



DATED _____ **[20** _____ **]**

BY

OWNER

and

BANK

IN FAVOUR OF

NORTH HERTFORDSHIRE DISTRICT COUNCIL

and

HERTFORDSHIRE COUNTY COUNCIL

UNILATERAL UNDERTAKING

Under Section 106 of the Town & Country Planning Act 1990
Land at [_____]

Legal Services
North Hertfordshire District
Council
Council Offices, Gernon Road
Letchworth Garden City
Hertfordshire SG6 3JF
(Ref: _____ /LL _____)

THIS UNILATERAL UNDERTAKING is made as a deed on the _____ day
of _____ [20 ____]

BY

1 **OWNER** (Co. Regn. No. _____) whose registered office is at

("the Owner") and

2 **BANK** (Co. Regn. No. _____) of _____ ("the Mortgagee")

IN FAVOUR OF

3 **NORTH HERTFORDSHIRE DISTRICT COUNCIL** of Council Offices Gernon Road
Letchworth Garden City Hertfordshire SG6 3JF ("the Council") and

4 **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Pegs Lane Hertford
Hertfordshire SG13 8DE ("the County Council")

RECITALS

A The Council and the County Council are the local planning authorities for the Land
for the purposes of the Act.

B The Council is a principal council for the purposes of the Local Government Act
1972.

C The County Council is the Education Authority for the purposes of the Education
Acts as defined in section 578 of the Education Act 1996 the Highway Authority
for the purposes of the Highways Act 1980 the Fire and Rescue Authority the
Social Services Authority and the Libraries Authority for Hertfordshire.

D The Owner is the registered freehold proprietor of the Land registered at HM Land
Registry under Title Number [_____] free from encumbrances that would prevent
the Owner from entering into this Deed [save for the Charge].

E The Mortgagee has an interest in the Land under a legal charge/mortgage dated
[_____] ("the Charge") made between the Owner and the Mortgagee and
consents to the Owner entering into this Deed.

F On [_____] the Owner submitted the Application to the Council for Planning
Permission for the Development.

- G This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead

OPERATIVE PROVISIONS:

WORDS AND EXPRESSIONS

1. In this Deed the following expressions shall have the following meanings unless inconsistent with the text:

"Act"

means the Town and Country Planning Act 1990 as amended;

"Affordable Housing"

means subsidised housing within the definition of affordable housing contained in Annex 2 of the NPPF (or any subsequent replacement or modification thereof) that will be available to persons who cannot afford to rent or buy housing generally available on the open market;

"Affordable Housing Contribution"

means the sum of [] which shall be applied towards the provision by the Council of off-site Affordable Housing within the District of North Hertfordshire;

"Affordable Housing Land"

means the land upon which the Affordable Housing Units will be built;

"Affordable Housing Provider"

means an organisation that is involved in the delivery and management and ownership of Affordable Housing which is registered or eligible for registration under chapter 3 part 2 of the Housing and Regeneration Act 2008 and which is listed in the North Hertfordshire District Council Housing Association Partnership Deed or such other body as shall be approved in writing by the Council which is capable of managing Affordable Housing and receiving grant from Homes England;

["Affordable Housing Scheme"]

means a scheme to be submitted in writing by the Owner to the Council for approval in respect of a [Phase] containing details of:

- (i) the number of Affordable Housing Units in that [Phase];
- (ii) a breakdown of the type, size and tenure mix of the Affordable Housing Units in that [Phase];
- (iii) the location of each Affordable Housing Unit in that [Phase];]

"Affordable Housing Units"

means those Dwellings permitted as part of the Development which are to be provided as Affordable Housing to Qualifying Persons in accordance with paragraphs 1 and 2 of Part I of Schedule Two;

"Affordable Rented Unit"

means a unit of Affordable Housing let by a local authority or private registered provider of social housing to households who are eligible for social rented housing in accordance with the definition of affordable rented housing contained in Annex 2 to the NPPF (or any subsequent replacement or modification thereof) but for the avoidance of doubt must be at an affordable rent which is subject to rent controls that require:

- (i) in the case of each one or two bedroom unit a rent of no more than 80% of the equivalent local market rent (including service charges, where applicable) for one and two bedroom units respectively;
- (ii) in the case of each three bedroom unit a rent of no more than 70% of the equivalent local market rent (including service charges, where applicable) for three bedroom units; and
- (iii) in the case of each four bedroom unit a rent of no more than the equivalent rent (excluding service charge where applicable) for a four bedroom Social Rented Unit;

"Application"

means the application for [outline/detailed] planning permission for the Development submitted to the Council by or on behalf of the Owner with the application plans and other materials on [] and allocated reference number [];

"Bus Stop Improvement Contribution"

means the sum of [] (£0.00) Index Linked as hereinafter provided which shall be applied towards ;

"Chargee"

means any mortgagee or chargee of the Owner or Affordable Housing Provider or the successors in title to such mortgagee or charge or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

"Childcare Facilities Contribution"

means the sum of [] (Index Linked) which shall be applied towards the cost of providing childcare facilities serving the locality of the Development;

"Commencement"

means the carrying out by any person (which for the avoidance of doubt may or may not be a Party to this Deed or their agents or representatives) of a material operation comprised in the Development within the meaning of Section 56 of the Act save that for the purposes of this Deed only "material operation" shall not include:

