

Dated

2023

**THE CITY COUNCIL OF BRISTOL (1)**

and

**HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND) (2)**

---

## **A G R E E M E N T**

under Section 106 of the Town and Country Planning Act 1990  
Sections 111 and 120 of the Local Government Act 1972  
Section 1 of the Localism Act 2011  
and other statutory provisions relating to land at  
Brislington Meadows, Broomhill Road, Bristol, BS4 4UD

---

Planning ref: 22/01878/P  
Appeal ref: APP/Z0116/W/22/3308537

Tim O'Gara  
Service Director - Legal  
& Democratic Services City Hall  
College Green  
Bristol  
BS1 5TR

Ref:GD04.410

**THIS AGREEMENT** is made the                      day of                      2023

**B E T W E E N :**

- (1) **THE CITY COUNCIL OF BRISTOL** of City Hall College Green Bristol BS1 5TR (“**Council**”); and
- (2) **HOMES AND COMMUNITIES AGENCY** (trading as **HOMES ENGLAND**) of One Friargate, Coventry, CV1 2GN (“**Owner**”)

**BACKGROUND**

1. The Council is the local planning authority and the local highway authority for the area in which the Land is situated;
2. The Owner is registered at The Land Registry as proprietor with freehold title BL156166 in respect of the Land as shown for identification purposes only edged red on the Plan free from encumbrances;
3. The Planning Application was made to the Council pursuant to the 1990 Act for planning permission for the Development;
4. The Owner has appealed the non-determination of the Planning Application. The Appeal was lodged with the Planning Inspectorate on 7 October 2022.
5. The Council is satisfied that should the Appeal be allowed and Planning Permission is granted it should be subject to the provisions of this Agreement that are necessary to make the Development acceptable in planning terms and which it is agreed by the parties hereto are directly related to the Development and are fairly and reasonably related in scale and kind to the Development

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

- 1.1. In this Agreement unless the context indicates otherwise the words and expressions below shall mean as follows:

<b>"1990 Act"</b>	the Town and Country Planning Act 1990 (as amended) and that and any other reference to the 1990 Act shall include any amending or replacing legislation for the time being in force
<b>"Appeal"</b>	the appeal against non-determination of the Planning Application by the Council submitted by the Owner to the Planning Inspectorate and given reference APP/Z0116/W/22/3308537
<b>"Commencement"</b>	the date on which any material operation (as defined in section 56(4) of the 1990 Act) forming part of the Development (or a Phase as the case may be) begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and <b>"Commencement of Development"</b> or <b>"Commence Development"</b> shall be construed accordingly
<b>"Committed for Expenditure"</b>	the Council has identified a financial contribution for spending in its annual financial forward plan or otherwise allocated the contribution for spending in accordance with its legal duties pursuant to Section 151 of the Local Government Act 1972
<b>"Development"</b>	the development authorised or to be authorised by the Planning Permission

<b>"Director"</b>	the Council's Strategic Director of Growth and Regeneration for the time being or his duly appointed agent
<b>"Expert"</b>	the expert appointed pursuant to clause 17.1 or 17.2
<b>"Index Linked"</b>	shall be construed in accordance with SCHEDULE 3
<b>"Land"</b>	the land situated at Brislington Meadows, Broomhill Road, Bristol in respect of which the Owner made the Planning Application as shown edged red for the purposes of identification on the Plan (together with other land) and for the avoidance of doubt except where the context otherwise requires shall include each and every part of the land
<b>"Occupation"</b>	the occupation of an individual Residential Unit 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 and <b>"Occupy"</b> and <b>"Occupied"</b> and <b>"Occupier"</b> shall be construed accordingly
<b>"Perpetuity"</b>	a minimum term of 125 (one hundred and twenty five) years from the date of first Occupation of the first Affordable Housing Unit (as defined in SCHEDULE 1)
<b>"Phase(s)"</b>	a phase or the phases of the Development as shown on the Phasing Plan
<b>"Phasing Plan"</b>	the plan approved pursuant to the planning permission showing the Phases

<b>"Plan"</b>	the plan annexed to this Agreement at Annexure 1 and marked with drawing number 7456_s106
<b>"Planning Application"</b>	the application made by the Owner to the Council (reference number 22/01878/P) for outline planning permission to develop the Land to provide up to 260 new residential dwellings (Class C3 use) together with pedestrian, cycle and vehicular access, cycle and car parking, public open space and associated infrastructure. Approval sought for access with all other matters reserved.
<b>"Planning Permission"</b>	any outline planning permission granted in respect of the Appeal or such other permission as may be granted by the Council in respect of the Land pursuant to an application for planning permission to amend such permission made pursuant to Section 73 of the 1990 Act provided that such permission does not materially alter the obligations contained in this Agreement save that the Council reserves the right to require a supplemental deed pursuant to Section 106/Section 106A (as appropriate) of the 1990 Act at its sole election
<b>"Residential Units"</b>	the (up to 260) residential properties forming part of the Development which includes the Open Market Units and the Affordable Housing Units (as both are defined in SCHEDULE 1) and <b>"Residential Unit"</b> will be interpreted as one of them accordingly
<b>"Working Day"</b>	a day other than a Saturday or Sunday or public holiday in England

- 1.2. Any reference to the parties or any other legal or natural person shall include his her its or their heirs assigns and successors in title and in the case of any local authority shall also include any successor in function
- 1.3. Any covenants obligations or other commitments given by more than one party shall be joint and several
- 1.4. Where the Owner is not a body corporate then neuter words shall include the masculine or feminine gender (as the case may be) and singular words shall include their plural numbers
- 1.5. The headings throughout this Agreement are for convenience only and shall not be taken into account in the construction and interpretation of this Agreement
- 1.6. References to clauses and Schedules are to the clauses and Schedules of this Agreement

## **2. STATUTORY POWERS**

### **2.1. THIS Agreement:**

- 2.1.1. will be registered as a Local Land Charge;
- 2.1.2. is entered into pursuant to Section 106 of the 1990 Act Sections 111 and 120 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other statutory and enabling powers;
- 2.1.3. to the extent that the obligations in this Agreement fall within the terms of Section 106 of the 1990 Act the obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the 1990 Act; and
- 2.1.4. to the extent that the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the power contained in Sections 111 and 120 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other statutory and enabling powers

- 2.2. This Agreement shall cease to have effect and be extinguished automatically (insofar only as it has not already been complied with) in the event that the Planning Permission is quashed, revoked or otherwise withdrawn or without the consent of the Owner is modified by any statutory procedure.
- 2.3. If this Agreement ceases to have effect in accordance with clause 2.2 the Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Agreement.
- 2.4. In the event that the Secretary of State grants the Planning Permission pursuant to the Appeal but expressly states in their decision letter that any obligation (or part thereof) contained in this Agreement:
- 2.4.1. is not a material planning consideration; or
  - 2.4.2. that no weight can be attached to the obligation in determining the Appeal; or
  - 2.4.3. otherwise fails to comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended);
- then such an obligation (or part thereof) will be deemed to be null and void and severed from the remainder of this Agreement.

### **3. ENFORCEMENT**

- 3.1. The covenants herein on behalf of the Owner are planning obligations (as defined in the 1990 Act) and they shall in accordance with Section 106(3) of the 1990 Act be enforceable by the Council against all persons obtaining title to the Land (or any part thereof) through any of those parties
- 3.2. SAVE AS PROVIDED FOR IN CLAUSE 3.3 no person shall be bound by any covenant or obligation herein in respect of any period during which that person no longer has an interest in the Land or part thereof except in respect of any breach arising and subsisting prior to parting with such interest
- 3.3. A First Home Owner (as defined in SCHEDULE 1) shall continue to be bound to pay any Additional First Homes Contribution (as defined in SCHEDULE 1)

as may be required in accordance with

3.4.

3.5.

