

BETWEEN

STROUD DISTRICT COUNCIL (1)

- and -

NAILSWORTH COMMUNITY LAND TRUST LIMITED (2)

- and –

ASTER COMMUNITIES LIMITED (3)

DEED

Planning Obligation
Deed of Agreement
Section 106 of the Town and Country Planning Act 1990
Relating to development on land at
Land adjacent to Lawnside, Nailsworth, Gloucestershire

Legal Services
Stroud District Council
Council Offices
Ebley Mill
Stroud
Glos GL5 4UB
Tel: (01453) 754377
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Ref: []

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PARTIES

- (1) **STROUD DISTRICT COUNCIL** of Council Offices Ebley Mill Ebley Wharf Stroud Gloucestershire GL5 4UB (“Council”)
- (2) **NAILSWORTH COMMUNITY LAND TRUST LIMITED** (a Registered Society with number RS007192) whose registered office is at [] (“the Owner”)
- (3) **ASTER COMMUNITIES LIMITED** (a registered society under the Co-operative and Community Benefit Societies Act 2014 (Registered No: 31530R) whose registered office is at Sarsen Court, Horton Avenue, Cannings Hill, Devizes, Wiltshire SN10 2AZ (“Aster”)

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated
- 2 The Owner is entitled to be registered as proprietor of the Site with Title Absolute at the Land Registry under an as yet unallocated Title Number and Aster is entitled to be registered as proprietor of the Site with leasehold absolute title under an as yet unallocated title number
- 3 The Council resolved on [] to grant the Planning Permission subject to the prior completion of this Agreement
- 4 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:

“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 2012 including social rented and intermediate affordable housing provided to specified eligible Persons in Housing Need and:

- i. 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
- ii. providing for the affordable housing to remain at an affordable price for future eligible Persons in Housing Need

“Affordable Housing Unit(s)” Means those dwellings (including a house flat or maisonette) constructed pursuant to the Planning Permission as Affordable Housing on the Site together with (where appropriate) their attendant

	curtilages [to be provided in accordance with the Affordable Housing Matrix]
“Affordable Housing Matrix”	Means the types of Affordable Housing Units set out in the Third Schedule or otherwise as agreed with the Council in writing
“Affordable Housing Mix”	Means the affordable housing accommodation consisting of a 100% Affordable Rented Housing or such other mix as may be agreed in writing by the Council
“Affordable Rented Housing Unit(s)”	Means those Affordable Housing Units to be affordable rented housing for Tenants and owned and managed by a Registered Provider subject to rent controls that require a rent of no more than 80% of the local market rent.
“Application”	Means the application by the Owner for a Community Right to Build Order pursuant to the Neighbourhood Planning (General) Regulations 2012 for planning permission validated on [] submitted to the Council for the Development and allocated reference number [] more particularly set out in the Second Schedule

“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 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 of the Affordable Housing Units shall not be achieved unless all the services are connected and operating and the Affordable Housing Units are

	accessible by both vehicles and pedestrians and they are ready for occupation)
“Development”	Means the Development of the Site in accordance with the Planning Permission
“Family Associations”	Means one of more of their parents grandparents children grandchildren or siblings who have been continuously living within the relevant geographical area for the period of 3 years immediately prior to the date that the Affordable Rented Housing Unit becomes vacant
“First Occupation”	Means the date on which a Completed Affordable Housing Unit is first Occupied
“Interest”	Means 5% per annum over the NatWest Bank plc base rate from time to time in force
“Local Connection”	Means (not in priority order): <ul style="list-style-type: none"> (i) having Family Associations within the Relevant Geographical Area; (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; or

- (iii) for the last 12 months immediately prior to the date that the Affordable Rented Housing Unit becomes vacant having had their place of work within the Relevant Geographical Area

“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

"Open Market Value" means the open market value of all or any of the Affordable Housing Units having regard to all relevant circumstances on the assumptions that;

- i. the Affordable Housing Units are provided for private open market sale on a private residential estate with vacant possession; and
- ii. that no restrictions relating to Affordable Housing apply thereto

