

AGREEMENT

DATED

200...

HAMBLETON DISTRICT COUNCIL

and

><

PLANNING OBLIGATION BY DEED OF AGREEMENT
UNDER SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990

relating to [the development of.....
on/at.....]

Peter Simpson
Chief Executive
Civic Centre
Stone Cross
NORTHALLERTON

File Ref: LP31/
Doc Ref:

DATE200....

PARTIES

- (1) **HAMBLETON DISTRICT COUNCIL** of Civic Centre, Stone Cross, Northallerton, North Yorkshire, DL6 2UU (“District Council”)
- (2) **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall, Northallerton, North Yorkshire, DL7 8AD (“County Council”)
- (3) **[FREEHOLDER]** of [.....*insert address*.....]
 (“Owner”)
- (4) **[OTHER INTERESTED PERSON]** of [.....*insert address*.....]
 (“Developer”)
- (5) **[OTHER INTERESTED PERSON]** of [.....*insert address*.....]
 (“Mortgagee”)

INTRODUCTION

- 1. The District Council is the Local Planning Authority for the purposes of the Act for the area in which the Site is situated
- [2. The County Council is the Local Highway Authority [and the County Planning Authority/the Education Authority] for the area in which the Site is situated]
- 3. The Owner is the freehold owner of the Site
- [4. The Developer has an interest in the Site by way of ><]
- [5. The Mortgagee has an interest in the Site by way of a Mortgage dated ><]
- 6. The Owner has submitted the Application to the Council and the parties have agreed this Deed in order to secure the planning obligations contained in this Deed

NOW THIS DEED WITNESSES AS FOLLOWS

1. Definitions

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

- “Act” the Town and Country Planning Act 1990
- “Application” the application for outline [full] planning permission dated []₁ submitted to the Council for the Development and allocated reference number []₂
- “Commencement of Development” the date on which any material operation (as defined in Section 56(4) of the Act) forming

	<p>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, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly</p>
"Development"	<p>the Development of the Site with []₃ as set out in the Application</p>
"Dwelling"	<p>a dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission</p>
"Index"	<p>All Items Index of Retail Prices by the Office for National Statistics [All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation]</p>
"Interest"	<p>interest at 3 per cent above the base lending rate of the Bank of England from time to time</p>
"Occupation and "Occupied"	<p>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</p>

“Plan”	the plan attached to this Deed
“Planning Permission”	the [outline] [full] ⁴ planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule
“Site”	the land against which this Deed may be enforced as shown edged red on the Plan

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 District Council [and County Council]⁵ the successors to their respective statutory functions

3. Legal Basis

- 3.1 This Deed is made pursuant to Section 106 of the Act [Sections 111 and 120 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000]⁶
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and

are enforceable by the District Council [and the County Council]⁷ as Local Planning Authority against the Owner

4. Conditionality

4.1 This Deed is conditional upon:

- (i) the grant of the Planning Permission and
- (ii) the Commencement of Development

save for the provisions of Clauses 8.1, 15 and 16 (costs jurisdiction and delivery clauses) and any other relevant provisions which shall come into effect immediately upon completion of this Deed

5. The Owner's Covenants

5.1 The Owner covenants with the District Council as set out in the Third Schedule

5.2 The Owner covenants with the County Council as set out in the Fourth Schedule

6. The District Council's Covenants

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

7. The County Council's Covenants

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

8. Miscellaneous

8.1 The Owner shall pay to the District Council on completion of this Deed [£500] [£1,500]⁸ towards the costs of the District Council incurred in the negotiation, preparation, execution and monitoring of compliance with this Deed

8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

8.3 This Deed shall be registrable as a Local Land Charge by the District Council

8.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council or County 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 District Council by the Head of Service - Development 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

- 8.5 Following the performance and satisfaction of all the obligations in this Deed the District Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 8.6 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 the validity or enforceability of the remaining provisions of this Deed
- 8.7 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
- 8.8 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 but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 8.9 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
- 8.10 The Owner shall notify the [District] [County] Council in writing in advance of the Commencement of Development

9. Mortgagee's Consent

- 9.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

10. Waiver

No waiver (whether expressed or implied) by the District Council [(or the County Council or Owner)]¹⁰ of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council [or the County Council or Owner]¹¹ from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

11. Change in Ownership

The Owner agrees with the District Council to give the District Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan

12. Indexation

Any sum referred to in the Third [and Fourth]¹² Schedule[s] shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable

13. Interest

If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of payment

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

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

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

FIRST SCHEDULE

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

SECOND SCHEDULE

[Form of notice of planning permission]

THIRD SCHEDULE

The Owner's Covenants with the District Council

1.0 OPEN SPACE

Definitions (to be included in Clause 1):

"Open Space Land"	means the land shown for identification purposes coloured green on the Plan
"Open Space Works"	means the works to be carried out under paragraph 1.2 to the Third Schedule in accordance with the Open Space Works Scheme
["Off-site Open Space Contribution"]	means the sum of £..... towards the provision and/or improvement of open space facilities in the locality of the Development payable in accordance with paragraph 1.7 of the Third Schedule] ₁₃
["Off-site Recreational Contribution"]	means the sum of £..... towards the provision and/or improvement of recreational facilities in the locality of the Development in accordance with paragraph 1.7 of the Third Schedule] ₁₄
["Play Equipment"]	means the items of play equipment to be placed on the Open Space Land ₁₅

- 1.1 Not to commence nor to allow or permit the commencement of the Development until a scheme for the laying out and landscaping of the Open Space Land [and the installation of the Play Equipment on the Open Space Land] has been submitted to and approved by the District Council under the hand of its Head of Service - Development ("the Open Space Works Scheme")
- 1.2 To implement and complete the Open Space Works Scheme within ><₁₆ year of the commencement of construction of the first dwellinghouse of the Development or within such longer period as determined by the District Council under the hand of its Head of Service - Development
- 1.3 Upon the District Council under the hand of its Head of Service - Development confirming in writing that the Open Space Works Scheme has been completed to its satisfaction to transfer the Open Space Land to the District Council or its

nominated Parish Council for the consideration of one peppercorn SUBJECT to the Law Society's Standard Conditions of Sale current at the date of this Agreement TOGETHER with any rights of way over the Site necessary for the public to gain pedestrian access to the Open Space Land from a highway and for vehicular access to be gained to the Open Space Land from a highway to enable maintenance to be undertaken

- 1.4 Upon the transfer by the Owner to the District Council or nominated Parish Council of the Open Space Land in accordance with paragraph 1.3 above or paragraph 4 of the Seventh Schedule to pay to the District Council or nominated Parish Council the sum of ><¹⁷ for the future maintenance of the Open Space Land
- 1.5 Not to use or allow or permit the use of the Open Space Land for any purpose other than as open space in accordance with the Open Spaces Act 1906 or any statutory modification or re-enactment thereof
- 1.6 Upon completion of the Open Space Works Scheme at all times to maintain the Open Space Land in a clean, tidy and safe condition sufficient to enable it to be used as a public open space and to allow access to the public at all times to use it as open space
- 1.7 Upon the Commencement of Development to pay to the District Council the [Off-Site Open Space Contribution] [Off-Site Recreational Contribution]¹⁸
- 1.8 Upon the Commencement of Development to pay to the District Council the sum of ><¹⁹ representing the cost of [the provision of the Play Equipment] [and] ><²⁰ for the laying out and landscaping of the Open Space Land by the District Council in the event of non-compliance by the Owner with the provisions of paragraph 1.2 above or a written bond in a form provided by a third party approved by the District Council which has the same effect ("the Performance Bond")
- 1.9 In the event of non-compliance with the provisions of paragraph 1.2 to be bound by the Default provisions contained in the Seventh Schedule

2.0 **AFFORDABLE HOUSING**

Definitions *(to be included in Clause 1):*

“Affordable Housing”	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market
“Affordable Housing Units”	that part of the Development comprising [the Rented Affordable Housing] [Shared Ownership Housing] [Shared Equity Housing] ²¹
[“Appropriate Percentage”	means [%] [the percentage which £ >< ²² bears to the Market Value of the relevant Shared Equity Affordable Housing Unit at the date of its practical completion] ²³
[“Appropriate Sum”	means a sum which is equal to the Appropriate Percentage of the Market Value]
“Chargee”	any mortgagee or chargee of the Registered Social Landlord or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
“Chargee’s Duty”	the tasks and duties set out in paragraph 2.4 of the Third Schedule
“Market Housing Units”	that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing Units
“Market Value”	means the amount which a freehold interest free from encumbrances would fetch if sold on the open market by a willing seller
“Practical Completion”	issue of a certificate of practical completion by the Owner’s architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect

“Protected Tenant”	<p>any tenant who:-</p> <p>(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit</p> <p>(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit</p> <p>(c) has been granted a shared ownership lease by the Registered Social Landlord in exercise of that person’s statutory right in respect of a particular Affordable Housing Unit</p>
“Registered Social Landlord”	a registered social landlord as defined in Part 1 of the Housing Act 1996 who is registered with the Housing Corporation pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act and who is approved by the Council (such approval not to be unreasonably withheld or delayed)
“In Need of Accommodation”	shall be interpreted as set out in the Eighth Schedule hereto
[“Rented Affordable Housing”	shall mean the dwellings contained in the Rented Affordable Housing Scheme] ²⁴
[“Rented Affordable Housing Scheme”	shall mean a written scheme devised by the Owners and provided to and approved in writing by the District Council which indicates the type, size and location of dwellinghouses on the Site which shall be occupied as rented affordable housing for local people and for the avoidance of doubt

the number of dwellinghouses in the scheme shall be no less than [] of the dwellinghouses constructed on the Site of which [] shall be one-bedroomed accommodation, [] shall be two-bedroomed accommodation and [] shall be three-bedroomed accommodation unless otherwise agreed in writing by the District Council]²⁵

["Rented Affordable Housing Requirements"] shall mean the requirements set out in Part 1 of the Eighth Schedule]²⁶

["Target Rents"] shall mean the rents arrived at in accordance with any formula for target rents published by the Housing Corporation or successor thereto as amended from time to time]²⁷

"Design and Quality Standards" shall mean the standards set out in the Housing Corporation Design and Quality Standards and any replacement of those standards

["Shared Equity Affordable Housing"] shall mean the dwellings contained in the Shared Equity Affordable Housing Scheme]²⁸

["Shared Equity Affordable Housing Scheme"] shall mean a written scheme devised by the Owners and provided to and approved in writing by the District Council which indicates the type, size and location of dwellinghouses on the Site which shall be occupied as shared equity affordable housing for local people and for the avoidance of doubt the number of dwellinghouses in the scheme shall be no less than [] of the dwellinghouses constructed on the Site of which [] shall be one-bedroomed accommodation, [] shall be two-bedroomed accommodation and [] shall be three-bedroomed

	accommodation unless otherwise agreed in writing by the District Council] ²⁹
["Shared Equity Affordable Housing Requirements"]	shall mean the requirements set out in Part 2 of the Eighth Schedule] ³⁰
["Shared Ownership Affordable Housing"]	shall mean the dwellings contained in the Shared Ownership Housing Scheme]
["Shared Ownership Affordable Housing Scheme"]	shall mean a written scheme devised by the Owners and provided to and approved in writing by the District Council which indicates the type, size and location of dwellinghouses on the Site which shall be occupied as shared ownership affordable housing for local people and for the avoidance of doubt the number of dwellinghouses in the scheme shall be no less than [] of the dwellinghouses constructed on the Site of which [] shall be one-bedroomed accommodation, [] shall be two-bedroomed accommodation and [] shall be three-bedroomed accommodation unless otherwise agreed in writing by the District Council] ³¹
["Shared Ownership Housing Requirements"]	shall mean the requirements set out in Part 3 of the Eighth Schedule] ³²

- 2.1 No more than [...]³³ of the Market Housing Units shall be occupied until all of the Affordable Housing Units have been constructed in accordance with the Planning Permission [and to the Design and Quality Standards] and made ready for residential occupation and written notification of such has been received by the District Council
- 2.2 From the date of Practical Completion of the Affordable Housing Units they shall not be occupied other than by a person or persons who at the time of their first occupation are In Need of Accommodation and have occupied the affordable housing units in accordance with the [Rented Affordable Housing Requirements] [Shared Equity Affordable Housing Requirements] [Shared Ownership Housing Requirements]³⁴ save that this obligation shall not be binding on:-