3.6. **Part 4** of SCHEDULE 1 and such liability shall remain until the Additional First Homes Contribution has been fully paid

3.7. Unless stated specifically herein to the contrary nothing herein shall bind any statutory undertaker whose interest in the Land is held as part of their undertaking

3.8. In relation to individual owners and occupiers of a Residential Unit:

3.8.1. nothing herein shall bind an individual owner and/or Occupier of any single Open Market Unit;

3.8.2. paragraphs 1.5 to 1.22 of

3.8.3.

3.8.4.

3.8.5. **Part 4** of SCHEDULE 1 shall bind an individual First Home Owner in respect of the First Home owned by that First Home Owner; and

3.8.6. Part 5 and Part 6 of SCHEDULE 1 (as relevant) shall bind an individual owner/Occupier of an individual Affordable Housing Unit (but not a First Home)

#### 4. **THIRD PARTIES**

4.1. In accordance with Sections 1(2) and 2(3)(a) of the Contracts (Rights of Third Parties) Act 1999 no term of this Agreement shall be enforceable by a third party and any term may be rescinded or varied without the consent of any



third party

## **5. SUBSTANTIVE COVENANTS**

- 5.1. The Owner for and on behalf of itself and its heirs assigns and successors in title to its interests in the Land with the intention that the following provisions shall bind the Land and every part of it into whosoever's hands it may come covenants with the Council that it will comply with the covenants on the part of the Owner contained in the Schedules
- 5.2. The Council agrees and acknowledges that the covenant on the part of the Owner in clause 5.1 above shall apply only in the event that the Owner or anyone on its behalf or with its consent Commences the Development save as provided under clause 12 below and any pre-commencement obligations and conditions required by this Agreement which shall have full force and effect from the date of this Agreement
- 5.3. The Council covenants with the Owner to comply with the covenants on the part of the Council contained in the Schedules

## **6. RIGHT OF ENTRY**

- 6.1. If pursuant to a breach the Council requires to carry out all or any part of the works required under the terms of this Agreement the Owner (if in possession or if a receiver has been appointed) irrevocably authorises the Council and anyone appointed on its behalf (on giving reasonable notice except in the case of an emergency) to enter any part of the Land reasonably required for that purpose

## **7. CHANGE OF OWNERSHIP**

- 7.1. Until such time as the provisions of this Agreement have been fully complied with the Owner will in relation to any freehold or leasehold transfer of all or any part of their respective interests in the Land save for the transfer of individual Residential Units which form part of the Development deliver to the Council notice in writing of the transfer including the following information namely:

7.1.1. the name and address of the transferee;

7.1.2. a description of the land subject of the transfer including a plan; and

7.1.3. the nature of the interest transferred

7.2. Where notice pursuant to clause 7.1 above has been given and subsequently it is identified that the details provided require change (whether due to an error or to a change in the terms of the transfer or otherwise) the Owner shall serve a further notice in accordance with clause 7.1 save that in the case of a non-material change the Council may in writing and in its absolute discretion waive the need for such further notice

## **8. WARRANTY**

8.1. The Owner warrants that it is entitled to:

8.1.1. perform all of the obligations provided for in this Agreement in under or upon the Land; and

8.1.2. carry out the Development on the Land.

## **9. NOTICES**

9.1. Any notices to be served on or document to be submitted to any party to this Agreement:

9.1.1. In the case of the Owner shall be addressed to "the Head of Planning and Enabling – SW" and delivered or posted to that party at the following address: 2 Rivergate, Temple Quay, Bristol, BS1 6EH (or as may otherwise be advised by the Owner in writing to the Council);

9.1.2. in the case of the Council shall be addressed to the Planning Obligations Manager Strategic Planning Team quoting the planning reference number unless the Council advises the other parties hereto of an alternative address for service; and

9.1.3. in the case of any other person shall be delivered or posted to the

address for service notified by or on behalf of that person

## **10. CONFIRMATION OF INTERESTS**

- 10.1. The Owner confirms that to the best of its information apart from the parties to this Agreement there are no other persons with any interest (legal or equitable) in the Land or any part thereof

## **11. LOCAL AUTHORITY'S STATUTORY POSITION**

- 11.1. Nothing herein contained or implied shall limit prejudice or affect the rights duties and obligations of the Council under all statutes byelaws statutory instruments orders and regulations in the exercise of its function as a local authority

## **12. OPERATIVE DATE**

- 12.1. Save in respect of obligations requiring compliance prior to Commencement of Development this Agreement shall not become operative until the Commencement of Development

## **13. COMMENCEMENT OF DEVELOPMENT**

- 13.1. The Owner shall give to the Council seven (7) days written notice of its intention to Commence Development and shall confirm in writing within seven (7) days following Commencement that Development has Commenced PROVIDED THAT failure to provide either of the said notifications shall not render this Agreement inoperative

## **14. COSTS**

- 14.1. The Owner shall pay to the Council on the date hereof, its reasonable legal costs incurred in connection with this Agreement.

## **15. INDEMNITY**

- 15.1. The Owner will without prejudice to the Council's statutory and common law powers and rights hold the Council harmless and keep the Council

indemnified from and against any claim in connection with or incidental to the carrying out of any works required by this Agreement or in respect of any other requirement or covenant with the Council contained in this Agreement

## **16. INTEREST**

- 16.1. If any sum payable under this Agreement is not paid within fourteen (14) days of the date when it is due then save in the case of a manifest error by the Council in calculating the due sum the Owner shall in addition to any payment in respect of the sum due pay interest on the sum from the due date until actual payment at the rate of 3% (three per cent) above the base rate from time to time of National Westminster Bank Plc

## **17. DISPUTE PROVISIONS**

- 17.1. In the event of any dispute or difference arising between any of the parties to this Agreement in respect of any matter contained in this Agreement such dispute or difference may be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an Expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 17.2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 17.1 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.

- 17.3. 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 (20) Working Days after the conclusion of any hearing that takes place or twenty (20) Working Days after he has received each party's final written representation.
- 17.4. The Expert shall be required to give notice to each of the said parties requiring them to submit to him within ten (10) 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 (10) Working Days.
- 17.5. The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages or any other means of enforcing this Agreement and consequential and interim orders and relief.

## **18. JURISDICTION**

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

## **19. MISCELLANEOUS**

- 19.1. Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement
- 19.2. 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

**EXECUTED** as a deed by the parties and delivered the day and year first before written

Draft

**SCHEDULE 1**  
**AFFORDABLE HOUSING**

**Part 1**

**1. DEFINITIONS**

1.1 In this SCHEDULE 1 and elsewhere in this Agreement the words below shall mean as follows:-

**“Additional First Homes Contribution”** means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 1.12 , 1.13 of

Part 4 or paragraph 1.2 of Part 3 of this SCHEDULE 1, the lower of the following two amounts:

- (a) 30% (thirty per cent) of the proceeds of sale; and
- (b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes

Owner as a result of the disposal of the First Home other than as a First Home

<b>“Access”</b>	the provision of roads footpaths and cycleways together with all rights and easements over the said roads footpaths and cycleways as are necessary to provide access to the Affordable Housing Units or any one of them
<b>“Affordable Housing”</b>	affordable housing within the meaning of the National Planning Policy Framework 2021 (NPPF) Annex 2 Glossary or any amendment thereto or any Planning Policy Statement Guidance Notes or Circulars which may supersede it AND FOR THE AVOIDANCE OF DOUBT also includes First Homes unless expressly stated to the contrary
<b>“Affordable Housing Commuted Sum”</b>	the sum calculated on the basis of the Owner/developer subsidy of a Social Rented Unit (by applying the example calculation as set out in Figure 3 of the Bristol City Council Affordable Housing Practice Note 2022)
<b>“Affordable Housing Units”</b>	30% (thirty per cent) of the total number of Residential Units which shall be provided as Affordable Housing comprising of which 75% (seventy-five per cent) of them shall be Social Rented Units and 25% (twenty-five per cent) Shared Ownership Units or First Homes together with Access and such entrance ways corridors parking areas and other ancillary areas as are necessary for the enjoyment of such units and ‘Affordable Housing Unit’ shall mean any one of such units
<b>“Affordable Mix”</b>	the number size tenure and mix of Affordable Housing Units as shall be agreed in writing with the Council in accordance with Part 2 of this SCHEDULE 1 and which may be amended from time to time with the Council written approval (such approval not to be unreasonably withheld or delayed) subject to the requirements of this SCHEDULE 1



