

DATED

2007

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THE COUNCIL

- and -

- and -

**D E E D**

made pursuant to Section 106 of the Town and Country Planning Act 1990  
(as amended) relating to land to  
Title No.

THIS DEED is made the \_\_\_\_\_ day of \_\_\_\_\_ 2007  
BETWEEN

- (1) THE COUNCIL of ("the Council"); and
- (2) [ \_\_\_\_\_ ] whose registered office is at \_\_\_\_\_ ("the Owner") and
- (3) [ \_\_\_\_\_ ] whose registered office is situate at \_\_\_\_\_ ("the Developer") and
- (4) [ \_\_\_\_\_ ] whose registered office is situate at \_\_\_\_\_ ("the Mortgagee")

RECITALS

(1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 as amended (the "1990 Act") for the area within which the land as defined in Clause 2 of these Recitals is situated and is the authority by whom the planning obligations contained in this Deed are enforceable. The Council is a Principal Council within the meaning of Section 270(1) of the Local Government Act 1972.

(2) The Owner is the registered proprietor with [title absolute] [title possessory] of the land ("the Land") situate [ \_\_\_\_\_ ] shown edged red on the plan annexed to this Deed which is registered at the District Land Registry under Title Number \_\_\_\_\_ and holds the Land free from incumbrances [save those on the Register]

or

(2) The Owner is the registered proprietor of the land ("the Land") situate at [ \_\_\_\_\_ ] shown edged red on the plan annexed to this Deed which is registered at the District Land Registry with title absolute under Title Number \_\_\_\_\_ and title possessory under \_\_\_\_\_ Title \_\_\_\_\_ Number \_\_\_\_\_

CB and holds the Land free from [relevant] incumbrances [save those on the Register]

or

- (2) The [Owner(s)] [is/are] [the Owner(s)] in fee simple absolute in possession [free from incumbrances] [subject to a mortgage in favour of the Mortgagees and dated the [ ] of the freehold land ("the Land") situate [ ] shown edged red on the plan annexed to this Deed

or

- (2) The Owner is the freehold owner of land known as [ ] by virtue of a Transfer dated [ ] which is registered at the District Land Registry under title number [ ] shown edged red on the plan contained in Annex 1 to this Deed and holds the same free from incumbrances although at the date hereof the Owner is not yet registered at the District Land Registry as the registered proprietor thereof

- [(3) By way of legal charge dated in favour of the Mortgagee the land is charged by way of legal mortgage to secure the repayment of certain monies with interest thereon]

- (4) By written application submitted to the Council and numbered the Developer (a subsidiary company of the Owner) applied to the Council for approval of reserved matters in respect of outline planning permission reference for the erection of dwellings upon the Land ("the Development")

- (5) The Council is minded to grant planning permission ("the Permission") for the Development subject to the Owner and Developer entering into this Deed in accordance with the draft planning permission with conditions contained in Annex 2 to this Deed

NOW THIS DEED WITNESSETH as follows:-

1. This Deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and all other enabling powers (including the Local Government Act 2000) and is a planning obligation pursuant to the 1990 Act and shall be binding and enforceable against the Owner and its successors in title to the Land by the Council against the Owner and Developer and their successors in title

2. OPERATIVE EFFECT

With the exception of this Clause 2 and Clause 14 (legal costs) none of the terms or provisions in this Deed will have operative effect unless and until the date of commencement of the Development within the meaning of Section 56 of the 1990 Act

DEFINITIONS AND INTERPRETATION

- 3.1 (a) "Access" means the provision of roads footpaths and cycleways to a standard approved by the Head of Transport and Engineering Services together with all rights and easements over the said roads footpaths and cycleways as are necessary to facilitate the construction and occupation of any Dwelling upon the Affordable Housing Site unless and until the adoption of the said roads footpaths and cycleways as public highway
- (b) "Affordable Housing" means [Dwellings] [housing] that will be provided upon the Affordable Housing Site as part of the Development of [insert number of ] Dwellings that will be available to people who cannot afford to

rent or buy such Dwellings generally available on the open market to be provided as follows:

- (i)
- (ii)
- (iii)

