

Draft Model s106 Agreement

Annex D



WNDC

Deed relating to land at [] made pursuant to Section 106 of the Town and Country Planning Act 1990

Dated

(1) West Northamptonshire Development Corporation

-and -

(2) [Freehold Owner]

- and -

(3) [Leasehold Owner]

-and-

(4) [Developer]

-and-

(5) [Mortgagee]

-and-

(6) [Any Other Party With Significant Interest In Site]

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Agreement pursuant to Section 106 of the Town and Country Planning Act 1990

Dated **2008**

Between

- (1) **West Northamptonshire Development Corporation** of PO Box 355, Franklin's Gardens, Weedon Road, Northampton, NN5 5WU (the **Corporation**);
- (2) ** (company number **) whose registered office is situate at ** (the **Owner**); and
- (3) ** (company number **) whose registered office is situate at ** (the **Mortgagee**); and
- (4) ** (company number **) whose registered office is situate at ** (the **Developer**)

Recitals

- A The Corporation is the local planning authority by virtue of the Order for the Designated Area (in which [part of] the Site is situated) with the objective of securing the regeneration of the Designated Area.
- B The Owner is registered at the Land Registry as proprietor with freehold title absolute under title number [] of the Site and submitted the Application to the Corporation for determination on [insert date].
- C [The Mortgagee is the proprietor of a registered charge on the freehold title of the Site dated *]
- D The Corporation considered the Application on [] at its [] UDA Planning Committee and resolved to grant the Permission subject to completion of this Deed.
- E The purpose of this Deed is to secure the planning obligations set out in the Schedules hereto.
- F The covenants in Schedules 1 to [7] in this Deed constitute planning obligations for the purposes of Section 106 of the Act binding the Site and in respect of which the Corporation is the local planning authority entitled to enforce pursuant to the terms of this Deed.
- G [The Developer has entered into an agreement with the Owner to carry out the development of the Site]

It is agreed:

1 Definitions

Act means the Town and Country Planning Act 1990 as amended

Affordable Housing means housing meeting current Housing Corporation Scheme Development Standards at costs below those associated with open market housing which is accessible to households in housing need to either rent or purchase.

Affordable Housing Mix means the mix of Affordable Housing Units to be provided as follows:

- (a) []% one bed Affordable Housing Units;
- (b) []% two bed Affordable Housing Units;
- (c) []% three bed Affordable Housing Units;
- (d) []% four bed Affordable Housing Units.

Affordable Housing Provider means a registered social landlord given the meaning in Part 1 of the Housing Act 1996 (including any other body defined by subsequent legislation as having a similar role in respect of Affordable Housing) or other body registered with the Housing Corporation under the relevant Housing Act or other body approved by the Housing Corporation to receive social housing grant such Affordable Housing Provider in any event to be approved by the Corporation and [Northampton Borough Council].

Affordable Housing Tenures means the following mix of tenures expressed as a percentage of the total number of Dwellings to be constructed which comprise the Affordable Housing Units:

- (a) []% Social Rented Housing Units;
- (b) []% Shared Ownership Housing Units.

Affordable Housing Units means together the Social Rented Housing Units and the Shared Ownership Housing Units which shall represent 35% (thirty five per cent) of the total number of Dwellings to be provided as part of the Development in accordance with the Affordable Housing Mix and Affordable Housing Tenures.

Application means planning application reference [] submitted to the Corporation by the Owner in respect of the Site for [].

[Borough] Council's Area means [].

Commenced means the start of works which amount to a Material Operation in relation to a Dwelling or Commercial Unit being constructed as part of the Development.

Completion means unless the context otherwise so admits the proper issue of a certificate of practical completion of any works carried out pursuant to this Deed or as the context may allow any part, section or phase thereof by an independent architect, engineer or other certifying professional as the case may be and the terms "Complete", "Completed" and cognate expressions shall be interpreted in accordance with this definition and Occupation of any Dwelling shall be determinative of Completion even in the absence of a certificate.

Commercial Unit(s) means a building for industrial distribution office hotel retail or leisure use and ancillary facilities.

Design Code means a code to apply during construction and to have continuing effect setting out the proposed vision and key design principles for the Development to include (but not to be limited to) the following details for each separate use permitted as part of the Development and for each Phase: density; details of building types; parking provision; building materials; key elevational and architectural principles; location of landmark buildings and gateways; building heights; street types and block principles; roofs and boundaries; public realm materials including carriageways; footways; landscaping; and street furniture.