- a. site clearance;
- b. demolition of existing buildings;
- c. archaeological investigation;
- d. the assessment of contamination;
- e. remedial action in respect of any contamination;
- f. diversion and laying of services;
- g. the erection of fencing or other means of enclosure for site security;

h. the display of advertisements;

i. any off-site highways works

and the term Commence and Commences shall be construed accordingly;

"Community Centre Contribution"

means the sum of [] Index Linked which shall be applied towards the use of community centre facilities servicing the Development;

"County Council Contributions"

means together the [];

"Development"

means the development authorised by the Planning Permission and described as [] within the Application;

"Disposal"

means the transfer of a legal estate in an Affordable Housing Unit and "Dispose" shall be construed accordingly;

"District Council Contributions"

means together the [];

"Dwellings"

means an individual residential unit permitted as part of the Development and "Dwellings" shall be construed accordingly;

"Fire and Rescue Service"

means that part of the County Council known as the Hertfordshire Fire and Rescue Service;

"Homes England"

means the body that funds and regulates Affordable Housing Providers and such expression shall include successors to the functions and powers of Homes England;

"Index Linked"

[means that for [] Contributions such sum shall be index-linked by reference to the Tender Price Index of Public Sector Non Housing (PUBSEC) Smoothed All-In Index as published by the Building Cost Information Service from a base figure of 175 to the finalised figure applicable to the quarter in which the contribution is paid in accordance with clause 11.1;

means that for the Sustainable Transport Contribution sum shall be index linked by reference to the price adjustment formula for construction contracts on the Monthly Bulletin of Indices as collated into a single index in accordance with the SPONS Constructed Civil Engineering Cost Index from June 2006 until the date of payment] in accordance with **clause 11.2** and;

means for [] Contributions such sum shall be index linked by reference to the Office of National Statistics Index of Monthly Retail Prices Information (RPI) in accordance with **clause 11.3**;

"Informal Open Space Contribution"

means the sum of [] (Index Linked) which shall be applied towards the cost of informal open space facilities serving the Development;

"Interest"

means interest at two percent above the base lending rate of Lloyds Bank from time to time;

"Land"

the land known as [] which for identification purposes only is shown edged red on Plan 1;

"Leisure Services Contribution"

means the sum of [] (Index Linked) which shall be applied towards the cost of leisure facilities serving the Development;

"Libraries Contribution"

means the sum of [] (Index Linked) which shall be applied towards the cost of library facilities serving the locality of the Development;

"Local Connection"

means that the Qualifying Person has one of the following connections to the relevant area:

- (i) has lived for 6 out of the last 12 months or for 3 of the last 5 years in the relevant area;
- (ii) is currently employed and has been continuously employed for a minimum of 12 months in the relevant area; or
- (iii) has an immediate adult relative (including a parent, sibling, or adult child) who is currently a resident in the area and has been a resident in the area for the past 5 years;

or

- (i) has been continuously resident by choice in the relevant area for the last 12 months or has been resident by choice in the relevant area for 3 out of the last 5 years;
- (ii) has permanent employment in the relevant area; or
- (iii) has an immediate family member (this would normally be their mother, father, brother, sister or adult child) resident in the relevant area. Their residency must be by choice and have been so for a minimum of 5 years;

"Management Body"

means a body whose objects are for the management and maintenance of open space which has been approved by the Council in accordance with the Open Space Management Scheme

"Nominations Request Form"

means the nominations request form (Annex D to the 2014 – 2018 North Hertfordshire Housing Association Partnership Agreement) or such variations thereof as are approved by the Council

"NPPF"

means the National Planning Policy Framework issued by the Department for Communities and Local Government dated July 2018 or any Government issued policy statement amending or replacing the same from time to time;

"Occupation"

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 and the term "Occupied" and "Occupy" shall be construed accordingly;

"Open Market Dwelling"

means a Dwelling constructed on the Land as part of the Development which is not an Affordable Housing Unit;

["Open Space Maintenance Contribution"]

means the sum of [] (Index Linked) towards the enhancement and maintenance of open spaces within the vicinity of the Land;

["Open Space"]

means [public open space or play space];

["Open Space Land"]

means that part of the Development identified as being Open Space pursuant to paragraph [] of schedule Two;

"Open Space Management Scheme"

means the scheme for the long-term management and maintenance of the Open Space Land by a Management Body to be approved by the Council pursuant to

paragraph [] of Schedule Two or such variation thereof as may be agreed by the Owner and the Council;

"Open Space Programme"

means the programme for delivering the Open Space Scheme which for the avoidance of doubt shall include a timetable for the delivery of the Open Space Scheme in phases linked to the corresponding delivery of parts of the Development to be approved by the Council pursuant to paragraph [] of Part I of Schedule Two or such variation thereof as may be agreed by the Owner and the Council;

"Open Space Scheme"

means the scheme for the laying out, landscaping, construction and maintenance of the Open Space Land as Open Space to be approved by the Council pursuant to paragraph [] of Part I of Schedule Two or such variation thereof as may be agreed by the Owner and the Council;

["Open Space Scheme"]

means that the scheme for the provision of Open Space on the Open Space Land and the payment of the Open Space Maintenance Contribution to be approved by the Council pursuant to paragraph [] of Part I of Schedule Two or such variation thereof as may be agreed by the Owners and the Council