“the Parish” Means the Parish of Nailsworth

“Person in Housing Need” Means a person whose housing needs are not met by the market and is unable to compete in the local housing market as a result of the

	relationship between his or her income level and the rents or prices of such housing
“Plan”	means the plan attached hereto
“Planning Permission”	The planning permission granted or confirmed (as the case may be) pursuant to the Application
“Qualifying Person”	Means a person accepted by the Council as a Person in Housing Need who would qualify for Affordable Housing in accordance with the policies of the Council current at the relevant time and who: <ul style="list-style-type: none"> (i) is currently ordinarily resident within the Parish; or (ii) has a Local Connection with the Parish
“Registered Provider”	Means a Registered Provider of social housing as defined in the Housing and Regeneration Act 2008 who is registered with the Homes and Communities Agency
“Relevant Geographical Area”	shall mean (in order of priority) the Parish, the Surrounding Area and the District of Stroud
“Site”	Means the land against which this Deed may be enforced as shown edged red on the Plan 4
“Surrounding Area”	Means the Parishes of Nympsfield, Woodchester, Minchinhampton, Avening and Horsley.
“Tenant”	Means a Person in Housing Need who is renting

an Affordable Housing Unit at the time of his First Occupation under an assured (including assured shorthold) tenancy agreement with a Registered Provider

“Transfer”

Means a transfer executed by the transferor and delivered to the transferee unconditionally released for completion and “Transferred” shall be interpreted accordingly

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all

instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions

2.7 Any covenant not to act includes an obligation not to allow permit or suffer that act or thing to be done by another person and any covenant to do any act or thing includes an obligation to procure the doing of that act or thing by any other person.

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 and are enforceable by the Council and are planning obligations for the purposes of that section and 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 and 9 of the Housing Act 1985 Section 2 of the Local Government Act 2000 and all other enabling powers

3.2 The Council is the local planning authority having the power to enforce the planning obligations contained in this Deed

4 CONDITIONALITY

This Deed is conditional upon the grant of the Planning Permission **SAVE FOR** the provisions of Clause 7.1 (legal costs) Clause 9 (consent to registration)

Clause 16 (jurisdiction) and Clause 17 (delivery) which shall come into effect immediately upon completion of this Deed

5 THE OWNER'S COVENANTS

The Owner covenants with the Council as set out in the Fifth Schedule

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owner as set out in the Sixth Schedule

7 MISCELLANEOUS

7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation preparation and execution of this Deed in the sum ofPOUNDS (£.....); and

7.2 The Owner shall pay to the Council upon the grant of the Planning Permission a charge ofPOUNDS (£.....) for monitoring of compliance with this Agreement.

7.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement or their successors in title even if the terms are expressed to be for their benefit and nor shall any such third party have a right of veto over any future variations of this Agreement

7.4 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 Strategic Head of

Development Services and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party

- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 7.6 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
- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.8 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.
- 7.9 The obligations hereby created shall not be binding upon Tenants as herein defined
- 7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

- 7.11 Upon the satisfaction of any obligation under this Agreement the Council shall forthwith upon the receipt of a written demand for such provide the Owner with written confirmation of the satisfaction of that obligation
- 7.12 This Agreement constitutes the entire agreement between the parties in respect of the Planning Permission
- 7.13 This Agreement supersedes and replaces all previous negotiations between the parties whether oral or written
- 7.14 None of the parties has relied on any express or implied statement warranty representation or undertaking given by or on behalf of another and no collateral agreement exists between the parties and
- 7.15 Nothing herein contained excludes the liability of any of the parties in relation to fraud

8 WAIVER

It is hereby agreed by the parties hereto that failure by the Council at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owner of any of the conditions covenants agreements or obligations of this Agreement or any failure or delay by the Council to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of this Agreement or any part thereof or the right of the Council to enforce any provision and any variation of this Agreement agreed between the Owner and the Council shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendments or amendments agreed

9 CONSENT TO REGISTRATION

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

10 SDLT

Entry into this Deed does not constitute a transaction for a chargeable consideration for which Stamp Duty Land Tax is required and thus the Council hereby certifies that a Land Transaction Return is not applicable in accordance with Section 79(3) of the Finance Act 2003

11 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 in respect of an Affordable Housing Unit) such notice to give details of the transferee'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 Transferred by reference to a plan.

12 INTEREST

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 Agreement to the date of payment

13 NOTICES

Any notice to the Owner under this Agreement shall be in writing signed by the Head of Legal Services 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 addressed to the

[.....] and any notice to the Council under this Agreement 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 Head of Legal Services at the address stated at the beginning of this Agreement

14 VAT

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

15 JURISDICTION

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

16 DELIVERY

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

FIRST SCHEDULE

Details of the Owner's Title and description of the Site

All that freehold land at Lawnside, Nailsworth Gloucestershire as is shown edged in red on the Plan registered or to be registered at the Land Registry under Title Number [] or to be allocated a title number

SECOND SCHEDULE

Details of the Application

An application for a Community Right to Build Order pursuant to the Neighbourhood Planning (General) Regulations 2012 under Number [] for the erection of 10 affordable housing units including associated landscaping and highway works

THIRD SCHEDULE

Affordable Housing Matrix

6x 1-bedroomed flats	60%
4 x 2-bedroomed houses	40%
Total number	100% of Affordable Housing provision

FOURTH SCHEDULE
Draft Planning Permission

FIFTH SCHEDULE

The Owner's Covenants with the Council

1. AFFORDABLE HOUSING

1.1 General Provisions

The Owner covenants with the Council as follows in relation to the Affordable Housing provision on the Site:

1.1.1 To provide the Affordable Housing Units in accordance with the Affordable Housing Matrix and the provisions of this Schedule

1.1.2 Not to use or carry out any other development on the Site other than for the provision of Affordable Housing and any necessary ancillary purposes or in accordance with planning permission granted by the Council or permitted development rights and subject to release or discharge in accordance with clause 7.10

1.1.3 Not to Commence the Development until such time as the Owner shall have prepared at its own expense and submitted to the Council:

1.1.3.1 details of the location design type and standard costs size and the level of servicing of the Affordable Housing Units to be constructed;

1.1.3.2 a programme and timetable for the provision of the Affordable Housing Units

1.1.4 Not to Commence the Development until the Council has approved in writing the details required pursuant to Paragraph 1.1.3 hereof and thereafter the Owner shall secure at it own expense all necessary consents

and approvals (including building regulations) in respect of such approved details

- 1.1.5 To construct and Complete the Affordable Housing Units (and all associated works including all services roads and paths) in accordance with the details approved by the Council pursuant to Paragraph 1.1.3 hereof
- 1.1.6 Not to dispose of any Affordable Housing Units other than by way of a Transfer to an approved Registered Provider for the purposes of providing Affordable Housing
- 1.1.7 Not to occupy or allow the occupation of any Affordable Housing Unit other than as an Affordable Rented Housing Unit by a Tenant or a family of whom at least one member is a Tenant or a Person in Housing Need at the date of First Occupation as to ensure that the Affordable Housing Unit remains as such but for the avoidance of doubt this provision shall not apply to any disposal by a Registered Provider
- 1.1.8 The Owner covenants with the Council:
 - 1.1.8.1 That upon taking ownership and possession of the Affordable Housing Units and at all times subsequently to allocate each Affordable Rented Housing Unit to a Qualifying Person by advertising any vacant Affordable Rented Housing Unit(s) through the Gloucestershire Homeseeker Choice Based Lettings scheme and thereafter by allocating any such vacant Affordable Rented Housing Unit(s) to a Qualifying Person or persons on the Council's Housing Register who expresses an interest in occupying the said Affordable Rented Housing Unit(s) through bidding on the Council's 'Choice Based Letting' scheme SUBJECT TO the Owner having first agreed

in writing with the Council the appropriate labelling for any advertised Affordable Rented Housing Unit to provide more information on who is eligible to express an interest in occupying the same.

1.1.8.2 that if after a period of [X] calendar months the Owner is unable to allocate any of the Affordable Housing Units in the manner prescribed in Paragraph 1.1.8.1 above then the Owner shall allocate any such Affordable Housing Units by applying the procedure contained in Paragraph 1.1.8.1 above to a person accepted by the Council as a Person in Housing Need who would qualify for Affordable Housing in accordance with the policies of the Council current at the relevant time and who is currently ordinarily resident within or has a Local Connection with the Surrounding Area

1.1.8.3 that after [X] calendar months if the Owner is unable to allocate any of the Affordable Housing Units in the manner prescribed in Paragraphs 1.1.8.1 and 1.1.8.2 above then the Owner shall allocate any such Affordable Housing Units by applying the procedure contained in Paragraph 1.1.8.1 above to a person accepted by the Council as a Person in Housing Need who would qualify for Affordable Housing in accordance with the policies of the Council current at the relevant time and who is currently ordinarily resident within or has a Local Connection with District of Stroud

PROVIDED ALWAYS THAT such covenants shall cease to apply to any part of the Affordable Housing where the Owner shall be required to dispose of any part pursuant to a right to buy claim under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable or shall be required to sell to a tenant with the benefit of voluntary purchase grant provided under Sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation)

- 1.1.9 The Owner and the Council agree and declare that the provisions of this Schedule shall not be binding upon a mortgagee in possession or chargee of a Registered Provider nor upon a receiver (including an administrative receiver) appointed by a mortgagee in possession or chargee of a Registered Provider to the intent that any such mortgagee or chargee exercising its security may dispose of its freehold or head long leasehold interest in the Affordable Housing Units subject to any subsisting leases underleases but otherwise not in compliance with the terms of this Schedule

PROVIDED THAT

- 1.1.9.1 the mortgagee or chargee notifies the Council in writing that it is seeking a purchaser of its freehold interest or head long leasehold interest in the Affordable Housing Units; and
- 1.1.9.2 the mortgagee or chargee thereafter uses reasonable endeavours to sell and transfer its freehold in any Affordable Housing Unit to a Registered Provider subject to the terms of this Agreement including the terms of this Paragraph at a price

equal to its Open Market Value (and in any event at a price sufficient to redeem the mortgage or charge and all interest and costs); and

1.1.9.3 at least three (3) months have elapsed since the Council received the written notice referred to in Paragraph 1.1.9.1 above and a contract for the sale of the freehold in the Affordable Housing Units has not been exchanged with a Registered Provider despite the mortgagee's or chargee's reasonable endeavours

PROVIDED THAT at all times the rights and obligations in this Paragraph 1.1.9 shall not require the mortgagee/chargee to act contrary to its duties under the mortgage/charge and that the Council must give full consideration to protecting the interest of the mortgagee/chargee in respect of monies outstanding under the mortgage/charge

1.1.10 The provisions of this Agreement shall not bind individuals exercising their right to buy any of the Affordable Housing Units

SIXTH SCHEDULE

The Council's Covenants

Discharge of obligations

1. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed

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

THE COMMON SEAL)
of **STROUD DISTRICT COUNCIL**)
was affixed in the presence of:)

Authorised Signatory:

THE COMMON SEAL)
of)
was affixed in the presence of:)

Authorised Signatory:

EXECUTED as a **DEED** by **ASTER**)
COMMUNITIES LIMITED by hereunto)
affixing its common seal in the)
presence of:)

[Director]

[Director/Company Secretary]

Dated _____ **2016**

BETWEEN

Stroud District Council (1)

- and -

Nailsworth Community Land Trust
Limited (2)

- and-

Aster Communities Limited (3)

DEED

Planning Obligation
Deed of Agreement
Section 106 of the Town and Country
Planning Act 1990
Relating to land at Lawnside,
Nailsworth Gloucestershire