**“Armed Services Member”** means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member of those armed forces who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

**“Category 2: Accessible and Adaptable Dwellings”** dwellings which are built to standards which require that:

1. reasonable provision must be made for people to:
  - (a) gain access to; and
  - (b) use the dwellings and its facilities; and
2. the provisions must be sufficient to:
  - (a) meet the needs of occupiers with differing needs, including some older or disabled people; and
  - (b) allow adaptation of the dwellings to meet the changing needs of occupants over time

as specified in the ‘Optional Requirement M4(2) Category 2: Accessible and Adaptable dwellings’ section of the Building Regulations 2010 Approved Document M 2016 edition or such similar standards and regulations that may replace these

**“Category 3: Wheelchair User Dwellings”** dwellings which are built to standards which require that:

1. reasonable provision must be made for people to:
  - (a) gain access to; and
  - (b) use the dwellings and its facilities; and
2. the provisions must be sufficient to:

- (a) allow simple adaptation of the dwellings to meet the needs of occupants who are wheelchair users; or
- (b) meet the needs of occupants who use wheelchairs

as specified in the 'Optional Requirement M4 (3) Category 3: Wheelchair User Dwellings' section of the Building Regulations 2010 Approved Document M2016 edition or such similar standards and regulations that may replace these

AND

dwellings that comply with the requirements of the Council's Local Plan Policy DM4 (Core Strategy BCS18) that two per cent (2%) of new housing within a development scheme of fifty (50) units or more should be designed to be wheelchair accessible or easily adaptable for residents who are wheelchair users

**“Compliance Certificate”**

means the certificate issued by the Council confirming that a Residential Unit is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 1.6 of

**Part 4** applies the Eligibility Criteria (Local)

**“Council's Approved Allocation Policy”**

the Council's approved allocation policy from time to time in force for the allocation of residential accommodation to persons in need of such accommodation

<b>“Development Standard”</b>	<p>means a standard to fully comply with the following:-</p> <ul style="list-style-type: none"> <li>(a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015</li> <li>(b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time</li> <li>(c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited</li> <li>(d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)</li> <li>(e) local requirements as set out in adopted local plan]</li> </ul> <p>or such replacement or superseding standards as are in force at the time of this Agreement</p>
<b>“Director”</b>	<p>the Executive Director of Growth and Regeneration for the time being of the Council or such other officer of the Council as shall be substituted therefor and notified in writing to the Owners</p>
<b>“Discount Market Price”</b>	<p>means a sum which is the Market Value discounted by at least 30%</p>
<b>“Disposal”</b>	<p>means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:</p> <ul style="list-style-type: none"> <li>(a) a letting or sub-letting in accordance with paragraph 1.21 of</li> <li>(b)</li> </ul>

(c)

(d) **Part 4** of this SCHEDULE 1;

(e) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner;

(f) an Exempt Disposal

and “Disposed” and “Disposing” shall be construed accordingly

**“Eligibility  
Criteria  
(National)”**

means criteria which are met in respect of a purchase of a First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (b) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (National)

**“Eligibility  
Criteria (Local)”**

means criteria (if any) published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

- (a) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (Local) (if any); and
- (b) any or all of criteria (i) (ii) and (ii) below are met:
  - (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the

joint purchasers meets the Local Connection Criteria); and/or

(ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or

(iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker

**“Enabling Fee”** the fee of £550.00 (five hundred and fifty pounds) Index Linked charged by the Council for each Affordable Housing Unit and payable on Practical Completion of each Affordable Housing Unit

**“Estate Charge(s)”** any rentcharge imposed on a freehold property/owner pursuant to The Rentcharges Act 1977

**“Exempt Disposal”** the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Residential Unit (and for the avoidance of

doubt paragraph 1.2 of Part 3 of this SCHEDULE 1  
shall apply to such sale)

provided that in each case other than (d) the person to whom  
the disposal is made complies with the terms of paragraph  
1.16 of

#### **Part 4 of this SCHEDULE 1**

**“First Homes”** means those Affordable Housing Units which may be disposed  
of as a freehold or (in the case of flats only) as a leasehold  
property to a First Time Buyer at the Discount Market Price  
and which on their first Disposal does not exceed the Price  
Cap and **“First Home”** shall mean any one of such units

**“First Homes  
Owner”** means the person or persons having the freehold or leasehold  
interest (as applicable) in a First Home other than:

- (a) the Owner; or
- (b) another developer or other entity to which the freehold  
interest or leasehold interest in a First Home or in the land  
on which a First Home is to be provided has been  
transferred before that First Home is made available and is  
disposed of for occupation as a First Home; or
- (c) the freehold a tenant or sub-tenant of a permitted letting  
under paragraph 1.16 of
- (d)
- (e)

(f) **Part 4** of this SCHEDULE 1

<b>“First Time Buyer”</b>	means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
<b>“Ground Rent Charges”</b>	Any charges or payments that can legally be imposed on a leasehold property/owner pursuant to the Leasehold Reform (Ground Rent) Act 2022
<b>“Homes and Communities Agency / HCA / Homes England”</b>	the national housing and regeneration delivery agency for England established pursuant to the Housing and Regeneration Act 2008 (now known as <b>“Homes England”</b> (trading name)) which shall include any successor body in substitution for the Homes and Communities Agency and the terms <b>“Homes England”</b> shall mean the same for the purposes of this Agreement
<b>“Homes England Guidance”</b>	The guidance issued by Homes England known as “The Capital Funding Guide” first published on 4 November 2016 and as updated from time to time
<b>“Homes West”</b>	the group of RPs chosen by the West of England Local Authorities to develop and manage Affordable Housing within the West of England sub-region who have entered into a West of England Joint Working Agreement dated 2015 and agreed to comply with the group’s publication “West of England Standards Agreement” of October 2011 or any publication or document which may supersede it
<b>“Income Cap (National)”</b>	means eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home

<b>“Lease Model Agreements”</b>	The model leases published by Homes England as part of the Homes England Guidance, as updated from time to time
<b>“Key Worker”</b>	such categories of employment as may be designated and published by the Council from time to time as the “First Homes Key Worker criteria” and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Key Worker” criteria which shall apply to that disposal it being acknowledged that at the date of this agreement the Council has not designated any categories of employment as Key Worker
<b>“Layout Plan”</b>	the plan showing the location of the Affordable Housing Units as the Director shall approve and which may be amended from time to time with the written approval of the Director (such approval not to be unreasonably withheld or delayed)
<b>“Local Connection Criteria”</b>	<p>means the following criteria:</p> <ul style="list-style-type: none"> <li>• persons who have been living within the Bristol City boundary continuously for the last 2 years immediately prior to the date of application to buy the First Home property.</li> <li>• persons who have close family (as set out in the Council’s HomeChoice allocations scheme policy or any superseded document) currently living in Bristol, who have lived in Bristol continuously for the last 2 years immediately prior to the date of application to buy the First Home property, and who need to live near that person to provide or receive care.</li> <li>• persons whose normal place of work is in Bristol. For the purposes of this criterion voluntary, temporary,</li> </ul>



casual or short-term employment will not be taken into account and employment must not be marginal.

- persons who meet the criteria set out in The Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012 for whom a local connection requirement cannot be applied.

Only one member of a household buying a First Home in joint names needs to have a local connection to Bristol as set out above.