"Pitch Sport Contribution"

means the sum of [] (Index Linked) which shall be applied towards the enhancement and maintenance of pitch sports in the vicinity of the Development;

"Play Space Contribution"

means the sum of [] (Index Linked) which shall be applied towards the enhancement and maintenance of play space in the vicinity of the Development;

"Plan 1"

means the plan attached to this Deed and numbered Plan 1;

"Planning Obligations SPD"

means the North Hertfordshire District Council Planning Obligations Supplementary Planning Document dated November 2006;

"Planning Permission"

means the planning permission granted by the Council in pursuance of the Application a draft of which is attached at Schedule One;

"Primary Education Contribution"

means the sum of [] (Index Linked) which shall be applied towards the cost of primary education facilities serving the locality of the Development;

"Qualifying Person"

means a person or household in need of Affordable Housing identified in accordance with the provisions below:

- (i) in the case of an Affordable Rented Unit a person accepted on to the North Hertfordshire Common Housing Register (from time to time) in accordance with the North Hertfordshire Housing Partnership Common Housing Allocation Scheme 2013 (or any successor scheme approved in writing by the Council); and
- (ii) in the case of a Shared Ownership Unit, a person who meets the eligibility criteria for shared ownership housing set by the Government from time to time and who is approved by the relevant Help to Buy Agency appointed by Homes England for the area in which the Shared Ownership Unit is located

and the term "Qualifying Persons" shall be construed accordingly;

"Secondary Education Contribution"

means the sum of [] (Index Linked) which shall be applied towards the cost of secondary education facilities serving the locality of the Development;

"Secretary of State"

means the Secretary of State for Communities and Local Government (as that title is used in the Secretary of State for Communities and Local Government Order 2006 (SI 2006/1926)) or such other office holder who at the relevant time

is the person to whom an appeal may be made under Section 78 (1) of the 1990 Act

"Shared Ownership Lease"

means a lease in the form of the Homes England's model shared ownership lease and on terms that permit part purchase of the open market value of the equity in a unit in multiples of 5% up to a maximum of 80% together with rent payable for the open market rack rental value of the un-purchased percentage of the equity in the unit up to a value which does not exceed the rent set by the Homes England from time to time (or such other rent or form of lease approved in writing by the Council);

"Shared Ownership Unit"

means a unit of Affordable Housing to be made available by an Affordable Housing Provider under a Shared Ownership Lease;

"Social Rented Unit"

means a unit of Affordable Housing which is owned by local authorities or private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime (such unit may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the Council) and in all cases in accordance with the definition of social rented housing contained in Annex 2 to the NPPF or any subsequent replacement or modification thereof;

"Target Rent"

means a rent which does not exceed Homes England's target rent levels in place at the time of the grant of the relevant tenancy agreement for the relevant Social Rented Units PROVIDED THAT if Homes England's target rent system shall cease to operate or shall not have been revised in the year of the date of the grant of the relevant tenancy agreement then the target rent shall be such level of rent as may be approved in writing by the County Council.

"SPONS Index"

Means index linked by reference to the price adjustment formula for construction contracts in the monthly bulletin of indices published by Her Majesty's Stationery

Office as collated into a single index known as the SPONS Construction Civil Engineering Cost index;

"Sustainable Transport Contribution"

means the sum of [] (Index Linked) which shall be applied towards the design and construction of highway improvement works traffic management schemes traffic studies improvements to public transport and/or measures as will encourage users of the Development to travel to and from the Development by means of transport other than the private car which the County Council in its absolute discretion determines will contribute to the improvement of highway conditions on parts of the network affected by traffic associated with the Development;

"Waste Collection and Recycling Contribution"

means the sum of £71.00 per Dwelling house £54.00 per Dwelling flat (with own self contained garden) and £26.00 per Dwelling flat (with shared or no amenity space) Index Linked which shall be applied towards the cost of providing waste collection and recycling facilities serving the Development;

"Water Scheme"

means either the proposal prepared by or approved by the water undertaker for the area pursuant to the Water Industry Act 1991 to provide mains water services for the Development whether by means of new mains or extension to or diversion of existing services or apparatus OR where existing water services are to be used it shall mean the details of the Dwellings and the water supply to them which shall be provided by the Owner for the written approval of the Service prior to Commencement of the construction of any Dwelling to be constructed as part of the Development;

"Working Day"

means any day other than a Saturday or a Sunday or a Public Holiday; and

"Youth Contribution"

means the sum of [] (Index Linked) which shall be applied towards the cost of youth facilities and services serving the locality of the Development.

2. Where the context provides:

- 2.1 words of the masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice versa;
- 2.2 references to any Party means a party to this Deed and in the case of the Owner shall include its successors in title and assigns and any persons deriving title through or under them and in the cases of the Council and the County Council shall include successors to their respective functions;
- 2.3 where a Party includes more than one person any obligations of that Party shall be joint and several;
- 2.4 any reference to any statute or any section of a statute includes any statutory re-enactment or modification;
- 2.5 any reference to clauses and schedules are references to clauses and schedules to this Deed;
- 2.6 headings in the Deed shall not form part of or affect its construction;
- 2.7 where a Party is required to give consent or approval by any specific provision of this Deed such consent or approval shall not be unreasonably withheld or delayed;
- 2.8 any provision of this Deed which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Deed; and
- 2.9 any covenant by the Owner not to do any act or thing includes a covenant not to permit, allow or suffer the doing of that act or thing.