Designated Area means the development area for the Corporation as defined in the Order for which the Corporation is the local planning authority for the purposes of Part 3 of the Act.

Development means development permitted by the Permission.

Dwelling means a residential unit erected as part of the Development which includes both Affordable Housing Units and Market Units.

[Employment Standard Charge means the average cost per square metre (gross) of floorspace within a Commercial Unit of providing infrastructure and services within the relevant part of the Corporation's Designated Area assessed at the date of this Deed as £ ^{**} Index Linked having reached a balance between factors including the costs of infrastructure required in the Corporation's area, the likely scale of the development that will come forward and the level of charge that it is appropriate for developments to meet without stifling development.]

Grant means a capital grant provided by the Housing Corporation [Homes and Communities Agency] to fund Registered Social Landlords to develop social housing.

Housing Corporation means the non departmental public body responsible for registering, regulating and funding affordable housing providers in the provision of affordable housing and such

expression shall include successors to the functions and powers of the Housing Corporation

Implement or **Implementation** means the implementation of the Permission by the carrying out of any Material Operation.

Index Linked means that whenever reference in this Deed is made to a sum being Index Linked it shall mean that at the date when the said sum becomes due it shall be adjusted as so described in this Deed in accordance with the relevant index set out in Schedule 9 and “**Index**” and “**Indexation**” shall be construed accordingly.

Infrastructure means the infrastructure to be provided in or to serve the Designated Area as identified in Schedule 10 which may be amended from time to time in particular to incorporate items of infrastructure set out in any formal infrastructure plan produced and adopted by the Corporation after the date of this Deed.

Land Compensation Payment means a payment by the Corporation to the Developer in consideration for land to be occupied by defined infrastructure to be constructed by the Corporation (or the Developer as agreed Works in Kind).

Market Units means Dwellings which are not Affordable Housing Units.

Masterplan means [REDACTED].

Material Operation shall have the meaning as defined by Section 56 of the Act in respect of the Development excluding any archaeological works, works of demolition, works of excavation, remediation, stabilisation works, service installation or diversions, site and soil investigations, erection of hoardings or fences.

Maximum Commercial Floorspace means ^{**} [REDACTED] square metres (gross) of floorspace to be comprised in Commercial Units which may be constructed pursuant to the Permission.

Maximum Number of Dwellings means ^{**} [REDACTED] being the maximum number of Dwellings that may be constructed pursuant to the Permission.

Net Receipts means any receipts received by an Affordable Housing provider from the sale of an interest in an Affordable Housing Unit following its initial Occupation after deduction of the Affordable Housing Provider’s reasonable and demonstrable costs of acquisition, construction and sale of the relevant Affordable Housing Units.

Occupy or **Occupation** means the occupation of any part of the Development save for fitting out purposes.

Optimum Affordable Housing Mix means the mix of Affordable Housing to be provided as set out in Part 1 of Schedule 6.

Order means the West Northamptonshire Development Corporation (Planning Functions) Order 2006 which confers on the Corporation powers of local planning authority for the purposes of Part 3 of the Act in respect of the Designated Area.

Permission means a planning permission issued pursuant to the Application for the Development.

Plan means the plan annexed to this Deed.

Quarter means 31 January 30 April 31 July and 30 October.

Quarterly Report means a report to be prepared which identifies the following for the immediate preceding Quarter:

- a) the total number of Dwellings Commenced within that Quarter;
- b) the total number of Dwellings Completed within that Quarter;
- c) the total amount of commercial floorspace within the Development (together with details of the floorspace in gross square metres) Commenced within that Quarter;
- d) the total amount of commercial floorspace within the Development Completed within that Quarter (together with details of the floorspace in gross square metres).

Request for Security Confirmation means a written notice from the Corporation requesting a Security Confirmation in relation to specified Dwellings within the Development.

Residential Standard Charge means the average cost per Dwelling of providing infrastructure and services within the relevant part of the Corporation’s Designated Area assessed at the date of this Deed as ^{**} [REDACTED] Index Linked having reached a balance between factors including the costs of infrastructure required in the Corporation’s area, the likely scale of the development that will come forward and the level of charge that it is appropriate for developments to meet without stifling development.

Scheme Development Standards means the Housing Corporation Scheme Development Standards as may be amended.

Secondary Affordable Housing Mix means the mix of Affordable Housing to be provided as set out in Part 2 of Schedule 6.

