

Dated: 10th June 2019

- (1) Nicholas John Spencer and Susan Jane Spencer**
- (2) Aster Communities**
- (3) Eastington Community Land Trust Limited**
- (4) Stroud District Council**

**Town and Country Planning Act 1990
Section 106 Agreement**

Relating to: Land at Claypit Ground, Eastington

Planning Application S.18/2202/FUL

Legal Services
Stroud District Council
Ebley Mill
Ebley Wharf
Stroud
Glos.
GL5 4UB

This **S106 Agreement** is made theof.....**2019**

BETWEEN:

- (1) **NICHOLAS JOHN SPENCER AND SUSAN JANE SPENCER** of Elmhay House, Middle Street, Eastington, Stonehouse, Gloucestershire, GL10 3BD (“**the Owner**”)
- (2) **ASTER COMMUNITIES** a Charitable Registered Society as defined in Section 1 of the Co-operative and Community Benefit Societies Act 2014 (Registered Number 31530R) whose registered office is at Sarsen Court Horton Avenue Devizes Wiltshire SN10 2AZ (“**the Developer**”)
- (3) **EASTINGTON COMMUNITY LAND TRUST LIMITED** a registered society under the Co-operative and Community Benefit Societies Act 2014 (registered no. 7425) whose registered address is Hazel Cottage, Millend, Eastington, Stonehouse, Gloucestershire, GL10 3SF (“**the CLT**”)
- (4) **STROUD DISTRICT COUNCIL** at Ebley Mill, Ebley Wharf, Stroud, Gloucestershire, GL5 4UB (“**the Council**”)

INTRODUCTION

- A. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated
- B. The Owner is the registered proprietor of the Site with Title Absolute registered at the Land Registry comprising part of Title Number GR419462
- C. The CLT has submitted a Planning Application for the site
- D. The Owner intends to grant to the Developer a lease of the Site for the purpose of constructing and managing the Affordable Housing Units and the Owner further intends to transfer the freehold reversion of the Site (subject to the said lease) to the CLT
- E. The Owner Developer and the CLT have agreed to comply with the covenants in this Deed
- F. Each obligation undertaken in this Deed by the Owner is a planning obligation for the purposes of Section 106 of the Town and Country Planning Act 1990

OPERATIVE PART**1. DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

“the Act”	means the Town and Country Planning Act 1990 (as amended)
“Affordable Housing”	means affordable housing that meets the requirements of the National Planning Policy Framework including social rented, affordable rent and intermediate housing provided to specified eligible Persons in Housing Need and: (a) meeting the needs of eligible Persons in Housing Need including availability at a cost low enough for them to afford determined with regard to local incomes and local house prices; and (b) providing for the affordable housing to remain at an affordable price for future eligible Persons in Housing Need or for the subsidy to be recycled for alternative affordable housing provision within the District of Stroud
“Affordable Housing Matrix”	means the types of Affordable Housing Units set out in Schedule 2 hereto
“Affordable Housing Unit”	means a Dwelling constructed pursuant to the Planning Permission as Affordable Housing
“Affordable Rented Units”	means those Affordable Housing Units to be rented to Tenants at Affordable Rents
“Affordable Rent”	means rent up to a maximum of 80% of the estimated market rent for an equivalent property for the size and location, inclusive of service charges, based on a valuation in accordance with the method recognised by the Royal Institution of Surveyors PROVIDED THAT in respect of the first lettings (but not subsequent lettings)

	of the Affordable Rented Units (whether on a Starter Assured Shorthold Tenancy or an Assured Tenancy) the initial rent shall not be higher than the relevant Local Housing Allowance maximum amount set for eligibility benefit
“the Application”	means the planning application for the Development and allocated application reference number S.18/2202/FUL
"Approval"	means approval in writing by the Council under hand of the Planning Manager (or equivalent at the time) and the word "Approved" shall be construed accordingly
“Commencement of Development”	means the date on which any material operation (as defined in Section 56 of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance demolition work archaeological investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commence" "Commenced" and “Commence the Development” shall be construed accordingly
"Completed"	means the point at which any Affordable Housing Unit is practically complete save for minor snagging items such that it is reasonably fit for occupation or use and the words "Completion" and “Complete” shall be construed accordingly (and for the avoidance of doubt Completion shall not be achieved unless all the services to and from the Dwelling are connected and operating and are accessible by both vehicles and pedestrians and they are ready for occupation)
“the Development”	means the construction of 23 Affordable Housing Units (comprising five one-bedroom bungalows, four one-