3. **STATUTORY PROVISIONS AND COVENANTS**

- 3.1 This Deed and the covenants within it are made pursuant to section 106 of the Act. 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 the County Council against the Owner and each of their successors in title

and assigns to each and every part of the Land and any person deriving title to each and every part of the Land through or under the Owner (subject to paragraph 2, Part I of Schedule Two).

3.2 To the extent that any of the obligations in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers.

3.3 The Owner enters into the obligations for itself and its successors in title with the Council and the County Council to the intent that the obligations hereunder shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Land or any part thereof PROVIDED THAT

3.3.1 a Affordable Housing Provider and the owners and/or occupiers of Affordable Housing Units shall only be liable in respect of the obligations and restrictions contained in Part I of Schedule Two and shall otherwise have no liability pursuant to this Deed;

3.3.2 with the exception of the obligations and restrictions to be performed or complied with prior to the Occupation of the Development or a Dwelling constructed as part of the Development or the obligations contained in Paragraph 1 of Part 2 of Schedule Two the owners tenants and occupiers of individual Open Market Dwellings shall have no liability in respect of the obligations and restrictions contained in this Deed; OR

3.3.2 The provisions contained in this Deed shall not be binding against any individual owner or occupier or any mortgagee of any individual owner or occupier of a Dwelling comprised within the Development; and

3.3.3 the obligations and restrictions in this Deed shall not be enforceable against a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker or in respect of any easements relating to cables, pipes or other service media running under the Land nor enforceable against any highway

authority which may be responsible for any public highway maintainable at the public expense

4. CONDITIONALITY

4.1 This Deed is conditional upon:

- a) the grant of the Planning Permission substantially in the form as annexed at Schedule One; and
- b) the Commencement of Development

SAVE FOR the provisions of clauses 12, 13 and 15.5 which shall come into effect immediately upon completion of this Deed.

5. PLANNING OBLIGATIONS

The Owner covenants with the Council and the County Council to observe the restrictions and to perform the obligations and activities specified in Schedule Two to this Deed.

6. EXERCISE OF THE POWERS OF THE COUNCIL AND THE COUNTY COUNCIL

Nothing in this Deed whether express or implied shall prejudice or affect the rights discretion powers duties and obligations of the Council or the County Council under any statute, bye-law, statutory instrument, order or regulation in the exercise of its functions as local planning authority, principle council, education authority, fire and rescue authority, highway authority, library authority and social services authority.

7. WAIVER

No waiver whether expressed or implied by the Council or the County Council of any breach or default by the Owner in performing or observing any of the covenants in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing or from acting upon any subsequent breach or default of any of the covenants.

8. CONSENTS

8.1 [The Mortgagee consents to the execution of this Deed and acknowledges that the Land shall be bound by the restrictions and covenants contained in this

Deed and agrees its rights in relation to the Land shall be deferred and that planning obligations in favour of the Council and the County Council shall have priority and it is acknowledged that the Mortgagee enters into this Deed in order to give consent to its terms only and will not be bound by its terms unless it becomes a mortgagee in possession of the Land or exercises its power of sale in relation to the Land.]

8.2 The Owner warrants and confirms that it has obtained all necessary permissions and consents to it entering into this Deed.

8.3 [The Owner warrants and confirms that it is the freehold owner of the Land with full power to enter into this Deed.]

8.4 [The Owner warrants and confirms that the Land is free from all mortgages charges or other encumbrances and that no other person apart from the Developer has an interest in the Land whose consent is necessary to make this Deed binding on the Land and all estates and interests in it.]

9. **SUCCESSORS IN TITLE**

No Person shall be liable for breach of any covenants or obligations in this Deed occurring after the date on which they have parted with their interest in the Land PROVIDED THAT they will remain liable for any breach occurring before that date. Neither the reservation of rights nor the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purposes of this clause.

10. **PLANNING PERMISSION**

10.1 [If any form of development within the Land which individually or in combination with any other permission for development would lead to the levels of development exceeding those set out in the Application that development may be the subject of additional planning obligations.]

10.2 This Deed shall cease to have effect if the Planning Permission is quashed, revoked, expires, is modified by any statutory procedure without the consent of the Owner or is otherwise withdrawn;

11. **EXPENDITURE, INTEREST AND INDEXATION**

11.1. Where any sum in Schedule Two is required to be Index Linked by reference to the PUBSEC Index that sum payable shall be increased in accordance with any

change in the Department of Business Innovation and Skills Tender Price Index of Public Sector Non-Housing Smoothed All-In Index by the application of the formula:

$A = B \times (C \div D)$ where:-

A is the total amount to be paid;

B is the principal sum stated in this Deed;

C is the PUBSEC Smoothed All-In Index figure for the date upon which the interim payment described below is actually paid

D is the figure of 175.

11.2. Where any sum in Schedule Two is expressed to be Index Linked by reference to movements in the SPONS Index the Sustainable Transport Contribution shall be index-linked to such movements in the SPONS Index from July 2006 to the date on which the Sustainable Transport Contribution is paid

11.3. Where any sum in Schedule Two is expressed to be Index Linked by reference to RPI that sum shall be increased by application of the formula:

$A = B \times (C \div D)$ where:-

A is the total amount to be paid;

B is the principal sum stated in this Deed;

C is the Office of National Statistics Index of Monthly Retail Prices Information figure for the date upon which the Contribution is actually paid;

D is the Office of National Statistics Index of Monthly Retail Prices Information figure from April 2006.