- 2.2.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees or
 - 2.2.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty or
 - 2.2.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor
- 2.3 No more than [...insert %...] of the Market Housing Units shall be Occupied until the Affordable Housing Units have been transferred to a Registered Social Landlord on terms that accord with relevant Housing Corporation funding requirements (if appropriate) current at the date of construction of the Affordable Housing Units
- 2.4 the Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than 6 months' prior notice to the District Council of its intention to dispose and:-
- (a) in the event that the District Council responds within 3 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its best endeavours to secure such transfer
 - (b) if the District Council does not serve its response to the notice served under paragraph 2.4(a) within the 3 months then the Chargee shall be entitled to dispose free of the restrictions set out in this Part of the Third Schedule
 - (c) if the District Council or any other person cannot within 3 months of the date of service of its response under paragraph 2.4(a) secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 2.4(a) the Chargee shall be entitled to dispose free of the restrictions set out in this Part of the Third Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph 2.4 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or Mortgage

3.0 COMMUNITY FACILITIES

Definitions (to be included within Clause 1)

“Community Facilities Land”	means the site of the Community Facilities shown for identification purposes only coloured orange on the Plan and referred to in paragraph 3.1 of the Third Schedule
“Community Facilities”	means the provision of a community hall/health centre as shall be agreed with the Local Planning Authority as provided in paragraph [] of the Third Schedule
“Community Facilities Floorspace”	means not less than [] square metres of floorspace (gross external) to be provided within the Development for the purposes referred to in paragraph [] of the Third Schedule in accordance with the Specification
“Community Facilities Contribution”	means the sum of [] pounds (£[.....]) towards the provision of the Community Facilities
“Community Uses”	means [.....]]
“Specification”	means the specification set out in the Ninth Schedule

- 3.1 To provide and lay out (including construction of buildings to at least a shell state) the Community Facilities Land in accordance with the Specification and to the Council’s satisfaction for the purpose of accommodating the Community Facilities
- 3.2 To complete the works of provision and laying out on or before [...*specified number...*] Dwelling[s] [is/are] made available for occupation
- 3.3 That the Community Facilities Land shall not be used for any purpose other than one or more of the Community Uses

OR

- 3.1 To provide the Community Facilities Floorspace on the Community Facilities Land in the following phases:-

- (a) not to Occupy more than [.....*specified number*....] Residential Units until [...*specified area*...] square metres of Community Facilities Floorspace has been provided
 - (b) not to occupy [.....*specified number*....] Residential Units until [...*specified number*...] square metres of Community Facilities Floorspace has been provided
- 3.2 That the Community Facilities Floorspace shall not be used for any purpose other than one or more of the Community Uses

4.0 **CCTV**

Definitions (to be included in Clause 1):

“CCTV”	means closed circuit television covering the [... <i>specify public areas</i> ...] to be provided in accordance with paragraph 3 of the Third Schedule
“CCTV Contribution”	means the sum of [... <i>specify amount</i> ...] to be paid by the Owner to the District Council and expended by the District Council in accordance with paragraph [] of the Third Schedule
“Public Realm”	means the areas open to the public [<i>within the town centre</i>] which shall be subject to surveillance by CCTV

4.1 Prior to the Commencement of the Development the Owner shall agree with the District Council a detailed scheme for the installation of CCTV to monitor the [...*specify areas*...] [“the Public Realm”] which scheme shall include details of:-

- (a) the number and location of the CCTV cameras to be installed
- (b) the specification of the CCTV cameras to be installed which shall be of similar standard to that of the District Council's cameras
- (c) phasing of the installation

and shall thereafter install the CCTV in accordance with the agreed scheme [and connect it to the District Council's existing CCTV system]

OR

4.1 Prior to the Commencement of the Development the Owner shall pay the CCTV Contribution to the District Council which shall be used by the District Council to increase the CCTV monitoring capacity within the Public Realm

5.0 PUBLIC ART

Definitions (to be included in Clause 1):

“Public Art Contribution” means a financial contribution of [] pounds (£[.....]) towards the provision of public art such provision to be entirely at the discretion of the District Council in terms of size nature artistic influence and geographical location with the [Council area, or specified area] as referred to in paragraph [] of the Third Schedule

Alternative Definition:

“Public Art Contribution” means a financial contribution of [] pounds (£[.....]) towards the provision of Public Art which will include where appropriate sculpture, street furniture, landscaping and/or architectural detailing within [specify area] [within or within the vicinity of the Development as the Owner and (District Council may agree) as referred to in paragraph [] of the Third Schedule

“Public Art” means [.....]