- (c) “Affordable Housing Contribution” a sum of money to be paid by the Owner to the Council as a contribution towards the provision of Affordable Housing within the administrative area of the Council if required by the circumstances set out in Paragraph 4.2 of the First Schedule to this Deed
- (d) “Affordable Housing Site” means the land shown edged on the plan annexed hereto
- (e) “Assistant Director of Community Services: Strategic Housing” means the Officer for the time being of the Council or such other Officer or Officers who may from time to time be responsible for the Council’s powers duties functions and responsibilities in relation to housing including the provision of Affordable Housing
- (f) “Clean Condition” means free from any contamination which would (in the reasonable opinion of the Head of Environmental and Public Protection Services) prejudice the use of the Land for the purposes of providing Affordable Housing
- (g) “Commencement of
- means as in Sub-Section 56(4) of the Act

Development”

- (h) “Discounted [Dwellings] provided by a [Housing]” means rented [Dwellings] [housing] to be Registered Social Landlord through assured tenancies at rent levels of at least 25% below current market rents for similar properties and/or housing for sale at a price at least 25% less than similar properties as valued at the time of sale (unless the Council agrees that a lower percentage deduction may be applied to such rent levels or price taking into consideration inter alia housing prices in the area and the viability of the Development)
- (i) “Dwelling” means a self contained bungalow house or flat
- (j) “Head of Environmental Health and Public Protection Services” means the Officer for the time being of the Council or such other Officer or Officers as may from time to time be responsible for the Council’s powers duties functions and responsibilities in relation to Environmental Health including contaminated land
- (k) “Head of Planning Delivery Services” means the Officer for the time being of the Council or such other Officer or Officers who may from time to time be primarily responsible for the Council’s powers duties functions and responsibilities under the Act

(l) “Head of Transport and Engineering Services” means the Officer for the time being of the Council or such other Officer or Officers who may from time to time be responsible for the Council’s powers duties functions and responsibilities in relation to highways

(m) “Key Worker” means those persons falling in the category of Key Worker as defined by the Housing Corporation from time to time or as agreed between the Registered Social Landlord and the Council

(n) “Key Worker letting upon an Accommodation” means Dwellings used for the purpose of assured shorthold tenancy or Housing Corporation approved shared ownership lease or the freehold or leasehold purchase of New Build Home Buy to Key Workers as provided in the First Schedule to this Deed

(o) “New Build Homebuy” means a scheme whereby a Registered Social Landlord provides an equity percentage loan to those persons qualifying for Affordable Housing to enable such a person to acquire a newly constructed property in the open market such loan to:-

(i) be one permitted by the Social Housing Landlords (Additional Purposes or Objects) Order 1999

(ii) be secured on the property

(iii) rank immediately behind any loan made in respect of the property to a qualifying lending institution such as a building society, bank or insurance company providing a conventional mortgage to such a person

or such other scheme that may subsequently be introduced with the purpose of meeting the objective of providing this form of Affordable Housing

(p) “Open Market Dwelling” means any Dwelling upon the Land which is not situate upon the Affordable Housing Site

(q) “Strategic Partnership” means such partnership arrangements currently in force or any replacement thereof between the Council as Local Housing Authority and a defined number of Registered Social Landlords to facilitate the provision of Affordable Housing throughout the Council’s administrative area

(r) “Registered Social Landlord” means a Social Landlord registered with the Housing

Corporation as referred to in Sections 1, 2 and 3 of the Housing Act 1996 but (in the event only of any statutory modification or change being made to the said reference) shall include any landlord providing social housing whose status and functions are similar to a Social Landlord as aforesaid

- (s) “Services” (without prejudice to the generality of this expression) includes electricity telephone gas water foul drainage surface water drainage cable television and other cable services all of a capacity suitable to serve the Affordable Housing Site
- (t) “Service Installations” (without prejudice to the generality of this expression) includes sewers drains culverts channels outlets mains wire cables ducts flues soakaways and other conducting media all of a capacity suitable to serve the Affordable Housing Site for the supply of Services substations regulator valves and all other infrastructure whatsoever for Services
- (u) “Shared Ownership [Dwellings] [Housing]” means those Affordable Houses to be made available for lease on an equity shared basis to the first purchaser of such Affordable Houses where the purchaser pays for a percentage of the leasehold equity with the remaining percentage being retained by the Registered Social Landlord and where the purchaser will enter into a lease and shall be entitled to acquire 100% of the leasehold equity from the Registered Social Landlord over time
- (v) “Site Valuation Exercise” an exercise undertaken by the City Council or consultants appointed by the Council in agreement with the Owner to determine the valuation of the Affordable Housing Contribution if required