11.4 It is further agreed by the parties that:

11.4.1 if prior to the receipt of the [District Council Contributions and/or the County Council Contributions] Contributions the Council or the County Council incurs any expenditure in providing additional facilities the need for which arises from or in anticipation of the Development then the Council or the County Council may immediately following receipt of such contributions deduct from the

[District Council Contributions and/or the County Council Contributions] Contributions such expenditure incurred; and

11.4.2 where any sum to be paid by the Owner under the terms of this Deed is required to be Index-Linked then an interim payment shall initially be made based on the latest available forecast figure at the date of payment and any payment or payments by way of adjustment shall be made within 14 days of demand by the Council or County Council to the payer of the interim payment (as the case may be) once the relevant index has been finalised.

11.5 If any payment due under this Deed by the Owner is paid late, Interest will be payable from the date payment is due to the date of payment.

12. **COSTS**

12.1 The Owner shall pay the Council's [and the County Council's] reasonable legal costs plus disbursements incurred in connection with the preparation negotiation and completion of this Deed immediately upon completion.

13. **REGISTRATION OF THIS DEED**

This Deed shall be registrable as a local land charge following completion by the Council as local planning authority

14. **THIRD PARTIES**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a Party hereto or a successor in title to a Party hereto.

15. **NOTICE**

[The Owner shall give the Council and the County Council prior written notice of

15.1 the Commencement of the Development;

15.2 the Occupation of the [1st] Dwelling;

15.3 the Occupation of [50%] of the Open Market Units;

15.4 the completion of the Development.

15.5 any change of any interests in the Land occurring before all of 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 Land purchased by reference to a plan.]

16. **SERVICE OF NOTICES AND DOCUMENTS**

Any notice required or authorised to be given by any Party shall be in writing in the form of proforma set out in Schedule Three and shall contain the Application reference number [] and reference to the date of this Deed and shall be sufficiently given if sent by first class post or facsimile to the following persons

The Council Planning Control and Conservation Manager North
Hertfordshire District Council Council Offices Gernon Road
Letchworth Garden City Hertfordshire SG6 3JF [ref xxx]

The County Council Chief Legal Officer Hertfordshire County Council County Hall
Hertford Hertfordshire SG13 8DE [ref DU xxx]

The Fire and Rescue Water Services Officer Fire and Rescue Service Old London
Service Road Hertford Hertfordshire SG13 7LD (01992 507521)

The Owner [tbc]

17 **DETERMINATION OF DISPUTES**

In the event of there being a dispute arising out of this Deed or the subject matter thereof the following provisions shall apply:

17.1 The parties shall use their reasonable endeavours to resolve the dispute by agreement

17.2 If agreement cannot be reached the matter in dispute shall be referred to and settled by some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert on the application of either party after giving notice in writing to the other party to this Deed

- 17.3 The person to be appointed pursuant to clause 17.2 shall be a person having ten years or more post qualification experience of projects comprising works of the scale and nature of the Development
- 17.4 Reference to the expert shall be on terms that determination shall take place within 28 working days of the expert accepting his instructions
- 17.5 The expert shall have the power to award costs of the determination in favour of either party to the dispute at the expense of the other party and failing such determination such costs shall be borne by the parties in equal shares
- 17.6 The expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision
- 17.7 The findings of the expert shall (other than in the case of a manifest material error) be final and binding on the parties to the dispute
- 17.8 For the avoidance of doubt references to 'party' or 'parties' in clause 17.1 exclude the County Council and the County Council shall not be required to submit to or be bound by the provisions of Clauses 17.1 -17.7.

18 MISCELLANEOUS

- 18.1 Without prejudice to the Council's and the County Council's statutory rights the Owner hereby grants to the Council and/or the County Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter any part of the Land to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed provided that the Council or County Council gives the Owner two days notice and complies with any reasonable on site health and safety requirements of the Owner during any such inspection.
- 18.2 At the written request of the Owners at any time after the planning obligations have been fully and satisfactorily discharged/performed, the Council may issue the Owner with written confirmation of the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 18.3 Nothing in this Deed shall be construed as affecting prohibiting or limiting any rights to develop any part of the Land in accordance with a planning

permission (other than the Planning Permission) granted whether before or after the date of this Deed by the Council the County Council or the Secretary of State or any other competent authority.

18.4 Where any approval, agreement, consent, confirmation or expression of satisfaction is required under the terms of this Deed the request for it shall be made in writing and where a request is made the approval, agreement, consent, confirmation or expression of satisfaction shall not be unreasonably withheld or delayed.

19 **JURISDICTION**

19.1 This Deed is to be governed by and interpreted in accordance with the laws of England.

19.2 The Courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed. This clause operates for the benefit of the Council and the County Council who retain the right to sue and enforce any judgment against the Owner in the courts of any competent jurisdiction.

20 **EXECUTION**

The parties have executed this Deed as a deed and it is delivered on the date set out above.

