facilities;
“Primary Care Facilities”	Means the provision of new and additional premises or infrastructure, extension to existing premises or improved digital infrastructure and telehealth facilities at [] ⁶¹ ;

⁵⁶ Insert sum or delete

⁵⁷ Delete if provided on site and no commuted sum

⁵⁸ Applicable to First Homes only

⁵⁹ Applicable to First Homes only

⁶⁰ Insert sum or delete

⁶¹ Insert details or delete in accordance with instructions

<p>“Package Treatment Plant (PTP)”⁶²</p>	<p>The [DETAILS/DESCRIPTION OF DEVICE] being the wastewater treatment system to be installed at the Site to serve and treat wastewater from the Development in the approximate location shown cross hatched [] on Plan []</p>
<p>“PTP Management Plan”</p>	<p>means (unless otherwise agreed with the Council in writing) a written scheme demonstrating the way in which the future management and maintenance requirements for the Package Treatment Plant in perpetuity have been identified and how an ongoing maintenance regime (including but not limited to all elements of monitoring, maintenance and dosing for all the features of Package Treatment Plant) specifically fulfils the Management Company objectives. The scheme shall be written by a British Water Accredited Service Technician, or other suitably qualified professional and all elements of management/maintenance shall only be carried out by a professional individual/company. Sludge shall be removed by a registered waste carrier.</p>
<p>“Qualifying Purchaser”⁶³</p>	<p>means a person who has demonstrated both at the time of application and at the time contracts are exchanged to purchase a [Discount Market Sale Unit /Low Cost Market Housing Unit]⁶⁴ to the Council's satisfaction that he is:</p> <ul style="list-style-type: none"> • at least 18 years old; • a member of a household having an annual income of less than £40,000 as a sole income and £80,000 as joint (or such other figure as the Council may agree); • purchasing the Dwelling for occupation as sole main residence; • unable to afford to buy a home suitable for their housing needs on the Open Market; • able to demonstrate a good credit history (i.e. no bad debts or County Court Judgments) and able to afford the regular

⁶² Remove if not required

⁶³ Applicable to Low Cost Market Housing and Discount Market

⁶⁴ Amend as relevant

	<p>payments and costs involved in buying a [Discount Market Sale Unit or Low Cost Market Housing Unit]; and</p> <p>able to secure a mortgage and have sufficient deposit to purchase or otherwise be able to demonstrate ability to purchase;</p>
“Reasonable Endeavours”	<p>means that the party under the obligation shall not be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject hereto such party shall be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable;</p>
“Recycling and Waste Contribution”	<p>means a sum of []⁶⁵ Index Linked towards the Recycling Facilities based on £ (Index Linked) per Dwelling</p>
“Recycling Facilities”	<p>means one waste collection bin and one recycling collection bin to be provided for each Dwelling</p>
“Release Declaration”⁶⁶	<p>means the declaration completed by the Owner returning any unused Phosphate Credits to the Council in accordance with the [Fourth] Schedule and in the form attached at the [Tenth] Schedule</p>
“Released”⁶⁷	<p>means the release and cancellation of the Phosphate Credit Reservation</p>
“Registered Provider”	<p>means a registered provider of Affordable Housing under Part 2 of the Housing and Regeneration Act 2008 being a preferred development partner listed (or intended for listing) in the Council’s ‘provision of affordable housing technical data’ which supports the supplementary planning document Planning Obligations April 2008 (or any subsequent or updated document), or any such other Registered</p>

⁶⁵ Insert sum or delete

⁶⁶ Applicable to phosphate provisions only

⁶⁷ Applicable to phosphate provisions only

	Provider as may previously be agreed with the Council in writing such agreement not to be unreasonably withheld;
“Rent to Buy Units”⁶⁸	means [insert number or percentage of units] of the Affordable Housing Units to be constructed on the Site and which are provided by the Registered Provider and let at the Intermediate Rent for at least the Letting Period and in accordance with the Rent to Buy Scheme;
“Rent to Buy Scheme”⁶⁹	means a scheme which allows working households to rent a home at the Intermediate Rent to give the tenant the opportunity to save for a deposit to buy their first home as described within the Technical Data and in accordance with the eligibility criteria, requirements and procedures set out in the Homes Capital Funding Guide or such other similar guide or document that may replace it;
“RICS Community Infrastructure Levy (CIL) Index”	means the RICS Community Infrastructure Levy (CIL) Index published by the Royal Institution of Chartered Surveyors and calculated on the basis of the arithmetic mean of the BCIS Tender Price Index (TPI) prior to the fourth quarter each year as calculated by the BCIS in the October of that year;
“Secondary Parish”	means the parish(es) of [] ⁷⁰ ;
“Shared Ownership”	means ownership under the terms of a lease by which a lessee may (subject to the restriction in paragraph 2 of the Second Schedule (Part 2) to this Deed) acquire a share or shares of the equity in an Affordable Housing Unit from the Registered Provider who retains the remainder and may charge a rent and “Shared Ownership Unit” means any Affordable Housing Unit designated for Shared Ownership;

⁶⁸ Delete as appropriate

⁶⁹ Delete as appropriate

⁷⁰ Insert secondary parishes in accordance with instructions or delete

“Site”	means the land shown atedged red on [the Plan] [Plan xx] ⁷¹ against which this Deed may be enforced and registered at HM Land Registry under title number [] ⁷² ;
“Social Rented Housing”	means housing owned by local authorities or Registered Providers for which guideline target rents are determined through the national rent regime and may also be owned by other persons and provided under equivalent rental arrangements to the above as agreed with the Council or with Homes England (or successor agency or body) and “Social Rented Unit” means any Affordable Housing Unit designated for Social Rented Housing;
“Sports Contribution”	means the sum of [] ⁷³ Index Linked based on [] per Open Market Unit towards the Sports Facilities
“Sports Facilities”	means towards [hockey, cycling, football, cricket, rugby, tennis and athletics] ⁷⁴ in accordance with the Herefordshire Playing Pitch and Outdoor Sports Strategy and Action Plan February 2023 as amended from time to time
“Supplementary Planning Document “	means the Supplementary Planning Document dated 1 April 2008 which is the Council's guidance for planning obligations in Herefordshire, for all those involved in the submission and determination of planning applications;
“Technical Data”	means the data updated annually by the Council entitled ‘Provision of Affordable Housing Technical Data to Support the Affordable Housing Supplementary Planning Document June 2021 (or any technical data published by the Council in support of any replacement planning policy document);

⁷¹ Amend as appropriate

⁷² Insert HM Land Registry title number

⁷³ Insert sum or delete

⁷⁴ Amended as appropriate

<p>“Transport contribution”</p>	<p>means a sum of []⁷⁵ Index Linked based on the following;</p> <ul style="list-style-type: none"> • £ (Index Linked) for a 2 bedroom Open Market Unit • £ (Index Linked) for a 3 bedroom Open Market Unit • £ (Index Linked) for a 4+ bedroom Open Market Unit <p>towards [any or all of] the Transport Facilities</p>
<p>“Transport Facilities”</p>	<p>means the sustainable transport infrastructure to serve the Development and [are as follows:] [as particularly set out in Annex []⁷⁶</p>
<p>“Trigger Event”</p>	<p>means each occasion that an instalment of the Contributions falls due in accordance with the provisions of paragraph 2 of the First Schedule</p>
<p>“Trigger Payment Notice”</p>	<p>means a written notice to be in the form set out in the [Ninth] Schedule to be served by the Owner on the Council on each Trigger Event</p>
<p>“VAT”</p>	<p>means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax; and</p>
<p>“Wheelchair Accessible Unit”⁷⁷</p>	<p>means the Affordable Housing Unit provided and built to comply with Wheelchair Standards;</p>
<p>“Wheelchair Standards Category 2”⁷⁸</p>	<p>means the standard set out in the optional requirement to dwellings M4(2) Category 2: Accessible and adaptable dwelling of Part M (access to and use of buildings) Building Regulations 2010 (as amended) (or subsequent revision or replacement standard current at the time the Owners submission of the relevant building regulations application;</p>

⁷⁵ Insert sum or delete

⁷⁶ Amend as appropriate

⁷⁷ Delete if none.