by the terms of Paragraph 4.2 of the First Schedule to this Deed

- (w) “Socially Rented [Dwellings] [Housing]” means those Dwellings to be transferred to a Registered Social Landlord for the purpose of subsidised low cost renting to those persons qualifying for such Dwellings as defined in Paragraph of the First Schedule to this Deed

3.2 Wherever the context so admits the following words and phrases in this Deed shall have the meaning herein attributed to them:-

- (a) The singular shall include the plural and vice versa
- (b) The masculine gender shall include the feminine and vice versa
- (c) Any words denoting natural persons shall include legal persons and vice versa
- (d) The reference to any statute or section of a statute includes any statutory re-enactment or modification
- (e) The expressions “the Council” “the Owner” and the “Developer” shall include their respective successors in title and assigns
- (f) “Working day” means any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday

4 THE OWNER AND THE DEVELOPER HEREBY JOINTLY AND SEVERALLY COVENANT with the Council so as to bind their interests in the Land that they or their successors in title shall observe and perform the covenants contained in the First Second Third, Fourth, Fifth and Sixth Schedules hereto

5. The Council covenants with the Owner and Developer to comply with the covenants and obligations contained in the Seventh Schedule

6. This Deed is a local land charge and shall be registered as such

7. Nothing in this Deed will prejudice or affect the rights powers duties and obligations of the Council in the exercise of its statutory functions
8. In the event that any part of this Deed may be subject to challenge review deletion or otherwise rendered null/void or voidable the balance of the said Deed shall remain in full force and effect
9. Within five working days following the date of Commencement of Development the Developer will give written notice to that effect to the Head of Planning Delivery Services for the time being of the Council
10. The obligations in this Deed will not be enforceable against:
  - 10.1 the purchasers or tenants of Dwellings or
  - 10.2 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
11. The Council will reimburse the contribution to the Owner or Developer as appropriate in the event that the contribution is not utilised in whole or in part for the purpose intended
12. NOTICE
  - 12.1 Any notice required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post telex or facsimile transmission
  - 12.2 The address for service of any such notice shall be as set out at the start of this Deed (or such other address for service as shall have previously been notified by or to the Council as appropriate) except:-
    - 12.2.1 any notice required by this Deed to be served upon the Head of Planning Delivery Services shall be sent to the Council

12.2.2 any notice required by this Deed to be served upon the Assistant Director of Community Services:

12.2.3 Any legal notice to be sent under this Deed upon the Council shall be addressed to the Solicitor to the Council

12.3 The cheque in respect of the payment for the Contribution for Off-Site Open Space contained in the Fourth Schedule hereto together with the consideration for any transfer of land as provided in this Deed shall be made payable to the Council and sent to the Head of Planning as provided in Sub-clause 12.2.1

12.4 Any Notice under this Deed shall be deemed to have been served as follows:-

- (a) if personally delivered at the time of delivery
- (b) if by post at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom
- (c) if sent by tested telex or facsimile transmission at the time of successful transmission
- (d) and in proving such service it shall be sufficient to prove that personal delivery was made and a receipt obtained or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded delivery envelope and a receipt obtained or that the telex or facsimile was successfully transmitted on a tested line and acknowledged in writing as having been received by the addressee as the case may be

12.5 (a) within five working days of the completion of the transfer of any interest in the Land the Owner and Second Owner shall serve notice upon the solicitor to the Council together with a copy to the Head of

Planning Delivery Services giving details of the transferees name and address together with details of the site to which the interest applies

(b) the requirement to serve notice upon the Council as stipulated in clause 12.5 (a) shall cease as soon as all of the obligations under this Deed have been complied with and the Council has so acknowledged in writing of this Deed

13. Where following the date of this Deed any plan annexed to this Deed is substituted by agreement between the Council and the Owner or the Developer the Council will from time to time at the request and cost of the Owner enter into such supplemental deed or other confirmation as is reasonably requested for the purpose of documenting such substitution.