	bedroom flats, eleven two-bedroom houses and three three-bedroom houses) with associated vehicle access on the Site pursuant to the Planning Permission
“Dwelling”	means a house, bungalow or flat constructed on the Site pursuant to the Planning Permission together with its attendant curtilage
“Family Associations”	Means having one or more parent, grandparent, adult child or sibling who have been continuously living within the relevant geographical area applicable pursuant to paragraph 4 or paragraph 6 of the Third Schedule as the case may be for the period of 3 years immediately prior to the date that the Dwelling becomes vacant
“First Occupation”	means the date on which a Completed Dwelling is occupied or used 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

“Interest”	means 4% per annum over the NatWest Bank plc base rate from time to time in force
“Local Connection”	<p>Means (not in priority order):</p> <p>(i) having Family Associations within the relevant geographical area applicable pursuant to paragraph 4 or paragraph 6 of the Third Schedule or</p> <p>(ii) for a continuous period of 3 years out of the last 5 years immediately prior to the date that the Affordable Rented Housing Unit becomes vacant having had their only or principal home within the relevant geographical area applicable pursuant to paragraph 4 or paragraph 6 of the Third Schedule</p>
“Occupation” and “Occupied”	means 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
“Person in Housing Need”	means a person or household whose housing needs are not met by the market and is unable to resolve his or her or their housing needs in the local housing market as a result of the relationship between his or her or household income level and the rents or prices of such housing
“Plan 1” and “Plan 2”	means the plans attached hereto and respectively so marked
“the Planning Permission”	means the planning permission granted pursuant to the Application
“Qualifying	means a person on the Gloucestershire Homeseeker

Person”	Plus Register (or any successor chosen by the Council) who would qualify for Affordable Housing in accordance with the policies of the Council current at the relevant time
“Registered Provider”	means: (a) a Registered Provider of social housing as defined in Housing and Regeneration Act 2008 who is registered with Homes England; or (b) other body nominated by the Council and registered with Homes England; or (c) such other body Approved and nominated by the Council; or (d) such other body nominated by the Owner and Approved by the Council
“Primary Geographical Area”	means the traditional hamlets of Eastington the boundary of which is shown edged red on Plan 2
“Severn Estuary Mitigation Contribution”	Means the sum of £8,855.00 (eight thousand eight hundred and fifty five pounds) for expenditure on environmental and ecological measures to mitigate the impact of the Development on the Severn Estuary Special Area of Conservation, Special Protection Area and Ramsar Site
“Site”	means the land described in the First Schedule against which this Deed may be enforced
“Tenant”	means a Person in Housing Need who is renting an Affordable Housing Unit under a tenancy agreement with a Registered Provider

2 Construction of this Deed

2.1 In this Deed:

2.1.1 The clause headings do not affect its interpretation.

- 2.1.2 Where reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.1.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.1.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.1.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.1.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.1.7 References to any party to this deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.2 None of the terms of this Deed will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it even if the terms are expressed to be for their or their successors benefit, and nor shall any third party have a right of veto over any future variations of this Deed.
- 2.3 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect or impair the validity legality or enforceability of the remaining provisions of this Deed.
- 2.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and to the extent that they fall within the terms of Section 106 of the Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act.

- 3.2 All other obligations under this Deed that are not enforceable as planning obligations shall take effect as personal covenants pursuant to Section 111 of the Local Government Act 1972 Sections 8 to 9 of the Housing Act 1985 Section 2 of the Local Government Act 2000 Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.3 The Council is the local planning authority having the power to enforce the planning obligations contained in this Deed.

4 CONDITIONALITY & LIABILITY

- 4.1 The Covenants in the Schedules to this Deed are conditional upon the Commencement of Development
- 4.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or in the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the avoidance of doubt the benefit of any security or covenant or the reserving of any easement shall not be an interest for these purposes.

5 THE OWNERS' COVENANT

- 5.1 The Owner covenants with the Council on behalf of his assigns and successors in title as set out in the Third Schedule so as to bind the Site and every part of it into whosoever hands it may come.
- 5.2 With effect from the date that the CLT and the Developer acquire legal interests in the Site the CLT and Developer shall observe and perform the obligations and restrictions set out in the Third Schedule.
- 5.3 The Developer will indemnify the CLT in relation to a breach of any and all obligations in this agreement and all proceedings, costs, claims and expenses on account of any breach.