Security means in relation to any Dwellings or Commercial Units specified in a Request for Security Confirmation legal provision by way of a bank bond cash deposit mortgage parent company guarantee or other mechanism agreed between the Corporation

and the Owner guaranteeing the availability of funds to pay all Standard Charges in relation to the Dwellings or Commercial Units when they fall due in accordance with this Deed.

Security Confirmation means a document that provides detailed information about the resources available to the Owner (including the value of the land).

Security Notice means a notice from the Corporation specifying why the Corporation is not reasonably satisfied that the Security Confirmation is sufficient to provide the Corporation with a good level of confidence that the remaining Residential Standard Charges or Employment Standard Charges will be paid when they fall due in accordance with this Deed.

Shared Ownership Housing means Shared Ownership Housing Units in which the occupier owns a percentage of the dwelling and the remainder is owned by an Affordable Housing Provider or such other third party but with the right for the occupier to purchase further percentages of the dwelling up to 100% (one hundred per cent).¹

Shared Ownership Housing Units means those dwellings to be provided as Shared Ownership Housing

Site means the land shown edged red on the Plan.

Social Rented Housing Units means subsidised housing for rent at [Target Rents] to persons in housing need who cannot afford to buy or rent properties generally available in the private housing market

Staff Monitoring Contribution means
£[() pounds]
Index Linked.

Sustainability Strategy means a scheme which includes:

- (a) details of how measures for ensuring at least ten per cent (10%) of the energy demand required to operate the Development will be provided from renewable sources;
- (b) details of how the Development will be constructed so as to achieve either a BRE Environmental Assessment Method “very good” rating, in the case of Commercial Units or a minimum level 3 of the Code for Sustainable Homes in the case of Dwellings;
- (c) the extent to which sustainable materials will be used during the construction of the Development;
- (d) the way in which a minimum of twenty per cent (20%) reduction above Building Regulation requirements applicable at the date of this Deed will be achieved in

relation to energy emissions from the Dwellings to be constructed as part of the Development;

- (e) the way in which the ICE’s demolition protocol will be followed;
- (f) the way in which sustainable drainage systems can be incorporated into the Development;
- (g) the way in which the Development will be constructed so as to reduce water use and to generally encourage efficient water use; and
- (h) the way in which waste generation, storage and disposal will be managed as part of the construction of the Development

[**Target Rents** means a rent as determined through the national rent regime in accordance with the proposal set out in the Three Year Review of Rent Restructuring (July 2004) which was implemented as policy in July 2006 or any superseding publications and policies as adopted by the Housing Corporation for use by Affordable Housing Providers.]

Tertiary Affordable Housing Mix means the mix of Affordable Housing to be provided as set out in Part 3 of Schedule [].

Total Employment Standard Charge means the sum of £^{**} Index Linked being the total Employment Standard Charge payable in respect of the Maximum Commercial Floorspace

Total Residential Standard Charge means the sum of £^{**} Index Linked being the total Residential Standard Charge payable in respect of the Maximum Number of Dwellings

[**Works in Kind** means those works which the Owner or Developer wish to carry out themselves the details specification(s) and programming of which are approved by the Corporation in accordance with the provisions of this Deed.]

[**Works in Kind Costs** means (as appropriate in the particular context) the lower of:

- (a) the estimated construction costs of carrying out any Works in Kind together with associated design fees and supervision fees and required maintenance contributions (where applicable) though excluding for the avoidance of doubt any bond fees; or
- (b) the actual construction costs of carrying out any Works in Kind together with associated design fees and supervision fees and required maintenance contributions (where

¹ Provision will be made for minimum and maximum initial equity shares and caps on rent and interest to ensure that affordability is maintained

applicable) though excluding for the avoidance of doubt any bond fees.

2 Miscellaneous

Where the context so admits:

- 2.1 words importing one gender shall be construed as importing any other gender and words importing the singular shall be construed as importing the plural and vice versa.
- 2.2 where reference is made to a statutory provision this includes all prior and subsequent enactments amendments and modifications relating to that provision and any subordinate legislation made under it.
- 2.3 the expression “the Owner”, “the Developer” and “the Mortgagee” shall include their respective successors in title and assigns, the expression “the Corporation” shall include any successor to its functions as local planning authority for the Designated Area [and the expression “the Council” shall include any successor to its functions as local planning authority for its administrative area save as provided for by the Order and the expression].
- 2.4 any covenant by the Owner not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably inferred.
- 2.5 where under this Deed any notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction is required to be given or reached or taken by any party or any response is requested any such notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction shall not be unreasonable or unreasonably withheld or delayed provided that nothing herein shall fetter the statutory rights, powers or duties of the Corporation.
- 2.6 the Clause and Paragraph headings do not affect the interpretation of this Deed.
- 2.7 any obligations of the parties to this Deed contained in this Deed which are or may be deemed to be obligations of one or more persons shall be joint and several obligations on the part of those persons unless the context otherwise requires.