**“Local Housing Allowance”**

the flat rate rental allowance providing financial assistance towards the housing costs of low-income households for different rental areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department for Work and Pensions or such similar framework that may replace it

**“Long Lease”**

shall mean a lease for a term of at least 990 (nine hundred and ninety) years

**"Market Value"**

means the open market value as assessed by a Valuer of a Residential Unit as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation

**“Mortgagee”**

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a First Home

<b>“National Rent Regime”</b>	the rent policy set out in the social rent guidance section within the ‘Rent Standard Guidance’ published by the Department for Community and Local Government in 2015 (as updated by the Welfare Reform and Work Act 2016) or successor guidance or direction from time to time
<b>"Open Market Units"</b>	those Residential Units for sale or rent on the Private Housing Market other than Affordable Housing Units
<b>“Practical Completion”</b>	the practical completion of the Affordable Housing Unit(s) as evidenced by the issue of a certificate by an architect, surveyor or other suitably qualified professional person confirming that the construction of the Affordable Housing Units or any one of them is completed internally and externally and further evidenced by Building Regulation approval and <b>“Practically Completed”</b> shall have the same meaning
<b>“Price Cap”</b>	means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State
<b>“Private Housing Market”</b>	<p>the open market for the sale or letting of residential accommodation provided by a person or body other than:</p> <ul style="list-style-type: none"> <li>(i) a local housing authority; or</li> <li>(ii) an RP; or</li> <li>(iii) any other person or body offering residential accommodation to the public at less than the prevailing market rent/sale price</li> </ul>

<b>“Regulator of Social Housing”</b>	the Government’s agency for regulating RPs and publishing rent standards which definition shall include any successor body or bodies taking over such functions
<b>“Retained Equity”</b>	the equity in a Shared Ownership Unit that is retained by the RP, i.e. the share of the property that the RP holds after selling the balance to the occupant
<b>“RP”</b>	a provider of Affordable Housing registered with the Regulator of Social Housing or Homes West as shall be approved by the Council such approval not to be unreasonably withheld or delayed or such other body as may be proposed by the Owner and approved by the Council (such approval not to be unreasonably withheld or delayed)
<b>“Sales and Marketing Strategy”</b>	the marketing strategy for First Homes which will include triggers for the commencement of marketing to people with a local connection for the Local Connection Criteria to operate
<b>“SDLT”</b>	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
<b>“Secretary of State”</b>	means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function
<b>“Service Charge”</b>	a sum (which expression shall include any Estate Charge(s) and/or Ground Rent Charges) that covers the contributions required from time to time for those services and facilities which are of a nature and to a standard reasonably required in connection with the Affordable Housing Unit(s) such as maintaining, repairing and servicing any communal parts related to the Affordable Housing Unit(s), the cleaning and lighting of common parts and the maintenance of any communal gardens

or landscaping areas or shared highways that directly benefit the Affordable Housing Unit(s).

<b>“Service Charge Cap”</b>	the sum of £650.00 (six hundred and fifty pounds) per annum per unit Index Linked unless as agreed in writing between the affordable housing provider and the Council. For the avoidance of the doubt the Service Charge Cap shall not include Sinking Fund Charges for Shared Ownership or First Homes.
<b>“Service Installations”</b>	(without prejudice to the generality of this expression) shall include sewers drains culverts channels outlets mains wires cables ducts flues soakaways and other conducting media for the supply of Services
<b>“Services”</b>	(without prejudice to the generality of this expression) shall include electricity telephone gas water foul drainage surface water drainage cable television and other cable services
<b>“Shared Ownership Units”</b>	those Affordable Housing Units in respect of which the occupier purchases an agreed percentage of the equity sale and pays a rent of up to one and half per cent (1.5%) of the Retained Equity value and is permitted to Staircase and <b>“Shared Ownership Unit”</b> shall mean any one of such units
<b>“Sinking Fund Charges”</b>	any charges required to cover the costs of replacing items or areas of a building at their expected ‘end of life’ as part of programmed repairs for that building
<b>“Social Rented Units”</b>	social rented units owned and managed by local authorities or an RP for which guideline target rents are determined through the National Rent Regime and shall bear the same meaning as described in the definition of “Affordable housing for rent” in the NPPF and <b>“Social Rented Unit”</b> shall mean any one of such units

<b>“Staircase”</b>	the method by which the occupier of a Shared Ownership Unit pays a premium in order to acquire an equity (or a further equity) in such unit and <b>“Staircasing”</b> shall be construed accordingly
<b>“Staircasing Receipts”</b>	payments made to the RP (less reasonable costs) by a shared ownership lessee tenant or any other person for the acquisition of equity in a Shared Ownership Unit pursuant to a Staircase event
<b>“Valuer”</b>	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity
<b>“West of England Local Authorities”</b>	the Council, Bath and North East Somerset Council, North Somerset Council and South Gloucestershire Council

## Part 2 Owner Covenants

1. The Owner hereby covenants with the Council as follows:
  - 1.1. not to Commence the Development until the Owner has submitted to and obtained the written approval of the Director to:
    - 1.1.1. the number of Affordable Housing Units and the amount of the Affordable Housing Commuted Sum (if applicable) to be provided on the basis that if the calculation of the number of Affordable Housing Units results in:
      - (a) a fraction equal or greater than 0.5 the total number of Affordable Housing Units to be provided on the Land shall be rounded up to the next whole number; or
      - (b) a fraction lower than 0.5 this fraction of an Affordable Housing Unit shall instead be provided as the Affordable Housing Commuted Sum and the total number of Affordable

Housing Units to be provided on the Land shall be rounded down to the previous whole number;

- 1.1.2. the Layout Plan;
- 1.1.3. a programme and timetable for the provision of the Affordable Housing Units including the proposed phasing of the Affordable Housing Units in accordance with the Phasing Plan;
- 1.1.4. the Affordable Housing Mix;
- 1.1.5. the cost standard and level of servicing (as applicable) of the Affordable Housing Units;
- 1.1.6. a rent and affordability scheme for the Affordable Housing Units (but not for any First Homes (if applicable)) demonstrating how the proposed rental structure Service Charge and review mechanisms will (as applicable) do as follows:
  - (a) accord with the National Rent Regime and Service Charge Cap; and
  - (b) accord with the limit of up to 1.5% rent on Retained Equity in respect of any Shared Ownership Units (as applicable); and
  - (c) not exceed Local Housing Allowance levels at each new let of an Affordable Housing Unit
- 1.1.7. the number and location of Category 2 (M4(2)) (Accessible and Adaptable Dwellings) and Category 3 (M4(3)) (Wheelchair User Dwellings)

such approval not to be unreasonably withheld or delayed

- 1.2. to provide the Affordable Housing Units in accordance with the Affordable Mix approved by the Council and in accordance with the agreed Layout Plan and the agreed programme and timetable
- 1.3. where the Affordable Housing Mix approved by the Council includes:

1.3.1. First Homes:

- (a) they shall be provided in accordance with
- (b)
- (c)

(d) **Part 4** of this SCHEDULE 1; and

(e) prior to the Commencement of Development the Owner shall pay to the Council the sum of one hundred and seventy-five pounds (£175.00) per First Home as a contribution towards the Council's costs incurred in connection with the performance of the Council's obligations pursuant to

- (f)
- (g)

(h) **Part 4** (First Homes) of this SCHEDULE 1;

or

1.3.2. Shared Ownership Units they shall be provided in accordance with Part 6 of this SCHEDULE 1

1.4. upon Commencement of the Development of each Phase to construct any Affordable Housing Units in that Phase together with the Services Service Installations and Access in accordance with:

1.4.1. the Development Standard; and

1.4.2. the approval of the Director issued pursuant to paragraph 1.1

1.5. not to Commence the Development until the Owner has entered into a contract with an RP for either:

1.5.1. the grant to such RP of a Long Lease of the Affordable Housing Units (but not including any First Homes); or

1.5.2. the transfer to such RP of the freehold of the Affordable Housing Units (as appropriate) (but not including any First Homes)

together with (in either case) all Services Service Installations and Access and provide evidence in writing to the Council of such contract