6 MORTGAGEE

- 6.1 The Owner and the Council agree and declare that the provisions of the Second Schedule and the Third Schedule shall not be binding upon a mortgagee or chargee of a

Registered Provider (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 ("Mortgagee") to the intent that any such Mortgagee exercising its security may dispose of its head long leasehold interest in the Affordable Housing Units subject to any subsisting leases and underleases **PROVIDED THAT**

- 6.1.1 the Mortgagee notifies the Council in writing that it is seeking a purchaser of its head long leasehold interest in the Affordable Housing Units; and
- 6.1.2 the Mortgagee thereafter uses reasonable endeavours to sell and transfer its head long leasehold interest in any Affordable Rented Units to a Registered Provider subject to the terms of this Deed; and
- 6.1.3 three (3) months have elapsed since the Council received the written notice referred to in Clause 6.1.1 and the sale of the head long leasehold interest in Affordable Rented Units to a Registered Provider has not completed despite the Mortgagee's reasonable endeavours.
- 6.1.4 the said Mortgagee shall not be required to dispose of the head long leasehold interest in the Affordable Rented Units to a Registered Provider for a consideration of less than the amount due and outstanding under the terms of the relevant security documentation together with all accrued principal monies, interest, costs and expenses.
- 6.1.5 If such disposal has not completed within the three (3) month period the Mortgagee shall be entitled to dispose of the Affordable Rented Units free from the provisions of the Second Schedule and the Third Schedule which provisions shall determine absolutely.

7. APPROVALS & NOTICES

7.1 Where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed, and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Planning Manager (or equivalent at the time) .

7.2 Any notice to the Owner under this Deed shall be in writing signed by the Planning Manager (or equivalent at the time) for the time being of the Council unless otherwise herein provided and shall be deemed to be sufficiently served in the case of the Owner if sent to it by registered or recorded delivery post at the address of the relevant party in this deed.

7.3 Any notice to the Council under this Deed shall be in writing and shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the Council addressed to the Planning Manager (or equivalent at the time) at the address stated at the beginning of this Deed.

6 WAIVER

It is hereby agreed by the parties hereto that failure by the Council at any time to enforce the provisions of this Deed or to require performance strictly or otherwise by the Owner of any of the conditions, covenants, agreements, or obligations of this Deed or any failure or delay by the Council to exercise any act right or remedy shall not:

- (a) be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation; nor
- (b) affect the validity of this Deed or any part thereof or the right of the Council to enforce any provision;

and any variation of this Deed agreed between the Owner and the Council shall not vitiate the remainder of the Deed which shall remain in full force and effect subject to such agreed amendments.

8. CONSENT TO REGISTRATION

The Owner hereby consents to the registration of this Deed as a Local Land Charge.

9. CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site (save for any transfer or lease in respect of any Dwelling or electricity substation lease or weather station sub lease) such notice to give details of the transferee's or lessee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

10. INTEREST

The Owner covenants that if any payment due to the Council under this Deed is paid late Interest calculated on a daily basis and compounded quarterly will be payable from the date payment is due under the terms of this Deed to the date of payment.

11. WARRANTY

The Owner hereby warrants to the Council that they have not leased mortgaged charged or otherwise created any interest in the Site other than already in place at the date of this Deed.

12. MISCELLANEOUS

12.1 Upon the satisfaction of any obligation under this Deed the Council shall as soon as reasonably practicable upon the receipt of a written demand for such and evidence of such compliance provide the Owner with written confirmation of the satisfaction of that obligation.

12.2 This Deed constitutes the entire agreement between the parties in respect of the Planning Permission.

12.3 Subject to Clause 4 the provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

12.4 This Deed is governed by and interpreted in accordance with the law of England.

FIRST SCHEDULE

Details of the Owners' Title and description of the Site

All that land known as part of Claypit Ground shown edged in red on Plan 1 and registered at the Land Registry as forming part of Title Number GR419462.

THE SECOND SCHEUDLE

Affordable Housing Matrix

All of the 23 Dwellings constructed pursuant to the Permission shall be Affordable Rented Units of which:

1. 4 shall be 1-bed 2-person flats; and,
2. 11 shall be 2-bed 4-person houses
3. 5 shall be 1-bed 2-person bungalows
4. 3 shall be 3-bed 5-person houses

THE THIRD SCHEDULE

The Owner covenants with the Council on behalf of his assigns and successors in title as follows:

SEVERN ESTUARY MITIGATION CONTRIBUTION

Not to Commence nor cause or permit the Commencement of the Development until the Severn Estuary Mitigation Contribution has been paid to the Council

AFFORDABLE HOUSING PROVISION

1. Not to provide any Dwellings comprised in the Development other than as Affordable Rented Units in accordance with the Affordable Housing Matrix.
2. To provide pedestrian and vehicular access foul and surface water sewers and water gas electricity and telecommunication service systems for any Dwelling constructed and laid as part of the Development to a standard that each may be adopted and maintained at the public's or a statutory undertaker's expense to an appropriate point (whereupon it may be private) linking in each case to the remainder of the roads and/or sewers and/or pipes and/or cables and/or other apparatus built laid or constructed on the remainder of the Site.
3. To occupy and manage the Dwellings in accordance with the objects of a Registered Provider to ensure that each Dwelling is allocated to a Person in Housing Need as their sole residence.
4. Subject to paragraph 6 of this schedule to let each Dwelling (as soon as reasonably practicable after that Dwelling becomes vacant) to a Qualifying

Person with a Local Connection to the Primary Geographical Area by advertising any vacant Dwelling through the Gloucestershire Homeseeker Plus Choice Based Lettings scheme (or any replacement scheme) and thereafter by allocating any such vacant Dwelling to such Person as his/her sole residence-

5. Not to cause or permit any of the Dwellings to be available for mutual exchanges, including the National Homewapper Scheme unless the applicant is a Qualifying Person with a Local Connection to the Primary Geographical Area and to include clear terms to this effect in each tenancy agreement of a Dwelling.
6. To procure the advertisement of each Dwelling in accordance with paragraph 4 of this Schedule for not less than 15 working days for the First Occupation of each Dwelling and 5 working days for subsequent Occupation PROVIDED THAT.
 - (a) If following advertisement there is no suitable Qualifying Person with a Local Connection to the Primary Geographical Area to whom the Affordable Housing Unit may be allocated, the Affordable Housing Unit may be allocated to those Qualifying Persons who have either been resident in the Primary Geographical Area for not less than 6 out of the last 12 months or employed in the Primary Geographical Area for not less than 6 out of the last 12 months.
 - (b) If after diligent enquiry, no person is identified pursuant to paragraph 6(a) above, the Dwelling may be allocated to any Qualifying Person who has a Local Connection with one or more of the parishes of Whitminster, Frampton upon Severn, Slimbridge, Coaley, Frocester or Standish.
 - (c) If after further diligent enquiry, no person is identified pursuant to sub-paragraph 6(b) above, the Dwelling may be allocated to any Qualifying Person who has a Local Connection within the district of Stroud.
 - (d) if after a period of three (3) calendar months from first advertising the Dwelling in the manner prescribed in the foregoing provisions of this paragraph 6 the Owner is unable to allocate the

Dwelling in the manner prescribed therein then the Owner shall be permitted to allocate any such Dwelling to any Qualifying Person.

Plan 2



IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

**EXECUTED AS A DEED by affixing
the COMMON SEAL of STROUD
DISTRICT COUNCIL**

in the presence of:

.....

Authorised Signatory:

**EXECUTED AS A DEED
by ASTER COMMUNITIES LIMITED**
affixing its COMMON SEAL in the
presence of

.....

.....

Authorised signatories

**EXECUTED AS A DEED by
EASTINGTON COMMUNITY
LAND TRUST LIMITED**

acting by a committee member
and the secretary or two committee
members

.....
Committee Member

.....
Secretary / Committee Member

**EXECUTED AS A DEED BY
NICHOLAS JOHN SPENCER**
in the presence of

Signatures: _____

Signature of witness: _____

Name (in BLOCK CAPITALS): _____

Address: _____

**EXECUTED AS A DEED BY
SUSAN JANE SPENCER**

in the presence of

Signatures: _____

Signature of witness: _____

Name (in BLOCK CAPITALS): _____

Address: _____