2.8 nothing in this Deed shall prevent the Corporation (acting reasonably) applying any contribution (or any part thereof) towards any other purpose for which other contributions are due under this Deed in the interests of the proper planning of the Designated Areas.

2.9 in the event of any conflict between the provisions of this Deed and any document annexed hereto as referred to herein, the terms, conditions and provisions of this Deed will prevail.

2.10 where reference is made to a Clause, Part, Plan, Paragraph, Recital or Schedule such reference (unless the context requires otherwise) is a reference to a clause, part, plan, paragraph, recital or schedule of or to (or in the case of the plans attached to) this Deed.

3 Legal Effect

3.1 This Deed is made pursuant to section 106 of the Act with the intention that it binds the Owner’s the Developer’s and the Mortgagee’s interests in the Site or that part of the Site described in the relevant provision of this Deed as provided for by that section.

3.2 The obligations and covenants contained in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Corporation as local planning authority for the Designated Area.

3.3 All obligations and covenants made by the Corporation are made pursuant to its powers under section 136 of the Local Government Planning and Land Act 1980 and the Order, with the object to secure the regeneration of the Designated Area and in particular to:

- (a) acquire, hold, manage, reclaim and dispose of land and other property;
- (b) carry out building and other operations;
- (c) seek to ensure the provision of water, electricity, gas, sewerage and other services;
- (d) carry on any business or undertaking for the purposes of the object; and
- (e) generally do anything necessary or expedient for the purposes of the object or for purposes incidental to those purposes

as are incidental to its functions as local planning authority to secure that object.

- 3.4 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Corporation [or the Council] in the exercise of their functions as local planning authority or any other function and their rights, powers, duties and obligations under all public and private statutes, byelaws and regulations may be as fully and effectively exercised as if they were not a party to this Deed.

4 Conditionality

Save for the obligations in Schedule 1 paragraph 5 of Schedule 2 paragraph 4 of Schedule 7 and [insert others as appropriate] which come into effect on the grant of the Permission the planning obligations in Schedules [] of this Deed are conditional upon the Implementation of the Permission.

5 Obligations of the Owner and the Developer

- 5.1 The Owner and the Developer jointly and severally covenant with the Corporation to perform the relevant obligations and observe the relevant restrictions contained in Schedules [] to this Deed.
- 5.2 The Owner the Developer and the Mortgagee and any person deriving title from them shall be bound by the planning obligations that are contained in this Deed only to the extent that they have a legal interest in the Site (or any relevant part of it) at the time when such obligations arise subject only to the provisions contained in Clause 9.
- 5.3 The Owner and the Developer shall pay to the Corporation on the completion of this Deed its reasonable professional costs, in particular, the costs of legal advice, valuation and cost consultancy and any costs incurred in preparing or reviewing development appraisals including any VAT thereon and disbursements properly incurred in the negotiation and completion of this Deed in the sum of [].

6 Covenants by the Corporation [and the Council]

The Corporation agrees to observe and perform the covenants on its part contained in Schedule 8.

- 6.2 [The Council agrees to observe and perform the covenants on its part contained in Schedule []]

7 Mortgagee's Consent

The Mortgagee consents to the Owner and Developer entering into this Deed and acknowledges that the Site will be bound by the terms and obligations contained in this Deed and if the Mortgagee becomes a mortgagee in possession of the whole or any part of the Site the Mortgagee will not carry out or procure the Development or any part thereof without performing and observing the terms and obligations contained in this Deed.

8 Payment

If any sum due from to the Corporation shall remain unpaid on the due date for payment then interest shall be paid on the sum outstanding at the rate of 4% (four percent) per annum above the base rate of the National Westminster Bank plc from time to time calculated from the date that such sum becomes due up to the date of payment.

9 Release and Discharge

- 9.1 The obligations contained in this Deed shall not be binding upon nor enforceable against:
- (a) any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services; and
 - (b) the Owner the Developer and the Mortgagee (or any person deriving an interest in the Site from the Owner the Developer and the Mortgagee) after they have disposed of their interest in the Site (or in the event of a disposal of part in relation to the part disposed of) but not so as to release the Owner the Developer and the Mortgagee from any antecedent breach, non-performance or non-observance of their obligations.