14. The Owner or the Developer shall pay to the Council prior to completion of this Deed its reasonable and proper legal costs incurred in the preparation negotiation and completion of this Deed

15. The Owner [and Mortgagee] confirm[s] that Recital[s] (2) [and 3] is [are] accurate and correct

16. Should any of the sums payable to the Council under this Planning Obligation be more than 14 days in arrears then the sum payable shall attract interest calculated at a rate of 5% per annum above Barclays Bank plc base rate on a daily basis from the first day after it has become due.

17. The Mortgagee consents to the Owner entering into this Deed and agrees that the Land shall be bound by the covenants contained therein and will ensure that any obligations thereunder is transmitted to any transferee from it as Mortgagee

18. ARBITRATION

18.1 Any disputes or differences arising between the parties to this Deed as to any matter arising out of or in connection with this Deed shall be referred

to the determination of an experienced and suitably qualified single arbitrator to be agreed upon by the parties hereto or failing agreement upon the application by any of the parties to this Deed to the President for the time being of The Royal Institution of Chartered Surveyors such arbitrator to act in accordance with the Arbitration Act 1996

18.2 The seat of the arbitration shall be in England and Wales whose law shall also be applicable to any arbitration arising from this Deed

18.3 The costs of such reference shall be borne as the arbitrator shall determine and failing such determination each party shall bear their own costs

IN WITNESS whereof this Deed is executed by the parties as a Deed on the date given on page one

**FIRST SCHEDULE**  
**AFFORDABLE HOUSING**

1. Not to Implement the Development until the Affordable Housing Scheme has been submitted to and approved by the Council in accordance with Sub-clause 1.1(b) under the definition of Affordable Housing Scheme (such approval not to be unreasonably withheld or delayed) and thereafter to provide the Affordable Housing strictly in accordance with the Affordable Housing Scheme. The tenures of the Affordable Housing shall include Social Rented Dwellings Shared Ownership Dwellings and Discounted Housing (including New Build Homebuy) or such other tenures as agreed with the Council in writing
  
2. No more than Open Market Dwellings upon the Land shall be occupied unless and until the Affordable Housing Site has been conveyed/transferred to a Registered Social Landlord (in a Clean Condition together with all Services Service Installations and Access provided up to at least the boundary of the Affordable Housing Site) so as to be available in all aspects for the provision of Affordable Housing. The Registered Social Landlord shall commence construction of the Affordable Housing as soon as reasonably practicable upon

the completion of the transfer/conveyance and the Owner or Developer shall occupy no more than Open Market Dwellings until the Affordable Housing has been completed

3. In the event that:-

(a) The Owner fails to convey/transfer the Affordable Housing Site to a Registered Social Landlord prior to the occupation of the Open Market Dwelling in accordance with Paragraph 2 hereof and subject to Paragraph 4 of this Schedule

or

(b) The Registered Social Landlord fails to commence construction of the Affordable Housing within two years upon the completion of the transfer/conveyance

or

(c) Subject to force majeure the Registered Social Landlord fails to complete construction of the Affordable Housing within 3 years following the completion of the transfer/conveyance

and the Assistant Director of Community Services: Strategic Housing is reasonably satisfied that such failure will prevent the provision of Affordable Housing on the Affordable Housing Site in accordance with the said timetable and programme (or such variation thereof as the Council may agree) or a court of competent jurisdiction holds that Paragraph 2 of this Deed is either unlawful or unenforceable for any reason then the Council may by notice in writing served upon the Owner or the Registered Social Landlord as appropriate require the transfer of the Affordable Housing Site to the Council (save for Affordable Housing Units which have been completed and are being managed by a Registered Social Landlord and the provisions of the Sixth Schedule of this Deed shall apply to such transfer

4. 4.1 In the event that:

(a) The Owner provides documentary evidence of its attempts under the provisions of this Deed to convey/transfer the Affordable

Housing Site to a Registered Social Landlord including those members of the Strategic Partnership and