SCHEDULE ONE

DRAFT PLANNING PERMISSION

SCHEDULE TWO

PART I

OWNER'S COVENANTS TO THE COUNCIL

Affordable Housing

1. The Owner covenants with the Council:
 - 1.1 that the Owner shall ensure that at least 25%/40% of the Dwellings to be built on the Land shall be Affordable Housing Units;
 - 1.2 that the Owner shall ensure that 65% of the Affordable Housing Units are Affordable Rented Units and 35% of the Affordable Housing Units are Shared Ownership Units;
 - 1.3 to provide the following types of Affordable Housing Units:
 - 1.3.1 as Affordable Rented Units:
 - ☐ x one bedroom flats;
 - ☐ x two bedroom flats and
 - ☐ x four bedroom house
 - 1.3.2 as Shared Ownership Units:
 - ☐ x two bedroom houses; and
 - ☐ x three bedroom house
 - 1.4 the Affordable Housing Units shall be designed and constructed so as to meet the standards contained in Homes England Design and Quality Standards (or such other successor body's standards);
 - 1.5 not to Occupy more than 25% of the Open Market Dwellings until 50% of the Affordable Housing Units:

- 1.5.1 have been constructed to the Council's satisfaction in accordance with the requirements set out in **paragraph 1.4** above, the Planning Permission and to such standard as would enable immediate Occupation by a purchaser, tenant or lessee of the Affordable Housing Units;
 - 1.5.2 those Affordable Housing Units have been transferred to an Affordable Housing Provider; and
 - 1.5.3 subject to **paragraph 2** below and unless otherwise agreed in writing by the Council, all nominations will be made in compliance with the North Hertfordshire Common Housing Allocations Scheme and a Nomination Request Form (Annex D of the 2014-2018 Housing Association Partnership Agreement) has been submitted to the Council for all Affordable Rented Units. The Council shall have the right to nominate a Qualifying Person to occupy each of the Affordable Rented Units as referred to in **paragraph 1.16** (or such variation or substitution issued by North Hertfordshire District Council thereafter);
- 1.6 not to Occupy more than 50% of the Open Market Dwellings until all of the Affordable Housing Units:
 - 1.6.1 have been constructed to the Council's satisfaction in accordance with the requirements set out in **paragraph 1.4** above, the Planning Permission and to such standard as would enable immediate Occupation by a purchaser, tenant or lessee of the Affordable Housing Units;
 - 1.6.2 all of the Affordable Housing Units have been transferred to an Affordable Housing Provider;
 - 1.6.3 subject to **paragraph 2** below and unless otherwise agreed in writing by the Council, all nominations will be made in compliance with the North Hertfordshire Common Housing Allocations Scheme and a Nomination Request Form (Annex D of the 2014-2018 Housing Association Partnership Agreement) has been submitted to the Council for all Affordable Rented Units. The Council shall have the right to nominate a Qualifying Person to occupy each of the Affordable Rented Units as referred to in **paragraph 1.16** (or such

variation or substitution issued by North Hertfordshire District Council thereafter);

1.7 that the transfers referred to in **paragraphs 1.5.2 and 1.6.2** shall contain the following:

1.7.1 the grant by the Owner to the Affordable Housing Provider of all rights of access from the public highway and full and free passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units;

1.7.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development;

1.7.3 in the case of a lease the term shall not be less than 125 years;

1.7.4 covenants by the Affordable Housing Provider that:

1.7.4.1 subject to **paragraph 2** below, each Affordable Housing Unit shall be used for no other purpose than Affordable Housing;

1.7.4.2 subject to **paragraph 2** below, the grant of a lease, tenancy or Shared Ownership Lease in any Affordable Housing Unit shall be restricted to a Qualifying Person;

1.8 that subject to **paragraph 1.9 and paragraph 2** below the grant or assignment of a tenancy, lease or Shared Ownership Lease of any Affordable Housing Unit shall be restricted to a Qualifying Person with a Local Connection to the [];

1.9 that subject to **paragraph 2** if no Qualifying Person satisfies the requirements of paragraph 1.8 above then the grant or assignment of any tenancy, lease or Shared Ownership Lease of any Affordable Housing Unit shall be made to a Qualifying Person with a Local Connection to one of the following areas (in order of priority from **paragraphs 1.9.1 to 1.9.3**):

1.9.1 the Parishes of []; or

- 1.9.2 if no Qualifying Person satisfies **paragraph 1.9.1**, other rural parishes within North Hertfordshire; or
- 1.9.3 if no Qualifying Person satisfies **paragraphs 1.9.1** or **1.9.2**, North Hertfordshire generally;
- 1.10 that subject to **paragraph 2** and with the exception of a disposal of a Shared Ownership Lease the Owner shall not dispose of a freehold or leasehold estate in the Affordable Housing Units or the Affordable Housing Land other than to another Affordable Housing Provider which shall observe the covenants contained in this Deed;
- 1.11 that the Owner and the Developer shall notify the Council immediately in the event of service of any notice under Sections 40 and 41 of the Housing Act 1996 or any notice, order or direction served, made or given under Schedule One Part IV of the Housing Act 1996 (or any replacement provisions to any of the above in the Housing and Regeneration Act 2008 or any subsequent statutory re-enactments or modifications thereof);
- 1.12 that subject to **paragraph 2** below the Owner and the Developer shall not Occupy or permit the Affordable Housing Units to be used or Occupied other than for the provision of Affordable Housing in accordance with the terms of this Deed;
- 1.13 that subject to **paragraph 2** below the Owner and the Developer shall not Occupy or permit the Affordable Housing Units to be provided pursuant to **paragraph 1.3.1** to be used or Occupied other than as Affordable Rented Units in accordance with the terms of this Deed;
- 1.14 that subject to **paragraph 2** below the Owner and the Developer shall not Occupy or permit the Shared Ownership Units to be provided pursuant to **paragraph 1.3.2** to be used or Occupied other than as Shared Ownership Units and not to permit a tenant or occupier of a Shared Ownership Unit to purchase more than 80% of the equity of the Shared Ownership Unit in accordance with the terms of this Deed;
- 1.15 that subject to **paragraph 2** below the Owner and the Developer shall not Occupy or permit the Affordable Housing Units to be used or Occupied other than by Qualifying Persons and their dependants;

1.16 that subject to **paragraph 2** below and unless otherwise agreed in writing by the Council, the Council shall have the right to nominate a Qualifying Person to occupy the Affordable Housing Units as follows:

1.16.1 the right to nominate Qualifying Persons to occupy all of the Affordable Rented Units in respect of the first disposal (by way of lease or otherwise) of all of the Affordable Housing Units; and

1.16.2 the right to nominate Qualifying Persons to occupy three out of every four of the Affordable Rented Units in respect of the second and subsequent disposals of the Affordable Housing Units (by way of lease, assignment or otherwise);

1.17 that subject to **paragraph 2** below the Owner and the Developer shall not Occupy or permit each Shared Ownership Unit to be Occupied unless and until in respect of that Shared Ownership Unit the Affordable Housing Provider referred to in **paragraph 1.6.2** above has entered into a Shared Ownership Lease to a Qualifying Person with a Local Connection.

2. The provisions of **paragraphs 1.1, 1.2, 1.3, 1.5.3, 1.6.3, 1.7.4, 1.8, 1.9, 1.10, 1.12, 1.13, 1.14, 1.15, 1.16** and **1.17** shall not be binding or enforceable against:

2.1 any person who shall acquire the freehold or leasehold interest in any Affordable Housing Unit pursuant to any statutory right of acquisition and any successor in title or mortgagee of that person;

2.2 a Chargee which shall have the benefit of a legal mortgage or charge secured against the Affordable Housing Provider's estate or interest in any Affordable Housing Unit(s) on the Affordable Housing Land who wishes to exercise its power of sale (or any person deriving title from such Chargee appointed by such Chargee) PROVIDED THAT the Chargee or receiver or manager appointed by the Chargee has notified the Council in writing that it wishes to exercise its statutory power of sale and for a period of three months from such written notification the Chargee having used reasonable endeavours has not completed the disposal of the Affordable Housing Unit(s) to an Affordable Housing Provider PROVIDED THAT nothing in this paragraph shall require the Chargee to dispose of the Affordable Housing Unit(s) at a price which is less than the outstanding balance of its legal mortgage or charge over the Affordable Housing Unit(s) (including

interest, costs and expenses) FOR THE AVOIDANCE OF DOUBT if such disposal has not completed after the three month period from such written notification the Chargee, shall be entitled to dispose of the Affordable Housing Unit(s) free from the provisions of paragraphs 1.1, 1.2, 1.3, 1.5.3, 1.6.3, 1.7.4, 1.8, 1.9, 1.10, 1.12, 1.13, 1.14, 1.15, 1.16 and 1.17;

- 2.3 a Chargee which shall have the benefit of a legal mortgage or charge secured against a tenant's estate or interest (leased by an Affordable Housing Provider) in a Shared Ownership Unit who wishes to exercise its power of sale (or any person deriving title from such Chargee) PROVIDED THAT the Chargee has notified the Council in writing that it wishes to exercise its statutory power of sale and for a period of three months from such written notification the Chargee having used reasonable endeavours has not completed the disposal of the Shared Ownership Unit to an Affordable Housing Provider or Qualifying Person PROVIDED THAT nothing in this paragraph shall require the Chargee or receiver or manager to dispose of the Shared Ownership Unit at a price which is less than the outstanding balance of its legal mortgage or charge over the Shared Ownership Unit (including interest, costs and expenses) FOR THE AVOIDANCE OF DOUBT if such disposal has not completed after the three month period from such written notification the Chargee, shall be entitled to dispose of the Affordable Housing Unit(s) free from the provisions of paragraphs 1.1, 1.2, 1.3, 1.5.3, 1.6.3, 1.7.4, 1.8, 1.9, 1.10, 1.12, 1.13, 1.14, 1.15, 1.16 and 1.17.

Contributions to the Council

- 3 The Owner covenants with the Council:
 - 3.1 to pay the District Council Contributions to the Council prior to the Commencement of the Development; and
 - 3.2 not to cause or permit the Commencement of the Development until it has paid the District Council Contributions to the Council in accordance with **paragraph 3.1** above.