10 Local Land Charges and Planning Register

The Corporation shall procure that this Deed shall be registered:

- (a) as a local land charge in the register of local land charges maintained by [Northampton][the] Borough Council; and
- (b) in the register maintained by [Northampton][the] Borough Council under Article 25 of the Town and Country Planning (General Development Procedure) Order 1995.

11 Notices

- 11.1 Any notice notification or application for any approval consent or other authorisation required to be made by the parties under the terms of this Deed is to be made in writing and shall be deemed to be sufficiently served if delivered, personally or sent recorded delivery service or by First Class Post to the following officer at the addresses specified in this Deed and addressed as follows:
- (a) if to the Corporation to the address set out above for the attention of the Chief Planning Officer;
 - (b) if to the Owner to the address set out above for the attention of ** [REDACTED] ;
 - (c) if to the Developer to the address set out above for the attention of ** [REDACTED] ; and
 - (d) if to the Mortgagee to the address set out above for the attention of ** [REDACTED] .

12 Remedies

- 12.1 The Owner or Developer shall notify the Corporation of the occurrence of any breach of its obligations under this Deed as soon as practicable after it becomes aware of such matter and in any event within 10 (ten) working days of such matter becoming apparent to the Owner or Developer.
- 12.2 Where the Corporation becomes aware of a breach or non-compliance with a provision of this Deed the Corporation shall be entitled to serve notice of such breach upon the Owner or Developer and the notice of breach shall state the nature of the breach, the steps required to remedy the breach and a reasonable timescale for remedying the breach.
- 12.3 The Owner or Developer shall within 10 (ten) working days of receiving the said notice give written notification to the Corporation of its response to the notice including any claim that it will remedy the breach within the stated timescale, that the timescale is too short or that it rejects the notice for the reason that no breach has occurred.
- 12.4 The Corporation and the Owner or Developer shall hold discussions about the notice of breach where either party so requests.
- 12.5 The Owner or Developer agrees that it shall observe and perform the conditions restrictions and other matters mentioned in this Deed and shall indemnify the Corporation for any expenses or costs incurred by the Corporation in respect of any breach by the Owner or Developer of any

obligations herein contained save to the extent that any act or omission of the Corporation its employees or agents has caused or contributed to such expenses or costs.

- 12.6 If the Owner or Developer persistently and deliberately fails to comply with material obligations under this Deed the Corporation shall forthwith serve on the Owner or Developer written notice of such failure. The Corporation shall thereafter be entitled to increase the level of its monitoring of the Owner or Developer's obligations for a period of 6 (six) months following each such failure and the Owner or Developer shall pay to the Corporation at the end of such 6 (six) month period the reasonable and proper costs of such increased monitoring.

13 VAT

If VAT becomes payable on payments made under this Deed that VAT will be additional to the sums required, provided that the Owner and/or Developer will be entitled to valid VAT receipts in respect of any vatiable supplies properly incurred under this Deed.²

14 Third Party Rights

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

15 Execution

The parties have executed this agreement as a deed and it is delivered on the date set out at the front of this Deed.

² NOTE: if transfer of land is to take place greater than 5 years ahead, SDLT will fall due and work will require an indemnity.

Schedule 1 **Implementation**

- 1 The Owner and the Developer will provide the Corporation with not less than 21 (twenty one) days prior written notice of the date on which it intends to Implement the Permission.
- 2 The Owner and the Developer will comply with the planning conditions contained within the Permission.

Schedule 2 Standard Charge

General Obligations

- 1 The Owner and Developer will pay to the Corporation:
 - (a) the Residential Standard Charge for each Dwelling; and
 - (b) the Employment Standard Charge for each Commercial Unit;
 in accordance with the provisions that follow in this Schedule 2.
- 2 The Owner and Developer shall no later than 10 (ten) days after the end of each Quarter submit the Quarterly Report to the Corporation.

Payments

- 3 [The Owner and the Developer shall pay to the Corporation the sum of £• when the Development is Commenced/ upon completion of this Deed]
- 4 The Owner and the Developer shall pay to the Corporation the Residential Standard Charge in respect of each Dwelling as follows:
 - (a) at the end of each Quarter 75% (seventy five per cent) of the Residential Standard Charge for each Dwelling Commenced in that Quarter;
 - (b) at the end of each Quarter [25% (twenty five per cent)] of the Residential Standard Charge for each Dwelling Completed in that Quarter.¹
- 5 [The Owner and the Developer shall pay to the Corporation the Employment Standard Charge in respect of each Commercial Unit within the Development as follows:
 - (a) at the end of each Quarter 75% (seventy five per cent) of the Employment Standard Charge payable for each Commercial Unit within the Development Commenced in that Quarter;
 - (b) at the end of each Quarter 25% (twenty five per cent) of the Employment Standard Charge payable for each Commercial Unit within the Development Completed in that Quarter.]