- 1.6. not to Occupy nor permit to be Occupied more than 40% (forty per cent) of the Open Market Units until the Owner has either granted a Long Lease of the Affordable Housing Units (but not including any First Homes) or has transferred the freehold of the Affordable Housing Units (as appropriate) (but not including any First Homes) to an RP in accordance with the contract referred to in paragraph 1.4 above and has provided evidence in writing to the Council of such Long Lease or transfer
- 1.7. unless otherwise agreed in writing by the Director not to Occupy nor permit to be Occupied more than 60% (sixty per cent) of the Open Market Units until the Owner has substantially completed 75% (seventy-five per cent) of the Affordable Housing Units
- 1.8. unless otherwise agreed in writing by the Director not to Occupy nor permit to be Occupied more than 80% (eighty per cent) of the Open Market Units until the Owner has substantially completed 100% of the Affordable Housing Units
- 1.9. to notify the Director of the Practical Completion of all of the Affordable Housing Units
- 1.10. subject to:
  - 1.10.1. the right of any occupier of a Shared Ownership Unit to Staircase to 100% (one hundred per cent);
  - 1.10.2. any statutory right of any occupier of an Affordable Housing Unit to buy or acquire their Affordable Housing Unit; and/or
  - 1.10.3. the provisions of Part 3 of this SCHEDULE 1

to ensure and procure that the Affordable Housing Units shall be provided as such in Perpetuity



- 1.11. to pay to the Council the Affordable Housing Commuted Sum (if applicable) prior to Commencement of Development and the Council covenants to use the Affordable Housing Commuted Sum for the provision of affordable housing within the Council's administrative area.
- 1.12. to observe the terms and requirements of this SCHEDULE 1
- 1.13. that (unless otherwise permitted in writing by the Director or as otherwise permitted by this Agreement) the Owner will not vary the Affordable Mix of Affordable Housing Units

### **Part 3**

#### **Agreements between the Council and the Owner**

1. IT IS HEREBY AGREED between the parties to this Agreement as follows:-
  - 1.1. that in relation to Affordable Housing Units other than First Homes the obligations contained in this SCHEDULE 1 shall not bind:
    - 1.1.1. 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 (each a "**Receiver**") 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 PROVIDED THAT:
      - (a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another RP or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security

documents including all accrued principal monies, interest and costs and expenses; and

- (b) if such disposal has not completed within the 3 (three) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely; or

1.1.2. any tenant of an Affordable Housing Unit who (notwithstanding the provision of paragraph 1.4 of

1.1.3.

1.1.4.

1.1.5. **Part 4** and paragraph 1.4 of Part 5 of this SCHEDULE 1) acquires and exercises a right to acquire such Affordable Housing Unit or any successor in title of such tenant or any mortgagee or chargee of such tenant or successor in title or any receiver appointed by such mortgagee or chargee and the said obligations shall thereafter cease to have effect in relation to the Affordable Housing Units or such of them as may be affected; or

1.1.6. a leaseholder of a Shared Ownership Affordable Housing Unit who has exercised a right to Staircase up to 100% (one hundred per cent) ownership or any successor in title of such leaseholder or any mortgagee or chargee of such leaseholder or successor in title or any receiver appointed by such mortgagee or chargee and the said obligations shall thereafter cease to have effect in relation to the Affordable Housing Units or such of them as may be affected

- 1.2 that in relation to First Homes the obligations contained in this SCHEDULE 1 shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a "**Receiver**")) of any individual

First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

- 1.2.1 such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
  - 1.2.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 1.2.3 below
  - 1.2.3 following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.
  - 1.2.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:
    - (a) forthwith issue a completed application to the purchaser of that Residential Unit to enable the removal of the restriction on the title set out in paragraph 1.8 of
    - (b)
    - (c)
    - (d) **Part 4;** and
    - (e) apply all such monies received towards the provision of Affordable Housing
- 1.2. that upon the Owner entering into a Long Lease of or transferring the freehold of the Affordable Housing Units (not including any First Homes) to an RP the RP (or their successors or assigns) shall be held by the Council solely responsible for complying with the terms and requirements of this SCHEDULE

## **Part 4**

### **Owner obligations in relation to First Homes**

1. In the event that an Affordable Housing Mix approved by the Director includes First Homes the Owner hereby covenants with the Council as follows:

#### **QUANTUM OF FIRST HOMES**

- 1.1. 25% (twenty five per cent) of the total number of Affordable Housing Units shall be First Homes and shall be provided and retained as First Homes in perpetuity subject to the terms of Part 1, Part 3 and Part 4 of this of this SCHEDULE 1

#### **TYPE AND DISTRIBUTION**

- 1.2. where applicable the mix of First Homes provided as part of the Development shall be in accordance with
  - 1.2.1. the Affordable Housing Mix; and
  - 1.2.2. the distribution in the Layout Plan
- 1.3. all First Homes shall be constructed to no less than the standard applied to the Open Market Units

#### **DELIVERY MECHANISM**

- 1.4. not less than six (6) months prior to the Practical Completion of the 1<sup>st</sup> (first) First Home, the Sales and Marketing Strategy shall be submitted to the Council for written approval (such approval not to be unreasonably withheld) which shall then be approved by the Council within 28 days of its receipt (PROVIDED THAT should the Sales and Marketing Strategy not include

necessary information so that can be approved by the Council when first submitted, the Council shall approve the document within 28 days of its receipt of any outstanding information)

- 1.5. the First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

1.5.1. the Eligibility Criteria (National); and

1.5.2. the Eligibility Criteria (Local) (if any)

- 1.6. if after a First Home has been actively marketed in accordance with the Sales and Marketing Strategy for three (3) months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 1.5.2 shall cease to apply

- 1.7. subject to paragraphs 1.9 to 1.13, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% (fifty per cent) of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee

- 1.8. no First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

1.8.1. the Council has been provided with evidence that:

- (a) the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 1.5 applies meets the Eligibility Criteria (Local) (if any)
- (b) the Residential Unit is being Disposed of as a First Home at the Discount Market Price; and
- (c) the transfer of the First Home includes:

- (i) a definition of the "Council" which shall be The City Council of Bristol
- (ii) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs 1.4-1.12 of the [Supplemental] S106 Agreement a copy of which is attached hereto as the Annexure."
- (iii) A definition of "[supplemental] S106 Agreement" means the [supplemental]agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ ] made between (1) the Council and (2)
- (iv) a provision that the property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the property or any part of it other than in accordance with the First Homes Provisions
- (v) a copy of the First Homes Provisions in an Annexure

1.8.2. the Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 1.6 and 1.7.1 have been met; and

1.8.3. the First Home Owner(s) has paid to the Council the sum of One Hundred and Seventy Five Pounds (£175.00) (Index Linked) per First Home unit as a contribution towards the Council's costs

incurred in connection with the Council's obligations pursuant to this

1.8.4.

1.8.5.

1.8.6. **Part 4** of SCHEDULE 1 (SAVE THAT this payment shall not apply to the first sale of a First Home by the Owner) ("**First Home Fee**").

1.9. on the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

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

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

1.10.1. the Residential Unit has been actively marketed as a First Home for six (6) months in accordance with paragraphs 1.9 and 1.10 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Residential Unit as a First Home but it has not been possible to Dispose of that Residential Unit as a First Home in accordance with paragraphs 1.6 and 1.12; or

- 1.10.2. requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 1.9.1 before being able to Dispose of the Residential Unit other than as a First Home would be likely to cause the First Homes Owner undue hardship
- 1.11. upon receipt of an application served in accordance with paragraph 1.9 the Council shall have the right (but shall not be required) to direct that the relevant Residential Unit is disposed of to it at the Discount Market Price
- 1.12. if the Council is satisfied that either of the grounds in paragraph 1.9 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 1.9 that the relevant Residential Unit may be Disposed of:
  - 1.12.1. to the Council at the Discount Market Price; or
  - 1.12.2. (if the Council confirms that it does not wish to acquire the relevant Residential Unit) other than as a First Home

and on the issue of that written confirmation the obligations in this Agreement which apply to First Homes shall cease to bind and shall no longer affect that Residential Unit apart from paragraph 1.13 which shall cease to apply on receipt of payment by the Council where the relevant Residential Unit is disposed of other than as a First Home