⁷⁸ Amend as appropriate

“Wheelchair Standards Category 3)”⁷⁹	means the standard set out in the optional requirement to dwellings M4(3) Category 3: Wheelchair User Dwellings of Part M (access to and use of buildings) Building Regulations 2010 (as amended) (or subsequent revision or replacement standard current at the time the Owners submission of the relevant building regulations application;
“Working Day(s)”	Mondays to Fridays (excluding days that in England are public holidays) inclusive.

1.2 In this Deed:

1.2.1 the clause headings in this Deed are for convenience only and do not affect its interpretation;

1.2.2 unless otherwise indicated references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

(a) All Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by subsequent legislation; that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and

(b) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision whether before or after the date of this Deed;

1.2.3 the headings in this Deed are inserted for convenience only and shall not affect the construction or interpretation of this Deed;

1.2.4 where the agreement, approval, consent or an expression of satisfaction is required by the Owner under the terms of this Deed from the Council; that agreement, approval, consent or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed;

1.2.5 references to the Site include any part of it;

⁷⁹ Amend as appropriate

- 1.2.6 references to any party in this Deed include the successors in title of that party and assigns and any person deriving title through or under that party. In addition, references to the Council include any successor to its functions as local planning authority exercising planning powers under the Act;
- 1.2.7 “including” means “including, without limitation”;
- 1.2.8 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.9 where two or more people form a party to this Deed the obligations of that party will be joint and several and may be enforced against them all jointly or against each of them individually;
- 1.2.10 if any provision of this Deed is held by a Court of competent jurisdiction to be illegal unlawful invalid or unenforceable then to the extent possible the offending provision(s) will be severed from the Deed and the legality lawfulness validity and enforceability of the remainder of the Deed shall be unaffected and continue in full force and effect;
- 1.2.11 words importing the singular shall include the plural and vice versa;
- 1.2.12 words importing 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.
- 1.3 Without prejudice to the terms of any other provision contained in this Deed the Owner shall pay all costs, charges and expenses (including without prejudice to legal costs and Surveyor’s fees) reasonably incurred by the Council for the purpose of or incidental to the enforcement of any right or power of the Council or any obligation of the Owner arising under this Deed;
- 1.4 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 as amended, by any person not a party to it and the terms of this Deed may be varied by a deed agreed between the parties without the consent of any third party being required;

- 1.5 No party will be liable for any breach of the terms of this Deed occurring after the date on which they part with their entire interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any breaches of this Deed occurring before parting with such interests. Neither the reservations of any rights nor the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this sub-clause;
- 1.6 This Deed shall not be enforceable against a statutory undertaker, service company, or any other entity to whom any part of the Site may be transferred, let or otherwise disposed of for the provision of service media, electricity sub-stations, pumping stations, gas governor stations or similar matters, after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker service company, or other such entity;
- 1.7 No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default; and
- 1.8 Entry into this Deed does not constitute a transaction for a chargeable consideration for which Stamp Duty Land Tax is required.

2. EFFECT OF THIS DEED

- 2.1 This Deed is made pursuant to section 106 of the Act and to the extent that they fall within the terms of section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council.
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 2 of the Local Government Act 2000, section 1 Localism Act 2011 and all other enabling powers, with the intend to bind the Owners and successors in title.

- 2.3 The covenants, restrictions and requirements of the Owner contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by them in the Site and their respective successors and assigns.
- 2.4 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.5 This Deed will be registered as a local land charge by the Council.
- 2.6 If the Council agrees following an application under Section 73 of the Act to vary or release any condition contained in the Planning Permission or if a condition is varied or released following an appeal under Section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless the Council in determining the application for the new planning permission indicate that consequential amendments are required to this Deed to reflect the impact of the Section 73 application when a separate deed under Section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.

[3. LENDER'S CONSENT

- 3.1 The Lender consents to the completion of this Deed and declares that its interest in the Site shall be bound by the terms of this Deed as if it had been executed and registered as a land charge before the creation of the Lender's interest in the Site.
- 3.2 The Lender shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Lender is in possession of all or any part of the Site.]⁸⁰

4. MISCELLANEOUS

⁸⁰ Amended as appropriate

- 4.1 Nothing in this Deed prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Deed, whether or not pursuant to an appeal.
- 4.2 Nothing in this Deed shall be construed as a grant of planning permission.
- 4.3 Unless expressly agreed otherwise in this Deed, the covenants in this Deed shall be enforceable without any limit of time against the Owner and any successors in title to the Site and assigns of the Owner in an interest or estate to the Site or any part or parts of the Site as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.

5. COMMENCEMENT

The provisions of this Deed shall have immediate effect on the date upon which it is completed.

6. OBLIGATIONS OF THE OWNER

The Owner covenants with the Council as set out in the [First, Second and Third]⁸¹ Schedule of this Deed.

7. OBLIGATIONS OF THE COUNCIL

The Council covenants with the Owner as set out in the [Fourth]⁸² Schedule of this Deed.

8. TERMINATION OF THIS DEED

- 8.1 This Deed will cease to have effect (insofar only as it has not already been complied with) if:

⁸¹ Amend as appropriate

⁸² Amend as appropriate

8.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn prior to the Commencement Date so as to render this Deed or any part of it irrelevant, impractical or unviable or;

1.8.2 the Planning Permission expires prior to the Commencement Date

8.2 The Council shall upon receipt of a written request by the Owner and without unreasonable delay at any time after this Deed has come to an end under clause 8.1 or the obligations contained in the Schedules hereto have been discharged issue written confirmation thereof and note all related entries in the Register of Local Land Charges provided that the Owner has adequately set out the basis for making such a request.

9. NOTICES

9.1 A notice under this Deed is valid only if it is given by hand or sent by recorded delivery and it is served at the address shown in this Deed for the receiving party or at any address specified in a notice given by that party to the other parties.

9.2 A notice sent to the Council:

9.2.1 in relation to any matters arising from this Deed shall be addressed to the Planning Obligations Manager Development Management Team, Herefordshire Council, Plough Lane, Hereford, HR4 0LE quoting the Planning Reference.

9.3 A notice:

9.3.1 if delivered by hand, it to be treated as served on signature of a delivery receipt or at the time the notice or document is left at the address provided that, if delivery occurs:

(a) before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day; and

(b) if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

9.3.2 sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post or on the third working day after posting if sent by second class post;

10. CHANGE IN OWNERSHIP

- 10.1 At the time of execution of this Deed, the Owner warrants that no person other than the Owner has any legal or equitable interest in the Site.
- 10.2 The Owner agrees to give the Council immediate written notice of any change in ownership of any of its interests in the Site 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 address or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this clause shall not apply in respect of the disposal of any individual Dwelling or Dwellings.

11. ENFORCEMENT

- 11.1 This Deed is to be governed by and interpreted in accordance with the law of England;
- 11.2 The Courts of England are to have jurisdiction in relation to any disputes between the parties out of or related to this Deed. This clause operates for the benefit of the Council who retains the right to sue the Owner and enforce any judgment against the Owner in the courts of any competent jurisdiction.

12. DISPUTE

Any dispute or disputes between any of the parties to this Deed arising out of the provisions of this Deed (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Deed) shall be referred to a single arbitrator to be agreed between the parties or in default of agreement on the application of any party by the President of the Royal Institute of Chartered Surveyors in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment for the time-being in force.