Longstop Date

- 6 To the extent that payments have not already been made the Owner and Developer will pay:
 - (a) the balance up to 50% (fifty per cent) of the Total Residential Standard Charge and up to 50% of the Total Employment Standard Charge (as applicable) not already paid on the 5th (fifth) anniversary of the Development being commenced; and
 - (b) the balance of the Total Residential Standard Charge and Total Employment Standard Charge (as applicable) not already paid on the 10th (tenth) anniversary of the Development being commenced.

¹ This figure will be amended depending on the amount of the initial payment under paragraph 3.

Schedule 3 Works the Owner and/or Developer wishes to undertake

- 1 If the Owner or Developer wish to carry out any Works in Kind it will submit to the Corporation for approval:
 - (a) comprehensive details and specifications of the Works in Kind sufficient to enable the Corporation to assess whether or not the proposed works fall within the scope of those identified in the [insert name of infrastructure doc]; and
 - (b) a detailed delivery programme setting out the timescales within which the works in question will be carried out and completed sufficient to enable the Corporation to assess whether or not the proposed works fall within the works programme set out in the [insert name of infrastructure doc].
- 2 If the Corporation determines that:
 - (c) the details and specifications fall within the scope of those in relation to which the Residential Standard Charge and Employment Standard Charge have been calculated;
 - (d) the details and specifications adequately define the Works in Kind;
 - (e) that the proposed delivery programme would not adversely affect the Corporation's programming of works or adversely affect the cost of other works which the Corporation intends to carry out; and
 - (f) there are no legal or procedural constraints on the Corporation that would prevent it from allowing the Owner or Developer to carry out the Works in Kind

then it will ask for the Owner or Developer to prepare a written assessment of the estimated Works in Kind Costs for the said works based upon the said approval details specifications and delivery programme for approval by the Corporation.
- 3 Subject to the estimated Works in Kind Costs (either conditionally or otherwise) being approved by the Corporation the Owner or Developer will carry out and complete the said Works in Kind entirely in accordance with the details specifications and delivery programme approved pursuant to paragraphs 1 and 2 of this Schedule.
- 4 The Works in Kind Costs will:
 - (a) be Index Linked from the date that they were agreed; and
 - (b) be off-set against any payments of the Residential Standard Charge or Employment Standard Charge payable by the Owner or Developer after Completion of the Works in Kind.
- 5 The following Works in Kind Costs have been already approved and upon Completion of the Works in Kind the Works in Kind Costs may then be offset against any payments of the Standard Charge then falling due
 - (a) **

Schedule 4 Security

The Owner covenants with the Corporation as follows:

- 1 At any time after [the Completion of X Dwellings] [the Completion of x Commercial Units] the Corporation may issue a Request for Security Confirmation from the Owner.
- 2 A Security Confirmation must be provided within 28 (twenty eight) days of a Request for Security Confirmation.
- 3 If following receipt of a Security Confirmation the Corporation is not reasonably satisfied that the Owner will be able to pay the Standard Charges required when they fall due in accordance with this Deed it shall be entitled to serve a Security Notice on the Owner.
- 4 The Owner shall provide Security to the Corporation within 28 (twenty eight) days of the date of the Security Notice.
- 5 Subject to Paragraph 4 of this Schedule 4, if the Owner fails to provide Security within 28 (twenty eight) days of the date of the Security Notice there shall be a deemed default of the longstop provisions contained in Paragraph 6(a) or (b) of Schedule 2 (whichever is applicable) and the Corporation may commence enforcement proceedings as it sees fit to secure the provision of Security and/or the payment of Total Residential Standard Charge and/or Total Employment Standard Charge and shall be entitled to prevent any further development on the land specified until such time as the Security has been provided.