5.1 To pay the Public Art Contribution within [...insert number to be specified...] days of the Commencement of Development

OR

5.1 To include as part of the Development a permanent work of Public Art to the value of the Public Art Contribution which is integral to the Development and permanently affixed to the Development Land the precise nature of the work of art and its precise location on the Development Land to be approved by the District Council prior to Occupation of any part of the Development

5.2 To provide the work of Public Art on or before [...specify date or event...]

6.0 **TRANSPORT CONTRIBUTIION**

Definitions (to be included in Clause 1):

“Transport Contribution” means the contribution of [] pounds (£[.....]) to be paid to the District Council to provide the Transport Facilities as referred to in paragraph [] of the Third Schedule

“Transport Facilities” means [...describe any facilities required...]

6.1 To pay to the District Council the Transport Contribution towards the provision of the Transport Facilities within [] days of the Commencement of Development

6.2 To undertake and complete the Transport Facilities prior to Occupation of [.....insert number.....] Residential Unit(s)

FOURTH SCHEDULE

The Owner's Covenants with the County Council

1.0 EDUCATION CONTRIBUTION

Definitions *(to be included in Clause 1)*

“Education Contribution” means the sum of [] pounds (£[.....]) to provide additional educational facilities within the [...specify Council area....] as required as a consequence of the Development

Covenants

- 1.1 To pay the Education Contribution to the County Council in its capacity as local education authority prior to Occupation of [...specify number of units....] or within [] months of the Commencement of Development]

2.0 HIGHWAYS CONTRIBUTION

Definitions *(to be included in Clause 1):*

“Highways Contribution” means the sum of [] pounds (£[.....]) to provide highways improvements required as a consequence of the Development

- 2.1 To pay the Highways Contribution to the County Council in its capacity as highway authority prior to Occupation of [...specify number of units....] [or within] [] months of the Commencement of Development]

FIFTH SCHEDULE

District Council Covenants

Corresponding covenant by District Council where land transferred

1. The District Council agrees to execute the transfer of the property in accordance with paragraph 1.3 of the Third Schedule

Repayment of Contributions

2. The District Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the District Council shall agree
3. The District Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within [five] years of the date of receipt by the District Council of such payment together with Interest for the period from the date of payment to the date of refund **PROVIDED** that this clause shall not apply to sums paid for maintenance purposes
4. The District Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed

Open Space

5. The District Council [or other Transferee] shall neither use nor permit to be used the Open Space Land other than as amenity areas for the use of the public without the prior consent of the Owner
6. If the Owner complies in all respects with the provisions of paragraph 1.2 of the Third Schedule then upon completion by it of the Approved Scheme to the satisfaction of the District Council under the hand of its Head of Service - Development the District Council shall repay to the Owner the Performance Bond together with Interest from the date of payment of the Performance Bond to the District Council until the date of the repayment of the Performance Bond

7. The District Council [or other Transferee] shall neither use nor permit to be used the Community Facilities Land other than for the purposes referred to in paragraph [] of the [.....] Schedule

Discharge of Obligations

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

SIXTH SCHEDULE

County Council's Covenants

1. The County Council hereby covenants with the Owner to use all sums received from the Owner under this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree
2. The County Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within [five] years of the date of receipt by the County Council of such payment together with Interest for the period from the date of payment to the date of refund PROVIDED that this clause shall not apply to sums paid for maintenance purposes
3. The County Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed

SEVENTH SCHEDULE

Open Space Land - Default Provisions

1. If the Owner has not completed the Open Space Works Scheme within ><35 year of the commencement of the first dwellinghouse of the Development then the Council shall be permitted to enter upon the Site and carry out such works as it deems necessary to implement and complete the Open Space Works Scheme (“the Works”)
2. The Owner hereby covenants that it will indemnify the Council its servants agents and contractors in respect of any claims for loss damage or injury made by any persons as a consequence of entry by the Council upon the Site and carrying out the Works
3. Upon completion of the Works the Council shall calculate the cost to itself (including administrative costs) of carrying out the Works (“the Works Costs”) and shall return to the Owner the balance of the Performance Bond after deduction of the Works Costs
4. Upon the completion of the Works the Owner shall transfer the Open Space Land to the Council or a nominated Parish Council for the consideration of one peppercorn on the basis set out in Clause 1.3 of the Third Schedule unless this has already been transferred under Clause 1.3 of the Third Schedule

EIGHTH SCHEDULE

[Affordable Housing Requirements]