- 1.13. if the Council does not wish to acquire the relevant Residential Unit itself and is not satisfied that either of the grounds in paragraph 1.9 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 1.9 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Residential Unit as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the Owner has been unable to Dispose of the Residential Unit as a First Home he may serve notice on the Council in accordance with paragraph 1.9 following which the Council must within 28 days issue confirmation in writing that the Residential Unit may be Disposed of other than as a First Home



- 1.14. where a Residential Unit is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 1.11 or 1.12 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution
- 1.15. upon receipt of the Additional First Homes Contribution the Council shall:
- 1.15.1. within twenty (20) Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 1.8 where such restriction has previously been registered against the relevant title
- 1.15.2. apply all monies received towards the provision of Affordable Housing
- 1.16. any person who purchases a First Home free of the restrictions in this
- 1.17.
- 1.18.
- 1.19. **Part 4** of this SCHEDULE 1 pursuant to the provisions in paragraphs 1.12 and 1.13 shall not be liable to pay the Additional First Homes Contribution to the Council
- 1.20. The Owner shall provide quarterly written updates in accordance with Council requirements on the progress of delivery of the First Homes, including information on plot reservations and Practical Completions

## **USE**

- 1.21. each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Agreement PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 1.21.1 – 1.21.4 below:

- 1.21.1. a First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.
- 1.21.2. a First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) to (f) below:
- (a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
  - (b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
  - (c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
  - (d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown

- (e) the First Homes Owner reasonably requires to live elsewhere or the duration of the letting or sub-letting as a result of redundancy; and
  - (f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person
- 1.21.3. a letting or sub-letting permitted pursuant to paragraph 1.21.1 or 1.21.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 1.21.4. nothing in this paragraph 1.21 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.
- 1.22. that no First Homes Owner or occupier of a First Home shall be charged a Service Charge in excess of the Service Charge Cap unless as agreed in writing between the affordable housing provider and the Council.

## **Part 5**

### **Owner obligations in relation to the Social Rented Units**

- 1. The Owner hereby covenants with the Council to ensure and/or procure the delivery of the Social Rented Units in accordance with this SCHEDULE 1 and to ensure and/or procure as follows:
  - 1.1. that the Social Rented Units shall at all times be occupied and managed in accordance with the objects of an RP and will procure that the Social Rented Units shall not be used otherwise than for the purpose of providing dwellings for rent to those persons referred to in paragraphs 1.2 and 1.3 below
  - 1.2. that in respect of those Social Rented Units for which the Council is from time to time granted nomination rights by the RP that such units shall not be

occupied otherwise than by a person or persons who are considered by the Council and the RP to be in need of such accommodation and to whom such units shall have been allocated in accordance with the Council's Approved Allocation Policy

- 1.3. that in respect of those Social Rented Units for which the Council has not been granted nomination rights by the RP that such units shall not be occupied otherwise than by a person or persons who are considered by the RP to be in need of such accommodation and to whom such units shall have been allocated in accordance with the RP's approved allocation policy
- 1.4. that the Social Rented Units shall be excluded (so far as legally possible) from:-
  - 1.4.1. any voluntary purchase grant scheme; and/or
  - 1.4.2. any right to acquire or right to buy schemes introduced in favour of the occupiers of the Social Rented Units
- 1.5. that no occupier of a Social Rented Unit shall be charged a Service Charge in excess of the Service Charge Cap unless as agreed in writing between the affordable housing provider and the Council.
- 1.6. not to charge the tenant of a Social Rented Unit a rent in excess of the target rent determined in accordance with the National Rent Regime
- 1.7. that the Enabling Fee is paid to the Council on Practical Completion of each Social Rented Unit in accordance with the Council's Affordable Housing Practice Note 2022 or such other document that may supersede it
- 1.8. that an obligation is included in the Long Lease or transfer of the Affordable Housing Units to an RP to comply with the provisions of this Part 5 of this SCHEDULE 1 subject to the exclusions in Part 3 of this SCHEDULE 1 and subject to any later variation or amendment that may be made to this Agreement
2. For the avoidance of doubt the provisions in this Part 5 of this SCHEDULE 1 shall not be binding on:

- 2.1. a sale to a tenant exercising their right to acquire or purchase under a statutory power;
- 2.2. the purchaser or successor in title to any person specified in paragraph 2.1 above

## **Part 6**

### **Owner obligations in relation to Shared Ownership Units**

1. In the event that an Affordable Housing Mix approved by the Director includes Shared Ownership Units the Owner hereby covenants with the Council as follows:
  - 1.1. 25% (twenty five per cent) of the total Affordable Housing Units are to be provided as Shared Ownership Units the Owner hereby covenants with the Council to ensure and/or procure the delivery of the Shared Ownership Units in accordance with this SCHEDULE 1;
  - 1.2. that the Shared Ownership Units shall be made available for shared equity leasing by an RP under the HCA's standard form of shared ownership lease (or any subsequent standard form of shared ownership lease as may be issued by Homes England from time to time in force) to persons who are considered by the RP to be in need of such accommodation;
  - 1.3. that the RP will notify the Council in writing each time a purchaser of a Shared Ownership Unit acquires a further equity in such Shared Ownership Unit;
  - 1.4. that no occupier of a Shared Ownership Unit shall be charged a Service Charge in excess of the Service Charge Cap and no element of such Service Charge shall be included in any rent for such unit unless as agreed in writing between the affordable housing provider and the Council.
  - 1.5. that no occupier of a Shared Ownership Unit shall be charged a rent on the Retained Equity in excess of up to one and half per cent (1.5%) of the Retained Equity value and such occupier shall not be required to make an initial purchase of equity of more than as is set out in the Homes England Guidance

and Lease Model Agreements applicable at the time of the initial purchase unless otherwise agreed with the Council

- 1.6. that the RP shall use all Staircasing Receipts received from the purchaser of a Shared Ownership Unit (as a result of the occupiers exercising the right to Staircase) to enable the provision of Affordable Housing within either:
  - 1.6.1. the same electoral ward in which the Shared Ownership Units are situated; or
  - 1.6.2. the City of Bristol generally; or
  - 1.6.3. as previously agreed in writing with the Council
- 1.7. that the Enabling Fee is paid to the Council on Practical Completion of each Shared Ownership Unit in accordance with the Council's Affordable Housing Practice Note 2022 or such other document that may supersede it
- 1.8. that an obligation is included in the Long Lease or transfer of the Shared Ownership Units to an RP to comply with the provisions of this Part 6 of this SCHEDULE 1 subject to the exclusions in Part 3 of this SCHEDULE 1 and subject to any later variation or amendment that may be made to this Agreement

## **Part 7**

1. For the avoidance of doubt, in the event that the Owner elects to provide more than the policy compliant thirty per cent (30%) affordable housing as part of the Development, such units shall be permitted by the Council to be delivered and used as affordable tenures (in accordance with Annex 2 of the NPPF Glossary) but SCHEDULE 1 of this Agreement shall not apply to such units.

## SCHEDULE 2

### FINANCIAL CONTRIBUTIONS

#### 1. DEFINITIONS

1.1. In this SCHEDULE 2 the words below shall mean as follows:

**“Employment and Skills Plan”** the plan to be prepared by and provided to the Council for its approval by the Owner in accordance with a condition of the Planning Permission

**“Fire Hydrant Contribution”** the sum of £15,000.00 (Fifteen Thousand Pounds) plus VAT and Index Linked (being at £1,500 plus VAT per hydrant) for expenditure by the Council on the provision installation and five (5) years maintenance of ten (10) new fire hydrant(s) and related appropriately-sized water mains for fire-fighting purposes at a location within the vicinity of the Development to be agreed between the parties acting reasonably

**“Residential Travel Plan”** the residential travel plan for the Development to be prepared by either the Owner or the Council depending on which Travel Plan Fee is paid by the Owner

**“Travel Plan Fee”** the sum of either:

- (i) £220.00 (two hundred and twenty pounds) Index Linked per Residential Unit to be used by the Council towards the Council's costs and expenses incurred by the Council in the preparation and implementation of the Residential Travel Plan on behalf of the Owner; or
- (ii) £5,693.00 (five thousand six hundred and ninety-three pounds) Index Linked to be used by the Council towards the Council's costs and

expenses incurred by the Council in auditing and monitoring the Residential Travel Plan prepared by the Owner

**“Traffic Order Contribution”**

the sum of £25,240.00 (twenty five thousand two hundred and forty pounds) Index Linked to be used by the Council for the making and implementation of four (4) traffic orders for the Development comprised as follows:

- (i) New pedestrian crossing on School Road;
- (ii) New road humps on School Road (crossing site) and Bonville Road (emergency access site);
- (iii) Area wide waiting restrictions on new “adopted” development roads and roads surrounding the development site;
- (iv) 20mph on new adopted roads within development site.