Schedule 5 Affordable Housing

The Owner and Developer covenant with the Corporation as follows:

Overall Provision

- 1 Prior to Implementation of the Permission to submit to the Corporation:
 - (a) a plan showing the number and location of the Affordable Housing Units and a programme for their [phased] delivery identifying the proportion of units proposed to be used for Social Rented Housing Units and Shared Ownership Housing Units the split reflecting the then latest assessment of housing market need; and
 - (b) the identity of any prospective Affordable Housing Provider.
- 2 Not to Implement the Permission until the Corporation has approved in writing the details required pursuant to Paragraph 1(a) of this Schedule 5 and thereafter the Permission shall be implemented in accordance with the plans and programme approved by the Corporation.
- 3 That 35% (thirty five per cent) of the Dwellings constructed as part of the Development shall be provided as Affordable Housing and shall be provided in accordance with the Affordable Housing Tenures and the Affordable Housing Mix (unless otherwise agreed by the Corporation).
- 4 Subject to paragraph 14 of this Schedule, to ensure that the Affordable Housing Units shall not be used for any purpose other than Affordable Housing.
- 5 The Affordable Housing Units shall be distributed throughout the Site in clusters consisting of no more than [] Affordable Housing Units within any one cluster (unless otherwise agreed by the Corporation).

Housing Mix

- 6 All Affordable Housing Units shall be constructed to the Housing Corporation's Scheme Design and Quality Standards.
- 7 The Owner and the Developer will use all reasonable endeavours to secure the Affordable Housing Units in accordance with the Optimum Affordable Housing Mix.

- 8 If unconditional contracts are not exchanged with an Affordable Housing Provider within 6 (six) months of the Implementation of the Permission, for the next 6 (six) months following, or until such time as the Developer may negotiate with the Affordable Housing Provider, to use all reasonable endeavours to secure the Affordable Housing Units in accordance with the Secondary Affordable Housing Mix and exchange unconditional contracts to secure such Affordable Housing Units.
- 9 If unconditional contracts are not exchanged with an Affordable Housing Provider to secure the Affordable Housing Units in accordance with the Secondary Affordable Housing Mix within 12 (twelve) months of the Implementation of the Permission, for the next 6 (six) months, or until such time as the Developer may negotiate with the Affordable Housing Provider, the Owner and the Developer:
 - (a) shall demonstrate to the Corporation [and [Northampton][the] Borough Council] that the Owner and/or the Developer have used all reasonable endeavours to secure the Affordable Housing; and
 - (b) must negotiate with an Affordable Housing Provider for the provision of Affordable Housing Units to secure a mix of Affordable Housing Units which is as close to the Secondary Affordable Housing Mix as possible and in any event no less than the number of units identified in the Tertiary Affordable Housing Mix.

Trigger Controls

- 10 Not to permit the Occupation of more than [] Market Units constructed pursuant to the Permission until [] Affordable Housing Units have been Completed.
- 11 Not to permit the Occupation of more than [] Market Units constructed pursuant to the Permission until all of the Affordable Housing Units have been Completed.

Monitoring and Management

- 12 To ensure that the Affordable Housing Units shall be managed where applicable by an Affordable Housing Provider in accordance with its objectives or Articles of Association.