Open Space

- 4 The Owner covenants with the Council:
 - 4.1 to submit the Open Space Scheme to the Council for approval prior to the Commencement of the Development;
 - 4.2 not to Commence Development until it has submitted to and obtained the Council's approval of the Open Space Scheme;
 - 4.3 [to submit the Open Space Programme to the Council for approval prior to the Commencement of the Development;]
 - 4.4 [not to Commence Development until it has submitted to and obtained the Council's approval of the Open Space Programme;]
 - 4.5 [to submit the Open Space Management Scheme to the Council for approval prior to the Commencement of the Development;]
 - 4.6 [not to Commence Development until it has submitted to and obtained the Council's approval of the Open Space Management Scheme;]
 - 4.7 from the Commencement of the Development to lay out the Open Space Land in accordance with the Open Space Scheme and the Open Space Programme (both as approved by the Council) and fully implement and comply with the Open Space Scheme (as approved by the Council);

- 4.8 not to cause or permit the Occupation of more than 80% of the Dwellings until the Open Space Land has been laid out fully in accordance with the Open Space Scheme and the Open Space Programme (both as approved by the Council) to the Council's satisfaction and the Council has issued a certificate of completion in respect of the Open Space Land;
- 4.9 [prior to Occupation of 80% of the Dwellings to transfer the Open Space Land to the Management Body in accordance with the requirements of the Open Space Management Scheme]
- 4.10 [not to cause or permit the Occupation of more than 80% of the Dwellings until the Open Space Land has been transferred to the Management Body in accordance with the requirements of the Open Space Management Scheme approved by the Council and thereafter to manage and maintain the Open Space Land in accordance with the Open Space Management Scheme approved by the Council;]
- 4.11 [from the issue of the certificate of completion by the Council to maintain the Open Space Land to the standard required by the Open Space Scheme (as approved by the Council) in perpetuity;]
- 4.12 [from the completion of each part of the Open Space Land in accordance with the Open Space Scheme (as approved by the Council) to maintain that part of the Open Space Land to the standard required by the Open Space Scheme (as approved by the Council) in perpetuity and to make available and retain the Open Space Land at all times as public open space available for public use;]
- 4.13 [from the issue of the Certificate of Completion by the Council to make and retain the Open Space Land at all times as public open space available for public use;]
- 4.14 [not to use the Open Space Land for any use or purpose other than as public open space for use by and for the enjoyment of the public in perpetuity.]

PART II

OWNER'S COVENANTS TO THE COUNTY COUNCIL

Contributions to the County Council

- 5. The Owner covenants with the County Council:
 - 5.1 to pay the County Council Contributions to the County Council prior to the Commencement of the Development; and
 - 5.2 not to cause or permit the Commencement of the Development until it has paid the County Council Contributions to the County Council in accordance with **paragraph 5.1** above.

Fire Hydrants

- 6.1 to ensure that the Water Scheme incorporates fire hydrants in accordance with BS 750 (2006) as reasonably and properly required by the Fire and Rescue Service;
- 6.2 not to commence nor cause nor permit Commencement of the Development until they shall have prepared and submitted the Water Scheme to the Fire and Rescue Service for its written approval;
- 6.3 to construct and provide at no cost to the Fire and Rescue Service or the County Council the fire hydrants reasonably and properly indicated in the Water Scheme and to advise the Fire and Rescue Service in writing of the date upon which each and every fire hydrant becomes operational and ready to be used for the purpose of fire-fighting by the Fire and Rescue Service;
- 6.4 once operational as aforesaid to maintain the fire hydrants in good condition and repair such that they are suitable at all times for use by the

Fire and Rescue Service until they are adopted by the Fire and Rescue Service which adoption shall take place on the date specified in a written confirmation issued by the Chief Fire Officer of the Fire and Rescue Service provided that such written confirmation shall not be issued prior to the issue by the Director of Environment of the certificate of maintenance pursuant for the highways in which the fire hydrants are located;

- 6.5 not to Occupy nor cause nor permit Occupation of any Dwelling until such time as it is served by a fire hydrant which is operational and ready to be used for the purpose of fire-fighting by the Fire and Rescue Service; and
- 6.6 to address any notice to be given to the Fire and Rescue Service to the Water Services Officer, Fire and Rescue Service, Old London Road Hertford SG13 7LD Telephone 01992 507521.

SCHEDULE THREE

PROFORMA

EVENT NOTIFICATION AND PAYMENT

PURSUANT TO SECTION 106 AGREEMENT

DATED

MADE BETWEEN

PLANNING PERMISSION REFERENCE.....

HCC DU REFERENCE

SITE ADDRESS

.....

.....

.....

SITE OWNER DETAILS

Name

Contact name

Address

.....

.....

Telephone nos.

Main

Mobile

Email

EVENTS BEING NOTIFIED

Commencement Date – date :.....

Occupation of Development (Number if relevant) – date:.....

Completion of Development – date:

COMPLIANCE WITH OBLIGATION(S)

Schedule **Paragraph**

Details of obligation and compliance

.....

PAYMENT OF S106 CONTRIBUTIONS

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example Education (primary)	X £	Y £	Z £	X+Y £	Herts County Council

Payment of S106 contributions can be made by BACS, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

- a) The County Secretary
Hertfordshire County Council
County Hall,
Pegs Lane
Hertford
Hertfordshire
SG13 8DE

(Ref : DU)

- b) To Planning Control and Conservation Manager North Hertfordshire District Council
Council Offices Gernon Road Letchworth Garden City Hertfordshire SG6 3JF(X).

SCHEDULE FOUR

EXECUTED and DELIVERED as a **DEED** on the date of this document

EXECUTED under the Common Seal of
OWNER
in the presence of:

Director

Secretary

EXECUTED as a **DEED** by
OWNER

Acting by two Directors/a Director
and its Secretary

Director

Director/Secretary

EXECUTED AS A DEED by)
)
in the presence of)

Witness

Signature

Address