**“Local Labour and Training Plan Fee ”**

the sum of £2,000.00 (two thousand pounds) Index Linked to be used by the Council towards the Council’s costs and expenses incurred by the Council in monitoring the implementation of the Employment and Skills Plan

**“Tree Replacement Contribution”**

a sum to be agreed with the Council (plus Indexation) towards the costs and expenses incurred by the Council in the off-site planting of replacement trees in mitigation for the loss of those trees located on the Land and identified for removal (but not capable of replacement on the Land) in accordance with paragraph 2 of SCHEDULE 2 and calculated in accordance with the tree replacement standards within the Planning



Obligations SPD and further set out in ANNEXURE 2 of this Agreement

**“Transport  
Infrastructure  
Contribution”**

the sum of £143,208.00 (one hundred and forty three thousand two hundred and eight pounds) Index Linked to be used for expenditure by the Council on new and upgraded public transport facilities in the vicinity of the Land to include the provision of real-time information displays, raised kerbs and new shelters for two locations.

2. Following approval of an arboricultural survey pursuant to the Planning Permission but prior to Commencement of Development the Developer shall agree with the Council in writing the total sum to be paid by the Developer for the Tree Replacement Contribution
3. The Owner covenants to pay the Fire Hydrant Contribution, Local Labour and Training Plan Fee, the Travel Plan Fee (whichever sum is elected), the Traffic Order Contribution and the Tree Replacement Contribution on or before Commencement of Development
4. The Owner covenants not to Commence the Development until the Fire Hydrant Contribution, Local Labour and Training Plan Fee, the Travel Plan Fee (whichever sum is elected), the Traffic Order Contribution and the Tree Replacement Contribution have been paid to the Council
5. The Owner covenants to pay the Transport Infrastructure Contribution to the Council in the following instalments:
  - 5.1. £35,802.00 (thirty five thousand eight hundred and two pounds) Index Linked prior to Commencement of Development
  - 5.2. £35,802.00 (thirty five thousand eight hundred and two pounds) Index Linked prior to first Occupation of any Residential Unit

- 5.3. £35,802.00 (thirty five thousand eight hundred and two pounds) Index Linked prior to first Occupation of more than 25% (twenty-five per cent) of the Residential Units
- 5.4. £35,802.00 (thirty five thousand eight hundred and two pounds) Index Linked prior to first Occupation of more than 50% (fifty per cent) of the Residential Units
6. The Owner covenants not to:
- 6.1. Commence the Development until the instalment referred to in paragraph 5.1 of this SCHEDULE 2 has been paid to the Council
- 6.2. Occupy or permit the first Occupation of any Residential Unit until the instalment referred to in paragraph 5.2 of this SCHEDULE 2 has been paid to the Council
- 6.3. Occupy or permit the first Occupation of more than 25% (twenty-five per cent) of the Residential Units until the instalment referred to in paragraph 5.3 of this SCHEDULE 2 has been paid to the Council
- 6.4. Occupy or permit the first Occupation of more than 50% (fifty per cent) of the Residential Units until the instalment referred to in paragraph 5.4 of this SCHEDULE 2 has been paid to the Council
7. The Council covenants to apply the Fire Hydrant Contribution, Local Labour and Training Plan Fee, the Travel Plan Fee (whichever sum is elected), the Traffic Order Contribution, the Tree Replacement Contribution and the Transport Infrastructure Contribution only to the purposes identified in paragraph 1 above

## **SCHEDULE 3**

### **INDEXATION**

#### **1. DEFINITIONS**

1.1. For the purposes of this SCHEDULE 3, the words below shall mean as follows:

**“Contributions”** the Fire Hydrant Contribution, the Local Labour and Training Plan Fee, the Travel Plan Fee, the Traffic Order Contribution, the Tree Replacement Contribution and the Transport Infrastructure Contribution

**“CPI”** the Consumer Price Index or any such alternative index or comparable measure of price inflation as may be agreed in writing with the Council

**“Indexation”** means in relation to:

- (a) the rent chargeable for the Affordable Housing Units indexation calculated in accordance with paragraph 2.2.1 of this SCHEDULE 3
- (b) the Service Charge Cap applicable for the Affordable Housing Units under this Agreement indexation calculated in accordance with paragraph 2.2.2 of this SCHEDULE 3
- (c) the Contributions and Enabling Fee indexation calculated in accordance with paragraph 2.1 of this SCHEDULE 3

**"RPI"** the All items Index of Retail Prices published by the Office for National Statistics or any publication substituted therefor

## **2. CALCULATION OF INDEXATION**

### **2.1. Contributions**

2.1.1. All Contributions, the First Home Fee and the Enabling Fee will be subject to indexation based on increases in the RPI Index and calculated using the following formula:

$$C = \text{£Y} \times (B / A)$$

Where:

A in respect of the Local Labour and Training Plan Fee the value of the Index is for 1 March 2022, for the Tree Replacement Contribution and Fire Hydrant Contribution the value of the Index is for January 2013, and for the remainder Contributions, and the Enabling Fee, is the value of the RPI Index for the month immediately preceding the date of this Agreement in respect of the relevant Contribution the First Home Fee or the Enabling Fee

B is the value of the Index for the month immediately preceding payment of a Contribution the First Home Fee or the Enabling Fee pursuant to the provisions of this Agreement

£Y is the relevant Contribution the First Home Fee or the Enabling Fee

C is the level of the Contribution the First Home Fee or the Enabling Fee after the application of the Indexation formula

## 2.2. Affordable Housing Units

2.2.1. The baseline rent for the Affordable Housing Units shall be subject to indexation based on increases in the Index and calculated using the following formula:

$$C = \text{£Y} \times (B / A)$$

Where:

- A is the value of the Index for the month immediately preceding the date of this Agreement
- B is the value of the Index for the month of March each year
- £Y is the rent on each new let
- C is the level of rent payable in respect of the Affordable Housing Units after application of the Indexation formula

2.2.2. The Service Charge Cap for the Affordable Housing Units will be subject to indexation in April of every financial year ('the Indexation Trigger') based on increases in the Index and calculated using the following formula:

$$C = \text{£Y} \times (B / A)$$

Where:

- A is the value of the CPI for September 2018
- B is the value of the CPI for September of the financial year preceding the Indexation Trigger
- £Y is the Service Charge Cap prior to indexation
- C is the level of the Service Charge Cap applicable in respect of the Affordable Housing Units after application of the Indexation formula

## **SCHEDULE 4**

### **COUNCIL'S COVENANTS**

1. The Council covenants with the Owner:
  - 1.1. if any of the Contributions (or any part thereof) (save for the Traffic Order Contribution) is not applied or Committed for Expenditure by the Council for the purposes as specified in SCHEDULE 2 (as the case may be) within ten (10) years of the date of receipt of each payment to repay the relevant Contribution (or such part as has not been applied or committed) to the person who paid such Contribution(s) together with interest thereon at the annual average local authority seven day rate as published in The Financial Times calculated from the date of receipt of each payment (as applicable) until repayment;
  - 1.2. upon a written request by the Owner to provide to the Owner within twenty (20) Working Days such evidence as the Owner shall reasonably require to confirm the expenditure of the relevant Contribution or that it has been Committed for Expenditure; and
  - 1.3. at the written request of the Owner to provide written confirmation of the discharge of any of the obligations contained in this Agreement when satisfied that such obligations have been performed