13. COUNCIL'S COSTS

- 13.1 The Owner covenants and agrees with the Council that prior to completion of this Deed the Owner shall pay to the Council its reasonable and proper legal costs in connection with the preparation of this Deed, together with all disbursements, incurred in connection with the negotiation, preparation, completion and registration of this Deed; and
- 13.2 The Owner covenants and agrees with the Council that prior to Commencement to pay to the Council the Council's reasonable Planning Obligations Manager monitoring costs in the sum of 2% of the total Contribution.

14. LATE PAYMENT

Without prejudice to the Council's rights to enforce any breaches of this Deed (including by way of injunction) if any sum due to the Council from the Owner under this Deed is not paid on or before the date upon which it is due then Interest shall be payable from the due date of payment until the actual date of payment

15. COMMUNITY INFRASTRUCTURE LEVY

The terms of this Deed comply in all respects with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 in that the obligations contained herein are necessary to make the Development acceptable in planning terms, directly relate to the Development and fairly and reasonably relate in scale and kind to the Development.

16. INDEXATION OF CONTRIBUTIONS

- 16.1 The Owner covenants and agree with the Council that the Contributions payable in accordance with the obligations contained in paragraph 2 of the First Schedule to this Deed shall be uplifted by reference to:
- 16.1.1 any increase in the RICS Community Infrastructure Levy (CIL) Index occurring between the date of its publication prior to the date of this Deed and the date that such sum is actually paid to the Council; or
- 16.1.2 an equivalent index that the Council may at their discretion select in the event that the RICS Community Infrastructure Levy (CIL) Index shall cease to be published before such sums are paid.

17. VAT

17.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

17.2 The Owner hereby acknowledges and agrees that if at any time VAT is required to be paid in respect of the Site and the Contributions then to the extent that VAT had not been previously charged in respect of that payment the Council shall have the right to issue a VAT invoice to the Owner and the VAT shall be paid accordingly.

18. RIGHT OF ACCESS

Without prejudice to the Council's statutory right of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising under the Deed has been performed or observed.

19. RESERVATIONS

For the avoidance of doubt, nothing in this Deed shall prevent the Council from exercising any of its statutory powers or functions in relation to the development of the Site.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

DRAFT

**FIRST SCHEDULE
(Contributions)**

1. Notice of Commencement

The Owner hereby covenants as follows:

- 1.1 not less than five Working Days prior to Commencement Date to serve the Commencement Notice on the Council;
- 1.2 Not to permit or cause or allow the Commencement of Development until the Commencement Notice has been served upon the Council.
- 1.3 having commenced Development to serve a Trigger Payment Notice on the Council prior to each Trigger Event.

2. Contributions

The Owner hereby covenants as follows: ⁸³;

2.1 [prior to the Commencement Date to pay to the Council the Contributions] **OR**

[to pay the Contributions to the Council in the following instalments:-

2.1.1 x% prior to the Commencement of Development;

2.1.2 x% prior to the Occupation of more than x% of the Dwellings; and

2.1.3 x% prior to the Occupation of more than x% of the Dwellings; and

2.1.4 The balance prior to the Occupation of more than x% of the Dwellings.]

2.2 [not to [Commence or cause or allow or permit the Development to Commence]⁸⁴ until and unless the Contributions are paid in full to the Council;] **OR**

2.2 [not to Commence or cause or allow or permit the Commencement of Development until the payments referred to in paragraph 2.1.1 above have been made.

2.3 not to Occupy or cause or allow or permit the Occupation of more than x% of the Dwellings until the payments referred to in paragraph 2.1.2 above have been made.

2.4 not to Occupy or cause or allow or permit the Occupation of more than x% of the Dwellings until the payments referred to in paragraph 2.1.3 above have been made

2.5 Not to Occupy or cause or allow or permit the Occupation of more than 50% of the Dwellings until the payments referred to in paragraph 2.1.3 above have been made.]

2.6 agree that the Contributions may be pooled with other contributions if appropriate.

⁸³ Amend in accordance with instructions

⁸⁴ Amend in accordance with instructions

SECOND SCHEDULE
(Affordable Housing)

PART 1

1. Affordable Housing

The Owner covenants and agrees with the Council:

- 1.1. Not to Commence Development until and unless a programme for the delivery of the Affordable Housing Units (“the Affordable Housing Delivery Plan”) has been submitted to and has been approved in writing by the Council (such approval not to be unreasonably withheld) and such Affordable Housing Delivery Plan shall also identify any relevant Wheelchair Accessible Unit(s)
- 1.2. Following the Commencement of Development to construct or procure the construction of the Affordable Housing Units at no cost to the Council to the Development Standards and in accordance with the Planning Permission and to ensure the Occupation in accordance with the approved Affordable Housing Delivery Plan at paragraph 1.1 of this Part 1 of this Second Schedule.
- 1.3. Not to Occupy or cause or permit the Occupation of any more than 50%⁸⁵ of the Open Market Units until and unless the Affordable Housing Units have been constructed in accordance with paragraph 1.2 above and are ready and available for Occupation and are accessible by vehicles and pedestrians [and where relevant have been transferred (by freehold transfer with title absolute and full title guarantee) to a Registered Provider]⁸⁶.
- 1.4. Subject to paragraph 1.6 not to let manage or co-own or allow the Affordable Housing Units to be let managed or co-owned other than strictly in accordance with guidance issued by Homes England (or any successor agency) from time to time with the intention that the Affordable Housing Units shall at all times be used for the purposes of providing

⁸⁵ Amend according to instructions

⁸⁶ Delete as appropriate

Affordable Housing (save otherwise expressly provided in this Deed) to persons who are eligible in accordance with the allocation policies of the Registered Provider and satisfy the following requirements:

1.4.1. The [Affordable Rented Units and Social Rented Units] are registered and advertised through Home Point at the time the Affordable Housing Unit becomes available for Occupation; and

1.4.2. ⁸⁷[In the case of the Affordable Rented Units and Social Rented Units allocated in accordance with the Herefordshire Allocation Policy [and in the case of Shared Ownership Units the allocation policies of the Registered Provider] and for Occupation as a sole residence to a person or persons one of whom meet the following qualifying criteria:

(i) a Local Connection with the Parish [or to the Secondary Parish if after 10 Working Days if there being no person with a Local Connection within the Parish]; and

(ii) in the event of there being no person with a Local Connection to the Parish [or Secondary Parish] any other person ordinarily resident within the administrative area of the Council who is eligible under the Herefordshire Allocation Policy and or the allocation policies of the Registered Provider if the Registered Provider can demonstrate to the Council that after 20 Working Days of any of the Affordable Housing Units becoming available the Registered Provider having made all reasonable efforts through the use of Home Point as applicable but have found no suitable candidate under paragraph 1.4.2 (i) above; and]

1.5. The transfer of the relevant Affordable Housing Units to the Registered Provider⁸⁸ shall include the following provisions:-

⁸⁷ Amend in accordance with instructions

⁸⁸ RP units only amend or delete as appropriate

- 1.5.1. the grant to the acquiring Registered Provider of all rights of way access and passage of services and all other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units; and
 - 1.5.2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development.
- 1.6. The restrictions and obligations contained within the Second Schedule shall not be binding on nor enforceable against a Chargee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee PROVIDED THAT:
- 1.6.1. such Chargee shall first give written notice to the Housing Development Officer (Strategic Housing Herefordshire Council, Plough Lane, Hereford HR4 0LE) quoting the Planning Reference of its intention to dispose of the Affordable Housing Units (or relevant part) and shall have used Reasonable Endeavours over a period of three months from the date of the written notice to secure a disposal of the Affordable Housing Units (or relevant part) to a Registered Provider or to the Council or as otherwise agreed in writing by the Council for a consideration not exceeding the greater of:
 - (i) the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - (ii) the Open Market Value of the Affordable Housing Units (or relevant part).
 - 1.6.2. if such disposal has not been secured within the three month period subject to having first obtained the written agreement of the Council (not to be unreasonably withheld) that all relevant requirements contained within this Schedule of this Deed have been complied with the Chargee shall be entitled to dispose of the Affordable Housing Units (or relevant part) free from the provisions of this Schedule of this Deed which provisions shall determine absolutely.
 - 1.6.3. That paragraphs 1.4, 1.5 and 1.6 of this Schedule does not apply to First Homes.

PART 2

2. Shared Ownership

- 2.1 The Occupiers of the Shared Ownership Units shall not (unless otherwise agreed in writing by the Council) be permitted to own more than 80% of the total equity value of such Affordable Housing Units PROVIDED THAT this paragraph shall not apply if the Shared Ownership lease of any such unit is in a model form for the protection of Affordable Housing in rural areas published or approved by the Homes England (or a successor body) containing provisions that:
- 2.1.1 permit an occupier to acquire more than 80% of the total equity in such unit; and
 - 2.1.2 require the mandatory buy back of any such unit by the Registered Provider or its nominee in the event of an intended disposal by any such occupier.

PART 3

3. Low Cost Market Housing

- 3.1 The Owner covenants with the Council that no Open Market Units erected or to be erected on the Site will be Occupied, except in accordance with the restriction in paragraph 3.2 of Part 3 of this Schedule, and that the Low Cost Market Housing Units erected or to be erected on the Site will not be Occupied, except in accordance with the restrictions and obligations in paragraphs 3.3 to 3.9 inclusive in this Schedule:
- 3.2 Not to Occupy or cause or permit the Occupation of any more than 50%⁸⁹ of the Open Market Units on any part or parts of the Site until and unless the Low Cost Market Housing Units have been constructed in accordance with the Planning Permission and are ready and available for Occupation and are accessible by vehicles and pedestrians.
- 3.3 The initial sale price for all Low Cost Market Housing Units has been determined by the Council by reference to the Technical Data as being:

⁸⁹ Amend in accordance with instructions

- ⁹⁰3.3.1 for each two bedroom Low Cost Housing Market Unit being a discounted price of []% from the Open Market Value; and
- 3.3.2 for each three bedroom Low Cost Housing Market Unit being a discounted price of []% from the Open Market Value; and
- 3.3.3 for each four bedroom Low Cost Housing Market Unit being a discounted price of []% from the Open Market Value
- 3.4 The sale price for all first and subsequent disposals of Low Cost Market Housing Units will be determined by the average of two formal Open Market Valuations by two independent estate agents to be approved by the council to which the discount percentage figures from the Open Market Value as referred to in paragraph 3.3 in Part 3 of this Schedule must be applied as appropriate to the size of the relevant Low Cost Market Housing Unit;
- 3.5 The Low Cost Market Housing Units shall not be Occupied:-
- 3.5.1 by anyone except to persons who meets the qualifying criteria in paragraph 3.6 below; and
- 3.5.2 on the first sale following completion of construction of the Low Cost Market Housing Units at a price no higher than that required by paragraph 3.3 of Part 3 of this Schedule for a relevant Low Cost Market Housing Unit; and
- 3.5.3 on every subsequent sale at a price being a discounted price of []⁹¹% from the Open Market value of the relevant Low Cost Market Housing Unit.
- 3.6 The Low Cost Market Housing Units must (unless otherwise agreed by the Council) be allocated in accordance with the Councils terms and conditions for Occupation as a sole residence to a Qualifying Purchaser one of whom has:-
- 3.6.1 a Local Connection with the Parish; or

⁹⁰ Insert % in accordance with instructions

⁹¹ Insert discount percentage

- 3.6.2 if no person satisfying the requirement of paragraph [3.6.1] above has been identified within [one month] a person with Local Connection to the Secondary Parish; and
- 3.6.3 in the event of there being no person with a Local Connection to the Parish or Secondary Parish any other person who has a Local Connection to the County if it can be demonstrated to the Council that after 3 months of any Low Cost Market Housing Unit becoming available for sale and having made all reasonable efforts no suitable candidate under sub-paragraphs 3.6.1 or 3.6.2 of Part 3 of this Schedule have been found.
- 3.7 In the case of all initial sales:
- 3.7.1 prior to notice of an intended sale to submit for approval by the Council (such approval not being unreasonably withheld) a Marketing Plan for the sale of the Low Cost Market Housing Units; and
- 3.7.2 on receipt of a written approval of the Council for the Marketing Plan serve a notice of sale upon the Council each time a Low Cost Market Housing Unit is released for sale but in any event not less than two months before the expected date that the relevant Low Cost Market Housing Unit for sale and is ready and available for Occupation;
- 3.7.3 upon submission of a notice of an intended sale of the specified Low Cost Market Housing Unit to carry out the advertising of the Low Cost Market Housing Unit for sale in accordance with the Marketing Plan;
- 3.7.4 to liaise with the Council (or its nominee) for a period of 3 months from the date of the Council's written confirmation of receipt of such notice in order to identify a potential purchaser meeting the residency requirement in paragraph 3.6 of Part 3 of this Schedule and having a Local Connection;
- 3.7.5 not to exchange contracts for the sale of the relevant Low Cost Market Housing Unit unless written approval has been obtained from the Council that the prospective purchaser meets all criteria set out in paragraph 3.6 of Part 3 of this Schedule; PROVIDED THAT

- 3.7.6 if on any initial sale the Council is reasonably satisfied that after a period of 3 months of active marketing and advertising a Low Cost Market Housing Unit cannot be sold in accordance with Part 3 of this Schedule or that a potential purchaser has been identified and a period of 6 months has expired without the parties entering into a binding contract for such disposal the Low Cost Market Housing Unit may (with the Council's prior written approval) be sold free from the Local Connection requirements in paragraph 3.6 of Part 3 of this Schedule;

PROVIDED THAT

- (a) the dwelling is sold at the discounted price referred to in sub-paragraph 3.5.3 of Part 3 of this Schedule to the purchaser as his only or principal home; and
- (b) the discount referred to in sub-paragraph 3.5.3 and the Local Connection requirements shall apply in full on any subsequent disposition so that such person shall remain bound by the terms of this Deed;

- 3.7.7 on completion of the initial sale of every Low Cost Market Unit to secure a restriction on the registered title in the terms required by the Land Registry such that no disposition of any Low Cost Market Unit will be registered unless the purchaser's solicitors certify that the terms of paragraphs 3.5 and 3.6 of Part 3 of this Schedule have been complied with and provide the Council with a copy of the restriction and the solicitors' certificate of compliance on each and every such disposition of the Low Cost Market Unit.

3.8 In the case of all subsequent sales:

- 3.8.1 to serve on the Council a notice of an intended sale of the specified Low Cost Market Housing Unit for sale together with two valuation appraisals by two local estate agents and the name address and contact details for the vendor and selling agent;
- 3.8.2 not to commence any marketing unless the Council has confirmed in writing acceptance of (a) the notice of intended sale and (b) the discounted price referred to in sub-paragraph 3.5.3 in Part 3 of this Schedule at which the Low Cost Market Housing Unit must be sold;

- 3.8.3 to ensure its selling agent liaises with the Council (or its nominee) for a period of 3 months from the date of the Council's confirmation of receipt of such notice in order to identify a potential purchaser meeting the sole residency and Qualifying Purchaser requirement in paragraph 3.6 of Part 3 of this Schedule and having a Local Connection;
- 3.8.4 not to exchange contracts for the sale of the relevant Low Cost Market Housing Unit unless written prior written approval has been obtained from the Council that the prospective purchaser meets the criteria set out in paragraph 3.6 of this First Schedule; PROVIDED THAT
- 3.8.5 if on any subsequent sale the Council is reasonably satisfied that after a period of 3 months of active marketing and advertising that a Low Cost Market Housing Unit cannot be sold in accordance with this Schedule or that a potential purchaser has been identified and a period of 6 months has expired without the parties entering into a binding contract for such disposal the Low Cost Market Housing Unit may (with the Council's prior written approval) be sold free from the Local Connection requirements provided that (a) the dwelling is sold at the discounted price to the purchaser as his only or principal home and (b) the discount and Local Connection requirements shall apply in full on any subsequent disposition so that such person shall remain bound by the terms of this Deed.
- 3.9 Not to permit or otherwise allow any Low Cost Market Housing Unit for sale to be let other than with the written consent of the Council.

PART 4

4. Discount Market Sale Units

- 4.1 The Owner covenants with the Council that no Open Market Units erected or to be erected on the Site will be Occupied except in accordance with the restriction in paragraph 4.2 of Part 4 of this Schedule and that the Discount Market Sale Units will not be Occupied except in accordance with the restrictions and obligations in paragraphs 4.2 to 4.10 inclusive in Part 4 of this Schedule.

- 4.2 Not to Occupy or cause or permit the Occupation of more than 50%⁹² of the Open Market Units on any part or parts of the Site until and unless the Discount Market Sale Units relevant to the phase have been constructed in accordance with the Planning Permission and are ready and available for Occupation and are accessible by vehicles and pedestrians.
- 4.3 The initial sale price for all Discount Market Sale Units has been agreed by the Council such price to be at a discount of 30%⁹³ from Open Market Value of the relevant Discount Market Sale Unit ("Initial Discount Price").
- 4.4 The sale price for all subsequent disposals of Discount Market Sale Units will be determined by the average of two formal Open Market Valuations by two independent estate agents to which the 30%⁹⁴ discount from the Open Market Value of the relevant Discount Market Sale Unit ("Discount Price") must be applied
- 4.5 The Discount Market Sale Units shall not be Occupied:-
- 4.5.1 by anyone except to persons who meets the qualifying criteria in paragraph 4.6 below; and
- 4.5.2 on the first sale following completion of construction of the Discount Market Sale Units at the Initial Discount Price; and
- 4.5.3 on every subsequent sale at the Discount Price
- 4.6 The Discount Market Sale Units must (unless otherwise agreed by the Council) be allocated in accordance with the Council's terms and conditions for Occupation as a sole residence to a Qualifying Purchaser one of whom is a person ordinarily resident within the administrative area of the Council.
- 4.7 In the case of all initial sales:

⁹² Amend in accordance with instructions

⁹³ Amend in accordance with instructions

⁹⁴ Amend in accord with instructions

- 4.7.1 prior to notice of an intended sale to submit for approval by the Council (such approval not being unreasonably withheld) a Marketing Plan for advertising the sale of the Discount Market Sale Units; and
- 4.7.2 on receipt of a written approval of the Council for the Marketing Plan serve a notice of sale upon the Council each time a Discount Market Sale Unit is released for sale but in any event not less than two months before the expected date that the relevant Discount Market Sale Unit for sale is ready and available for Occupation;
- 4.7.3 upon submission of a notice of an intended sale of the specified Discount Market Sale Unit to carry out the advertising of the Discount Market Sale Unit for sale in accordance with the Marketing Plan;
- 4.7.4 to liaise with the Council (or its nominee) for a period of 3 months from the date of the Council's written confirmation of receipt of such notice in order to identify a potential purchaser meeting the sole residency and Qualifying Purchaser requirements in paragraph 4.6 of Part 4 of this Schedule
- 4.7.5 not to exchange contracts for the sale of the relevant Discount Market Sale Unit unless written approval has been obtained from the Council that the prospective purchaser meets all criteria set out in paragraph 4.6 of Part 4 of this Schedule

PROVIDED THAT:

- 4.7.6 if on any initial sale the Council is reasonably satisfied that after a period of 3 months of active marketing and advertising a Discount Market Sale Unit cannot be sold in accordance with Part 4 of this Schedule or that a potential purchaser has been identified and a period of 6 months has expired without the parties entering into a binding contract for such disposal the Discount Market Sale Unit may (with the Council's prior written approval) be sold free from the requirements in paragraph 4.6 of Part 3 of this Schedule; Provided That
 - (a) the Discount Market Sale Unit is sold at the Discount Price to the purchaser as his only or principal home; and

- (b) the Discount Price and the requirements in paragraph 4.6 of Part 4 of this Schedule shall apply in full on any subsequent disposition so that such person shall remain bound by the terms of this Deed;

4.7.7 on completion of the initial sale of every Discount Market Sale Unit to secure a restriction on the registered title in the terms required by the Land Registry such that no disposition of any Discount Market Sale Unit will be registered unless the purchaser's solicitors certify that the terms of paragraphs 4.5 and 4.6 of Part 4 of this Schedule have been complied with and provide the Council with a copy of the restriction and the solicitors' certificate of compliance on each and every such disposition of the Discount Market Sale Unit.

4.8 In the case of all subsequent sales:

4.8.1 to serve on the Council a notice of an intended sale of the specified Discount Market Sale Unit for sale together with two valuation appraisals by two local estate agents and the name address and contact details for the vendor and selling agent;

4.8.2 not to commence any marketing unless the Council has confirmed in writing acceptance of;

- (a) the notice of intended sale; and
- (b) the Discount Price

4.8.3 to ensure its selling agent liaises with the Council (or its nominee) for a period of 3 months from the date of the Council's confirmation of receipt of such notice in order to identify a potential purchaser meeting the sole residency and Qualifying Purchaser requirements in paragraph 4.6 of Part 4 of this Schedule;

4.8.4 not to exchange contracts for the sale of the relevant Discount Market Sale Housing Unit unless written prior written approval has been obtained from the Council that the prospective purchaser meets the criteria set out in paragraph 4.6 of this Schedule 2; PROVIDED THAT

4.8.5 if on any subsequent sale the Council is reasonably satisfied that after a period of 3 months of active marketing and advertising that a Discount Market Sale Unit cannot be sold in accordance with Part 4 of this Schedule or that a potential purchaser has

been identified and a period of 6 months has expired without the parties entering into a binding contract for such disposal the Discount Market Sale Unit may (with the Council's prior written approval) be sold free from the requirements in paragraph 4.6 of Part 4 of this Schedule; PROVIDED THAT

- (a) the Discount Market Sale Unit is sold at the Discount Price to the purchaser as his only or principal home; and
- (b) the Discount Price and the requirements in paragraph 4.6 of Part 4 of this Schedule shall apply in full on any subsequent disposition so that such person shall remain bound by the terms of this Deed.

4.9 Not to permit or otherwise allow any Discount Market Sale Unit for sale to be let other than with the written consent of the Council.

PART 5

5. Rent to Buy Units

- 5.1 Not to permit or otherwise allow any of the Rent to Buy Units to be let within the Letting Period:
 - 5.1.1 other than to a person who satisfies the requirements of the Rent to Buy Scheme; and
 - 5.1.2 at a sum not exceeding the Intermediate Rent
- 5.2 Within the Letting Period the Registered Provider may only sell the relevant Rent to Buy Unit whether on the Open Market or as a Shared Ownership Unit to the existing tenant
- 5.3 After the Letting Period where the relevant Rent to Buy Unit is made available for further letting as an Affordable Rented Unit the relevant property will be let in accordance with Part **[1]** of the Second Schedule to this Deed
- 5.4 Where the relevant Rent to Buy Unit is made available as a Shared Ownership Unit either after the Letting Period or upon sale to an existing tenant within the Letting Period the relevant unit will be sold in accordance with Part **[2]** of this Second Schedule to this Deed
- 5.5 The Registered Provider shall serve written notice upon the Council when it has sold a Rent to Buy Unit to an existing tenant within the Letting Period

- 5.6 Where the Registered Provider has not exchanged contracts for the sale of a Rent to Buy Unit to an existing tenant prior to one month before the expected date of the end of the Letting Period written notice must be served upon the Council confirming the proposed use or disposal of the relevant Rent to Buy Unit after the end of the Letting Period

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THIRD SCHEDULE

(First Homes)

1. Affordable Housing - First Homes

- 1.1 Unless otherwise agreed in writing by the Council, the Owner for and on behalf of itself and its successors in title to the Site with the intention that the following provisions shall bind the Site and every part of it into whosoever's hands it may come covenants with the Council as below SAVE THAT
- 1.2 paragraphs 2, 3, 4 and 5⁹⁵ of this Schedule shall not apply to a First Homes Owner;
- 1.3 paragraphs 6 and 7⁹⁶ of this Schedule apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner ; and
- 1.4 Paragraph 8 of this Schedule applies as set out therein.

2. Quantum of First Homes

- 2.1 [Twenty five percent (25%) OR [x]]⁹⁷ of Affordable Housing Units on the Site shall be identified reserved and set aside as First Homes in accordance with the approved Affordable Housing Delivery Plan required at paragraph 1.1 of Part 1 of the Second Schedule and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.

[Where phased development]⁹⁸

- [2.2 Unless otherwise agreed through the Affordable Housing Delivery Plan]required pursuant to paragraph 1.1 of Part 1 of the Second Schedule [•%] of the total number of the Dwellings in each residential phase (rounded up or down to the nearest whole Dwelling) OR [x] Dwellings in each residential phase shall be identified reserved and set aside as First

⁹⁵ Update if para 3 not required

⁹⁶ Update is para 3 not required

⁹⁷ Insert percentage or number of units

⁹⁸ Delete as appropriate

Homes and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule in accordance with the approved Affordable Housing Delivery Plan relevant to that residential phase.]

3. Clustering⁹⁹

- 3.1 Clusters of houses shall not exceed [number] Affordable Housing Units;
- 3.2 Clusters of flats in blocks with [number] or less storeys shall:
 - 3.4.1 not exceed [number] Affordable Housing Units;
 - 3.4.2 not have more than 6 flats with shared access; and
 - 3.4.3 be of a single tenure where sharing a communal entrance;
- 3.3 The size of Clusters and shared access arrangements for Affordable Housing Units which are flats in blocks with [number] or more storeys shall be agreed in writing with the Council as part of the Affordable Housing Delivery Plan.

4. Type and Distribution

- 4.1 The mix of First Homes provided within the Site shall be in accordance with
 - 4.1.1 the Affordable Housing Mix; and
 - 4.1.2 the distribution in the approved Affordable Housing Delivery Plan

5. Appearance and Development Standard

All First Homes shall be constructed to:-

- 5.1 the Development Standard current at [the time of the relevant reserved matters approval] [the date of this Deed]; and
- 5.2 no less than the standard applied to the Open Market Units.

⁹⁹ Amend or delete in accordance with instructions

5.3 The First Homes shall not be visually distinguishable from the Open Market Units based upon their external appearance;

3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Open Market Units but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted

6. Delivery Mechanism

6.1 The First Homes shall be marketed for sale in accordance with the Marketing Plan and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

6.1.1 the Eligibility Criteria (National); and

6.1.2 the Eligibility Criteria (Local).

6.1.3 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local), paragraph 6.1.2 shall cease to apply.

6.2 Subject to paragraphs 6.5 to 6.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Mortgagee

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

6.3.1 The Council has been provided with evidence that:

6.3.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 6.2 applies meets the Eligibility (Local)

6.3.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and

6.3.1.3 the transfer of the First Home includes:

- a) a definition of the "Council" which shall be the County of Herefordshire District Council of Plough Lane Offices, Plough Lane, Hereford HR4 0LE
- b) a definition of "First Homes Provisions" in the following terms:
"means the provisions set out in clause[s] [] of the [Supplemental] S106 Agreement a copy of which is attached hereto as the Annexure."
- c) A definition of *"[Supplemental] S106 Agreement means the [supplemental] agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) the Council [and] (2) [and (3)]"*
- d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions
- e) a copy of the First Homes Provisions in an Annexure

6.3.2

The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 6.2 and 6.3.1 have been met

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

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Herefordshire Council of Plough Lane Offices, Plough Lane, Hereford HR4 0LE or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

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

6.5.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 6.1 and 6.2 (and in the case of an initial First Homes Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 6.3 and 6.3.1; or

6.5.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 6.5.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

6.6 Upon receipt of an application served in accordance with paragraph 6.5 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

6.7 If the Council is satisfied that either of the grounds in paragraph 6.5 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.5 that the relevant Dwelling may be Disposed of:

6.7.1 to the Council at the Discount Market Price; or

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

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 6.9 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home

- 6.8 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 6.5 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.5 serve notice on the owner setting out the further steps it requires the owner to take to secure the First Homes Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 6.5 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home
- 6.9 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 6.7 or 6.8 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution
- 6.10 Upon receipt of the Additional First Homes Contribution and the completed relevant HM Land Registry cancellation form (currently and RX4) ("the Form") and a copy of current HM Land Registry Title Information document for the relevant property the Council shall:
- 6.10.1 within [20] Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 6.4 where such restriction has previously been registered against the relevant title by or in favour of the Council
 - 6.10.2 apply all monies received towards the provision of Affordable Housing
- 6.11 Any person who purchases a First Home free of the restrictions in this Schedule, pursuant to the provisions in paragraphs 6.7 and 6.8 shall not be liable to pay the Additional First Homes Contribution to the Council.

7. USE

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed

PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 7.1 – 7.4 below.

7.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

7.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
- c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

7.3 A letting or sub-letting permitted pursuant to paragraph 7.1 or 7.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

- 7.4 Nothing in this paragraph 7 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

8. Exclusion

- 8.1 The obligations in paragraphs 6-7 of this Third Schedule in relation to First Homes shall not apply to any First Homes Mortgagee or any receiver (including an administrative receiver appointed by such First Homes Mortgagee or any other person appointed under any security documentation to enable such Chargee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such First Homes Mortgagee or Receiver PROVIDED THAT:

8.1.1 such First Homes Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and

8.1.2 once notice of intention to Dispose of the relevant First Home has been given by the First Homes Mortgagee or Receiver to the Council First Homes Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 8.1.3

8.1.3 following the Disposal of the relevant First Home the First Homes Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.

8.1.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:

8.1.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.4 of this Schedule; and

8.1.4.2 apply all such monies received towards the provision of Affordable Housing

FOURTH SCHEDULE

Phosphate Credit Obligations

[Alternative clauses version 1 of 2]¹⁰⁰

Part 1

Payment of the Phosphate Credit Sum

1. The Owner covenants with the Council to pay to the Council upon completion of this Deed the Phosphate Credit Sum.

Part 2

The Release of Phosphate Credits Purchased

1. In the event that this Deed terminates in accordance with clause 8.1 and the Council has refunded the Phosphate Credit Sum to the Owner (less a 5% administration fee) the Owner acknowledges that the Council shall be entitled to re-allocate the Phosphate Credits to other developments and projects in its administrative area.
2. That if the Release Declaration is served on the Council by the Owner and the Phosphate Credit Sum (less a 5% administration fee) is repaid to the Owner (or such successor in title as provided in this Schedule) then the Owner (or such successor in title) shall not implement the Planning Permission.

Part 3

Disposal of the Site Prior to the Commencement Date:

1. If prior to the Commencement Date there is a Disposal of the Site, the Phosphate Credits already purchased shall transfer to the purchaser/successor in title and the Owner shall be responsible for recovering the reimbursement of the Phosphate Credit Sum from the purchaser/successor in title if applicable.
2. The Owner shall notify the Council in writing within 14 days of the Disposal of the Site to a purchaser/successor in title.

¹⁰⁰ Applicable where whole sum paid on completion of agreement

3. The Owner agrees that the Council shall only be required to refund the Phosphate Credit Sum to the Owner or such purchaser/successor in title as notified under paragraph 2 of this Part 3 and provided that the Owner is registered as a freehold or long leasehold (of at least 125 years) owner of the entire Site at the HM Land Registry

Alternative clauses version 2 of 2]¹⁰¹

Part 1

Payment of the Phosphate Credit Sum

1. To pay to the Council upon completion of this Deed the Phosphate Credit Deposit and the Owner acknowledges that the Phosphate Credit Deposit shall be non-refundable except where the provisions of paragraphs 2.1 or 2.2 of Part 2 of the Seventh Schedule of this Deed are applicable.
2. To pay to the Council prior to the Commencement of Development the Phosphate Credit Final Payment and not to Commence or cause or allow the Commencement of Development unless the Phosphate Credit Final Payment has been paid.

Part 2

The Release of Phosphate Credits Purchased

1. In the event that:-
 - 1.1 this Deed terminates in accordance with clause 8.1; or
 - 1.2 the Development is not Commenced within 3 years of the date on which the Planning Permission is granted and the Planning Permission has expired;

the Phosphate Credit Reservation shall be Released and the Owner acknowledges that the Council shall be entitled to re-allocate the Phosphate Credits comprised in the Phosphate Credit Requirement to other developments and projects in its administrative area.

¹⁰¹ Applicable when 10% deposit paid with balance on commencement

2. That if the Phosphate Credit Reservation is Released then the Owner (or such successor in title) shall not implement the Planning Permission.

Part 3

Disposal of the Site Prior to the Commencement Date:

1. If prior to Commencement Date there is a Disposal of the Site, the Phosphate Credits already reserved shall transfer to the purchaser/successor in title and the Owner shall be responsible for recovering the reimbursement of the Phosphate Credit Deposit from the purchaser/successor in title if applicable.
2. The Owner shall notify the Council in writing within 14 days of the Disposal of the Site to a purchaser/successor in title.
3. The Owner agrees that the Council shall only be required to refund the Phosphate Credit Sum to the Owner or such purchaser/successor in title as notified under paragraph 2 of this Part 2 and provided that the Owner is registered as a freehold or long leasehold (of at least 125 years) owner of the entire Site at the HM Land Registry.

FIFTH SCHEDULE

Package Treatment Plant

The Owner covenants and agrees with the Council:

- 1.1 Not to Commence Development until the Council has approved the arrangements for the establishment of the Management Company in accordance with the Management Company Plan; the arrangements for the freehold transfer of the Package Treatment Plant to the Management Company and the details of/for the recovery by that Management Company of service charge contributions from the owners of the Open Market Units towards the upkeep and permanent maintenance of the Package Treatment Plant in accordance with the PTP Management Plan.
- 1.2 Not to permit or allow the Occupation of the Development until the Council has approved in writing the arrangements as identified in the PTP Management Plan for the long term management and maintenance of the Package Treatment Plant;
- 1.3 No Dwelling shall be Occupied until the Owner has:-
 - 1.3.1 set up, constituted or otherwise incorporated the Management Company; and
 - 1.3.2 entered into a contract with the Management Company to transfer the Package Treatment Plant to the Management Company in accordance with the provisions of this this Fourth Schedule; and
 - 1.3.3 installed the Package Treatment Plant to the Council's written satisfaction.
- 1.4 the Owner shall not sell or otherwise dispose of any Open Market Unit without requiring (through appropriate covenants) for the purchaser of that Open Market Unit and his successors in title to become members of the Management Company and for them to enter into a covenant with the Management Company to pay a service charge towards the costs of the Management Company discharging its functions towards the management of the Package Treatment Plant together with provisions for recovery of those contributions in accordance with the arrangements approved pursuant to this Fourth Schedule.
- 1.5 Prior to Occupation of the final Open Market Unit the Owner shall transfer the freehold of the Package Treatment Plant to the Management Company for a consideration of £1.00

subject to the Management Company covenanting to maintain the Package Treatment Plant in perpetuity in accordance with the PTP Management Plan.

- 1.6 The Owner shall not Occupy or permit Occupation of the final Open Market Unit until the Package Treatment Plant has been transferred to the Management Company.
- 1.7 Until a transfer of the Package Treatment Plant to the Management Company pursuant to this Fourth Schedule the Owner shall at all times remain fully responsible for all elements of monitoring, maintenance, dosing, repair, and general upkeep of the Package Treatment Plant in accordance with the PTP Management Plan.

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SIXTH SCHEDULE

(Open Space Facilities)

1. The Owner covenants and agrees with the Council:
 - 1.1 Not to Commence Development until the Council has approved in writing (such approval not to be unreasonably withheld or delayed):
 - (i) the arrangements as identified in the Open Space Facilities Plan for the long term management and maintenance of the Open Space Facilities;
 - (ii) the establishment of the Management Company in accordance with the Management Company Plan;
 - (iii) the freehold transfer of the Open Space Facilities to the Management Company; and
 - (iv) the details of/for the recovery by the Management Company of service charge contributions from the owners of the Open Market Units towards the upkeep and permanent maintenance of the Open Space Facilities in perpetuity
 - 1.2 No Open Market Unit shall be Occupied (unless otherwise agreed in writing by the Council) until the Owner has:-
 - 1.2.1 set up, constituted or otherwise incorporated the Management Company; and
 - 1.2.2 entered into a contract with the Management Company to transfer the Open Space Facilities to the Management Company in accordance with the provisions of this this Schedule; and
 - 1.3 the Owner shall not sell or otherwise dispose of any Open Market Unit without requiring (through appropriate covenants) for the purchaser of that Open Market Unit and his successors in title to become members of the Management Company and for them to enter into a covenant with the Management Company to pay a service charge towards the costs of the Management Company discharging its functions towards the management of the Open Space Facilities together with provisions for recovery of those contributions in accordance with the arrangements approved pursuant to this Schedule.

- 1.4. Prior to Occupation of the final¹⁰² Open Market Unit the Owner shall transfer the freehold of the Open Space Facilities to the Management Company for a consideration of £1.00 (if demanded) Subject To:
- 1.4.1 covenants by the Management Company to maintain the Open Space Facilities in perpetuity in accordance with the approved Management Company Plan and not to use the Open Space Facilities except as an area of open space for free public recreation and enjoyment in perpetuity
- 1.5 The Owner shall not Occupy or permit Occupation of that final Open Market Unit until the Open Space Facilities have been transferred to the Management Company.
- 1.6 No more than [xx%] of the Open Market Units shall be Occupied until the Owner has laid out and equipped the Open Space Facilities to the Council's satisfaction (such expression of satisfaction not to be unreasonably withheld or delayed) in accordance with the approved Open Space Facilities Plan.
- 1.7 until a transfer of the Open Space Facilities pursuant to this Schedule the Owner shall:
- 1.7.1 not use the Open Space Facilities for any purpose other than as a public amenity area serving the Development; and
- 1.7.2 at all times remain fully responsible for the repair, maintenance, safety and general upkeep of the Open Space Facilities consistent with its use as a public amenity serving the Development.

¹⁰² Amend in accordance with instructions

SEVENTH SCHEDULE
(THE COUNCIL'S COVENANTS)

Part 1 – The Contributions

The Council covenants and agrees:

1. Upon receipt of the Contributions the Council will place the same in an interest bearing account.
2. The Council shall apply the Contributions only towards the facilities and purposes referred to in this Deed.
3. The Council agree that if any part of the Contributions have not been expended or remain uncommitted following a period of [ten] years from the date of payment then such part of the Contributions as may remain unspent or uncommitted together with interest accrued as aforesaid on the balance shall be returned to the payer of the Contributions.
3. If so requested in writing to provide the payer of the Contributions with such evidence as shall be reasonably requested to confirm the expenditure of the Contributions.

[Alternative clauses version 1 of 2]¹⁰³

Part 2 - Refund of the Phosphate Credit Sum

1. The Council hereby covenants with the Owner that on receipt of the completed Release Declaration by the Owner, that it will refund to the Owner within 28 days of receipt, the Phosphate Credit Sum less a 5% administration fee where either of the following circumstances apply;
 - 1.1 The Planning Permission has not been granted and the Owner does not intend to appeal this decision or the time for making an appeal against this decision has now expired (“Circumstance 1”);
 - 1.2 The Planning Permission has been quashed, revoked or otherwise withdrawn before Commencement of Development (“Circumstance 2”);

¹⁰³ Applicable where phosphate credit paid in full on completion

- 1.3 It has been more than 3 years since the date on which the Planning Permission was granted and the Planning Permission has now expired (“Circumstance 3”);
2. The refund made by the Council in respect of the Phosphate Credit Sum shall not accrue interest.

[Alternative clauses version 2 of 2]¹⁰⁴

Part 2 The Reservation of the Phosphate Credit Requirement

1. On receipt of the Phosphate Credit Deposit from the Owner the Council shall reserve the Phosphate Credit Requirement for the benefit of the Development and shall not allocate the Phosphate Credit Requirement to any other development or project within its administrative area unless the Phosphate Credit Reservation is Released in accordance with Paragraph 1 of Part 2 to the Fourth Schedule
2. The Council hereby covenants with the Owner that on receipt of the completed Release Declaration by the Owner, that it will refund to the Owner within 28 days of receipt, the Phosphate Credit Deposit Sum where either of the following circumstances apply;
 - 2.1 The Planning Permission has not been granted and the Owner does not intend to appeal this decision or the time for making an appeal against this decision has now expired (“Circumstance 1”);
 - 2.2 The Planning Permission has been quashed, revoked or otherwise withdrawn without the Owners consent before Commencement of Development (“Circumstance 2”);
3. The refund made by the Council in respect of the Phosphate Credit Deposit shall not accrue interest.

¹⁰⁴ Applicable when 10% deposit paid with balance on commencement

NINTH SCHEDULE
S.106 TRIGGER PAYMENT NOTICE

Ways to Pay

BAC Payment or Bank Transfer

Bank Name

Account Number:

Sort Code

Address

IMPORTANT PLEASE READ - Send this completed form along with the payment due to the above address upon the trigger detailed in the '**trigger**' box below. Where there are multiple triggers you will find a payment form for each one, hence you must send each form and payment due upon the various triggers. Should you fail to comply with any of these requests you will be in breach of the agreement

TRIGGER

Payment of [£] being the [xx instalment of the]
 [*insert relevant contribution type*] Contribution
]
 Prior to [the Commencement Date / Occupation
 of ...]

CODES

(For office use only)

All S106 Contributions Payment Ref :
Monitoring Officer Costs Payment Ref:
Legal Cost Payment Ref

Planning Reference Number:

Site Address:

Amount Paid £

(Please tick the relevant box)

Paid by cheque/bankers draft Paid by cash Paid by credit/debit card
 Paid by other (please detail) _____

Payee Name: _____

Address: _____

Signature: _____ Date: _____

TENTH SCHEDULE ¹⁰⁵
Release Declaration

Planning Obligations Manager
 Hereford Council
 Plough Lane Offices,
 Plough Lane,
 Hereford
 HR4 0LE

Planning Application Site:	
the Applicant (full name):	
Development	
Details of the Planning Permission	
Details of the S106 Agreement	

The Owner entered into the above Section 106 Agreement with the Council on [DATE].

In the Section 106 Agreement the Owner [agreed to purchase the Phosphate Credits][reserved the Phosphate Credits by payment of the Phosphate Credit Deposit] in accordance with the Fourth Schedule of the Section 106 Agreement and the Council's Interim Phosphate Pricing Credit Pricing and Allocation Policy dated May 2022 to offset the phosphate output of the Development and thereby mitigating adverse effects resulting from increased phosphate levels within the River Wye/River Lugg Catchment Area.

The Owner HEREBY GIVES NOTICE to the Council that:

- a. The Planning Permission referred to in the Section 106 Agreement has not been granted and the Owner does not intend to appeal this decision or the time for making an appeal against this decision has now expired ("Circumstance 1");

¹⁰⁵ Applicable to phosphate provisions only

- b. The Planning Permission referred to in the Section 106 Agreement has been quashed, revoked or otherwise withdrawn before Commencement of Development (“Circumstance 2”);

- c. It has been more than 3 years since the date on which the Planning Permission was granted and the Planning Permission has now expired (“Circumstance 3”);

[Delete as appropriate]

and the Owner hereby returns the Phosphate Credits as set out below:

I the Owner hereby return to the Council the Phosphate Credits Purchased under the S106 Agreement in respect of the Whole of the Development :	Details of the Phosphate Credits for the Development:
------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------

Signed

Owner

Print Name

ANNEX 1
SITE PLAN

DRAFT

ANNEX 2**THE AFFORDABLE HOUSING MIX¹⁰⁶**

Table included for illustration

Tenure	Number	Property mix	Plots	Category 2: Accessible & Adaptable Dwellings plots	Category 3: Wheelchair User Dwellings plots
Shared Ownership Units	x	[] x 4 bed, 7 person houses,			
Low Cost Market Housing Units	x	[] x 4 bed, 7 person house			
First Homes	x				
Total	x				

¹⁰⁶ Amend details in accordance with instructions or delete if not required

[ANNEX 3
TRANSPORT CONTRIBUTION PLAN]¹⁰⁷

DRAFT

¹⁰⁷ Amend or delete as appropriate

ANNEX 4 COMPLIANCE CERTIFICATE

FIRST HOMES COMPLIANCE CERTIFICATE

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

The proposed First Homes Buyer(s) First Homes application has been approved by [Council name] pursuant to the supplemental agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 relating to [details of site] dated [date] and made between [parties] and this Compliance Certificate issued to the proposed First Homes Buyer(s) and their conveyancer by [Council] as follows:

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

This **COMPLIANCE CERTIFICATE** is issued by [Council] and confirms that a Dwelling is being disposed of to the First Home Buyer(s) specified in this Compliance Certificate who meet the:

- a. Eligibility Criteria (National)
 - i. First Time Buyer;
 - ii. Having Household income no more than £80,000 per annum [; and if applicable
- b. the Eligibility Criteria (Local)
 - i. First Time Buyer;

- ii. A household having an income of less than £40,000 as a sole income and £80,000 as a joint income
- iii. Meets the Local Connection requirements; and/or
- iv Is an Armed Services Member

As set out in full in the supplemental agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 relating to [details of site] dated [date] and made between [parties] (“Planning Obligations”).

The First Homes Buyer(s) (the new First Homes Owner) has provided all the necessary First Homes confirmations and declarations of eligibility required by [Council] and the First Homes Buyer(s) solicitor has confirmed that the transfer to the First Home Buyer(s) will comply with the requirements in Planning Obligations in relation to the Property.

Yours sincerely

Name:	
Signed:	
For and on behalf of	The County of Herefordshire District Council
Dated:	

DATED

IN WITNESS of which the parties have executed this Agreement as a Deed on the date first written above

EXECUTED AS A DEED when the)
COMMON SEAL of the)
COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL)
was hereunto affixed **BY ORDER**)

Authorised Signatory

[Applicants legal rep to insert execution clauses]