- 13 The Affordable Housing Units shall be built to a minimum of Code Level 3 of the Code for Sustainable Communities (or such higher standard as may be agreed with the Corporation) .
- 14 The restrictions upon the use and disposal of the Affordable Housing Units shall:
- (a) cease to apply to any part of the Affordable Housing Units should such part be transferred or leased by any mortgagee of the Affordable Housing Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Affordable Housing Provider PROVIDED ALWAYS THAT:
 - (i) a mortgagee receiver or manager shall in writing give the Corporation [Northampton][the] Borough Council and the Affordable Housing Provider (as appropriate) 4 (four) months prior notice of its intention to exercise any power of sale in respect of any Affordable Housing Units to provide the Corporation, [Northampton] [the] Borough Council the opportunity to complete a transfer of the Affordable Housing Units in question in order to ensure that they continue to be used for the purposes of Affordable Housing; and
 - (ii) if the Corporation [Northampton][the] Borough Council or the Affordable Housing Provider is unable to dispose of the Affordable Housing Units within the said period of 4 (four) months in accordance with sub paragraph (i) above then the mortgagee receiver or manager shall be entitled to dispose of the Affordable Housing Units on the open market;
 - (b) cease to apply to any part of the Affordable Housing Units where the Corporation or the Affordable Housing Provider shall be required to dispose of any part pursuant to the right to buy under Part VI of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable or shall be required to sell to a tenant with the benefit of a voluntary purchase grant provided under Sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation);
 - (c) subject to paragraph 15 of this Schedule, cease to apply to a tenant of a Shared Ownership Housing Unit who has acquired 100% (one hundred per cent) share in the value of the Shared Ownership Housing Unit and any successors in title.
- 15 Paragraph 14(c) of this Schedule will not apply unless the tenant wanting to transfer his shared ownership interest has first offered to sell his share to the Affordable Housing Provider in accordance with paragraph 18 below of this Schedule 5.
- 16 The Owner or Developer procuring the Affordable Housing will ensure that when any Affordable Housing Units or equity in those units is sold after the initial Occupation of the units the Net Receipts and any capital [] utilised for the [] of the unit will be used to provide additional Affordable Housing in the Borough Council's Area provided that nothing will require an Affordable Housing Provider to use receipts in conflict with any legislation or regulation or Housing Corporation rules or procedures or requirements of any funding organisation.
- 17 Prior to Occupation of any Affordable Housing Unit arrangements for the monitoring and use of receipts and any Net Receipts shall be submitted to and approved by the Corporation and Net Receipts shall used only in accordance with the approved arrangements.
- 18 A tenant of a Shared Ownership Housing Unit shall not seek to dispose of that unit on the open market without first:
- (a) serving no less than [2] months prior written notice on the Corporation [and Borough Council] identifying its intended date to dispose of its Affordable Housing Unit on the open market;
 - (b) obtaining no less than 3 independent assessments of the market value of the property and providing details of these to [Northampton Borough] [the Borough] Council with the written notice required pursuant to 18(a) above; and
 - (c) offering to sell the Shared Ownership Housing Unit to an Affordable Housing Provider nominated by the Borough Council at a price to be agreed between the tenant and Affordable Housing Provider
- Provided that if the offer to sell the Shared Ownership Housing Unit has not been accepted by the nominated Affordable Housing Provider upon the expiry of the date identified in the tenant's notification issues pursuant to paragraph 18(a) above then the tenant shall be permitted to offer the Affordable Housing Unit for sale on the open market.

Schedule 6 **Optimum Secondary and Tertiary Affordable Housing Mixes**

Schedule 7 On site Obligations

The Owner and the Developer covenant with the Corporation as follows:

[to be inserted as appropriate to the development in question]

- 1 To construct all Dwellings being provided as part of the Development to no less than **level 3 of the Code for Sustainable Homes** (or such higher standard as may be agreed with the Corporation) or higher.

[other sustainability measures]

[travel plan]

[public realm]

[enforcement]

- 2 Not to submit any reserved matters applications until:

(a) the Design Code;

(b) the Masterplan; and

(c) the Sustainability Strategy

have been submitted to and approved in writing by the Corporation.

- 3 That all reserved matters shall comply with the approved Design Code, Masterplan and Sustainability Strategy.

- 4 To pay the Staff Monitoring Contribution to the Corporation upon the completion of this Deed.

Schedule 8 **The Corporation's Covenants**

The Corporation covenants with the Owner and Developer as follows:

- 1 to use each of the Residential Standard Charge and the Employment Standard Charge paid by the Owner and the Developer towards the provision of such part or parts of the Infrastructure [within the Designated Area].
- 2 to provide the Owner and the Developer upon written request with details of the Corporations expenditure of the Residential Standard Charge and the Employment Standard Charge [] within its area on an annual basis.
- 3 upon reasonable written request from the Owner and/or Developer and subject to payment of it's reasonable and proper professional costs and charges the Corporation will certify compliance or partial compliance with the provisions of this Deed.

Schedule 9 Indexation

Contribution	Relevant Date for Indexation	Index
Standard Charge	[date standard charge set]	BCIS
Employment Standard Charge	[date standard charge set]	BCIS
Staff Monitoring Contribution	[date contribution set]	BCIS
[site specific contributions]		

Schedule 10 **Indicative List of Infrastructure to which the Standard Charge and Employment Standard Charge are to be applied**

Infrastructure item	
Type	Facility
Affordable housing	
Education	nursery
	primary
	secondary
	adult learning
	further education
	higher education
Culture & Community	Libraries
	Museums & archives
	Public art
	Community centre
	Youth centre
	Ecumenical centre
Social care	day care
	older persons housing
	children's homes
Open space	local park
	Local Area for Play
	Local Equipped AP
	Neighbourhood EAP
	district park
	Green infrastructure
Recreation and leisure	sports/leisure centre
	swimming pool
	playing pitches
Crematoria and BG	Crematoria
	Burial grounds
Emergency services	police stations
	fire stations
	ambulance stations
Health services	GP surgery/health centre
	dentist
	community hospital
	acute hospital
	mental health facility



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Compiled by: