

S106

16/00388/HY4

DATED 21st day of December 2016

(1) THE COUNCIL OF THE CITY OF SUNDERLAND

and

(2) SIGLION DEVELOPMENTS LLP

AGREEMENT

under Section 106 of the Town and Country
Planning Act 1990 relating to land known as
the Chapelgarth site to the south of
Weymouth Road, Chapelgarth, Sunderland

E. Waugh
Head of Law & Governance
Civic Centre
Sunderland
SR2 7DN

Ref: JMR/76539

THIS AGREEMENT is made on 21st day of December 2016

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF SUNDERLAND** of Civic Centre Burdon Road Sunderland SR2 7DN ("the Council") and
- (2) **SIGLION DEVELOPMENTS LLP** a limited liability partnership registered in England (LLP Number: OC394705) whose registered office is situated at Unit 1B, Echo 24 Building, West Wear Street, Sunderland SR1 1XD ("the Developer")

together "the Parties"

WHEREAS

- (1) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is located and by whom the obligations contained in this Agreement are enforceable
- (2) The Developer has the benefit of the Conditional Contract in respect of the acquisition of the Site in phases and in accordance with the terms contained therein
- (3) The Developer has submitted the Planning Application to the Council in order to carry out the Development on the Site
- (4) The Council and the Developer have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Developer and its respective successors in title and any person deriving title from it in relation to the Site (including any part thereof)
- (5) The Council has resolved to grant Planning Permission for the Development subject to such conditions as specified in the Planning Permission and subject

to the prior completion of this Agreement without which the Planning Permission would not be granted

- (6) The Parties have had regard to regulation 122 of the CIL Regulations and consider that the planning obligations contained in this Agreement are necessary to make the Development acceptable, are directly related to the Development and are fairly and reasonably related in scale and kind to the Development

INTERPRETATION

- 1.1 In this Agreement, the following words and expressions have the following meanings:

"Acceptable Noise Level" not exceeding 55 dB(A) (fifty five A-weighted decibels)

"Acceptable Return" a developer's return being 20% (twenty per cent) of Gross Development Value in respect of each Residential Phase

"Acoustic Noise Barrier" the acoustic noise barrier to be provided within the Red Zone Area in full accordance with the Acoustic Noise Barrier Specification and the term "Acoustic Noise Barrier" shall include any part thereof

"Acoustic Noise Barrier Specification" the detailed specification for the design, siting, installation, completion and subsequent maintenance of the Acoustic Noise Barrier which shall be in accordance with Section 21 (Green Buffers and Easements) of the Chapelgarth Design Code (as amended) dated July 2016 and to be approved by the Council

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	means subsidised housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any successor policy or legislation in respect of affordable housing)
"Affordable Housing Commuted Sum"	means if applicable an appropriate sum of money to be paid by the Developer as a financial contribution to the Council in lieu of the provision or part provision of the Affordable Housing Provision in any Residential Phase to be spent by the Council in accordance with the provisions of paragraph 8 of Schedule 9
"Affordable Housing Provision"	the amount of Affordable Housing Units to be provided by the Developer on the Site as part of each Residential Phase as determined in accordance with the provisions of paragraph 1 of Schedule Eight
"Affordable Housing Units"	means all of the Affordable Rented Units and the Intermediate Housing Units to be provided on the Site as part of the Affordable Housing Provision for each Residential Phase in accordance with the provisions of paragraph 2 of Schedule Eight and the term "Affordable Housing Unit" shall be construed accordingly
"Affordable Rent"	means the rent payable by individual

		households for the Affordable Rented Units which shall be subject to rent controls that require a rent of no more than 80 (eighty) per cent of the local market rent (inclusive of service charges) in the vicinity of the Site
"Affordable Rented Units"		those Dwellings to be provided on the Site which are owned and managed by a Registered Provider and subject at all times to an Affordable Rent
"Agreed Viability Report"		a Viability Report that is either (i) accepted by the Council under paragraph 3(a) of Schedule Ten or (ii) agreed by the Council under the provisions of paragraph 5 of Schedule Ten or (iii) subject to determination by an expert in accordance with paragraph 5 of Schedule Ten and clause 16
"Allotments Contribution"		the financial contribution to be paid by the Developer to the Council per Residential Phase in the amount as determined in accordance with the provisions of Part F paragraph 1 of Schedule Two of this Agreement and to be spent in accordance the provisions of paragraph 7 of Schedule Nine
"Area"		the administrative area of the City of Sunderland
"Biodiversity Works Contribution"	Mitigation	the financial contribution to be paid by the Developer to the Council per Residential Phase in the amount as determined in accordance with the provisions of Part E paragraph 1 of Schedule Two of this Agreement and to be spent in accordance the provisions of paragraph 6 of Schedule Nine

"Chargee"

a mortgagee or chargee (or any receiver (including an administrative receiver)) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or receiver

"CIL Regulations"

the Community Infrastructure Levy Regulations 2010 (SI 2010/948)

**"Commencement
Development"**

of the date on which any material operation (as defined in Section 58(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of archaeological investigations and survey sampling inspections including soil investigations, investigations for the purpose of assessing ground conditions, site survey works, remedial or mitigation works in respect of any contamination or other adverse ground conditions, diversion and laying of services, demolition works, site clearance (including works to adjust ground levels on site and the

"Commercial Unit"	removal of vegetation), erection of any temporary means of enclosure and the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly any unit to be constructed on the Site pursuant to the Planning Permission and the Reserved Matters Approval(s) which is not a Dwelling
"Conditional Contract"	the conditional development framework agreement dated 7 th November 2014 (as may be amended from time to time) between the Council and the Developer in respect of the sale and purchase of, inter alia, the Site in phases
"Development"	<p>the development of the Site pursuant to the Planning Permission and the Reserved Matters Approval(s) and including</p> <ul style="list-style-type: none"> <li data-bbox="810 1429 1394 1957">(i) outline planning permission for up to 750 residential units, public open space and internal road network along with up to 1000 square metres of ancillary commercial uses including Retail (A1), Financial and Professional Services (A2), Restaurant and Cafes (A3), Offices (B1) Non Residential (D1) and Assembly and Leisure (D2), together with associated landscaping and car

parking. All matters apart from access to be reserved in relation to the outline elements of the proposals; and

- (ii) detailed planning permission for a first phase of infrastructure which shall include the creation of a new protected right turn junction into the site off, Weymouth Road, landscaping and creation of attenuation ponds.

"Dwelling"

any unit of residential accommodation (including a house, flat or maisonette) to be constructed on the Site pursuant to the Planning Permission and the Reserved Matters Approvals (and for the avoidance of doubt including both the Affordable Housing Units and the Market Housing Units)

"Education Contribution"

the financial contribution to be paid by the Developer to the Council per Residential Phase in the amount as determined in accordance with the provisions of Part B paragraph 1 of Schedule Two of this Agreement and to be spent in accordance the provisions of paragraph 3 of Schedule Nine

"Further Section Agreement(s)"

106 means the further agreement(s) to be entered into by the Developer in respect of the Site pursuant to Section 106 of the Act in the form as set out in Appendix B to this Agreement

"Gross Development Value"

the anticipated market value of a completed Phase assuming it is sold to a willing

	purchaser(s)
"Highways Contribution"	means the financial contribution to be paid by the Developer to the Council per Residential Phase in the amount as determined in accordance with the provisions of Part A paragraph 1 of Schedule Two of this Agreement and to be spent in accordance with the provisions of paragraph 2 of Schedule Nine
"Interest"	means interest at the rate of the Bank of England base rate from time to time and accrued on a daily basis
"Index"	means the all items index of Retail Prices Issued by the Office for National Statistics (or any successor organisation) from time to time
"Indexation"	means the process specified in clause 17A whereby the amounts payable by the Developer under the provisions of Schedule Two to this Agreement are increased in accordance with any increase in the Index
"Initial Letting"	means each and every first letting of an Affordable Housing Unit pursuant to the terms of this Agreement
"Intermediate Housing"	shall have that meaning ascribed to it in Annex 2 of the National Planning Policy Framework document published by DCLG in March 2012 (or as subsequently amended or replaced)
"Intermediate Housing Units"	those Dwellings to be provided on the Site which are to be used and/or sold or let (as the case may be) for Intermediate Housing

"Joe's Paddock"	means the area of proposed open space to be provided on the Site in the location as expressly identified and marked as Joe's Paddock and shown coloured salmon on Plan Number 2
"Management Plan"	the detailed specification and plan for the management and maintenance of the Privately Maintained Areas to be prepared by the Developer in respect of each Phase which shall comply with the provisions of Schedule Four and to be approved by the Council
"Market Housing Units"	those Dwellings to be provided on the Site as part of the Development which are general market housing for sale on the open market and not Affordable Housing
"Noise Impact Assessment and Strategy"	a full and detailed noise impact assessment and mitigation strategy in respect of any part of the Development to be carried out within the Red Zone Area and based on the Acceptable Noise Level and to be approved by the Council
"Nominations Agreement"	the agreement to be entered into between the Registered Provider and the Council (in its capacity as local housing authority) in respect of the Affordable Housing Units in order to provide the Council with the following rights in perpetuity to nominate on each occasion: <ul style="list-style-type: none"> <li data-bbox="774 1680 1396 1825">(a) in relation to the Initial Lettings 100 (one hundred) per cent of the occupants of the Affordable Housing Units; and <li data-bbox="774 1848 1396 1960">(b) in relation to the Subsequent Lettings not less than 50 (fifty) per cent of the occupants

	of the Affordable Housing Units
"Occupation" and "Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations only or as site office
"Offer Period"	means a period of six months from receipt of offer documentation for the Affordable Housing Units to be provided in the relevant Residential Phase by a Registered Provider
"Open Space Areas"	means Joe's Paddock and Panoramic Park (and in each case including any part thereof)
"Open Space Areas Specification"	the detailed specification for the design, construction and provision of the Open Space Areas contained within sections 16 and 17 of the Chapelgarth Design Code (as amended) dated July 2018
"Panoramic Park"	means the area of proposed open space to be provided on the Site in the location as expressly identified and marked as Panoramic Park and shown coloured salmon on Plan Number 2
"Phase"	means each individual phase of the

	Development (of which there may be any number and those phases may be of any Use Class or composition of Use Classes as permitted by the Planning Permission)
"Plan Number 1"	the plan marked number 1 attached to this agreement
"Plan Number 2"	the plan marked number 2 attached to this agreement
"Plan Number 3"	the plan marked number 3 attached to this Agreement
"Plan Number 4"	the plan marked number 4 attached to this Agreement
"Plan Number 5"	the plan marked number 5 attached to this Agreement
"Plan Number 6"	the plan marked number 6 attached to this Agreement
"Planning Application"	the hybrid application for planning permission submitted to the Council for the Development and validated on 2 nd March 2016 and allocated the reference number 16/00388/HY4
"Planning Permission"	the planning permission subject to conditions to be granted in pursuance of the Planning Application (a draft of which is set out in Schedule Eleven) and for the purposes of this Agreement (and for no other purpose) including any subsequent planning permission that may be granted on an application pursuant to Section 73 of the Act relating to, and or in connection with, the Planning Permission

"Practical Completion"

the issue of a certificate of practical completion by the Developer's architect or in the event that the Development is constructed by a party other than the Developer the issue of a certificate of practical completion by that other party's architect confirming that the Development or the relevant Units or the relevant works (as the case may be) are practically complete and the term "Practically Complete" shall be construed accordingly

"Privately Maintained Areas"

means all those areas of the Site including (but not limited to) the Open Space Areas and comprising the following areas of the Site as identified and marked on Plan Number 2:

- a) the existing woodland;
- b) the existing hedges;
- c) the existing tree groups;
- d) the new woodland;
- e) the amenity open space;
- f) the play; and
- g) the green links

"Protected Tenant"

any tenant who:

- (a) Has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

- (b) Has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (c) Has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all remaining shares so that the tenant owns the entire Affordable Housing Unit

"Public Transport Contribution"

the financial contribution to be paid by the Developer to the Council per Residential Phase in the amount as determined in accordance with the provisions of Part D paragraph 1 of Schedule Two of this Agreement and to be spent in accordance with the provisions of paragraph 5 of Schedule Nine

"Recreation Facilities Contribution"

the financial contribution to be paid by the Developer to the Council per Residential Phase in the amount as determined in accordance with the provisions of Part C paragraph 1 of Schedule Two of this Agreement and to be spent in accordance the provisions of paragraph 4 of Schedule Nine

"Red Zone Area"

that part of the Site as shown coloured red on Plan Number 3

"Registered Provider"

means a not-for-profit registered provider of social housing as defined in Part 1 of the

Housing Act 1996 or other such body which is either registered as a "Registered Provider" of social housing pursuant to section 112 of the Housing and Regeneration Act 2008 or is eligible to receive a Social Housing Grant (as defined in section 18 of the Housing Act 1996)

"Reserved Matters Approvals" all reserved matters approvals that may be issued by the Council in respect of the Development pursuant to the Planning Permission and the term "Reserved Matters Approval" shall be construed accordingly

"Residential Phase" means any Phase of the Development containing any number of Dwellings (and for the avoidance of doubt there may be any number of such Phases)

"Ryhope/Doxford Park Link Road" means all of the proposed highway works, improvements and traffic measures as identified on Plan Number 5 including the new sections of highway, the improvement works, the accommodation works, the proposed footbridge and sharepath and the proposed prohibitions of driving

"SANG" the areas of suitable alternative natural greenspace (incorporating a circular walkway running through the full extent of the said greenspace) to be provided in the SANG Area in accordance with the SANG Specification and the provisions of Schedule Six and the term "SANG" shall include any part thereof

"SANG Area" those areas of the Site shown coloured turquoise on Plan Number 4

"SANG Specification"	the detailed specification for the design, construction and subsequent management and maintenance of the SANG as part of each Phase which shall be in accordance with the Chapelgarth Design Code (as amended) dated July 2016 and to be approved by the Council
"Shortfall in Affordable Housing Provision"	the total cumulative shortfall in Affordable Housing Provision in respect of all previous Residential Phases arising as a result of the operation of paragraph 7 of Schedule Ten
"Site"	the land described in Schedule One and against which this Agreement may be enforced as shown edged red on Plan Number 1 (and including any part thereof)
"SSGA"	means the South Sunderland Growth Area as shown edged on Plan Number 6
"Staircasing Proceeds"	any sums received by a Registered Provider in respect of any Affordable Housing Unit through the process of staircasing or exercise of a right to buy by which the occupier acquires from the Registered Provider all or part of its ownership share of the relevant Affordable Housing Unit
"Subsequent Letting"	means each and every letting of an Affordable Housing Unit occurring after an initial Letting
"Total Number of Dwellings"	means the total number of all Dwellings approved under the Reserved Matters Approvals for construction as part of the relevant Residential Phase
"Unit"	means any unit (whether a Dwelling or a Commercial Unit) to be constructed on the Site pursuant to the Planning Permission

and the Reserved Matters Approvals and the term "Units" shall be construed accordingly

"Use Class"

means any use class as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended)

"Viability Report"

a viability appraisal in respect of a Residential Phase that may be prepared and submitted by the Developer in accordance with the requirements of Schedule Ten

"Working Days"

Monday to Friday inclusive but excluding weekends and any public holiday

- 1.2 The expression "the Developer" shall include its respective successors in title and assigns and any person deriving title to the Site through or under it
- 1.3 The expression "the Council" shall include any statutory successor to any of its functions
- 1.4 References to the "Site" and the "Development" include any part of it
- 1.5 Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and words importing persons include companies and corporations and vice versa
- 1.6 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement
- 1.7 Whenever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly or severally unless there is an express provision otherwise.
- 1.8 Any reference to an Act of Parliament or statutory provision shall include any modification, extension or re-enactment of that Act or statutory provision for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

- 1.9 Any covenant contained in this Agreement whereby a party is not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 1.10 References in this Agreement to the term "including" shall be construed as meaning "including without limitation".
- 1.11 The headings are for reference only and shall not affect construction.

2. LEGAL BASIS

- 2.1 This Agreement is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers on behalf of the Council.
- 2.2 The covenants, restrictions and requirements imposed upon the Developer under this Agreement create planning obligations pursuant to Section 106 of the Act in respect of the Site and are enforceable by the Council as local planning authority against the Developer.

3. CONDITIONALITY

- 3.1 Save as provided in clause 3.2 the operation of the provisions of this Agreement are conditional upon:-

3.1.1 the grant of the Planning Permission; and

3.1.2 the Commencement of Development.

- 3.2 The provisions of clauses 6, 7.1, 15, 16, 17 and 18 shall take effect on the date of this Agreement

- 3.3 The obligations contained in Schedules Two to Seven (inclusive) shall not be enforceable against:

3.3.1 the owners, occupiers and tenants of an individual Dwelling nor against any mortgagee or charge thereof or in any such case against those deriving title from them;

3.3.2 the owners, occupiers and tenants of any Commercial Unit nor against any mortgagee or charge thereof or in any such case against those deriving title from them; or

3.3.3 any statutory undertaker after the transfer or other disposition of statutory apparatus by the Developer to the statutory undertaker (and/or in the event of the grant of rights to any such statutory undertaker over any part of the Site).

3.4 The obligations contained in Schedule Eight shall not be enforceable against:

3.4.1 the owners, occupiers and tenants of an individual Market Housing Unit nor against any mortgagee or charge thereof or in any such case against those deriving title from them;

3.4.2 any statutory undertaker after the transfer or other disposition of statutory apparatus by the Developer to the statutory undertaker (and/or in the event of the grant of rights to any such statutory undertaker over any part of the Site); or

3.4.3 a Protected Tenant (or their successors in title or mortgagees or those deriving title under them).

4. THE DEVELOPER'S COVENANTS

The Developer covenants with the Council to fully observe and perform all of its obligations in this Agreement (including those obligations set out in Schedules Two to Eight (inclusive)) and hereby agrees that the Site shall be subject to the obligations, restrictions and covenants herein, such obligations, restrictions and covenants being planning obligations for the purposes of Section 106 of the Act.

5. THE COUNCIL'S COVENANTS

The Council covenants with the Developer to observe and perform the obligations on its part in this Agreement (including those obligations set out in Schedule Nine).

6. THE COUNCIL'S FEES

The Developer shall pay to the Council on completion of this Agreement the sum of £850 (eight hundred and fifty pounds) plus value added tax in respect of the Council's legal costs incurred in the negotiation, preparation and completion of this Agreement.

7. LOCAL LAND CHARGE

7.1 This Agreement shall be registrable as a local land charge by the Council.

7.2 The Council shall upon the written request of the Developer at any time after either:

(a) all of the obligations of the Developer under this Agreement have been discharged in full; or

(b) this Agreement has been terminated pursuant to clause 9

issue written confirmation thereof and thereafter shall effect the cancellation of all entries in the Local Land Charges Register in respect of this Agreement.

8. COUNCIL'S CONSENT ETC AND NOTICES

Where the agreement, approval, consent or expression of satisfaction is required by the Developer from the Council under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning and Regeneration (or such other person as may be notified by the Council to the Developer from time to time) and any notices shall be

deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

9. TERMINATION

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

10. THIRD PARTIES

Save to the extent expressly provided otherwise in this Agreement, no provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

11. LIABILITY

11.1 No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

11.2 No mortgagee of the Site from time to time shall have any liability under this Agreement until it takes possession of the Site as a mortgagee in possession in which case it too will be bound by the obligations as if it were a person deriving title from the Developer.

12. STATUTORY POWERS

Nothing contained or implied in this Agreement shall prejudice or affect the exercise of the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority, local planning authority, local highway authority and any other statutory capacity.

13. SEVERANCE

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

14. WAIVER

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

15. CHANGE IN OWNERSHIP

Until the covenants, obligations and restrictions in this Agreement (including those obligations set out in Schedules Two, Three, Four, Five and Six) have been discharged in full, the Developer agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all of the obligations in this Agreement have been discharged such notice to give details of the transferee's full name and registered office or correspondence address together with the area of the Site transferred by reference to a plan.

16. DISPUTE RESOLUTION

- 16.1 In the event of any dispute or difference arising between the Parties in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the Parties in the absence of manifest error and any costs shall be payable by the

Parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the Parties in equal shares.

- 16.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 16.1 or as to the appropriateness of the professional body then such question may be referred by either Party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all Parties in the absence of manifest error and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties in equal shares.
- 16.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 16.4 The expert shall be required to give notice to each of the said Parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other Party will be entitled to make a counter written submission within a further ten working days.
- 16.5 This clause 16 does not apply to disputes in relation to matters of law or the construction or interpretation of any provision of this Deed or to the recovery of sums due under this Deed which will be subject to the exclusive jurisdiction of the Courts and further does not affect the ability of the Council to apply for or to be granted declaratory relief, an injunction, an order for specific performance, payment of any sum and any other means of enforcing this Agreement and consequential and interim orders and relief.

17. INTEREST

17.1 If any payment (including any part thereof) due under this Agreement is paid late, interest shall be payable by the party in default which shall accrue from the date the payment is due until the date of actual payment.

17A. INDEXATION

17A.1 The sums payable under the provisions of Schedule Two to this Agreement shall be increased by an amount equivalent to the increase in the Index from the date of this Agreement until the date on which each sum is payable.

18. JURISDICTION

18.1 This Agreement shall be governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the English courts.

19. FUTURE PLANNING PERMISSIONS

19.1 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

20. NOTICES

20.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

20.2 Any notice, demand or any other communication served is to be sent to the Council at the address set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.

20.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:-

20.3.1 if delivered by hand or by fax or e-mail, at the time of delivery;

20.3.2 if sent by first class post on the second working day after posting;

20.3.3 if sent by recorded delivery, at the time the delivery was signed for.

IN WITNESS whereof this Agreement has been duly executed as a Deed by the parties hereto the day and year first before written

SCHEDULE ONE

THE SITE

All that land to the south of Weymouth Road, Chapelgarth, Sunderland and
comprised within Title Numbers TY378602 and DU5296 and as shown edged red on
Plan Number 1 attached hereto

SCHEDULE TWO

THE DEVELOPER'S FINANCIAL CONTRIBUTIONS

Part A: The Highways Contribution

1. The Developer covenants to pay to the Council (in its capacity as local highway authority) the Highways Contribution in respect of each Residential Phase in the instalments as specified in paragraph 2 below and as calculated in accordance with the following formula following a Reserved Matters Approval in respect of the relevant Residential Phase:

$A \times B = \text{the Highways Contribution}$

Where:

- A is the base multiplier of £1,847 (subject to Indexation)
- B is the Total Number of Dwellings in the relevant Residential Phase

2. The Developer covenants to pay to the Council the Highways Contribution in respect of each Residential Phase as follows:

2.1 one-third to be paid prior to Occupation of thirty three percent (33%) of the Total Number of Dwellings in the relevant Residential Phase;

2.2 one-third to be paid prior to Occupation of sixty six percent (66%) of the Total Number of Dwellings in the relevant Residential Phase; and

2.3 one-third to be paid prior to Occupation of the final Dwelling constructed in the relevant Residential Phase.

3. The Developer further covenants as follows:

- 3.1 no more than thirty three percent (33%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.1 above;

- 3.2 no more than sixty six percent (66%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.2 above; and
- 3.3 the final Dwelling constructed in each Residential Phase shall not be Occupied until the relevant sum has been paid to the Council under paragraph 2.3 above.

Part B- The Education Contribution

1. The Developer covenants to pay to the Council (in its capacity as local education authority) the Education Contribution in respect of each Residential Phase in the instalments as specified in paragraph 2 below and as calculated in accordance with the following formula following a Reserved Matters Approval in respect of the relevant Residential Phase:

$C \times D = \text{the Education Contribution}$

Where:

- C is the base multiplier of £2,855 (subject to Indexation)
 - D is the Total Number of Dwellings in the relevant Residential Phase
2. The Developer covenants to pay to the Council the Education Contribution in respect of each Residential Phase in the following three instalments:
 - 2.1 one-third to be paid prior to Occupation of thirty three percent (33%) of the Total Number of Dwellings in the relevant Residential Phase;
 - 2.2 one-third to be paid prior to Occupation of sixty six percent (66%) of the Total Number of Dwellings in the relevant Residential Phase; and
 - 2.3 one-third to be paid prior to Occupation of the final Dwelling constructed in the relevant Residential Phase.

3. The Developer further covenants as follows:

- 3.3.1 no more than thirty-three percent (33%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.1 above;
- 3.3.2 no more than sixty six percent (66%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.2 above; and
- 3.3.3 the final Dwelling constructed in each Residential Phase shall not be Occupied until the relevant sum has been paid to the Council pursuant to paragraph 2.3 above.

Part C- The Recreation Facilities Contribution

1. The Developer covenants to pay to the Council the Recreation Facilities Contribution in respect of each Residential Phase in the instalments as specified in paragraph 2 below and as calculated in accordance with the following formula following a Reserved Matters Approval in respect of the relevant Residential Phase:

$E \times F = \text{The Recreation Facilities Contribution}$

Where:

- E is the base multiplier of £855 (subject to Indexation); and
- F is the Total Number of Dwellings in the relevant Residential Phase.

2. The Developer covenants to pay to the Council the Recreation Facilities Contribution in respect of each Residential Phase in the following three instalments:

- 2.1 one-third to be paid prior to Occupation of thirty-three percent (33%) of the Total Number of Dwellings in the relevant Residential Phase;
 - 2.2 one-third to be paid prior to Occupation of sixty six percent (66%) of the Total Number of Dwellings in the relevant Residential Phase; and
 - 2.3 one-third to be paid prior to Occupation of the final Dwelling constructed in the relevant Residential Phase.
3. The Developer further covenants as follows:
- 3.1 no more than thirty-three percent (33%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.1 above;
 - 3.2 no more than sixty six percent (66%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.2 above; and
 - 3.3 the final Dwelling constructed in each Residential Phase shall not be Occupied until the relevant sum has been paid to the Council pursuant to paragraph 2.3 above.

Part D- The Public Transport Contribution

1. The Developer covenants to pay to the Council (in its capacity as local highway authority) the Public Transport Contribution in respect of each Residential Phase in the instalments as specified in paragraph 2 below and as calculated in accordance with the following formula following a Reserved Matters Approval in respect of the relevant Residential Phase:

G x H = the Public Transport Contribution

Where:

- G is the base multiplier of £316 (subject to indexation)
- H is the Total Number of Dwellings in the relevant Residential Phase

2. The Developer covenants to pay the Public Transport Contribution in respect of each Residential Phase in the following three instalments:

2.1 one-third to be paid prior to Occupation of any of the Dwellings in the relevant Residential Phase;

2.2 one-third to be paid prior to Occupation of thirty three percent (33%) of the Total Number of Dwellings in the relevant Residential Phase; and

2.3 one-third to be paid prior to Occupation of sixty six per cent (66%) of the Total Number of Dwellings in the relevant Residential Phase.

3. The Developer further covenants as follows:

3.1 no Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.1 above;

3.2 no more than thirty three percent (33%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.2 above; and

3.3 no more than sixty six percent (66%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.3 above.

Part E- Biodiversity Mitigation Works Contribution

1. The Developer covenants to pay to the Council the Biodiversity Mitigation Works Contribution in respect of each Residential Phase in accordance with the requirements of paragraph 2 below and as calculated in accordance with

the following formula following a Reserved Matters Approval in respect of the relevant Residential Phase:

$I \times J$ = the Biodiversity Mitigation Works Contribution

Where:

- I is the base multiplier of £278.00 (subject to Indexation)
- J is the Total Number of Dwellings in the relevant Residential Phase
- provided that the total Biodiversity Mitigation Works Contribution payable in respect of the entire Development shall be capped at the amount of £208,153 (subject to Indexation)

2. The Developer covenants to pay the Biodiversity Mitigation Works Contribution in respect of each Residential Phase in the following three instalments:

2.1 one-third to be paid prior to Occupation of thirty three percent (33%) of the Total Number of Dwellings in the relevant Residential Phase;

2.2 one-third to be paid prior to Occupation of sixty six percent (66%) of the Total Number of Dwellings in the relevant Residential Phase; and

2.3 one-third to be paid prior to Occupation of the final Dwelling constructed in the relevant Residential Phase

subject to the maximum Biodiversity Mitigation Works Contribution payable in respect of the entire Development not exceeding £208,153 (subject to Indexation)

3. The Developer further covenants as follows:

3.1 no more than thirty three percent (33%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.1 above;

3.2 no more than sixty six percent (66%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.2 above; and

3.3 the final Dwelling constructed in each Residential Phase shall not be Occupied until the relevant sum has been paid to the Council pursuant to paragraph 2.3 above

subject to the maximum Biodiversity Mitigation Works Contribution payable in respect of the entire Development not exceeding £208,153 (subject to Indexation).

Part F- The Allotments Contribution

1. The Developer covenants to pay to the Council the Allotments Contribution in respect of each Residential Phase in accordance with the requirements of paragraph 2 below and as calculated in accordance with the following formula following a Reserved Matters Approval in respect of the relevant Residential Phase:

$K \times L = \text{the Allotments Contribution}$

Where:

- K is the base multiplier of £85.50 (subject to Indexation)
- L is the Total Number of Dwellings in the relevant Residential Phase

2. The Developer covenants to pay to the Council the Allotments Contribution in respect of each Residential Phase in the following three instalments:

2.1 one-third to be paid prior to Occupation of thirty three percent (33%) of the Total Number of Dwellings in the relevant Residential Phase;

2.2 one third to be paid prior to Occupation of sixty six percent (66%) of the Total Number of Dwellings in the relevant Residential Phase; and

2.3 one-third to be paid prior to Occupation of the final Dwelling constructed in the relevant Residential Phase.

3. The Developer further covenants as follows:

3.1 no more than thirty three percent (33%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.1 above;

3.2 no more than sixty six percent (66%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.2 above; and

3.3 the final Dwelling constructed in each Residential Phase shall not be Occupied until the relevant sum has been paid to the Council under paragraph 2.3 above.

SCHEDULE THREE

OBLIGATIONS IN RESPECT OF THE PRIVATELY MAINTAINED AREAS

Part A- Provision of the Open Space Areas

1. The Developer covenants to provide the Open Space Areas as part of the Development in full accordance with the Open Space Areas Specification and to the satisfaction of the Council. The Open Space Areas Specification shall not be amended without the prior written consent of the Council.
2. The Developer further covenants that no more than 375 (three hundred and seventy five) Dwellings shall be Occupied on the Site until:
 - 2.1.1.1 Practical Completion of Joe's Paddock has been achieved in accordance with the relevant requirements of the Open Space Areas Specification and to the satisfaction of the Council; and
 - 2.1.1.2 Joe's Paddock is fully available and accessible to the public for the purposes of public recreation.
3. The Developer further covenants that no more than 650 (six hundred and fifty) Dwellings shall be Occupied on the Site until:
 - 3.1.1.1 Practical Completion of Panoramic Park has been achieved in accordance with the requirements of the Open Space Areas Specification and to the satisfaction of the Council; and
 - 3.1.1.2 Panoramic Park is fully available and accessible to the public for the purposes of public recreation

Part B- Management and Maintenance of the Privately Maintained Areas

1. The Developer covenants that no Unit in any Phase shall be Occupied until the Management Plan for the respective Phase has been submitted to and approved in writing by the Council.
2. The Developer further covenants to implement and comply at all times with the requirements of the Management Plan in respect of the Privately Maintained Areas in each Phase to the satisfaction of the Council.
3. Each Management Plan shall not be amended without the prior written consent of the Council.
4. Subject to paragraph 5 below, following construction of the Privately Maintained Areas within each Phase the Developer covenants to maintain the Privately Maintained Areas in that Phase in perpetuity and in full accordance with the Management Plan for that Phase and to provide and maintain at all times public access to the Privately Maintained Areas in that Phase save only for any period(s) of time and to such extent that the Developer is required to exclude public access to specific parts of the Privately Maintained Areas in that Phase in accordance with the Law PROVIDED THAT in each case the Developer shall obtain the Council's prior consent in writing in advance of such proposed exclusion (such consent not to be unreasonably withheld or delayed).
5. Nothing in this Part B of Schedule Three shall prevent the Council (in agreement with the Developer) from publicly adopting at its discretion and at a future date any part(s) of the Privately Maintained Areas as either public highway or public open space and subject to such conditions precedent as the

Council may reasonably specify. In the event that any specific part(s) of the Privately Maintained Areas are subsequently adopted by the Council at any time then the provisions of Part B of this Schedule Three shall no longer apply to that part of the Privately Maintained Areas.

SCHEDULE FOUR

THE MANAGEMENT PLAN

The Developer shall produce a detailed specification and plan in respect of the management and maintenance of the Privately Maintained Areas within each Phase in accordance with the provisions of this Schedule Four and for subsequent approval by the Council.

As a minimum, the Management Plan shall identify the extent of those Privately Maintained Areas located within the respective Phase and cover all of the following items:

- (a) details of regular street sweeping within the Privately Maintained Areas;
- (b) details of how the roads, footways and footpaths within the Development will be maintained and repaired at all times;
- (c) details of how car parking on street within the Development will be managed at all times;
- (d) not used;
- (e) details of general bin emptying;
- (f) not used;
- (g) not used;
- (h) fly tipping or excess waste removal;
- (i) snow clearing and gritting;
- (j) maintenance and repair of hard landscaped areas;
- (k) maintenance and clearance of gullies;
- (l) provision and maintenance of street lighting (including energy charges) for standard columns and low height lighting units;
- (m) details of how pedestrian/cycle routes through the site will be kept safe for pedestrian/cycle use and how they will be maintained;
- (n) street weed control;

- (o) maintenance of soft landscaping areas including weeding, watering, fertilizing, replacement of failures, trimming and pruning of trees and shrubs, grass cutting, removal and replacement of seriously damaged, diseased or dead trees and maintenance of water features;
- (p) provision and maintenance of signage for both pedestrian/cycle routes and the SANG;
- (q) provision of road markings(e.g. "Give way" "Passing Place" etc) and regular refreshment of these markings;
- (r) seasonal maintenance (e.g. leaf clearance);
- (s) provision and maintenance of street furniture, seats, litter bins and bollards;
- (t) provision and maintenance of street name plates;
- (u) a tree management plan for any trees adjacent to these walls and/or overhanging the adopted highway;
- (v) reinstatement of private utility apparatus trenches to the original palette materials after essential works;
- (w) annual inspections of highways and structures for maintenance purposes; and
- (x) any other information in relation to the management, maintenance and/or repair of the Privately Maintained Areas as may be required by the Council (acting reasonably).

SCHEDULE FIVE

NOISE IMPACT ASSESSMENT AND STRATEGY AND NOISE MITIGATION WORKS

1. The Developer covenants that no Development shall be carried out within the Red Zone Area until a Noise Impact Assessment and Strategy has been undertaken by the Developer in respect of the relevant part of the Development to the satisfaction and approval of the Council.
2. The Developer further covenants that no Dwelling shall be Occupied within the Red Zone Area until all mitigation measures and requirements as identified in the Noise Impact Assessment and Strategy (as approved by the Council under paragraph 1 above) have been provided and implemented in full on the Site to the satisfaction of the Council, including (without limitation) the installation and completion of the Acoustic Noise Barrier (or the relevant part thereof).
3. The Developer further covenants that once constructed the Acoustic Noise Barrier (including any part thereof) together with all other mitigations measures and requirements as provided on the Site in accordance with paragraph 2 above shall be maintained in perpetuity in full and to the satisfaction of the Council.

SCHEDULE SIX

PROVISION AND MAINTENANCE OF THE SANG

The Developer covenants as follows:

1. No Development shall be carried out in any Phase until the SANG Specification in respect of that Phase has been submitted to and approved in writing by the Council. Thereafter the SANG Specification in respect of that Phase shall not be amended without the prior written consent of the Council.
2. To provide and maintain at all times public access to and across the SANG Area for the purposes of public recreation prior to Occupation of any of the Dwellings on the Site save only to such extent and for any period(s) of time that it is necessary and reasonable to prevent public access to specific parts of the SANG Area in order to carry out the relevant works pursuant to paragraph 3 below PROVIDED THAT in each case the Developer shall obtain the Council's prior consent in writing in advance of the extent and duration of the proposed closure (such consent not to be unreasonably withheld or delayed).
3. To provide the SANG as part of the Development in accordance with the SANG Specification and the provisions of this Schedule Six to the satisfaction of the Council.
4. The total area of the SANG to be provided on the Site shall be calculated as follows:

$M \times N$ = The total area of the SANG in hectares

Where:

- M is the Total Number of Dwellings
- N is a base multiplier of 0.018 hectares

PROVIDED THAT the total area of the SANG shall not exceed a maximum of 14 hectares.

5. The Developer covenants to provide the relevant part of the SANG as part of each Phase prior to Occupation of the final Dwelling constructed in that Phase.
6. Following Practical Completion of the SANG (including any part thereof), the Developer shall:
 - 6.1 maintain the SANG in perpetuity for the purposes of public recreation in accordance with the SANG Specification and to the satisfaction of the Council;
 - 6.2 neither use, nor permit to be used, the SANG at any time for any purpose other than for public recreation and as amenity land; and
 - 6.3 provide public access at all times to and across the SANG.

SCHEDULE SEVEN

THE FURTHER SECTION 106 AGREEMENT(S)

The Developer covenants not to exercise any right to acquire either a building licence, building lease and/or freehold interest in respect of any Phase or the Site pursuant to the Conditional Contract until the Developer has executed (and procured that any mortgagee of the Developer in respect of the relevant Phase or the Site has also executed) and delivered to the Council a Further Section 106 Agreement in respect of the Phase or the Site (as the case may be)

SCHEDULE EIGHT

AFFORDABLE HOUSING OBLIGATIONS

Subject to the provisions of Schedule Ten, the Developer covenants as follows:

1. To construct and provide the Affordable Housing Provision in each Residential Phase in accordance with the provisions of this Schedule and as calculated in accordance with the following formula:

$O \times P$ (+ (if applicable) any Shortfall in Affordable Housing Provision) = The Affordable Housing Provision in respect of each Residential Phase (to be rounded up to the nearest whole number)

Where:

- O is 10%;
- P is the Total Number of Dwellings in respect of the relevant Residential Phase.

2. To provide the Affordable Housing Provision in each Residential Phase (as determined in accordance with paragraph 1 above) in the following agreed proportions:

- 75% as Affordable Rented Units; and
- 25% as Intermediate Housing Units.

In each case the number of Affordable Rented Units and Intermediate Housing Units to be provided in respect of a Residential Phase shall be rounded up to the nearest whole number.

3. In the event that the Developer considers (acting reasonably) that the provision of Affordable Housing Units in a particular Phase would be incompatible with the form and type of the specific housing product proposed for that Phase, then the Developer may serve notice on the Council of its

desire to seek to re-negotiate the obligation to provide the relevant Affordable Housing Units within that Phase in accordance with the provisions of this paragraph 3. Subject to the Council's prior written approval (at its absolute discretion), in such circumstances the Developer may pay to the Council an Affordable Housing Commuted Sum (in the amount to be determined by the Council in accordance with the factors specified in paragraph 10.5 of this Schedule Eight) in lieu of the of the provision of the relevant Affordable Housing Units within that Phase. For the avoidance of doubt, the provisions of paragraphs 10-12 of Schedule 8 shall not apply in the event that the Developer serves a notice on the Council in accordance with this paragraph 3.

4. To provide the Affordable Housing Units in each Residential Phase in such locations within the relevant Residential Phase as approved in writing and in advance by the Council and to ensure that the Affordable Housing Units are not visually distinguishable from the Market Housing Units in terms of build, quality, materials, architectural details, levels of amenity space, parking provision and privacy.
5. No more than a maximum of fifty percent (50%) of the Market Housing Units in each Residential Phase shall be Occupied until:
 - 5.1 the Developer has entered into an unconditional contract for the transfer of all of the Affordable Housing Units in that Residential Phase to a Registered Provider; and
 - 5.2 the Registered Provider has entered into the Nominations Agreement with the Council (in its capacity as the local housing authority) in respect of the relevant Affordable Housing Units.
6. No more than seventy-five percent (75%) of the Market Housing Units shall be Occupied in each Residential Phase until all the Affordable Housing Units in that Residential Phase are ready for Occupation.

7. From the date of Practical Completion of the Affordable Housing Units, they shall only be used as Affordable Housing and for no other purpose, save in the case of:
- 7.1 any Protected Tenant (or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and charges); or
 - 7.2 a Chargee and any purchaser from the Chargee or successor in title thereof and their respective mortgagees and charges.
8. To utilise the Staircasing Proceeds on the provision of further Affordable Housing within the Area and for no other purpose and further to liaise with the Council in advance to discuss the details of how and where in the Area the Staircasing Proceeds should be spent.
9. Where despite having used reasonable endeavours during the relevant Offer Period to enter into a contract or contracts for the transfer of the relevant Affordable Housing Units to a Registered Provider as part of a specific Residential Phase, the Developer may after the expiry of the Offer Period (acting reasonably and in good faith) serve notice on the Council that it has failed to achieve a transfer of the relevant Affordable Housing Units in respect of that Phase and that it wishes to renegotiate the obligation to provide the Affordable Housing Units for that Phase (which may be a renegotiation of one or more of those matters set out below at paragraphs 10.1 to 10.5) and if such notice is served it shall be accompanied by such evidence as to the reasonable endeavours that the Developer has made to enter into a contract (or contracts) to transfer the relevant Affordable Housing Units, the details of the bids received and any other information as either party (acting reasonably) deem relevant including (without limitation) evidence of the competitive bid process undertaken by the Developer to meet the Affordable Housing obligations as set out herein, details of which Registered Providers have been contacted, the disposal terms offered, the responses received, the duration of

the negotiations and the reasons why a disposal has not occurred together with the Developer's updated proposals in respect of the Affordable Housing Provision for that Residential Phase (prepared by the Developer acting reasonably and having due regard to (i) all responses and representations received from Registered Providers during the Offer Period and (ii) those matters set out in paragraph 10 below and (iii) how to best address the Council's planning requirements for the provision of Affordable Housing Units in that Residential Phase).

10. If a notice is served by the Developer under paragraph 9 of this Schedule, the parties shall use reasonable endeavours to seek to agree (having due regard to the updated proposals put forward by the Developer pursuant to paragraph 9 above) as soon as reasonably practicable (with the intention that such agreement shall be made within 3 calendar months of the service of the Developer's notice under paragraph 9) a reasonable and commercially deliverable variation in respect of the Affordable Housing Provision for that Residential Phase taking into account the following:
 - 10.1 the number of Affordable Housing Units that need to be provided within the Residential Phase; and/or
 - 10.2 the type and tenure of the Affordable Housing Units to be provided within the Residential Phase (which may include a different form of Intermediate Housing to that which was originally marketed by the Developer); and/or
 - 10.3 whether any of the Affordable Housing Units can be disposed of by the Developer directly to any person in housing need; and/or
 - 10.4 the timescale for delivery of the relevant Affordable Housing Units; or
 - 10.5 as a potential alternative to the delivery of all or some of the Affordable Housing Units within the Residential Phase whether the Developer may provide those Affordable Housing Units (or any part) as Market Housing Units and in lieu to pay an Affordable Housing Commuted Sum to the Council as a financial contribution for the provision of off-site Affordable Housing provision, taking into account (i) the reasonably anticipated additional revenue arising from the sale of a Dwelling that may be used as a Market Housing Unit and the reasonably anticipated revenue

arising from the sale of a Dwelling that may be used as an Affordable Housing Unit (ii) any policy of the Council (at the relevant time) relating to the payment and the amount of any Affordable Housing Commuted Sum (including the realistic off-site delivery options in the Area)

Provided That in the course of any such negotiations the Developer and the Council shall take into account the following factors (with it being recognised that this is a non-exhaustive list):

- 10.6 market conditions;
 - 10.7 the financial viability of the relevant Residential Phase;
 - 10.8 potential delays to the Occupation of Market Housing Units within that Phase by reason of the operation of the provisions of this Schedule Eight;
 - 10.9 any constraint limitation or regulation issued by Central Government that does or may adversely affect a Registered Provider's ability to generate a finally viable rent or other income in respect of the Affordable Housing Units or which does or may adversely affect a Registered Provider's ability to use any of the Affordable Housing Units as security for loan finance; and
 - 10.10 the Council's planning requirement for the provision of Affordable Housing as part of each Residential Phase.
11. Subject to paragraphs 9 and 10, in the event that the parties are unable to agree (acting reasonably) any variation to the Affordable Housing Provision for that particular Residential Phase within 3 calendar months of the Developer's notice served under paragraphs 9 of this Schedule, either party may thereafter refer the matter to an expert for determination pursuant to clause 16 and the relevant expert shall make a determination under paragraph 10 as to the reasonable and commercially deliverable variation that is required in respect of the Affordable Housing Provision for that Residential Phase taking into account those matters set out in paragraphs 10.6 to 10.10 and the evidence supplied by the Developer with its notice served under paragraph 3.

12. Subject to the above provisions, if and on each occasion as the parties agree (or it is determined by the expert) that there should be a variation to the Affordable Housing Provision for a particular Residential Phase in accordance with paragraphs 9-11 above, the parties shall cause a memorandum of such agreement to be annexed to each part of this Deed (which such memorandum shall be conclusive evidence of such agreement or determination and which shall be signed on behalf of the Developer and the Council (and neither party shall delay the signing of such memorandum)).

SCHEDULE NINE

THE COUNCIL'S COVENANTS

The Council covenants as follows:-

1. To grant the Planning Permission within 5 (five) Working Days of the date of this Agreement.
2. Upon receipt of the Highways Contribution, to expend the Highways Contribution (together with any interest accrued thereon) on the design, procurement, construction, maintenance and any ancillary or enabling works (including without limitation any statutory undertaker works) together with the promotion and making of any statutory orders and any land acquisition costs in respect of the Ryhope/Doxford Park Link Road. The Council further covenants not to use the Highways Contribution other than for the purposes as specified in this Agreement. The Highways Contribution shall be spent by the Council within ten years from the date of Practical Completion of the relevant Residential Phase to which the payment relates or from the date of receipt by the Council of the final instalment under this Agreement (whichever is the later). In the event of the Highways Contribution not being so utilised in whole or in part in accordance with the provisions of this paragraph 2 the Council shall repay the unexpended sum upon written demand to the party which paid the Highways Contribution together with any accrued interest.
3. Upon receipt of the Education Contribution, to expend the Education Contribution (together with any interest accrued thereon) on the provision of new education facilities (including land acquisitions, procurement, design, construction and maintenance) and/or the funding of additional, extended or improved education facilities in such location(s) within the SSGA as determined by the Council in its absolute discretion as the local education authority. The Council further covenants not to use the Education Contribution other than for the purposes as specified in this Agreement. The Education Contribution shall be spent by the Council within three years from the date of Practical Completion of the entire Development. In the event of the Education Contribution not being so utilised in whole or in part in accordance

with the provisions of this paragraph 3, the Council shall repay the unexpended sum upon written demand to the party which paid the Education Contribution together with any accrued interest.

4. Upon receipt of the Recreation Facilities Contribution, to expend the Recreation Facilities Contribution (together with any interest accrued thereon) on the provision, improvement and/or maintenance of sport and recreation facilities (including land acquisitions, procurement, design, construction and maintenance) in such location(s) within the SSGA as determined by the Council in its absolute discretion. The Council further covenants not to use the Recreation Facilities Contribution other than for the purposes as specified in this Agreement. The Recreation Facilities Contribution shall be spent by the Council within three years from the date of Practical Completion of the entire Development. In the event of the Recreation Facilities Contribution not being so utilised in whole or in part in accordance with the provisions of this paragraph 4, the Council shall repay the unexpended sum upon written demand to the party which paid the Recreation Facilities Contribution together with any accrued interest.
5. Upon receipt of the Public Transport Contribution, to provide the said funding to Nexus as the Tyne and Wear Passenger Transport Executive (or any other party as may be nominated by Nexus) as soon as reasonably practicable from receipt of the monies by the Council in order to contribute to the funding of a bus route to and/or through the Site for an initial period together with the provision of any associated public transport infrastructure (if required). The Council shall agree terms with Nexus providing for the expenditure of the Public Transport Contribution by Nexus within five years from the date of Practical Completion of the relevant Residential Phase to which the payment relates. The Council shall also agree terms providing in the event of the Public Transport Contribution not being so utilised in whole or in part by Nexus in accordance with the provisions of this paragraph 5 for the unexpended sum to be repaid to the Council as soon as possible upon demand. Following receipt of any unexpended sum by the Council from Nexus, the Council shall pay the same amount to the party which paid the Public Transport Contribution to the Council together with any accrued interest as may be received from Nexus.

6. Upon receipt of the Biodiversity Mitigation Works Contribution, to expend the Biodiversity Mitigation Works Contribution (together with any interest accrued thereon) on the protection, mitigation, enhancement and/or management of biodiversity and habitat measures and/or works in such location(s) within the SSGA as determined by the Council in its absolute discretion. Without prejudice to the generality of the foregoing, this may include (without limitation) one or more of the following: the protection, enhancement and management of Blakeney Woods local wildlife site, the provision of a ranger service, the creation of a hedgerow incentive scheme, farmland management and the costs of managing the delivery and maintenance of any such works. The Council further covenants not to use the Biodiversity Mitigation Works Contribution other than for the purposes as specified in this Agreement. The Biodiversity Mitigation Works Contribution shall be spent by the Council within twenty years from the date of Practical Completion of the relevant Residential Phase to which the payment relates or from the date of receipt of the final instalment of the Biodiversity Mitigation Works Contribution for the relevant Residential Phase (whichever is the later). In the event of the Biodiversity Mitigation Works Contribution not being so utilised in whole or in part in accordance with the provisions of this paragraph 6, the Council shall repay the unexpended sum upon written demand to the party which paid the Biodiversity Mitigation Works Contribution together with any accrued interest.

7. Upon receipt of the Allotments Contribution, to expend the Allotments Works Contribution (together with any interest accrued thereon) on the provision, maintenance and site management of allotment plots in such location(s) within the Ryhope and Doxford Wards within the SSGA as determined by the Council in its absolute discretion. The Council further covenants not to use the Allotments Contribution other than for the purposes as specified in this Agreement. The Allotments Contribution shall be spent by the Council within twenty years from the date of Practical Completion of the relevant Residential Phase to which the payment relates or from the date of receipt of the final instalment of the Allotments Contribution for the relevant Residential Phase (whichever is the later). In the event of the Allotments Contribution not being so utilised in whole or in part in accordance with the provisions of this paragraph 7, the Council shall repay the unexpended sum

upon written demand to the party which paid the Allotments Contribution together with any accrued interest.

8. Upon receipt of any Affordable Housing Commuted Sum, to expend the Affordable Housing Commuted Sum (together with any interest accrued thereon) on the provision of, or facilitating the provision of Affordable Housing in such location(s) within the Area as determined by the Council in its absolute discretion. For the avoidance of doubt, any Affordable Housing Commuted Sum may be used by the Council for (but not limited to) any of the following purposes:- the acquisition, refurbishment, maintenance or provision of Affordable Housing or to provide gap or grant funding to third parties for such purposes. The Council further covenants not to use the Affordable Housing Commuted Sum other than for the purposes as specified in this Agreement. The Affordable Housing Commuted Sum shall be spent by the Council within five years from the date of Practical Completion of the relevant Residential Phase to which the payment relates or from the date of receipt of the final instalment of the Affordable Housing Commuted Sum (whichever is the later). In the event of the Affordable Housing Commuted Sum not being so utilised in whole or in part in accordance with the provisions of this paragraph 8, the Council shall repay the unexpended sum upon written demand to the party which paid the Affordable Housing Commuted Sum together with any accrued interest.

SCHEDULE TEN

VIABILITY REPORT

1. Prior to Commencement of Development of any Residential Phase, the Developer may submit to the Council a Viability Report for that Residential Phase. The purpose of the Viability Report shall be to demonstrate whether it is viable to provide all (or part) of the Affordable Housing Units in accordance with the provisions of Schedule Eight as part of the relevant Residential Phase based on the Acceptable Return.

2. Any Viability Report to be submitted by the Developer to the Council shall comply with the following minimum requirements:
 - 2.1 The report shall include all up to date anticipated revenues, build costs, sales and marketing costs, site works costs, development fees, abnormal costs, land acquisition costs and any other reasonable and proper costs to be incurred in respect of the delivery of the relevant Residential Phase;
 - 2.2 The report shall include all reasonable and necessary evidence in order to substantiate all costs and values applied;
 - 2.3 All costs and revenues shall be in accordance with the RICS Valuation-Professional Standards "Red Book" and RICS Building Cost Information Service (as the same may be amended or updated from time to time); and
 - 2.4 The report shall contain such other information as may be requested by the Council (acting reasonably) in order to demonstrate the viability of the relevant Residential Phase.

For the avoidance of doubt, the viability of each individual Residential Phase shall be assessed independently. A Viability Report shall not take into account any losses incurred in the delivery of a previous Phase. For the purposes of any Viability Report the Developer shall not be entitled to recover on a subsequent Residential Phase any part of the Acceptable Return that was not received on a previous Phase.

3. The Council shall within 5 weeks of the date of receipt of a Viability Report (which complies in full with the requirements of paragraph 2 above) from the Developer either:

- (a) confirm in writing that the Viability Report is accepted;
- (b) provide to the Developer reasons in writing as to why it is not accepted; or
- (c) set out in writing what further information the Council reasonably requires from the Developer to enable the Council to consider further the Viability Report and the timescales for receipt and consideration of the same

PROVIDED THAT in the event that the Council has not responded to the Developer in writing within the said 5 week period then the Council shall be deemed to have not accepted the Viability Report and the provisions of paragraph 5 below shall apply.

- 4. The Developer shall be responsible for the costs of the preparation and submission of each Viability Report and shall also be responsible for the Council's reasonable costs incurred in respect of the process of reviewing, responding to and seeking to agree each Viability Report (including the fees of any professional adviser appointed by the Council to assist it in this regard) up to a maximum sum of £3,000 (plus VAT) per Viability Report.
- 5. In the event that the Council does not accept the Viability Report under paragraph 3 above then the Developer and the Council shall liaise and use their reasonable endeavours to seek to agree the Viability Report PROVIDED THAT if it has not been possible to reach agreement in respect of the Viability Report within 1 month of receipt by the Developer of the Council's written response (or deemed response) under paragraph 3 either party may thereafter refer the matter to an expert for determination under clause 16 of this Agreement whose decision shall be final. The expert shall be required to determine:
 - 5.1 whether the Viability Report has been carried out in accordance with the provisions of this Schedule Ten; and
 - 5.2 (subject to 5.1 above) whether it is viable to provide all (or part) of the Affordable Housing Units in accordance with the requirements of Schedule Eight as part of the relevant Residential Phase based on the Acceptable Return.

6. In the event of an Agreed Viability Report the obligation to provide the Affordable Housing Units in that Residential Phase shall be adjusted for the purposes of paragraphs 1 and 2 of Schedule Eight to reflect the total number of Affordable Housing Units (and the mix of Affordable Rented Units and Intermediate Housing Units) that is viable to provide in that Residential Phase as demonstrated by the Agreed Viability Report.

7. In the event that the Affordable Housing Provision for a particular Residential Phase is adjusted pursuant to paragraph 6 above and there is a Shortfall in Affordable Housing Provision then the Developer shall either:
 - 7.1 provide in full the Shortfall in Affordable Housing Provision as part of the Affordable Housing Provision for the next Residential Phase in accordance with paragraphs 1 and 2 of Schedule Eight (subject to the potential operation of the provisions of this Schedule Ten in respect of that next Residential Phase); or

 - 7.2 pay to the Council an Affordable Housing Commuted Sum in lieu of the provision of the relevant Shortfall in Affordable Housing Provision (such sum to be determined by the Council in accordance with the factors specified in paragraph 10.5 of Schedule Eight as applied to the relevant shortfall).

8. For the avoidance of doubt it is agreed and acknowledged that an Agreed Viability Report shall form the basis of determining the extent of the Affordable Housing Provision for the relevant Residential Phase in accordance with the provisions of Schedule Eight.