PART 1

Rented Affordable Housing Requirements

1. Not to allow or permit any person or persons to occupy all or any part of the Rented Affordable Housing unless he or she is a tenant of the Rented Affordable Housing or a lodger or family member of a tenant or
 - (a) has succeeded to a tenancy under the provisions of the Housing Act 1985 or Housing Act 1988 upon the death of the former tenant of the accommodation; or
 - (b) upon the death of the former tenant has succeeded to the tenancy and was a member of the former tenant's family who resided with him/her throughout the period of twelve months ending with the former tenant's death and who occupied the accommodation as his or her only principal home at the time of the former tenant's death; or
 - (c) has succeeded to the tenancy as a result of a Court Order

2. Upon completion of construction of the Rented Affordable Housing and at all times subsequently upon a unit of accommodation in the Rented Affordable Housing becoming unoccupied to allocate each unoccupied unit of accommodation to a person who is in need of such accommodation and who:-
 - (a) has immediately prior to such allocation been ordinarily resident within the Parish of ><₃₆ ("the Parish") for a period of at least twelve months; or
 - (b) has within the last ten years prior to such allocation been ordinarily resident in the Parish for a period of at least five years; or
 - (c) has immediately prior to such allocation a mother, father, son or daughter or some other relative or carer approved in writing by the District Council's Head of Service - Regeneration who has been ordinarily resident in the Parish for at least twelve months; or
 - (d) is immediately prior to such allocation permanently employed in the Parish or is taking up permanent employment in the Parish within 3 months of the allocation

3. If upon a unit of accommodation within the Rented Affordable Housing becoming available for occupation whether on completion of the construction of

the Rented Affordable Housing or at any time subsequently the Owners are unable to fill any vacancy arising in accordance with paragraph 2 above as confirmed in writing by the District Council's Head of Service - Regeneration then the Owners shall allocate the unit of accommodation to a person who:-

- (a) has immediately prior to such allocation been ordinarily resident within one or more of the parishes of ><₃₇ (or such other parishes as may be agreed from time to time) ("the Other Parishes") for a period of at least twelve months; or
- (b) has within the last ten years prior to such allocation been ordinarily resident in one or more of the Other Parishes for a period of at least five years; or
- (c) has immediately prior to such allocation a mother, father, son or daughter or such other relative or carer approved in writing by the District Council's Head of Service - Regeneration ordinarily resident in one or more of the Other Parishes; or
- (d) is immediately prior to such allocation permanently employed in one of the Other Parishes or is taking up permanent employment in one of the Other Parishes within 3 months of the allocation

but if there is no such person then to any person in priority need nominated by the District Council's Head of Service - Regeneration PROVIDED that if within 12 weeks of a unit becoming unoccupied the Owners have been unable to fill the vacancy in accordance with paragraphs 2 and 3 above having taken all reasonable steps then the Owners may allocate any vacant unit to any person who is considered by the Owners to be in need of such accommodation

4. At all times in allocating or managing the units of accommodation in the Rented Affordable Housing:-
 - (a) to comply fully with the rules of a Registered Social Landlord and its current published housing waiting list and allocation system and in all cases in accordance with any published Housing Corporation Policies and Guidance Notes or rules policies and systems which are similar to such Registered Social Landlord documents; and
 - (b) to charge rents which are no higher than the Target Rents

PART 2

Shared Equity Affordable Housing Requirements

1. Not to occupy or allow or permit any person or persons to occupy all or any part of the Shared Equity Affordable Housing other than under a form of shared equity lease which has been approved in writing by the District Council and which:-
 - (a) ensures that the lessee does not either on entering into the lease or an assignment of the lease or at any time during occupation pay a consideration which exceeds the Appropriate Sum
 - (b) prohibits sub-letting of the Shared Equity Affordable Housing

2. Upon completion of construction of the Shared Equity Affordable Housing and at all times subsequently upon a unit of accommodation in the Rented Affordable Housing becoming unoccupied to allocate each unoccupied unit of accommodation to a person who is in need to such occupation and who:-
 - (a) has immediately prior to such allocation been ordinarily resident within the Parish of ><₃₈ ("the Parish") for a period of at least twelve months; or
 - (b) has within the last ten years prior to such allocation been ordinarily resident in the Parish for a period of at least five years; or
 - (c) has immediately prior to such allocation a mother, father, son or daughter or some other relative or carer approved in writing by the District Council's Head of Service - Regeneration who has been ordinarily resident in the Parish for at least twelve months; or
 - (d) is immediately prior to such allocation permanently employed in the Parish or is taking up permanent employment in the Parish within 3 months of the allocation