**EXECUTED as a DEED** by affixing THE  
COMMON SEAL of **THE CITY COUNCIL OF**  
**BRISTOL** in the presence of:

Authorised signatory

**EXECUTED as a DEED** by affixing THE  
COMMON SEAL of **HOMES AND  
COMMUNITIES AGENCY** in the presence of:

Authorised signatory

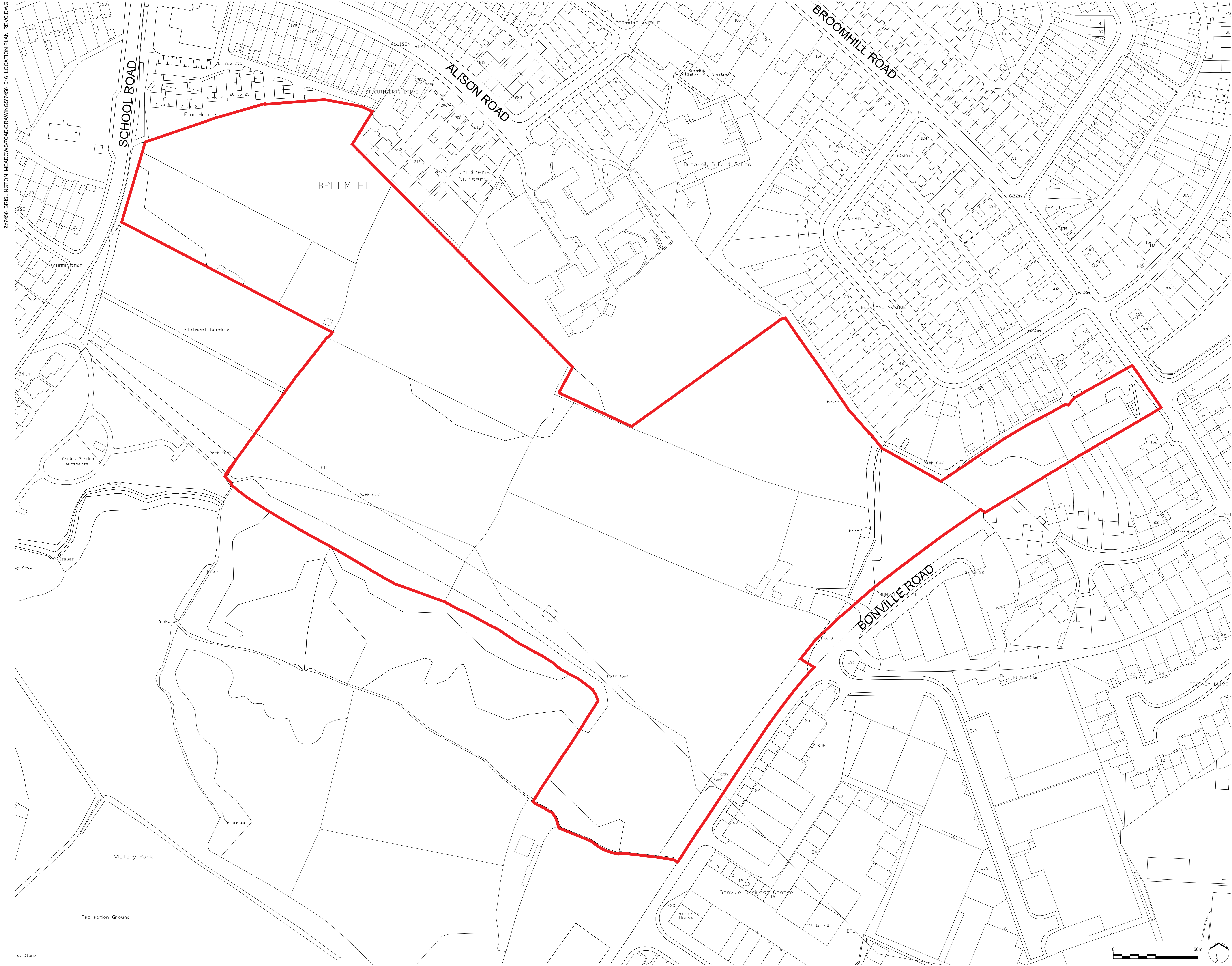
Draft

**ANNEXURE 1**  
**The Plan**

Draft



Z:\7456 BRISLINGTON\_MEADOWS\CADDRAWINGS\7456\_016\_LOCATION PLAN\_REV0.DWG



LEGEND

— Homes England Ownership

REV.	DESCRIPTION	APP.	DATE

**LDA DESIGN**

PROJECT TITLE  
**7456 Brislington Meadows**

DRAWING TITLE  
**S106 Red Line Boundary - Homes England Ownership**

ISSUED BY	Bristol	T: 0117 203 3628
DATE	03 Nov 2022	DRAWN JN
SCALE	1:1,000	CHECKED LA
STATUS	Planning	APPROVED RF

**DWG. NO 7456\_S106**

No dimensions are to be scaled from this drawing.  
All dimensions are to be checked on site.  
Area measurements for indicative purposes only.

© LDA Design Consulting Ltd. Quality Assured to BS EN ISO 9001 : 2015  
Sources Ordnance Survey

0 50m

North



**ANNEXURE 2**  
**The Tree Replacement standards within the Planning Obligations SPD**

Draft

## Trees

### Policy Background

The justification for requiring obligations in respect of new or compensatory tree planting is set out in Policies BCS9 and BCS11 of the council's Core Strategy.

### Trigger for Obligation

Obligations in respect of trees will be required where either:

- New planting is required on public land to mitigate the impact of a development, or
- Where trees covered by categories A, B and C of BS 5837 (Trees in relation to construction) are felled as part of a development, and replacement planting is required on public land

Tree planting will either take place on open ground or in areas of hard standing such as pavements.

Where planting can take place directly into open ground the contribution will be lower than where the planting is in areas of hard standing. This is due to the need to plant trees located in areas of hard standing in an engineered tree pit.

All tree planting on public land is to be undertaken by the council to ensure a consistent approach and level of quality, and to reduce the likelihood of new tree stock failing to survive.

### Level of Contribution

The contribution covers the cost of providing the tree pit (where appropriate), purchasing, planting, protecting, establishing and initially maintaining the new tree. The level of contribution is as follows:

Tree in open ground (no tree pit required)	<b>£765.21</b>
Tree in hard standing (tree pit required)	<b>£3,318.88</b>

The "open ground" figure will apply in the following circumstances:

- Where development results in the loss of Council owned trees in open ground.
- Where development results in the loss of trees on the development site, and is unable to provide replacement tree planting on site.

In both these cases the Council will provide replacement tree planting in the nearest appropriate area of open space.

The "hard standing" figure will apply in the following circumstances:

- Where development results in the loss of Council owned trees in areas of hard standing.
- Where new tree planting in hard standing is required to mitigate the impact of development (for example street trees required as part of highway improvements).

In the first of these cases the council will locate replacement tree planting in areas of hard standing as close as reasonably practical to the development site; and in the second of these cases the Council will implement tree planting in specific locations identified through the planning approval process.

The number of trees required to compensate for loss of existing trees depends upon the size of the trees to be lost. This is set out in the following table:

Trunk Diameter of Tree lost to development (cm measured at 1.5 metres above ground level)	Number of Replacement Trees
Less than 15	0 - 1
15 - 19.9	1
20 - 29.9	2
30 - 39.9	3
40 - 49.9	4
50 - 59.9	5
60 - 69.9	6
70 - 79.9	7
80 +	8

The following is a hypothetical example:

A development proposal results in the loss of two street trees, which have trunk diameters of 27cm and 33cm respectively.

The tree with the 27cm trunk will require 2 replacement trees and the tree with the 33 cm trunk will require 3 replacement trees.

The obligation will require the provision of 5 replacement street trees.

Therefore the contribution will be  $5 \times \text{£}3,318.88 = \text{£}16,594.40$

#### Further Information

Further information can be obtained from the council's Arboriculture Team, or the Planning Obligations Manager.