SCHEDULE ELEVEN

THE DRAFT PLANNING PERMISSION

Cundall
Mr Ian Cansfield
Horsely House
Regent Centre
Gosforth
Newcastle Upon Tyne
Northumberland
NE3 3LU

Date of Decision 19th December 2016

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
PLANNING AND COMPULSORY PURCHASE ACT 2004
TOWN AND COUNTRY PLANNING (Development Management Procedure)
(England) (Order) 2015**

In pursuance of its powers under the above mentioned Acts and Orders, Sunderland City Council, as local planning authority, has, subject to the completion of an agreement under Section 106 of the Town and Country Planning Act 1990, **APPROVED** the following namely:-

Application ref: 16/00388/HY4

Proposal Hybrid planning application - Outline planning application for up to 750no residential units, public open space and internal road network along with up to 1000sqm of ancillary commercial uses including Retail (A1), Financial and Professional Services (A2), Restaurant and Cafes (A3), Offices (B1) Non Residential (D1) and Assembly and Leisure (D2), together with associated landscaping and car parking.

All Matters apart from access to be reserved in relation to the outline elements of the proposals.

The development also seeks detailed consent for a first phase of infrastructure which shall include the creation of a new protected right turn junction into the site off, Weymouth Road, landscaping and creation of attenuation ponds.

At Chapelgarth South Of Weymouth Road Sunderland

PLEASE QUOTE THE APPLICATION NUMBER IN ALL CORRESPONDENCE

Please note: This information will also be available via the Internet at www.sunderland.gov.uk

Conditions:

- 1 The development of the first phase of infrastructure hereby permitted shall begin no later than three years from the date of this permission and shall be fully operational prior to the occupation of any residential properties. Reason : To comply with the requirements of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 to ensure the development is carried out within a reasonable period of time.
- 2 Applications for reserved matters shall be made to the Local Planning Authority before the expiry of ten years from the date of the permission and the development hereby permitted shall be begun before the expiration of three years from the date of approval of the final reserved matters. Reason : To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 , as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 to ensure that the development is commenced within a reasonable period.
- 3 The development hereby approved shall be in accordance with the following approved plans, unless otherwise agreed in writing with the Local Planning Authority: Chapelgarth Site Location Plan, received 02.03.2016. Drawing No. SK-002 Phase 1 Infrastructure Logistics Outline, received 28.07.2016. Drawing No. CLXX(95)1001 Phase 1 Infrastructure Highway Details, received 02.03.2016. Drawing No. CLXX(52)1002 Phase 1 Infrastructure Proposed Drainage, received 02.03.2016. Drawing No. CLXX(40)1002 Site Boundary Plan, received 02.03.2016. Drawing No. CLXX(90)1003 Section Marks Plan, received 02.03.2016. Drawing No. CLXX(52)1003 SUDS Basin Details Basin 1, received 02.03.2016. Drawing No. CLXX(52)1004 SUDS Basin Details Basin 2, received 02.03.2016. Drawing No. CLXX(52)1005 Outline SUDS Strategy, received 07.04.2016. Drawing No. CLXX(40)1006 Phase 1 Infrastructure Boundary, received 02.03.2016. Drawing No. CLXX(90)5001 Existing Ground Levels Long Sections, received 02.03.2016. Drawing No. L-1515-GAS-001 Detail Design of Weymouth Road Frontage, Site Sections, received 02.03.2016. Drawing No. L-1515-GAP-002 Detail Design of Weymouth Road Frontage, Overview, received 02.03.2016. Drawing No. L-1515-GAP-003 Detail Design of Weymouth Road Frontage, West, received 02.03.2016. Drawing No. L-1515-GAP-004 Detail Design of Weymouth Road Frontage, Central, received 02.03.2016. Drawing No. L-1515-GAP-005 Detail Design of Weymouth Road Frontage, East, received 02.03.2016. Drawing No. L-1515-GAP-006 Detail design of Weymouth Road Frontage, Planting Strategy, received 02.03.2016. Drawing No. L-1515-PRP-024 SANG Area Comparison and Circular Walk Example, received 27.05.2016. Existing Trees Shown on Existing Layout received 02.03.2016. Regulatory Plan 944 Reg 01 Rev 0 - Redline received 27.05.2016. Regulatory Plan 944 Reg 02 Rev A - Access, Movement and Streets received 27.05.2016. Regulatory Plan 944 Reg 03 Rev 0 - Neighbourhood Character Areas received 27.05.2016. Regulatory Plan 944 Reg 07 Rev 0 - Development Area and land Use received 27.05.2016. Regulatory Plan 944 Reg 12 Rev A - Open Space Strategy received 27.05.2016. Regulatory Plan 944 Reg 13 Rev 0 - Recreational Routes received 27.05.2016. Reason : For the avoidance of doubt and to ensure the scheme takes the form agreed by the authority and thus results in a satisfactory form of development and to comply with policy B2 of the saved adopted Unitary Development Plan.

- 4 The development hereby approved shall be carried out in full accordance with the Flood Risk Assessment for Siglion Developments LLP dated 01.03.2016 - Cundall, unless otherwise first agreed in writing by the Local Planning Authority. Reason : In order to prevent the increased risk of flooding from any sources in accordance with paragraph 103 of the NPPF and Policy EN12 of the saved UDP.
- 5 No properties shall be occupied until such time as a Framework Travel Plan covering the entire development has been submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the details to be agreed shall include a Travel Plan Coordinator, how a site-wide Travel Plan will be implemented and the timescales of its monitoring and review. Reason : The implementation, monitoring and review of the Site-Wide Travel Plan are to ensure that the site is accessible by alternative modes of travel in accordance with policies T1 and T2 of the UDP.
- 6 The development hereby approved shall be carried out in complete accordance with all recommendations set out by the submitted Arboricultural Tree Constraints Assessment issued 08.01.2016 and British Standard 5837 (2012): Trees in relation to design, demolition and construction, no development shall commence within a phase of the development until all tree protection measures required for that phase of development as set out by this assessment have been fully installed and all tree protection measures shall remain in place until the development is complete. Reason : In order to ensure that no damage is caused to trees during construction work and to comply with policy CN17 of the adopted Unitary Development Plan.
- 7 All vegetation clearance works shall be undertaken outside of the bird nesting season of mid March to August inclusive. If it is considered necessary to undertake the works during the bird nesting season, the site will require an inspection by a suitable qualified ecologist immediately prior to works commencing on site. If active nests are found works will have to cease and an acceptable method statement put in place that will safeguard the birds affected. Reason : In order to ensure a satisfactory form of development and to comply with policy CN18 of the saved adopted Unitary Development Plan.
- 8 Unless otherwise agreed by the Local Planning Authority, no development within the phase 1 Initial Infrastructure (other than that required to be carried out as part of an approved scheme of remediation) must not commence until conditions number 9 to number 11 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition number 12 has been complied with in relation to that contamination. Reason : To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan.
- 9 No development in the phase 1 Initial Infrastructure area shall take place until a Phase 2 Site Investigation and Risk Assessment, which assesses the nature and extent of any contamination on that specific area as outlined above (whether or not it originates on the site) has been submitted to and approved in writing by the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a

written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to: human health property (existing or proposed) including building, crops, livestock, pets, woodland and service line pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments. (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11.' Reason: To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, together with those to controlled waters (the site is overlying the Magnesian Limestone Principal Aquifer), property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan.

10 No development in the phase 1 Initial Infrastructure area shall take place until a detailed Remediation Scheme to bring that specific area of the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the Local Planning Authority. The Remediation Scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The Remediation Scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. Once the Remediation Scheme has been approved in writing by the Local Planning Authority it shall be known as the Approved Remediation Scheme. The Approved Remediation Scheme shall be implemented in accordance with its terms. The Local Planning Authority must be given two weeks written notification of commencement of the Approved Remediation Scheme works. Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan.

11 No occupation of any part of the permitted development in the phase 1 Initial Infrastructure Area shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy for that specific area of the site and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved. Reasons: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan.

- 12 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved. Reasons: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks and in accordance with policy EN14 of the Unitary Development Plan.
- 13 Radiocarbon dates will be sought for the gullies found in the preliminary archaeological trenches (report by Archaeological Services Durham University, March 2016) within six months of planning permission being granted. Reason : The site is located within an area identified as being of potential archaeological interest and investigation is required to ensure that any archaeological remains on the site can be preserved wherever possible and recorded, in accordance with paragraph 141 of the NPPF, Core Strategy Policy CS7.11 Development Management Policies DM7.8, DM7.11 and DM7.12 and saved UDP policies B11, B13 and B14. The gullies are potentially prehistoric.
- 14 Notwithstanding the submitted Phase 1 Infrastructure Proposed Drainage drawing, and prior to the commencement of works on site, a detailed timetable for the implementation of the Phase 1 Infrastructure works shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the approved works shall be implemented, operated and maintained in full accordance with the submitted maintenance schedule (4.2.3 Operation and Maintenance Plan (Phase 1 Infrastructure only) contained with the Drainage Strategy (Cundall dated 01.03.2016) unless otherwise agreed in writing by the Local Planning Authority. Reason : In order to prevent the development from causing increased flood risk off site over the lifetime of the development and to accord with paragraph 103 of the NPPF and Policy EN12 of the saved UDP.
- 15 No construction work shall take place in Phase 1 including any remediation works or civil engineering works, until a site specific Construction Environment Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, vibration, dust and site lighting. The plan should include, but not be limited to : 1. Procedures for maintaining good public relations including complaint management, public consultation and liaison; 2. Arrangements for liaison with the Council's Public Protection and Regulatory Services Section. 3. Mitigation measures as defined in BS 5528 : Parts 1 and 2 : Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works; 4. Hours of construction, including deliveries; 5. Control measures for dust and other air-borne pollutants; 6. Siting and set up/establishment of site compound area; 7. Measures for controlling the use of the site lighting whether required for safe working or for security purposes; 8. Erection and maintenance of security hoarding 9. Operation, loading and unloading of plant and materials; 10. Storage of plant and materials used in constructing the development; 11. Wheel washing facilities; 12. Parking of vehicles of site operatives, delivery vehicles and visitors; 13. Location and containment of redistributed earth mounds. Reason : In order to protect the amenities of the area and ensure a satisfactory form of development and to comply with saved UDP policies EN1, EN5, EN6, EN9, B2 and T14.

- 16 Notwithstanding the submitted plans, no above ground construction shall take place within the Phase 1 Infrastructure area, until full details of both the hard and soft landscaping works for that area have been submitted to and approved in writing by the Local Planning Authority. The soft landscape works shall include contour levels; planting plans; written specification (including cultivation and other operations associated with plant and grass establishment); schedules of trees and plants; noting species; tree and plant sizes and proposed numbers/densities where appropriate, these works shall be carried out in complete accordance with the approved details. The hard landscaping works shall include but not be limited to details of estate railings and gates; gabions, seating, steps and handrails and all surfacing materials. Reason : In the interests of visual amenity, nature conservation and mobility and to comply with the National Planning Policy Framework and policies B2, T14, CN18 and CN22 of the saved UDP.
- 17 Notwithstanding the submitted Phase 1 Infrastructure Detailed Design of Weymouth Road Frontage Drawings, and prior to the commencement of works on site, a Stage 1 Road Safety Audit shall be submitted to and approved in writing by the Local Planning Authority. Reason : In the interest of highway safety and to comply with policy T14 of the saved UDP.
- 18 No construction work shall take place in phase 1 until a detailed scheme of highway improvements to Weymouth Road and Moorside Road, including bus stop infrastructure and traffic management proposals have been submitted to and approved in writing by the Local Planning Authority and implemented under a Section 278 Agreement under the Highways Act to enable funding and implementation prior or occupation of any dwellings. Reason : In the interest of residential amenity and highways safety and to comply with policies B2 and T14 of the saved UDP.
- 19 No development shall commence on any specific reserved matters site (excluding site clearance, site investigations for assessing ground conditions, ground remediation work in respect of any contamination or other adverse ground conditions, until details of the following reserved matters have been submitted to and approved in writing by the local planning authority for that specific plot. o Layout o Scale o Appearance o Landscaping Plans and particulars of the reserved matters shall be submitted in writing to the Local Planning Authority and shall be carried out in accordance with the approved details. Reason : To comply with the requirements of Section 82 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 and as the further details are necessary to ensure a satisfactory form of development.
- 20 Each application for reserved matters shall be accompanied by a compliance statement which explains how the reserved matters application meets the principles, parameters and rules provided in the Chapelgarth, Sunderland, Design Code dated July 2016. Reason : In order to define the consent and ensure consistency with the Design Code and to comply with Policy B2 of the saved UDP.
- 21 No groundworks or development within each Reserved Matters Area shall commence until a second phase of archaeological fieldwork (to include evaluation trenching and mitigation strip and record excavation) has been completed. This shall be carried out in accordance with a specification provided by the Local Planning Authority. Reason : The site is located within an area identified as being of potential archaeological interest and investigation is required to ensure that any archaeological remains on the site can be

preserved wherever possible and recorded, in accordance with paragraph 141 of the NPPF, Core Strategy Policy CS7.11 Development Management Policies DM7.8, DM7.11 and DM7.12 and saved UDP policies B11, B13 and B14.

- 22 The building(s) within each Reserved Matters Area shall not be occupied/brought into use until the final report of the results of the archaeological fieldwork undertaken in relation to that reserved matters area and in pursuance of condition 21 has been submitted to and approved in writing by the Local Planning Authority. Reason : The site is located within an area identified as being of potential archaeological interest and investigation is required to ensure that any archaeological remains on the site can be preserved wherever possible and recorded, in accordance with paragraph 141 of the NPPF, Core Strategy Policy CS7.11 Development Management Policies DM7.8, DM7.11 and DM7.12 and saved UDP policies B11, B13 and B14.
- 23 The buildings within each Reserved Matters Area shall not be occupied/brought into use until a report detailing the results of the archaeological fieldwork undertaken in relation to that Reserved Matters Area has been produced in a form suitable for publication in a suitable and agreed journal and has been submitted to and approved in writing by the Local Planning Authority prior to submission to the editor of the journal. Reason : The site is located within an area identified as being of potential archaeological interest and investigation is required to ensure that any archaeological remains on the site can be preserved wherever possible and recorded, in accordance with paragraph 141 of the NPPF, Core Strategy Policy CS7.11 Development Management Policies DM7.8, DM7.11 and DM7.12 and saved UDP policies B11, B13 and B14.
- 24 All planting, seeding or turfing within each reserved matters area that are not subject to the Section 106 maintenance regime pursuant to this planning permission and comprised in the approved details of landscaping within the reserved matters area shall be carried out in the first planting season following the occupation of the specific reserved matters area or the completion of that reserved matters area, whichever is the sooner, which within a period of 5 years from the completion of the reserved matters area of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation. Reason : In the interest of visual amenity and nature conservation and to comply with policies B2, T14, CN18 and CN22 of the saved UDP.
- 25 No construction work shall take place in any phase of the development, including any remediation works or civil engineering works, until details of the routing of construction traffic vehicles arriving and leaving the site have been submitted to and approved in writing by the Local Planning Authority and implemented as such thereafter. Reason : In interest of residential amenity and highway safety and to comply with policies B2 and T14 of the saved UDP.
- 26 Notwithstanding the details provided within the Arboricultural Tree Constraints Assessment issued 08.01.2016 by AllAboutTrees, each application for reserved matters shall be accompanied by an Arboricultural Impact Assessment to establish site specific arboricultural management for the proposed layout. Reasons: In order to ensure that no damage is caused to trees during construction work and to comply with policy CN17 of the saved UDP.

27 Development shall not commence within each reserved matters phase until a detailed scheme for the disposal of foul water from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority in consultation with Northumbrian Water. Thereafter the development shall take place in accordance with the approved details. Reason : In order to prevent the increased risk of flooding from any source in accordance with paragraph 103 of the NPPF and Policy EN12 of the saved UDP.

28 No development shall commence within areas 4 and 5 contained within the submitted Drainage Strategy (Cundall dated 01.03.2016) until full details of a scheme for the disposal of foul and surface water has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the occupation of the first dwelling within each of these phases and retained in perpetuity. In order to ensure the provision of a sustainable form of surface water drainage and satisfactory drainage from the site and to protect Blakeney Woods Local Wildlife Site, in accordance with paragraph 103 of the NPPF and Policy EN12 of the saved UDP.

29 Notwithstanding the details provided in condition 28 Full Surface Water Drainage Details, no development shall take place within land indicated as areas 4 and 5 contained within the submitted Drainage Strategy (Cundall dated 1.03.2016), until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include: i) A timetable for its implementation, and ii) A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime. Reason : In order to prevent the development from causing increased flood risk off site over the lifetime of the development and to accord with paragraph 103 of the NPPF and Policy EN12 of the saved UDP.

30 Unless otherwise agreed by the Local Planning Authority, no development (within each reserved matters submission) other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions number 31 to number 33 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition number 34 has been complied with in relation to that contamination. Reason : To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan.

31 No development (within each reserved matters submission) shall take place until a Phase 2 Site Investigation and Risk Assessment, which assesses the nature and extent of any contamination on that specific area as outlined above (whether or not it originates on the site) has been submitted to and approved in writing by the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is

subject to the approval in writing of the Local Planning Authority. The report of the findings must include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to: human health property (existing or proposed) including buildings, crops, livestock, pets, woodland and service line pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments; (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11.'

Reason: To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, together with those to controlled waters (the site is overlying the Magnesian Limestone Principal Aquifer), property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan.

32 No development shall take place (within each reserved matters submission) until a detailed Remediation Scheme to bring that specific area of the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the Local Planning Authority. The Remediation Scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The Remediation Scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. Once the Remediation Scheme has been approved in writing by the Local Planning Authority it shall be known as the Approved Remediation Scheme. The Approved Remediation Scheme shall be implemented in accordance with its terms. The Local Planning Authority must be given two weeks written notification of commencement of the Approved Remediation Scheme works.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan.

33 No occupation of any part of the permitted development (with each reserved matters submission) shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy for that specific area of the site and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

Reasons: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan.

34 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority)(within each reserved matters submission) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved. Reasons: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks and in accordance with policy EN14 of the Unitary Development Plan.

35 No construction work shall take place in each reserved matters submission including any remediation works or civil engineering works, until a site specific Construction Environment Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, vibration, dust and site lighting.

The plan should include, but not be limited to : 1.Procedures for maintaining good public relations including complaint management, public consultation and liaison; 2.Arrangements for liaison with the Council's Pollution Prevention and Regulatory Services; 3. Mitigation measures as defined in BS 5528: parts 1 and 2: 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works; 4. Hours of construction, including deliveries; 5. Control measures for dust and other air-borne pollutants; 6. Siting and set up/establishment of site compound area; 7. Measures for controlling the use of site lighting whether required for safe working or for security purposes; 8. Erection and maintenance of security hoarding; 9. Operation, loading and unloading of plant and materials; 10. Storage of plant and materials used in constructing the development; 11. Wheel washing facilities; 12. Parking of vehicles of site operatives, delivery vehicles and visitors. 13. Location and containment of redistributed earth mounds. 14. Location of site sales office. Reasons : In order to protect the amenities of the area and ensure a satisfactory form of development and to comply with saved UDP policies EN1, EN5, EN6, EN8, B2 and T14.

36 No development within each reserved matters area shall be undertaken until a detailed construction noise and vibration assessment has been submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the assessment shall identify construction methodologies likely to generate the highest levels of vibration (e.g.piling). Reasons : In order to protect the amenities of the area and ensure a satisfactory form of development and to comply with saved UDP policies EN1, EN5 and EN6.

37 Prior to the occupation of any retail, financial and professional services, restaurant and cafes, offices, non residential institutions and assembly and leisure use units (as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking and re-enacting that Order)) the uses proposed opening shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the use shall operate within the hours approved, unless otherwise agreed in writing by the Local Planning Authority. Reasons : In the interest of the residential amenity and to comply with policies B2 and EN5 of the saved UDP.

- 38 The 1000 square metres of commercial floor space hereby approved and outlined on Regulatory Plan 07 Development Area and Landuse - drawing no. 944/REG07 rev 0 dated 29.03.2016 shall be occupied exclusively by uses falling within Use Classes A1 (Retail), A2 (Financial and Professional Services), A3 (Restaurants and Cafes), D1 (Non-Residential Institutions) or D2 (Assembly and Leisure as set out in the Town and Country Planning (Use Classes) Order, or the equivalent of any of these classes set out in any subsequent Statutory Instrument revoking or amending that order either in whole or in part, for the lifetime of the development and shall operate for no other use unless otherwise first agreed in writing with the Local Planning Authority. Once operating within one of the aforementioned use classes, the commercial unit, or subdivided units if applicable, shall benefit only from the permitted changes of use applicable to the initial use class within which the unit(s) operates, as set out in the Town and Country Planning (Use Classes) Order or any subsequent Statutory Instrument revoking or amending that order either in whole or in part and no other change of use shall be permitted without the prior written consent of the Local Planning Authority. Reasons : In order to achieve a satisfactory form of development and to accord with policies B2, EN5 and T14 of the saved UDP.
- 39 No construction work shall take place on any unit where the preparation and serving of food on a commercial basis will be carried out, until details of a scheme for the extraction of cooking fumes and odours and for the prevention of odour penetration through that building has been submitted to and approved in writing by the Local Planning Authority for that unit. Thereafter, these schemes shall be implemented in full accordance with the approved details prior to the development being brought into use and thereafter shall be retained at all times. Reasons : In the interest of the amenity of the occupiers of premises and neighbouring premises, in accordance with policy EN1 of the saved UDP.
- 40 Prior to the occupation of any retail, financial and professional services, restaurant and cafes, offices, non residential institutions and assembly and leisure use units (as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking and re-enacting that Order)) the uses proposed opening shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the use shall operate within the hours approved, unless otherwise agreed in writing by the Local Planning Authority. Reason : In the interest of the residential amenity and to comply with policies B2 and EN5 of the saved UDP.
- 41 Development shall not commence within each reserved matters phase until samples of the materials to be used in the construction of the external surfaces of the building have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. Reason : In the interest of visual amenity and to comply with policy B2 of the saved UDP.
- 42 Development shall not commence within each reserved matters phase until full details of the proposed boundary treatments have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. Reason : In the interest of visual amenity and to comply with policy B2 of the saved UDP.
- 43 The detailed plans to be submitted as reserved matters shall include a survey of existing and proposed ground level sections across the site and details of the finished

slab levels of each property. Reason : In order to achieve a satisfactory form of development and to comply with policy B2 of the saved UDP.

Informatives:

NOTE 1 : DEVELOPMENT LOW RISK AREA STANDING ADVICE The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0845 762 6848. Further information is also available on The Coal Authority website at www.coal.decc.gov.uk. Property specific summary information on past, current and future coal mining activity can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com.

NOTE 2 : The Local Planning Authority can only provide you with a formal written response to your request to discharge your condition(s) once a fee of £97.00 (commercial applications) or £28.00 (householder applications) (current rate subject to increase) per request has been paid to the Council as Local Planning Authority, together with any supporting information. A single request may cover the discharge of one or more conditions but each subsequent request attracts its own fee. Subject to the required details or actions being satisfactory, a written confirmation of the discharge of conditions(s) will be issued. The Council endeavours to discharge simple conditions within 21 days of the receipt of the request and complex ones within 8 weeks.

NOTE 3 : COMPLIANCE WITH CONDITIONS PRECEDENT This planning permission is subject to conditions which, in order to discharge them, require the submission of additional details and written approval of those details before the commencement of the development. This type of condition is called a condition precedent and failure to discharge such a condition prior to commencement of the development on site will make the development unlawful and liable to enforcement action.

NOTE 4 : In dealing with the application the Council has worked with the applicant in a positive and proactive manner and has implemented the requirement detailed in paragraph 187 of the National Planning Policy Framework.

NOTE 5 : It should be noted that this permission follows the completion of a related legal agreement by the applicant under Section 106 of the Town and Country Planning Act 1990.

NOTE 6: In view of the close proximity of the proposed development to residential properties the applicant should make an application for prior consent in respect of work on construction sites under the Control of Pollution Act 1974, Section 61 to the Council's Public Protection & Regulatory Services.

PLEASE NOTE THAT THIS IS NOT BUILDING REGULATION APPROVAL
BUILDING CONTROL CAN BE CONTACTED ON 0191 561 1550 FOR FURTHER ADVICE



Ms. Irene Lucas CBE
Chief Executive

TOWN AND COUNTRY PLANNING ACT 1990

NOTIFICATION TO BE SENT TO AN APPLICANT WHEN A LOCAL PLANNING AUTHORITY REFUSE PLANNING PERMISSION OR GRANT IT SUBJECT TO CONDITIONS

Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- As this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice REF: [], if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within: 28 days of the date of service of the enforcement notice, or within 6 months [12 weeks in the case of a householder appeal] of the date of this notice, whichever period expires earlier.
- As this is a decision to refuse planning permission for a householder application, if you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.
- As this is a decision to refuse planning permission for a minor commercial application, if you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.
- As this is a decision to refuse express consent for the display of an advertisement, if you want to appeal against your local planning authority's decision then you must do so within 8 weeks of the date of receipt of this notice.
- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.
- Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 0000) or online at www.planningportal.gov.uk/planning/appeals/online/makeanappeal.
- The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely based on their decision on direction given by the Secretary of State.

Purchase Notices

If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that the owner can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council (that is where the land is situated in a National Park, National Park authority for that Park, or in other cases the district council (or county council which is exercising the functions of a district council in relation to an area for which there is no district council), London borough council or Common Council of the City of London in whose area the land is situated) This Notice will require the Council to purchase the owner's interest in the land in accordance with the provisions of Chapter I of Part VI of the Town and Country Planning Act 1990.

Discharge of conditions

Town and Country Planning (Fee for Applications and Deemed Applications, Requests and Site visits) (England) (Amendment) No. 2 Regulations 2014 and in accordance with article 27 of the General Development Procedure Order 2015, a formal written response to a request to discharge the condition(s) can only be provided by the Local Planning Authority on receipt of the following:

1. A written request or alternatively a completed Standard Application form clearly identifying the planning permission by reference number and the conditions you presently wish to discharge by condition number. The form is available at:
<http://www.planningportal.gov.uk/uploads/appPDF/14525Form027.pdf>
2. Information submitted to discharge the condition(s), with a clear indication of the information which has been submitted in relation to each specific condition.
3. A fee of £28.00 (conditions on householder applications); or £97.00 in all other cases. Please note this cannot be paid retrospectively.

Important

This decision refers only to that required under the Town and Country Planning Acts and **does not include approval under the Building Regulations** (including their application by Section 24(1) of the Tyne and Wear Act 1980 in respect of Fire Brigade Access) or any other appropriate regulation, enactment, byelaw or order.

Appendix A

Plan Number 1, Plan Number 2, Plan Number 3, Plan Number 4, Plan Number 5
and Plan Number 6

Plan Number 1

ee
RLO



— RED LINE BOUNDARY

CHAPELGARTH

PROPOSED PLAN 01:
PRELIM

SCALE 1:5000 @ A3

29-03-2018

164/00001_Prelim

sigllon.

ee
Red



CHAPELGARTH

REGULATORY PLAN 1:2
OPEN SPACE STRATEGY

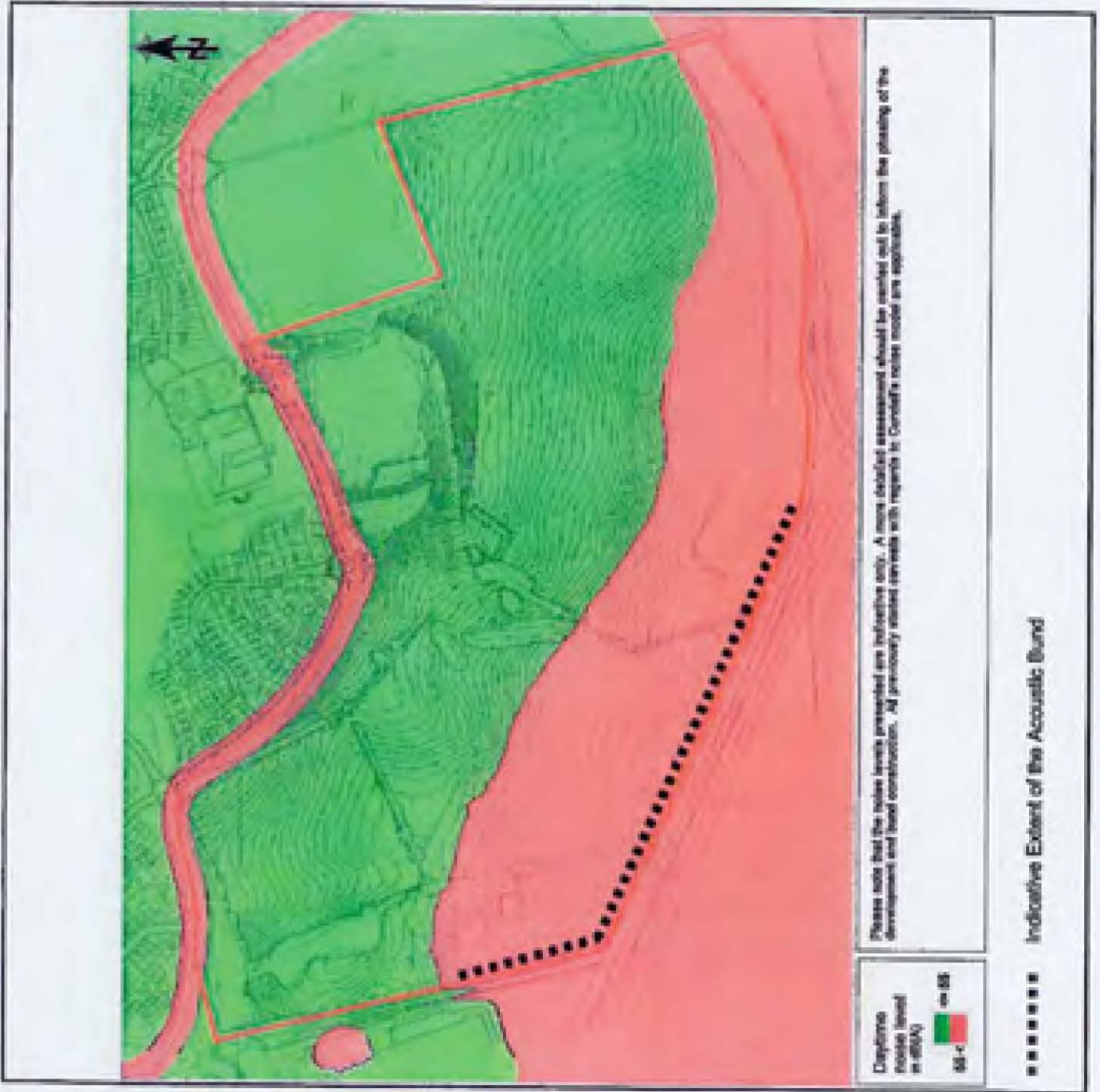
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28-05-2018
94420012_P001A

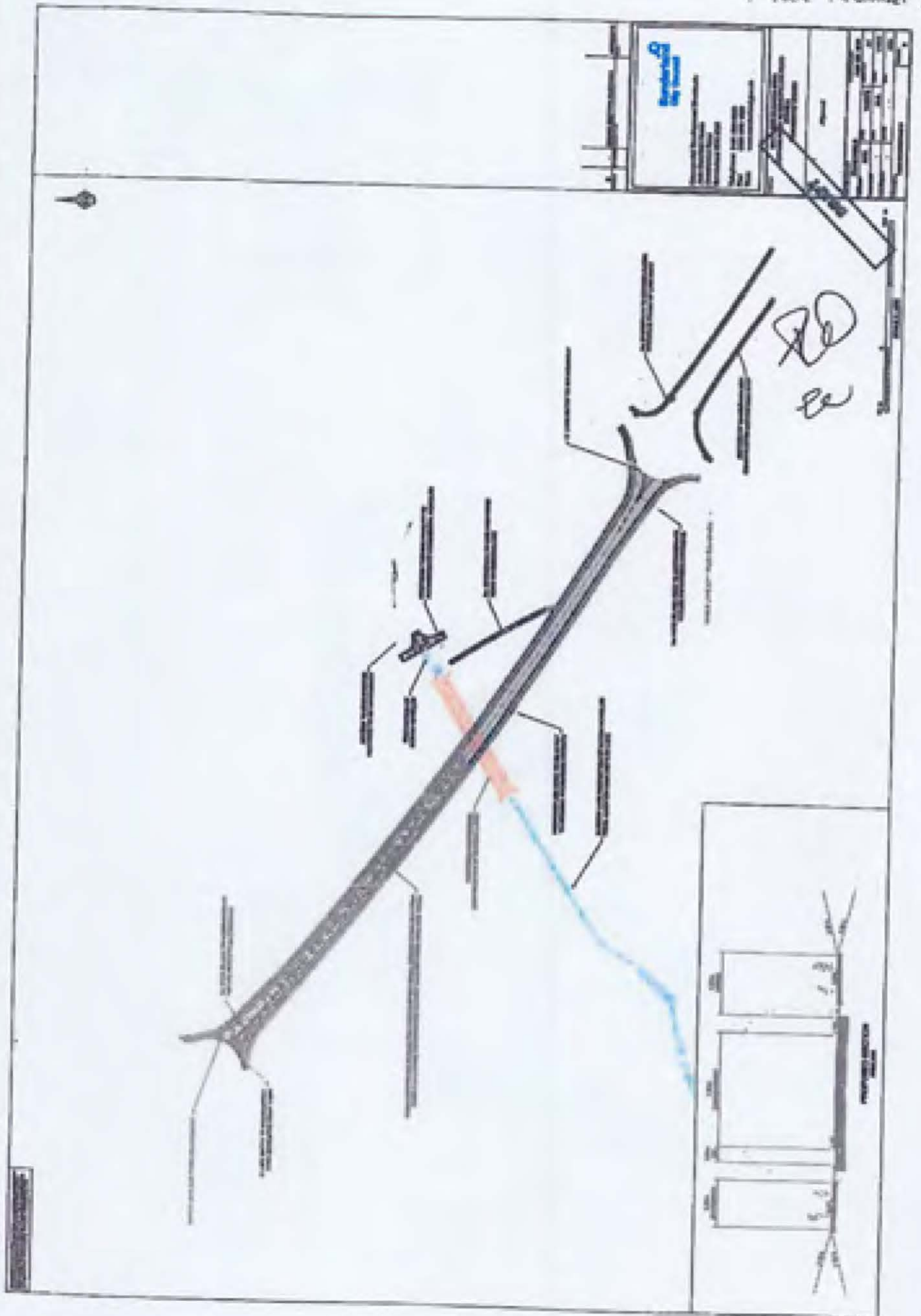


-  EXISTING WOODLAND
-  EXISTING HEDGES
-  EXISTING TREE GROUPS
-  NEW WOODLAND
-  SAME
-  AMENITY OPEN SPACE
-  PLAY
-  GREEN LAND

Plan Number 3

EW
FED





Plan Number 6

Legend

South Sunderland full



Full
ce

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Appendix B
Form of Further Section 106 Agreement

DATED

2016

(1) THE COUNCIL OF THE CITY OF SUNDERLAND

and

(2) SIGLION DEVELOPMENTS LLP

AGREEMENT NUMBER []

under Section 106 of the Town and Country
Planning Act 1990 relating to land known as
Phase [X] of the Chapelgarth site to the south
of Weymouth Road, Chapelgarth,
Sunderland

E. Waugh
Head of Law & Governance
Civic Centre
Sunderland
SR2 7DN

Ref: JMR/76539

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF SUNDERLAND** of Civic Centre Burdon Road Sunderland SR2 7DN ("the Council") and
- (2) **SIGLION DEVELOPMENTS LLP** a limited liability partnership registered in England (LLP Number: OC394705) whose registered office is situated at Unit 1B, Echo 24 Building, West Wear Street, Sunderland SR1 1XD ("the Developer")

together "the Parties"

WHEREAS

- (1) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Phase [X] Site is located and by whom the obligations contained in this Agreement are enforceable
- (2) The Developer [is the owner of] [has the benefit of] [DN: insert details of property interest in the Phase [X] Site]
- (3) The Developer previously submitted the Planning Application to the Council in order to carry out the Development on the Site
- (4) The Council subsequently resolved to grant Planning Permission for the Development subject to such conditions as specified in the Planning Permission and subject to the completion of the First Section 106 Agreement without which the Planning Permission would not have been granted
- (5) Pursuant to the terms of the First Section 106 Agreement, the Developer is now required to enter into this Agreement with the Council in respect of the Phase [X] Site as part of the acquisition by the Developer of the land interest as described in paragraph (2) above

INTERPRETATION

1.1 In this Agreement, the following words and expressions have the following meanings:

"Acceptable Noise Level"	not exceeding 55 dB(A) (fifty five A-weighted decibels)
"Acceptable Return"	a developer's return being 20% (twenty per cent) of Gross Development Value in respect of each Residential Phase
"Acoustic Noise Barrier"	the acoustic noise barrier to be provided within the Red Zone Area in full accordance with the Acoustic Noise Barrier Specification and the term "Acoustic Noise Barrier" shall include any part thereof
"Acoustic Noise Barrier Specification"	the detailed specification for the design, siting, installation, completion and subsequent maintenance of the Acoustic Noise Barrier which shall be in accordance with Section 21 (Green Buffers and Easements) of the Chapelgarth Design Code (as amended) dated July 2016 and to be approved by the Council
"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	means subsidised housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any successor policy or legislation in respect of affordable

housing)

**"Affordable
Commuted Sum"**

Housing means if applicable an appropriate sum of money to be paid by the Developer as a financial contribution to the Council in lieu of the provision or part provision of the Affordable Housing Provision in any Residential Phase to be spent by the Council in accordance with the provisions of paragraph 8 of Schedule 9

**"Affordable Housing
Provision"**

the amount of Affordable Housing Units to be provided by the Developer on the Site as part of each Residential Phase as determined in accordance with the provisions of paragraph 1 of Schedule Eight

"Affordable Housing Units"

means all of the Affordable Rented Units and the Intermediate Housing Units to be provided on the Site as part of the Affordable Housing Provision for each Residential Phase in accordance with the provisions of paragraph 2 of Schedule Eight and the term **"Affordable Housing Unit"** shall be construed accordingly

"Affordable Rent"

means the rent payable by individual households for the Affordable Rented Units which shall be subject to rent controls that require a rent of no more than 80 (eighty) per cent of the local market rent (inclusive of service charges) in the vicinity of the Site

"Affordable Rented Units"

those Dwellings to be provided on the Site which are owned and managed by a Registered Provider and subject at all times

to an Affordable Rent

"Agreed Viability Report"

a Viability Report that is either (i) accepted by the Council under paragraph 3(a) of Schedule Ten or (ii) agreed by the Council under the provisions of paragraph 5 of Schedule Ten or (iii) subject to determination by an expert in accordance with paragraph 5 of Schedule Ten and clause 16

"Agreement Plan"

the plan included in Schedule Twelve to this Agreement

"Allotments Contribution"

the financial contribution to be paid by the Developer to the Council per Residential Phase in the amount as determined in accordance with the provisions of Part F paragraph 1 of Schedule Two of this Agreement and to be spent in accordance the provisions of paragraph 7 of Schedule Nine

"Area"

the administrative area of the City of Sunderland

"Biodiversity Mitigation Works Contribution"

the financial contribution to be paid by the Developer to the Council per Residential Phase in the amount as determined in accordance with the provisions of Part E paragraph 1 of Schedule Two of this Agreement and to be spent in accordance the provisions of paragraph 6 of Schedule Nine

"Chargee"

a mortgagee or chargee (or any receiver (including an administrative receiver)) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security

or any administrator (howsoever appointed) including a housing administrator of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or receiver

“CIL Regulations”

the Community Infrastructure Levy Regulations 2010 (SI 2010/948)

“Commencement Development”

of the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of archaeological investigations and survey sampling inspections including soil investigations, investigations for the purpose of assessing ground conditions, site survey works, remedial or mitigation works in respect of any contamination or other adverse ground conditions, diversion and laying of services, demolition works, site clearance (including works to adjust ground levels on site and the removal of vegetation), erection of any temporary means of enclosure and the temporary display of site notices or advertisements and “Commence

"Commercial Unit"	Development" shall be construed accordingly any unit to be constructed on the Site pursuant to the Planning Permission and the Reserved Matters Approval(s) which is not a Dwelling
"Conditional Contract"	the conditional development framework agreement dated 7 th November 2014 (as may be amended from time to time) between the Council and the Developer in respect of the sale and purchase of, inter alia, the Site in phases
"Development"	<p>the development of the Site pursuant to the Planning Permission and the Reserved Matters Approval(s) and including</p> <ul style="list-style-type: none"> (i) outline planning permission for up to 750 residential units, public open space and internal road network along with up to 1000 square metres of ancillary commercial uses including Retail (A1), Financial and Professional Services (A2), Restaurant and Cafes (A3), Offices (B1) Non Residential (D1) and Assembly and Leisure (D2), together with associated landscaping and car parking. All matters apart from access to be reserved in relation to the outline elements of the proposals; and (ii) detailed planning permission for a

first phase of infrastructure which shall include the creation of a new protected right turn junction into the site off, Weymouth Road, landscaping and creation of attenuation ponds.

- "Dwelling"** any unit of residential accommodation (including a house, flat or maisonette) to be constructed on the Site pursuant to the Planning Permission and the Reserved Matters Approvals (and for the avoidance of doubt including both the Affordable Housing Units and the Market Housing Units)
- "Education Contribution"** the financial contribution to be paid by the Developer to the Council per Residential Phase in the amount as determined in accordance with the provisions of Part B paragraph 1 of Schedule Two of this Agreement and to be spent in accordance the provisions of paragraph 3 of Schedule Nine
- "First Section 106 Agreement"** means the agreement dated [] between the Council and the Developer in respect of the Site pursuant to Section 106 of the Act
- "Further Section 106 Agreement(s)"** means the further agreement(s) to be entered into by the Developer in respect of the Site pursuant to Section 106 of the Act in the form as set out in Appendix B to this Agreement
- "Gross Development Value"** the anticipated market value of a completed Phase assuming it is sold to a willing purchaser(s)

"Highways Contribution"	means the financial contribution to be paid by the Developer to the Council per Residential Phase in the amount as determined in accordance with the provisions of Part A paragraph 1 of Schedule Two of this Agreement and to be spent in accordance with the provisions of paragraph 2 of Schedule Nine
"Interest"	means interest at the rate of the Bank of England base rate from time to time and accrued on a daily basis
"Index"	means the all items index of Retail Prices issued by the Office for National Statistics (or any successor organisation) from time to time
"Indexation"	means the process specified in clause 17A whereby the amounts payable by the Developer under the provisions of Schedule Two to this Agreement are increased in accordance with any increase in the Index
"Initial Letting"	means each and every first letting of an Affordable Housing Unit pursuant to the terms of this Agreement
"Intermediate Housing"	shall have that meaning ascribed to it in Annex 2 of the National Planning Policy Framework document published by DCLG in March 2012 (or as subsequently amended or replaced)
"Intermediate Housing Units"	those Dwellings to be provided on the Site which are to be used and/or sold or let (as the case may be) for Intermediate Housing
"Joe's Paddock"	means the area of proposed open space to

	be provided on the Site in the location as expressly identified and marked as Joe's Paddock and shown coloured salmon on Plan Number 2
"Management Plan"	the detailed specification and plan for the management and maintenance of the Privately Maintained Areas to be prepared by the Developer in respect of each Phase which shall comply with the provisions of Schedule Four and to be approved by the Council
"Market Housing Units"	those Dwellings to be provided on the Site as part of the Development which are general market housing for sale on the open market and not Affordable Housing
"Noise Impact Assessment and Strategy"	a full and detailed noise impact assessment and mitigation strategy in respect of any part of the Development to be carried out within the Red Zone Area and based on the Acceptable Noise Level and to be approved by the Council
"Nominations Agreement"	<p>the agreement to be entered into between the Registered Provider and the Council (in its capacity as local housing authority) in respect of the Affordable Housing Units in order to provide the Council with the following rights in perpetuity to nominate on each occasion:</p> <p>(a) in relation to the Initial Lettings 100 (one hundred) per cent of the occupants of the Affordable Housing Units; and</p> <p>(b) in relation to the Subsequent Lettings not less than 50 (fifty) per cent of the occupants of the Affordable Housing Units</p>

"Occupation" and "Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations only or as site office
"Offer Period"	means a period of six months from receipt of offer documentation for the Affordable Housing Units to be provided in the relevant Residential Phase by a Registered Provider
"Open Space Areas"	means Joe's Paddock and Panoramic Park (and in each case including any part thereof)
"Open Space Areas Specification"	the detailed specification for the design, construction and provision of the Open Space Areas contained within sections 16 and 17 of the Chapelgarth Design Code (as amended) dated July 2016
"Panoramic Park"	means the area of proposed open space to be provided on the Site in the location as expressly identified and marked as Panoramic Park and shown coloured salmon on Plan Number 2
"Phase"	means each individual phase of the Development (of which there may be any

	number and those phases may be of any Use Class or composition of Use Classes as permitted by the Planning Permission)
"Phase [X] Site"	that part of the Site as described in Schedule Ten and against which this Agreement may be enforced as shown edged red on the Agreement Plan
"Plan Number 1"	the plan marked number 1 attached to this agreement
"Plan Number 2"	the plan marked number 2 attached to this agreement
"Plan Number 3"	the plan marked number 3 attached to this Agreement
"Plan Number 4"	the plan marked number 4 attached to this Agreement
"Plan Number 5"	the plan marked number 5 attached to this Agreement
"Plan Number 6"	the plan marked number 6 attached to this Agreement
"Planning Application"	the hybrid application for planning permission submitted to the Council for the Development and validated on 2 nd March 2016 and allocated the reference number 16/00388/HY4
"Planning Permission"	the planning permission subject to conditions to be granted in pursuance of the Planning Application (a draft of which is set out in Schedule Eleven) and for the purposes of this Agreement (and for no other purpose) including any subsequent planning

permission that may be granted on an application pursuant to Section 73 of the Act relating to, and or in connection with, the Planning Permission

"Practical Completion"

the issue of a certificate of practical completion by the Developer's architect or in the event that the Development is constructed by a party other than the Developer the issue of a certificate of practical completion by that other party's architect confirming that the Development or the relevant Units or the relevant works (as the case may be) are practically complete and the term "Practically Complete" shall be construed accordingly

"Privately Maintained Areas"

means all those areas of the Site including (but not limited to) the Open Space Areas and comprising the following areas of the Site as identified and marked on Plan Number 2:

- a) the existing woodland;
- b) the existing hedges;
- c) the existing tree groups;
- d) the new woodland;
- e) the amenity open space;
- f) the play; and
- g) the green links

"Protected Tenant"

any tenant who:

- (a) Has exercised the right to acquire pursuant to the Housing Act 1996 or

any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

(b) Has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

(c) Has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all remaining shares so that the tenant owns the entire Affordable Housing Unit

"Public Transport Contribution"

the financial contribution to be paid by the Developer to the Council per Residential Phase in the amount as determined in accordance with the provisions of Part D paragraph 1 of Schedule Two of this Agreement and to be spent in accordance with the provisions of paragraph 5 of Schedule Nine

"Recreation Facilities Contribution"

the financial contribution to be paid by the Developer to the Council per Residential Phase in the amount as determined in accordance with the provisions of Part C paragraph 1 of Schedule Two of this Agreement and to be spent in accordance the provisions of paragraph 4 of Schedule Nine

"Red Zone Area"	that part of the Site as shown coloured red on Plan Number 3
"Registered Provider"	means a not-for-profit registered provider of social housing as defined in Part 1 of the Housing Act 1996 or other such body which is either registered as a "Registered Provider" of social housing pursuant to section 112 of the Housing and Regeneration Act 2008 or is eligible to receive a Social Housing Grant (as defined in section 18 of the Housing Act 1996)
"Reserved Matters Approvals"	all reserved matters approvals that may be issued by the Council in respect of the Development pursuant to the Planning Permission and the term "Reserved Matters Approval" shall be construed accordingly
"Residential Phase"	means any Phase of the Development containing any number of Dwellings (and for the avoidance of doubt there may be any number of such Phases)
"Ryhope/Doxford Park Road"	Link means all of the proposed highway works, improvements and traffic measures as identified on Plan Number 5 including the new sections of highway, the improvement works, the accommodation works, the proposed footbridge and sharepath and the proposed prohibitions of driving
"SANG"	the areas of suitable alternative natural greenspace (incorporating a circular walkway running through the full extent of the said greenspace) to be provided in the SANG Area in accordance with the SANG Specification and the provisions of Schedule Six and the term "SANG" shall include any

	part thereof
"SANG Area"	those areas of the Site shown coloured turquoise on Plan Number 4
"SANG Specification"	the detailed specification for the design, construction and subsequent management and maintenance of the SANG as part of each Phase which shall be in accordance with the Chapelgarth Design Code (as amended) dated July 2016 and to be approved by the Council
"Shortfall in Affordable Housing Provision"	the total cumulative shortfall in Affordable Housing Provision in respect of all previous Residential Phases arising as a result of the operation of paragraph 7 of Schedule Ten
"Site"	the land described in Schedule One and against which the First Section 106 Agreement may be enforced as shown edged red on Plan Number 1 (and including any part thereof)
"SSGA"	means the South Sunderland Growth Area as shown edged on Plan Number 6
"Staircasing Proceeds"	any sums received by a Registered Provider in respect of any Affordable Housing Unit through the process of staircasing or exercise of a right to buy by which the occupier acquires from the Registered Provider all or part of its ownership share of the relevant Affordable Housing Unit
"Subsequent Letting"	means each and every letting of an Affordable Housing Unit occurring after an Initial Letting
"Total Number of Dwellings"	means the total number of all Dwellings approved under the Reserved Matters

Approvals for construction as part of the relevant Residential Phase

"Unit"

means any unit (whether a Dwelling or a Commercial Unit) to be constructed on the Site pursuant to the Planning Permission and the Reserved Matters Approvals and the term "Units" shall be construed accordingly

"Use Class"

means any use class as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended)

"Viability Report"

a visibility appraisal in respect of a Residential Phase that may be prepared and submitted by the Developer in accordance with the requirements of Schedule Ten

"Working Days"

Monday to Friday inclusive but excluding weekends and any public holiday

1.2 The expression "the Developer" shall include its respective successors in title and assigns and any person deriving title to the Site through or under it

1.3 The expression "the Council" shall include any statutory successor to any of its functions

1.4 References to the "Phase [X] Site" the "Site" and the "Development" include any part of it.

[Further, for the purposes of Schedules Two, Three, Four, Six and Eight of this Agreement, where the context so requires, the term "Site" shall be interpreted as meaning the "Phase [X] Site".] [DN: if required]

1.5 Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and words importing persons include companies and corporations and vice versa

1.6 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement

1.7 Whenever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced

against all of them jointly or severally unless there is an express provision otherwise.

- 1.8 Any reference to an Act of Parliament or statutory provision shall include any modification, extension or re-enactment of that Act or statutory provision for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.9 Any covenant contained in this Agreement whereby a party is not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 1.10 References in this Agreement to the term "including" shall be construed as meaning "including without limitation".
- 1.11 The headings are for reference only and shall not affect construction.

2. LEGAL BASIS

- 2.1 This Agreement is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers on behalf of the Council.
- 2.2 The covenants, restrictions and requirements imposed upon the Developer under this Agreement create planning obligations pursuant to Section 106 of the Act in respect of the Phase [X] Site and are enforceable by the Council as local planning authority against the Developer.

3. CONDITIONALITY

- 3.1 Save as provided in clause 3.2 the operation of the provisions of this Agreement are conditional upon:-

3.1.1 the grant of the Planning Permission; and

3.1.2 the Commencement of Development.

- 3.2 The provisions of clauses 6, 7.1, 15, 16, 17 and 18 shall take effect on the date of this Agreement

3.3 The obligations contained in Schedules Two to Seven (inclusive) shall not be enforceable against:

3.3.1 the owners, occupiers and tenants of an individual Dwelling nor against any mortgagee or charge thereof or in any such case against those deriving title from them;

3.3.2 the owners, occupiers and tenants of any Commercial Unit nor against any mortgagee or charge thereof or in any such case against those deriving title from them; or

3.3.3 any statutory undertaker after the transfer or other disposition of statutory apparatus by the Developer to the statutory undertaker (and/or in the event of the grant of rights to any such statutory undertaker over any part of the Site).

3.4 The obligations contained in Schedule Eight shall not be enforceable against:

3.4.1 the owners, occupiers and tenants of an individual Market Housing Unit nor against any mortgagee or charge thereof or in any such case against those deriving title from them;

3.4.2 any statutory undertaker after the transfer or other disposition of statutory apparatus by the Developer to the statutory undertaker (and/or in the event of the grant of rights to any such statutory undertaker over any part of the Site); or

3.4.3 a Protected Tenant (or their successors in title or mortgagees or those deriving title under them).

3A. THE FIRST SECTION 106 AGREEMENT

3A.1 It is hereby agreed by the Council and the Developer that the First Section 106 Agreement shall be terminated in part only by consent as at the date of this Deed to the extent that it relates to the Phase [X] Site shown on the Agreement Plan. In consideration for the covenants and obligations contained in this Deed, both Parties are hereby released with effect from the date of this Deed from their future obligations and liabilities under the First Section 106 Agreement in respect of the Phase [X] Site.

3A.2 For the avoidance of doubt, save as expressly provided in clause 3A.1, the First Section 106 Agreement shall continue in full force and effect in respect of the remainder of the Site but excluding the Phase [X] Site and except for as expressly provided in any Further Section 106 Agreement entered into pursuant to the terms of the First Section 106 Agreement. Further, clause 3A.1 shall not apply to, and nothing in this Deed shall affect in any way the operation or enforceability of, any Further Section 106 Agreement in respect of the Site entered into prior to the date of this Deed pursuant to the terms of the First Section 106 Agreement or otherwise.

4. THE DEVELOPER'S COVENANTS

The Developer covenants with the Council to fully observe and perform all of its obligations in this Agreement (including those obligations set out in Schedules Two to Eight (inclusive)) and hereby agrees that the Phase [X] Site shall be subject to the obligations, restrictions and covenants herein, such obligations, restrictions and covenants being planning obligations for the purposes of Section 106 of the Act.

5. THE COUNCIL'S COVENANTS

The Council covenants with the Developer to observe and perform the obligations on its part in this Agreement (including those obligations set out in Schedule Nine).

6. THE COUNCIL'S FEES

The Developer shall pay to the Council on completion of this Agreement the sum of £850 (eight hundred and fifty pounds) plus value added tax in respect of the Council's legal costs incurred in the negotiation, preparation and completion of this Agreement.

7. LOCAL LAND CHARGE

7.1 This Agreement shall be registrable as a local land charge by the Council.

7.2 The Council shall upon the written request of the Developer at any time after either:

- (a) all of the obligations of the Developer under this Agreement have been discharged in full; or
- (b) this Agreement has been terminated pursuant to clause 9

issue written confirmation thereof and thereafter shall effect the cancellation of all entries in the Local Land Charges Register in respect of this Agreement.

8. COUNCIL'S CONSENT ETC AND NOTICES

Where the agreement, approval, consent or expression of satisfaction is required by the Developer from the Council under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning and Regeneration (or such other person as may be notified by the Council to the Developer from time to time) and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

9. TERMINATION

This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or

otherwise withdrawn or (without the consent of the Developer) it is modified by any statutory procedure or expires prior to the Commencement Date.

10. THIRD PARTIES

Save to the extent expressly provided otherwise in this Agreement, no provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

11. LIABILITY

11.1 No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

11.2 No mortgagee of the Site from time to time shall have any liability under this Agreement until it takes possession of the Site as a mortgagee in possession in which case it too will be bound by the obligations as if it were a person deriving title from the Developer.

12. STATUTORY POWERS

Nothing contained or implied in this Agreement shall prejudice or affect the exercise of the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority, local planning authority, local highway authority and any other statutory capacity.

13. SEVERANCE

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

14. WAIVER

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

15. CHANGE IN OWNERSHIP

Until the covenants, obligations and restrictions in this Agreement (including those obligations set out in Schedules Two, Three, Four, Five and Six) have been discharged in full, the Developer agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Phase [X] Site occurring before all of the obligations in this Agreement have been discharged such notice to give details of the transferee's full name and registered office or correspondence address together with the area of the Phase [X] Site transferred by reference to a plan.

16. DISPUTE RESOLUTION

16.1 In the event of any dispute or difference arising between the Parties in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the Parties in the absence of manifest error and any costs shall be payable by the Parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the Parties in equal shares.

16.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 16.1 or as to the appropriateness of the professional body then such question may be referred by either Party to the president for the time being of the Law Society for him to appoint a solicitor to

determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all Parties in the absence of manifest error and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties in equal shares.

- 16.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 16.4 The expert shall be required to give notice to each of the said Parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other Party will be entitled to make a counter written submission within a further ten working days.
- 16.5 This clause 16 does not apply to disputes in relation to matters of law or the construction or interpretation of any provision of this Deed or to the recovery of sums due under this Deed which will be subject to the exclusive jurisdiction of the Courts and further does not affect the ability of the Council to apply for or to be granted declaratory relief, an injunction, an order for specific performance, payment of any sum and any other means of enforcing this Agreement and consequential and interim orders and relief.

17. INTEREST

- 17.1 If any payment (including any part thereof) due under this Agreement is paid late, interest shall be payable by the party in default which shall accrue from the date the payment is due until the date of actual payment.

17A. INDEXATION

17A.1 The sums payable under the provisions of Schedule Two to this Agreement shall be increased by an amount equivalent to the increase in the index from the date of this Agreement until the date on which each sum is payable.

18. JURISDICTION

18.1 This Agreement shall be governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the English courts.

19. FUTURE PLANNING PERMISSIONS

19.1 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

20. NOTICES

20.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

20.2 Any notice, demand or any other communication served is to be sent to the Council at the address set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.

20.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:-

20.3.1 if delivered by hand or by fax or e-mail, at the time of delivery;

20.3.2 if sent by first class post on the second working day after posting;

20.3.3 if sent by recorded delivery, at the time the delivery was signed for.

IN WITNESS whereof this Agreement has been duly executed as a Deed by the parties hereto the day and year first before written

SCHEDULE ONE

THE SITE

All that land to the south of Weymouth Road, Chapelgarth, Sunderland and
comprised within Title Numbers TY378602 and DU5296 and as shown edged red on
Plan Number 1 attached hereto

SCHEDULE TWO

THE DEVELOPER'S FINANCIAL CONTRIBUTIONS

Part A- The Highways Contribution

1. The Developer covenants to pay to the Council (in its capacity as local highway authority) the Highways Contribution in respect of each Residential Phase in the instalments as specified in paragraph 2 below and as calculated in accordance with the following formula following a Reserved Matters Approval in respect of the relevant Residential Phase:

$A \times B = \text{the Highways Contribution}$

Where:

- A is the base multiplier of £1,847 (subject to Indexation)
- B is the Total Number of Dwellings in the relevant Residential Phase

2. The Developer covenants to pay to the Council the Highways Contribution in respect of each Residential Phase as follows:

2.1 one-third to be paid prior to Occupation of thirty three percent (33%) of the Total Number of Dwellings in the relevant Residential Phase;

2.2 one-third to be paid prior to Occupation of sixty six percent (66%) of the Total Number of Dwellings in the relevant Residential Phase; and

2.3 one-third to be paid prior to Occupation of the final Dwelling constructed in the relevant Residential Phase.

3. The Developer further covenants as follows:

- 3.1 no more than thirty three percent (33%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.1 above;

- 3.2 no more than sixty six percent (66%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.2 above; and
- 3.3 the final Dwelling constructed in each Residential Phase shall not be Occupied until the relevant sum has been paid to the Council under paragraph 2.3 above.

Part B- The Education Contribution

1. The Developer covenants to pay to the Council (in its capacity as local education authority) the Education Contribution in respect of each Residential Phase in the instalments as specified in paragraph 2 below and as calculated in accordance with the following formula following a Reserved Matters Approval in respect of the relevant Residential Phase:

$C \times D = \text{the Education Contribution}$

Where:

- C is the base multiplier of £2,855 (subject to Indexation)
- D is the Total Number of Dwellings in the relevant Residential Phase

2. The Developer covenants to pay to the Council the Education Contribution in respect of each Residential Phase in the following three instalments:

- 2.1 one-third to be paid prior to Occupation of thirty three percent (33%) of the Total Number of Dwellings in the relevant Residential Phase;
- 2.2 one-third to be paid prior to Occupation of sixty six percent (66%) of the Total Number of Dwellings in the relevant Residential Phase; and
- 2.3 one-third to be paid prior to Occupation of the final Dwelling constructed in the relevant Residential Phase.

3. The Developer further covenants as follows:

- 3.3.1 no more than thirty-three percent (33%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.1 above;
- 3.3.2 no more than sixty six percent (66%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.2 above; and
- 3.3.3 the final Dwelling constructed in each Residential Phase shall not be Occupied until the relevant sum has been paid to the Council pursuant to paragraph 2.3 above.

Part C- The Recreation Facilities Contribution

1. The Developer covenants to pay to the Council the Recreation Facilities Contribution in respect of each Residential Phase in the instalments as specified in paragraph 2 below and as calculated in accordance with the following formula following a Reserved Matters Approval in respect of the relevant Residential Phase:

$E \times F =$ The Recreation Facilities Contribution

Where:

- E is the base multiplier of £855 (subject to Indexation); and
 - F is the Total Number of Dwellings in the relevant Residential Phase.
2. The Developer covenants to pay to the Council the Recreation Facilities Contribution in respect of each Residential Phase in the following three instalments:

- 2.1 one-third to be paid prior to Occupation of thirty-three percent (33%) of the Total Number of Dwellings in the relevant Residential Phase;
 - 2.2 one-third to be paid prior to Occupation of sixty six percent (66%) of the Total Number of Dwellings in the relevant Residential Phase; and
 - 2.3 one-third to be paid prior to Occupation of the final Dwelling constructed in the relevant Residential Phase.
3. The Developer further covenants as follows:
- 3.1 no more than thirty-three percent (33%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.1 above;
 - 3.2 no more than sixty six percent (66%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.2 above; and
 - 3.3 the final Dwelling constructed in each Residential Phase shall not be Occupied until the relevant sum has been paid to the Council pursuant to paragraph 2.3 above.

Part D- The Public Transport Contribution

1. The Developer covenants to pay to the Council (in its capacity as local highway authority) the Public Transport Contribution in respect of each Residential Phase in the instalments as specified in paragraph 2 below and as calculated in accordance with the following formula following a Reserved Matters Approval in respect of the relevant Residential Phase:

$G \times H =$ the Public Transport Contribution

Where:

- G is the base multiplier of £316 (subject to Indexation)
- H is the Total Number of Dwellings in the relevant Residential Phase

2. The Developer covenants to pay the Public Transport Contribution in respect of each Residential Phase in the following three instalments:

2.1 one-third to be paid prior to Occupation of any of the Dwellings in the relevant Residential Phase;

2.2 one-third to be paid prior to Occupation of thirty three percent (33%) of the Total Number of Dwellings in the relevant Residential Phase; and

2.3 one-third to be paid prior to Occupation of sixty six per cent (66%) of the Total Number of Dwellings in the relevant Residential Phase.

3. The Developer further covenants as follows:

3.1 no Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.1 above;

3.2 no more than thirty three percent (33%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.2 above; and

3.3 no more than sixty six percent (66%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.3 above.

Part E- Biodiversity Mitigation Works Contribution

1. The Developer covenants to pay to the Council the Biodiversity Mitigation Works Contribution in respect of each Residential Phase in accordance with the requirements of paragraph 2 below and as calculated in accordance with

the following formula following a Reserved Matters Approval in respect of the relevant Residential Phase:

$I \times J$ = the Biodiversity Mitigation Works Contribution

Where:

- I is the base multiplier of £278.00 (subject to Indexation)
- J is the Total Number of Dwellings in the relevant Residential Phase
- provided that the total Biodiversity Mitigation Works Contribution payable in respect of the entire Development shall be capped at the amount of £208,153 (subject to Indexation)

2. The Developer covenants to pay the Biodiversity Mitigation Works Contribution in respect of each Residential Phase in the following three instalments:

2.1 one-third to be paid prior to Occupation of thirty three percent (33%) of the Total Number of Dwellings in the relevant Residential Phase;

2.2 one-third to be paid prior to Occupation of sixty six percent (66%) of the Total Number of Dwellings in the relevant Residential Phase; and

2.3 one-third to be paid prior to Occupation of the final Dwelling constructed in the relevant Residential Phase

subject to the maximum Biodiversity Mitigation Works Contribution payable in respect of the entire Development not exceeding £208,153 (subject to Indexation)

3. The Developer further covenants as follows:

3.1 no more than thirty three percent (33%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.1 above;

3.2 no more than sixty six percent (66%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.2 above; and

3.3 the final Dwelling constructed in each Residential Phase shall not be Occupied until the relevant sum has been paid to the Council pursuant to paragraph 2.3 above

subject to the maximum Biodiversity Mitigation Works Contribution payable in respect of the entire Development not exceeding £208,153 (subject to Indexation).

Part F- The Allotments Contribution

1. The Developer covenants to pay to the Council the Allotments Contribution in respect of each Residential Phase in accordance with the requirements of paragraph 2 below and as calculated in accordance with the following formula following a Reserved Matters Approval in respect of the relevant Residential Phase:

$K \times L = \text{the Allotments Contribution}$

Where:

- K is the base multiplier of £85.50 (subject to indexation)
- L is the Total Number of Dwellings in the relevant Residential Phase

2. The Developer covenants to pay to the Council the Allotments Contribution in respect of each Residential Phase in the following three instalments:

2.1 one-third to be paid prior to Occupation of thirty three percent (33%) of the Total Number of Dwellings in the relevant Residential Phase;

2.2 one third to be paid prior to Occupation of sixty six percent (66%) of the Total Number of Dwellings in the relevant Residential Phase; and

2.3 one-third to be paid prior to Occupation of the final Dwelling constructed in the relevant Residential Phase.

3. The Developer further covenants as follows:

3.1 no more than thirty three percent (33%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.1 above;

3.2 no more than sixty six percent (66%) of the Total Number of Dwellings in each Residential Phase shall be Occupied until the relevant sum has been paid to the Council under paragraph 2.2 above; and

3.3 the final Dwelling constructed in each Residential Phase shall not be Occupied until the relevant sum has been paid to the Council under paragraph 2.3 above.

SCHEDULE THREE

OBLIGATIONS IN RESPECT OF THE PRIVATELY MAINTAINED AREAS

Part A- Provision of the Open Space Areas

1. The Developer covenants to provide the Open Space Areas as part of the Development in full accordance with the Open Space Areas Specification and to the satisfaction of the Council. The Open Space Areas Specification shall not be amended without the prior written consent of the Council.
2. The Developer further covenants that no more than 375 (three hundred and seventy five) Dwellings shall be Occupied on the Site until:
 - 2.1.1.1 Practical Completion of Joe's Paddock has been achieved in accordance with the relevant requirements of the Open Space Areas Specification and to the satisfaction of the Council; and
 - 2.1.1.2 Joe's Paddock is fully available and accessible to the public for the purposes of public recreation.
3. The Developer further covenants that no more than 650 (six hundred and fifty) Dwellings shall be Occupied on the Site until:
 - 3.1.1.1 Practical Completion of Panoramic Park has been achieved in accordance with the requirements of the Open Space Areas Specification and to the satisfaction of the Council; and
 - 3.1.1.2 Panoramic Park is fully available and accessible to the public for the purposes of public recreation

Part B- Management and Maintenance of the Privately Maintained Areas

1. The Developer covenants that no Unit in any Phase shall be Occupied until the Management Plan for the respective Phase has been submitted to and approved in writing by the Council.
2. The Developer further covenants to implement and comply at all times with the requirements of the Management Plan in respect of the Privately Maintained Areas in each Phase to the satisfaction of the Council.
3. Each Management Plan shall not be amended without the prior written consent of the Council.
4. Subject to paragraph 5 below, following construction of the Privately Maintained Areas within each Phase the Developer covenants to maintain the Privately Maintained Areas in that Phase in perpetuity and in full accordance with the Management Plan for that Phase and to provide and maintain at all times public access to the Privately Maintained Areas in that Phase save only for any period(s) of time and to such extent that the Developer is required to exclude public access to specific parts of the Privately Maintained Areas in that Phase in accordance with the Law PROVIDED THAT in each case the Developer shall obtain the Council's prior consent in writing in advance of such proposed exclusion (such consent not to be unreasonably withheld or delayed).
5. Nothing in this Part B of Schedule Three shall prevent the Council (in agreement with the Developer) from publicly adopting at its discretion and at a future date any part(s) of the Privately Maintained Areas as either public highway or public open space and subject to such conditions precedent as the

Council may reasonably specify. In the event that any specific part(s) of the Privately Maintained Areas are subsequently adopted by the Council at any time then the provisions of Part B of this Schedule Three shall no longer apply to that part of the Privately Maintained Areas.

SCHEDULE FOUR

THE MANAGEMENT PLAN

The Developer shall produce a detailed specification and plan in respect of the management and maintenance of the Privately Maintained Areas within each Phase in accordance with the provisions of this Schedule Four and for subsequent approval by the Council.

As a minimum, the Management Plan shall identify the extent of those Privately Maintained Areas located within the respective Phase and cover all of the following items:

- (a) details of regular street sweeping within the Privately Maintained Areas;
- (b) details of how the roads, footways and footpaths within the Development will be maintained and repaired at all times;
- (c) details of how car parking on street within the Development will be managed at all times;
- (d) not used;
- (e) details of general bin emptying;
- (f) not used;
- (g) not used;
- (h) fly tipping or excess waste removal;
- (i) snow clearing and gritting;
- (j) maintenance and repair of hard landscaped areas;
- (k) maintenance and clearance of gullies;
- (l) provision and maintenance of street lighting (including energy charges) for standard columns and low height lighting units;
- (m) details of how pedestrian/cycle routes through the site will be kept safe for pedestrian/cycle use and how they will be maintained;
- (n) street weed control;

- (o) maintenance of soft landscaping areas including weeding, watering, fertilizing, replacement of failures, trimming and pruning of trees and shrubs, grass cutting, removal and replacement of seriously damaged, diseased or dead trees and maintenance of water features;
- (p) provision and maintenance of signage for both pedestrian/cycle routes and the SANG;
- (q) provision of road markings(e.g. "Give way" "Passing Place" etc) and regular refreshment of these markings;
- (r) seasonal maintenance (e.g. leaf clearance);
- (s) provision and maintenance of street furniture, seats, litter bins and bollards;
- (t) provision and maintenance of street name plates;
- (u) a tree management plan for any trees adjacent to these walls and/or overhanging the adopted highway;
- (v) reinstatement of private utility apparatus trenches to the original palette materials after essential works;
- (w) annual inspections of highways and structures for maintenance purposes; and
- (x) any other information in relation to the management, maintenance and/or repair of the Privately Maintained Areas as may be required by the Council (acting reasonably).

SCHEDULE FIVE

NOISE IMPACT ASSESSMENT AND STRATEGY AND NOISE MITIGATION WORKS

1. The Developer covenants that no Development shall be carried out within the Red Zone Area until a Noise Impact Assessment and Strategy has been undertaken by the Developer in respect of the relevant part of the Development to the satisfaction and approval of the Council.
2. The Developer further covenants that no Dwelling shall be Occupied within the Red Zone Area until all mitigation measures and requirements as identified in the Noise Impact Assessment and Strategy (as approved by the Council under paragraph 1 above) have been provided and implemented in full on the Site to the satisfaction of the Council, including (without limitation) the installation and completion of the Acoustic Noise Barrier (or the relevant part thereof).
3. The Developer further covenants that once constructed the Acoustic Noise Barrier (including any part thereof) together with all other mitigations measures and requirements as provided on the Site in accordance with paragraph 2 above shall be maintained in perpetuity in full and to the satisfaction of the Council.

SCHEDULE SIX

PROVISION AND MAINTENANCE OF THE SANG

The Developer covenants as follows:

1. No Development shall be carried out in any Phase until the SANG Specification in respect of that Phase has been submitted to and approved in writing by the Council. Thereafter the SANG Specification in respect of that Phase shall not be amended without the prior written consent of the Council.
2. To provide and maintain at all times public access to and across the SANG Area for the purposes of public recreation prior to Occupation of any of the Dwellings on the Site save only to such extent and for any period(s) of time that it is necessary and reasonable to prevent public access to specific parts of the SANG Area in order to carry out the relevant works pursuant to paragraph 3 below PROVIDED THAT in each case the Developer shall obtain the Council's prior consent in writing in advance of the extent and duration of the proposed closure (such consent not to be unreasonably withheld or delayed).
3. To provide the SANG as part of the Development in accordance with the SANG Specification and the provisions of this Schedule Six to the satisfaction of the Council.
4. The total area of the SANG to be provided on the Site shall be calculated as follows:

$M \times N$ = The total area of the SANG in hectares

Where:

- M is the Total Number of Dwellings
- N is a base multiplier of 0.018 hectares

PROVIDED THAT the total area of the SANG shall not exceed a maximum of 14 hectares.

5. The Developer covenants to provide the relevant part of the SANG as part of each Phase prior to Occupation of the final Dwelling constructed in that Phase.
6. Following Practical Completion of the SANG (including any part thereof), the Developer shall:
 - 6.1 maintain the SANG in perpetuity for the purposes of public recreation in accordance with the SANG Specification and to the satisfaction of the Council;
 - 6.2 neither use, nor permit to be used, the SANG at any time for any purpose other than for public recreation and as amenity land; and
 - 6.3 provide public access at all times to and across the SANG.

SCHEDULE SEVEN

THE FURTHER SECTION 106 AGREEMENT(S)

The Developer covenants not to exercise any right to acquire either a building licence, building lease and/or freehold interest in respect of any Phase or the Site pursuant to the Conditional Contract until the Developer has executed (and procured that any mortgagee of the Developer in respect of the relevant Phase or the Site has also executed) and delivered to the Council a Further Section 106 Agreement in respect of the Phase or the Site (as the case may be)

SCHEDULE EIGHT

AFFORDABLE HOUSING OBLIGATIONS

Subject to the provisions of Schedule Ten, the Developer covenants as follows:

1. To construct and provide the Affordable Housing Provision in each Residential Phase in accordance with the provisions of this Schedule and as calculated in accordance with the following formula:

$O \times P$ (+ (if applicable) any Shortfall in Affordable Housing Provision) = The Affordable Housing Provision in respect of each Residential Phase (to be rounded up to the nearest whole number)

Where:

- O is 10%;
- P is the Total Number of Dwellings in respect of the relevant Residential Phase.

2. To provide the Affordable Housing Provision in each Residential Phase (as determined in accordance with paragraph 1 above) in the following agreed proportions:

- 75% as Affordable Rented Units; and
- 25% as Intermediate Housing Units.

In each case the number of Affordable Rented Units and Intermediate Housing Units to be provided in respect of a Residential Phase shall be rounded up to the nearest whole number.

3. In the event that the Developer considers (acting reasonably) that the provision of Affordable Housing Units in a particular Phase would be incompatible with the form and type of the specific housing product proposed for that Phase, then the Developer may serve notice on the Council of its

desire to seek to re-negotiate the obligation to provide the relevant Affordable Housing Units within that Phase in accordance with the provisions of this paragraph 3. Subject to the Council's prior written approval (at its absolute discretion), in such circumstances the Developer may pay to the Council an Affordable Housing Commuted Sum (in the amount to be determined by the Council in accordance with the factors specified in paragraph 10.5 of this Schedule Eight) in lieu of the provision of the relevant Affordable Housing Units within that Phase. For the avoidance of doubt, the provisions of paragraphs 10-12 of Schedule 8 shall not apply in the event that the Developer serves a notice on the Council in accordance with this paragraph 3.

4. To provide the Affordable Housing Units in each Residential Phase in such locations within the relevant Residential Phase as approved in writing and in advance by the Council and to ensure that the Affordable Housing Units are not visually distinguishable from the Market Housing Units in terms of build, quality, materials, architectural details, levels of amenity space, parking provision and privacy.
5. No more than a maximum of fifty percent (50%) of the Market Housing Units in each Residential Phase shall be Occupied until:
 - 5.1 the Developer has entered into an unconditional contract for the transfer of all of the Affordable Housing Units in that Residential Phase to a Registered Provider; and
 - 5.2 the Registered Provider has entered into the Nominations Agreement with the Council (in its capacity as the local housing authority) in respect of the relevant Affordable Housing Units.
6. No more than seventy-five percent (75%) of the Market Housing Units shall be Occupied in each Residential Phase until all the Affordable Housing Units in that Residential Phase are ready for Occupation.

7. From the date of Practical Completion of the Affordable Housing Units, they shall only be used as Affordable Housing and for no other purpose, save in the case of:
 - 7.1 any Protected Tenant (or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and charges);
or
 - 7.2 a Chargee and any purchaser from the Chargee or successor in title thereof and their respective mortgagees and charges.
8. To utilise the Staircasing Proceeds on the provision of further Affordable Housing within the Area and for no other purpose and further to liaise with the Council in advance to discuss the details of how and where in the Area the Staircasing Proceeds should be spent.
9. Where despite having used reasonable endeavours during the relevant Offer Period to enter into a contract or contracts for the transfer of the relevant Affordable Housing Units to a Registered Provider as part of a specific Residential Phase, the Developer may after the expiry of the Offer Period (acting reasonably and in good faith) serve notice on the Council that it has failed to achieve a transfer of the relevant Affordable Housing Units in respect of that Phase and that it wishes to renegotiate the obligation to provide the Affordable Housing Units for that Phase (which may be a renegotiation of one or more of those matters set out below at paragraphs 10.1 to 10.5) and if such notice is served it shall be accompanied by such evidence as to the reasonable endeavours that the Developer has made to enter into a contract (or contracts) to transfer the relevant Affordable Housing Units, the details of the bids received and any other information as either party (acting reasonably) deem relevant including (without limitation) evidence of the competitive bid process undertaken by the Developer to meet the Affordable Housing obligations as set out herein, details of which Registered Providers have been contacted, the disposal terms offered, the responses received, the duration of

the negotiations and the reasons why a disposal has not occurred together with the Developer's updated proposals in respect of the Affordable Housing Provision for that Residential Phase (prepared by the Developer acting reasonably and having due regard to (i) all responses and representations received from Registered Providers during the Offer Period and (ii) those matters set out in paragraph 10 below and (iii) how to best address the Council's planning requirements for the provision of Affordable Housing Units in that Residential Phase).

10. If a notice is served by the Developer under paragraph 9 of this Schedule, the parties shall use reasonable endeavours to seek to agree (having due regard to the updated proposals put forward by the Developer pursuant to paragraph 9 above) as soon as reasonably practicable (with the intention that such agreement shall be made within 3 calendar months of the service of the Developer's notice under paragraph 9) a reasonable and commercially deliverable variation in respect of the Affordable Housing Provision for that Residential Phase taking into account the following:
 - 10.1 the number of Affordable Housing Units that need to be provided within the Residential Phase; and/or
 - 10.2 the type and tenure of the Affordable Housing Units to be provided within the Residential Phase (which may include a different form of Intermediate Housing to that which was originally marketed by the Developer); and/or
 - 10.3 whether any of the Affordable Housing Units can be disposed of by the Developer directly to any person in housing need; and/or
 - 10.4 the timescale for delivery of the relevant Affordable Housing Units; or
 - 10.5 as a potential alternative to the delivery of all or some of the Affordable Housing Units within the Residential Phase whether the Developer may provide those Affordable Housing Units (or any part) as Market Housing Units and in lieu to pay an Affordable Housing Commuted Sum to the Council as a financial contribution for the provision of off-site Affordable Housing provision, taking into account (i) the reasonably anticipated additional revenue arising from the sale of a Dwelling that may be used as a Market Housing Unit and the reasonably anticipated revenue

arising from the sale of a Dwelling that may be used as an Affordable Housing Unit (ii) any policy of the Council (at the relevant time) relating to the payment and the amount of any Affordable Housing Commuted Sum (including the realistic off-site delivery options in the Area)

Provided That in the course of any such negotiations the Developer and the Council shall take into account the following factors (with it being recognised that this is a non-exhaustive list):

- 10.6 market conditions;
 - 10.7 the financial viability of the relevant Residential Phase;
 - 10.8 potential delays to the Occupation of Market Housing Units within that Phase by reason of the operation of the provisions of this Schedule Eight;
 - 10.9 any constraint limitation or regulation issued by Central Government that does or may adversely affect a Registered Provider's ability to generate a finally viable rent or other income in respect of the Affordable Housing Units or which does or may adversely affect a Registered Provider's ability to use any of the Affordable Housing Units as security for loan finance; and
 - 10.10 the Council's planning requirement for the provision of Affordable Housing as part of each Residential Phase.
11. Subject to paragraphs 9 and 10, in the event that the parties are unable to agree (acting reasonably) any variation to the Affordable Housing Provision for that particular Residential Phase within 3 calendar months of the Developer's notice served under paragraphs 9 of this Schedule, either party may thereafter refer the matter to an expert for determination pursuant to clause 16 and the relevant expert shall make a determination under paragraph 10 as to the reasonable and commercially deliverable variation that is required in respect of the Affordable Housing Provision for that Residential Phase taking into account those matters set out in paragraphs 10.6 to 10.10 and the evidence supplied by the Developer with its notice served under paragraph 3.

12. Subject to the above provisions, if and on each occasion as the parties agree (or it is determined by the expert) that there should be a variation to the Affordable Housing Provision for a particular Residential Phase in accordance with paragraphs 9-11 above, the parties shall cause a memorandum of such agreement to be annexed to each part of this Deed (which such memorandum shall be conclusive evidence of such agreement or determination and which shall be signed on behalf of the Developer and the Council (and neither party shall delay the signing of such memorandum)).

SCHEDULE NINE

THE COUNCIL'S COVENANTS

The Council covenants as follows:-

1. Not Used.
2. Upon receipt of the Highways Contribution, to expend the Highways Contribution (together with any interest accrued thereon) on the design, procurement, construction, maintenance and any ancillary or enabling works (including without limitation any statutory undertaker works) together with the promotion and making of any statutory orders and any land acquisition costs in respect of the Ryhope/Doxford Park Link Road. The Council further covenants not to use the Highways Contribution other than for the purposes as specified in this Agreement. The Highways Contribution shall be spent by the Council within ten years from the date of Practical Completion of the relevant Residential Phase to which the payment relates or from the date of receipt by the Council of the final instalment under this Agreement (whichever is the later). In the event of the Highways Contribution not being so utilised in whole or in part in accordance with the provisions of this paragraph 2 the Council shall repay the unexpended sum upon written demand to the party which paid the Highways Contribution together with any accrued interest.
3. Upon receipt of the Education Contribution, to expend the Education Contribution (together with any interest accrued thereon) on the provision of new education facilities (including land acquisitions, procurement, design, construction and maintenance) and/or the funding of additional, extended or improved education facilities in such location(s) within the SSGA as determined by the Council in its absolute discretion as the local education authority. The Council further covenants not to use the Education Contribution other than for the purposes as specified in this Agreement. The Education Contribution shall be spent by the Council within three years from the date of Practical Completion of the entire Development. In the event of the Education Contribution not being so utilised in whole or in part in accordance with the provisions of this paragraph 3, the Council shall repay the unexpended sum

upon written demand to the party which paid the Education Contribution together with any accrued interest.

4. Upon receipt of the Recreation Facilities Contribution, to expend the Recreation Facilities Contribution (together with any interest accrued thereon) on the provision, improvement and/or maintenance of sport and recreation facilities (including land acquisitions, procurement, design, construction and maintenance) in such location(s) within the SSGA as determined by the Council in its absolute discretion. The Council further covenants not to use the Recreation Facilities Contribution other than for the purposes as specified in this Agreement. The Recreation Facilities Contribution shall be spent by the Council within three years from the date of Practical Completion of the entire Development. In the event of the Recreation Facilities Contribution not being so utilised in whole or in part in accordance with the provisions of this paragraph 4, the Council shall repay the unexpended sum upon written demand to the party which paid the Recreation Facilities Contribution together with any accrued interest.
5. Upon receipt of the Public Transport Contribution, to provide the said funding to Nexus as the Tyne and Wear Passenger Transport Executive (or any other party as may be nominated by Nexus) as soon as reasonably practicable from receipt of the monies by the Council in order to contribute to the funding of a bus route to and/or through the Site for an initial period together with the provision of any associated public transport infrastructure (if required). The Council shall agree terms with Nexus providing for the expenditure of the Public Transport Contribution by Nexus within five years from the date of Practical Completion of the relevant Residential Phase to which the payment relates. The Council shall also agree terms providing in the event of the Public Transport Contribution not being so utilised in whole or in part by Nexus in accordance with the provisions of this paragraph 5 for the unexpended sum to be repaid to the Council as soon as possible upon demand. Following receipt of any unexpended sum by the Council from Nexus, the Council shall pay the same amount to the party which paid the Public Transport Contribution to the Council together with any accrued interest as may be received from Nexus.
6. Upon receipt of the Biodiversity Mitigation Works Contribution, to expend the Biodiversity Mitigation Works Contribution (together with any interest accrued

thereon) on the protection, mitigation, enhancement and/or management of biodiversity and habitat measures and/or works in such location(s) within the SSGA as determined by the Council in its absolute discretion. Without prejudice to the generality of the foregoing, this may include (without limitation) one or more of the following: the protection, enhancement and management of Blakeney Woods local wildlife site, the provision of a ranger service, the creation of a hedgerow incentive scheme, farmland management and the costs of managing the delivery and maintenance of any such works. The Council further covenants not to use the Biodiversity Mitigation Works Contribution other than for the purposes as specified in this Agreement. The Biodiversity Mitigation Works Contribution shall be spent by the Council within twenty years from the date of Practical Completion of the relevant Residential Phase to which the payment relates or from the date of receipt of the final instalment of the Biodiversity Mitigation Works Contribution for the relevant Residential Phase (whichever is the later). In the event of the Biodiversity Mitigation Works Contribution not being so utilised in whole or in part in accordance with the provisions of this paragraph 6, the Council shall repay the unexpended sum upon written demand to the party which paid the Biodiversity Mitigation Works Contribution together with any accrued interest.

7. Upon receipt of the Allotments Contribution, to expend the Allotments Works Contribution (together with any interest accrued thereon) on the provision, maintenance and site management of allotment plots in such location(s) within the Ryhope and Doxford Wards within the SSGA as determined by the Council in its absolute discretion. The Council further covenants not to use the Allotments Contribution other than for the purposes as specified in this Agreement. The Allotments Contribution shall be spent by the Council within twenty years from the date of Practical Completion of the relevant Residential Phase to which the payment relates or from the date of receipt of the final instalment of the Allotments Contribution for the relevant Residential Phase (whichever is the later). In the event of the Allotments Contribution not being so utilised in whole or in part in accordance with the provisions of this paragraph 7, the Council shall repay the unexpended sum upon written demand to the party which paid the Allotments Contribution together with any accrued interest.

8. Upon receipt of any Affordable Housing Commuted Sum, to expend the Affordable Housing Commuted Sum (together with any interest accrued thereon) on the provision of, or facilitating the provision of Affordable Housing in such location(s) within the Area as determined by the Council in its absolute discretion. For the avoidance of doubt, any Affordable Housing Commuted Sum may be used by the Council for (but not limited to) any of the following purposes:- the acquisition, refurbishment, maintenance or provision of Affordable Housing or to provide gap or grant funding to third parties for such purposes. The Council further covenants not to use the Affordable Housing Commuted Sum other than for the purposes as specified in this Agreement. The Affordable Housing Commuted Sum shall be spent by the Council within five years from the date of Practical Completion of the relevant Residential Phase to which the payment relates or from the date of receipt of the final instalment of the Affordable Housing Commuted Sum (whichever is the later). In the event of the Affordable Housing Commuted Sum not being so utilised in whole or in part in accordance with the provisions of this paragraph 8, the Council shall repay the unexpended sum upon written demand to the party which paid the Affordable Housing Commuted Sum together with any accrued interest.

SCHEDULE TEN

VIABILITY REPORT

1. Prior to Commencement of Development of any Residential Phase, the Developer may submit to the Council a Viability Report for that Residential Phase. The purpose of the Viability Report shall be to demonstrate whether it is viable to provide all (or part) of the Affordable Housing Units in accordance with the provisions of Schedule Eight as part of the relevant Residential Phase based on the Acceptable Return.
2. Any Viability Report to be submitted by the Developer to the Council shall comply with the following minimum requirements:
 - 2.1 The report shall include all up to date anticipated revenues, build costs, sales and marketing costs, site works costs, development fees, abnormal costs, land acquisition costs and any other reasonable and proper costs to be incurred in respect of the delivery of the relevant Residential Phase;
 - 2.2 The report shall include all reasonable and necessary evidence in order to substantiate all costs and values applied;
 - 2.3 All costs and revenues shall be in accordance with the RICS Valuation-Professional Standards "Red Book" and RICS Building Cost Information Service (as the same may be amended or updated from time to time); and
 - 2.4 The report shall contain such other information as may be requested by the Council (acting reasonably) in order to demonstrate the viability of the relevant Residential Phase.

For the avoidance of doubt, the viability of each individual Residential Phase shall be assessed independently. A Viability Report shall not take into account any losses incurred in the delivery of a previous Phase. For the purposes of any Viability Report the Developer shall not be entitled to recover on a subsequent Residential Phase any part of the Acceptable Return that was not received on a previous Phase.

3. The Council shall within 5 weeks of the date of receipt of a Viability Report (which complies in full with the requirements of paragraph 2 above) from the Developer either:

- (a) confirm in writing that the Viability Report is accepted;
- (b) provide to the Developer reasons in writing as to why it is not accepted; or
- (c) set out in writing what further information the Council reasonably requires from the Developer to enable the Council to consider further the Viability Report and the timescales for receipt and consideration of the same

PROVIDED THAT in the event that the Council has not responded to the Developer in writing within the said 5 week period then the Council shall be deemed to have not accepted the Viability Report and the provisions of paragraph 5 below shall apply.

- 4. The Developer shall be responsible for the costs of the preparation and submission of each Viability Report and shall also be responsible for the Council's reasonable costs incurred in respect of the process of reviewing, responding to and seeking to agree each Viability Report (including the fees of any professional adviser appointed by the Council to assist it in this regard) up to a maximum sum of £3,000 (plus VAT) per Viability Report.
- 5. In the event that the Council does not accept the Viability Report under paragraph 3 above then the Developer and the Council shall liaise and use their reasonable endeavours to seek to agree the Viability Report PROVIDED THAT if it has not been possible to reach agreement in respect of the Viability Report within 1 month of receipt by the Developer of the Council's written response (or deemed response) under paragraph 3 either party may thereafter refer the matter to an expert for determination under clause 16 of this Agreement whose decision shall be final. The expert shall be required to determine:
 - 5.1 whether the Viability Report has been carried out in accordance with the provisions of this Schedule Ten; and
 - 5.2 (subject to 5.1 above) whether it is viable to provide all (or part) of the Affordable Housing Units in accordance with the requirements of Schedule Eight as part of the relevant Residential Phase based on the Acceptable Return.

6. In the event of an Agreed Viability Report the obligation to provide the Affordable Housing Units in that Residential Phase shall be adjusted for the purposes of paragraphs 1 and 2 of Schedule Eight to reflect the total number of Affordable Housing Units (and the mix of Affordable Rented Units and Intermediate Housing Units) that is viable to provide in that Residential Phase as demonstrated by the Agreed Viability Report.

7. In the event that the Affordable Housing Provision for a particular Residential Phase is adjusted pursuant to paragraph 6 above and there is a Shortfall in Affordable Housing Provision then the Developer shall either:
 - 7.1 provide in full the Shortfall in Affordable Housing Provision as part of the Affordable Housing Provision for the next Residential Phase in accordance with paragraphs 1 and 2 of Schedule Eight (subject to the potential operation of the provisions of this Schedule Ten in respect of that next Residential Phase); or
 - 7.2 pay to the Council an Affordable Housing Commuted Sum in lieu of the provision of the relevant Shortfall in Affordable Housing Provision (such sum to be determined by the Council in accordance with the factors specified in paragraph 10.5 of Schedule Eight as applied to the relevant shortfall).

8. For the avoidance of doubt it is agreed and acknowledged that an Agreed Viability Report shall form the basis of determining the extent of the Affordable Housing Provision for the relevant Residential Phase in accordance with the provisions of Schedule Eight.

SCHEDULE ELEVEN

NOT USED

SCHEDULE TWELVE

THE PHASE [X] SITE

All that land...and as shown edged red on the Agreement Plan attached hereto

Appendix A

Plan Number 1, Plan Number 2, Plan Number 3, Plan Number 4, Plan Number 5
and Plan Number 6

Appendix B

Form of Further Section 106 Agreement

THE SEAL of THE COUNCIL OF)
THE CITY OF SUNDERLAND was)
hereunto affixed in the presence of:)

Authorised Signatory
Seal No.

EXECUTED as a DEED by)
SIGLION DEVELOPMENTS LLP)
in the presence of:-)

Signature of Witness

Name of Witness

Address of Witness

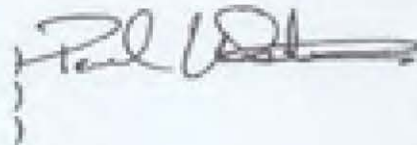
THE SEAL of THE COUNCIL OF)
THE CITY OF SUNDERLAND was)
hereunto affixed in the presence of:)



Authorised Signatory

Seal No. 62241A

EXECUTED as a DEED by
SIGLION DEVELOPMENTS LLP
in the presence of:-



Signature of Witness


Name of Witness
Paul Seacer

Address of Witness
c/o Siglion, Echo 24 Building,
Westgate, Street, Sunderland
SR1 1AD