3. If upon a unit of accommodation within the Shared Equity Affordable Housing becoming available for occupation whether on completion of the construction of the Shared Equity Affordable Housing or at any time subsequently the Owners are unable to fill any vacancy arising in accordance with paragraph 2 above as confirmed in writing by the District Council's Head of Service – Regeneration then the Owners shall allocate the unit of accommodation to a person who:-
 - (a) has immediately prior to such allocation been ordinarily resident within one or more of the parishes of ><₃₉ (or such other parishes as may be agreed from time to time) ("the Other Parishes") for a period of at least twelve months; or

- (b) has within the last ten years prior to such allocation been ordinarily resident in one or more of the Other Parishes for a period of at least five years; or
- (c) has immediately prior to such allocation a mother, father, son or daughter or such other relative or carer approved in writing by the District Council's Head of Service – Regeneration ordinarily resident in one or more of the Other Parishes; or
- (d) is immediately prior to such allocation permanently employed in one of the Other Parishes or is taking up permanent employment in one of the Other Parishes within 3 months of the allocation

but if there is no such person then to any person in priority need nominated by the District Council's Head of Service – Regeneration PROVIDED that if within 12 weeks of a unit becoming unoccupied the Owners have been unable to fill the vacancy in accordance with paragraphs 2 and 3 above having taken all reasonable steps then the Owners may allocate any vacant unit to any person who is considered by the Owners to be in need of such accommodation

PART 3

Shared Ownership Affordable Housing Requirements

1. Not to occupy or allow or permit any person or persons to occupy all or any part of the Shared Ownership Affordable Housing other than under a form of shared ownership lease which has been approved in writing by the District Council and which:-
 - [(a) ensures that the lessee does not either on entering into the lease or an assignment of the lease or at any time during occupation acquire more than >< % of the open market value of the Affordable Housing Unit]⁴⁰
 - (b) prohibits sub-letting of the Affordable Housing Unit

2. Upon completion of construction of the Shared Ownership Affordable Housing and at all times subsequently upon a unit of accommodation in the Shared Ownership Affordable Housing becoming unoccupied to allocate each unoccupied unit of accommodation to a person who is in need of such accommodation and who:-
 - (a) has immediately prior to such allocation been ordinarily resident within the Parish of ><₄₁ ("the Parish") for a period of at least twelve months; or
 - (b) has within the last ten years prior to such allocation been ordinarily resident in the Parish for a period of at least five years; or
 - (c) has immediately prior to such allocation a mother, father, son or daughter or some other relative or carer approved in writing by the District Council's Head of Service - Regeneration who has been ordinarily resident in the Parish for at least twelve months; or
 - (d) is immediately prior to such allocation permanently employed in the Parish or is taking up permanent employment in the Parish within 3 months of the allocation

3. If upon a unit of accommodation within the Shared Ownership Affordable Housing becoming available for occupation whether on completion of the construction of the Shared Ownership Affordable Housing or at any time subsequently the Owners are unable to fill any vacancy arising in accordance with paragraph 2 above as confirmed in writing by the District Council's Head of Service - Regeneration then the Owners shall allocate the unit of accommodation to a person who:-

- (a) has immediately prior to such allocation been ordinarily resident within one or more of the parishes of ><42 (or such other parishes as may be agreed from time to time) (“the Other Parishes”) for a period of at least twelve months; or
- (b) has within the last ten years prior to such allocation been ordinarily resident in one or more of the Other Parishes for a period of at least five years; or
- (c) has immediately prior to such allocation a mother, father, son or daughter or such other relative or carer approved in writing by the District Council’s Head of Service - Regeneration ordinarily resident in one or more of the Other Parishes; or
- (d) is immediately prior to such allocation permanently employed in one of the Other Parishes or is taking up permanent employment in one of the Other Parishes within 3 months of the allocation

but if there is no such person then to any person in priority need nominated by the District Council’s Head of Service – Regeneration PROVIDED that if within 12 weeks of a unit becoming unoccupied the Owners have been unable to fill the vacancy in accordance with paragraphs 2 and 3 above having taken all reasonable steps then the Owners may allocate any vacant unit to any person who is considered by the Owners to be in need of such accommodation

PART 4

Definition of In Need of Accommodation

1. A person is eligible for accommodation if their social and economic circumstances are such that they have difficulty securing accommodation on the open market or if he/she or a member of the household:-
 - (i) is occupying unsanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions; or
 - (ii) is living in accommodation which is temporary or occupied on insecure terms; or
 - (iii) needs alternative accommodation on medical or welfare grounds; or
 - (iv) needs to move to receive or provide care or support; or
 - (v) is establishing a separate household; or
 - (vi) needs to move to be able to take up or sustain permanent employment; or
 - (vii) is an existing social housing tenant whose move will enable the optimum use of social housing stock

NINTH SCHEDULE

Specification for Community Facilities Floorspace

SEALED AS A DEED for)
and on behalf of)
HAMBLETON DISTRICT COUNCIL)

Head of Service - Legal

THE COMMON SEAL OF)
NORTH YORKSHIRE COUNTY COUNCIL)
was affixed in the presence of)

Authorised Signatory

EXECUTED AS A DEED by)
[...insert name of owner...])
in the presence of)

Director

Director/Secretary

[...add Developer, mortgagee and any other parties as appropriate...]

The text of this Agreement is available in large print

-
- ¹ This is the date on the planning application form.
 - ² This is the reference number allocated by the Council to the application.
 - ³ Insert description of the development.
 - ⁴ Delete as appropriate.
 - ⁵ Delete as appropriate (e.g., delete reference to County Council if they are not to be a party).
 - ⁶ These provisions are important if there is to be a transfer of land.
 - ⁷ See 4 above.
 - ⁸ Delete as appropriate. The Council will require a contribution of £500 if there are no substantial alterations to the model. If there are substantial alterations then the contribution will be £1,500.
 - ⁹ Delete as appropriate.
 - ¹⁰ Delete as appropriate.
 - ¹¹ Delete as appropriate.
 - ¹² Delete as appropriate.
 - ¹³ This will be deleted if there is no Off-Site Open Space provision.
 - ¹⁴ This will be deleted if there is no Off-Site Recreational contribution.
 - ¹⁵ This will be deleted if no play equipment is to be provided.
 - ¹⁶ Insert a period for completing the Open Space Works Scheme.
 - ¹⁷ Insert a sum of money as a contribution to the future maintenance of the Open Space.
 - ¹⁸ Delete as appropriate.
 - ¹⁹ Insert a sum sufficient to act as a Bond for the required works.
 - ²⁰ Delete as appropriate.
 - ²¹ Delete as appropriate.
 - ²² Insert a sum which is deemed to be an affordable amount for a purchaser to pay for the dwelling at the date of the Deed. This definition may need to be amended to reflect the fact that there may be different figures within the same obligation for different property types within the same scheme.
 - ²³ Delete if there is to be no Shared Equity Affordable Housing.
 - ²⁴ Delete if there is to be no Rented Affordable Housing.

-
- ²⁵ Delete if there is to be no Rented Affordable Housing. Dwelling types (e.g., houses, flats, bungalows) may also be specified.
- ²⁶ Delete if there is to be no Rented Affordable Housing.
- ²⁷ Delete if there is to be no Rented Affordable Housing.
- ²⁸ Delete if there is to be no Shared Equity Housing.
- ²⁹ Delete if there is to be no Shared Equity Housing.
- ³⁰ Delete if there is to be no Shared Equity Housing.
- ³¹ Delete if there is to be no Shared Ownership Housing.
- ³² Delete if there is to be no Shared Ownership Housing.
- ³³ It will be a requirement that the Affordable Housing is provided before some of the Market Housing can be occupied. The appropriate number should be inserted.
- ³⁴ Delete as appropriate.
- ³⁵ This will be the same period as referred to at Note 16 above.
- ³⁶ This will be the Parish in which the development is situated.
- ³⁷ These will be the Parishes immediately adjoining the Parish referred to in Note 36 above.
- ³⁸ See Note 36 above.
- ³⁹ See Note 37 above.
- ⁴⁰ **This will not apply if Housing Corporation Funding rules would prohibit restrictions on staircasing to 100% on a scheme of this nature.**
- ⁴¹ See Note 36 above.
- ⁴² See Note 37 above.