- (b) The Assistant Director of Community Services; Strategic Housing is satisfied after making any inquiries she considers necessary that the failure to convey/transfer the Affordable Housing Site to an Approved Registered Social Landlord is in no respect attributable to any act or default of the Owner

The Assistant Director of Community Services: Strategic Housing shall notify the Owner that the Affordable Housing Site can be used for the provision of Open Market Dwellings

4.2 Within 20 Working Days of receipt of any notice by the Assistant Director of Community Services: Strategic Housing that the Affordable Housing Site can be used for the provision of Open Market Dwellings the Owner shall pay to the Council the Affordable Housing Contribution subject to indexation to be used or applied by the Council for or towards the provision by the Council or a Registered Social Landlord of Affordable Housing within the administrative area of the Council

4.3 At the same time as paying the Affordable Housing Contribution the Owner shall pay the costs of the Site Valuation Exercise to the Council

5. Where the Council has acquired the Affordable Housing Site under the provisions of Paragraph 3 above the Affordable Housing Site shall be used by the Council (or by any other party lawfully having occupation of the Affordable Housing Site in succession to the Council or under

arrangements entered into with the Council) solely for the provision of Affordable Housing as provided by this Deed and Paragraphs 6 to 10 inclusive and 12 shall apply to such use

6. The Social Rented Dwellings shall be occupied only by virtue of assured tenancies pursuant to the Housing Act 1988 and Housing Act 1996 (or such other form of tenancy as may from time to time be prescribed by statute as offering residential tenants of Registered Social Landlords a similar measure of security

- of tenure) or on such other basis is commonly used by Registered Social Landlords for the provision of general needs accommodation in accordance with best practice or on such other basis as may from time to time be approved in writing by the Council
7. The Shared Ownership Housing shall be occupied only by virtue of the Housing Corporation Approved Shared Ownership Lease or Assured Shorthold Tenancies pursuant to the Housing Act 1988 as amended by the Housing Act 1996 or such other form of tenancy as may from time to time be prescribed by statute shall replace them (or on such other basis as may from time to time be approved in writing by the Council)
  8. So far as legally possible any Dwelling constructed upon the Affordable Housing Site shall in the case of the Social Rented Dwellings be excluded from any arrangements whereby tenants may “swap” tenancies (unless a tenant who wishes to swap and move into one of the said dwellings meets all the criteria referred to in this Deed)
  9. The Dwellings to be built upon the Affordable Housing Site shall be constructed:-
    - (a) externally in accordance with the Permission
    - (b) in accordance with the Building Regulations and with the benefit of a NHBC Certificate
    - (c) in the case of Social Rented Accommodation internally in accordance with at least such specifications and standards as may from time to time be published by the Housing Corporation unless waiver is secured from the Housing Corporation
  10. Subject to the foregoing paragraphs and Paragraph 12 below the Affordable Housing to be constructed on the Affordable Housing Site shall at all times be occupied and managed in accordance with the objectives of a Registered Social Landlord and in respect of the Social Rented Housing in accordance with such published housing waiting list and allocation system as may be adopted by such Registered Social Landlord from time to time

11. A transfer of the Affordable Housing Site under the provisions of Paragraph 3 above shall be upon the following terms and conditions:-

- (a) The consideration for such transfer shall be one peppercorn
- (b) The transfer shall be subject to a covenant that the Affordable Housing Site shall be used solely for the provision of Affordable Housing in accordance with the terms of this Deed but not further or otherwise and in particular the Council shall not be prevented from disposing of the Affordable Housing Site by way of sale or sub-sale to a Registered Social Landlord of its own choosing
- (c) Save so far as the provisions thereof are not inconsistent with this Paragraph the terms and conditions referred to in the Sixth Schedule of this Deed shall apply to such transfer

12. It is hereby agreed and declared that after the date of the transfer of the Affordable Housing Site to a Registered Social Landlord the covenants contained in this Schedule shall:

12.1 not be binding upon a mortgagee or chargee of any of the Affordable Housing or any receiver appointed by any such mortgagee or chargee or any person or persons (including immediate and all subsequent successors in title to such persons) deriving title or an interest in the whole or any part of any such land from such mortgagee chargee or receiver to the intent that the provisions of this Agreement shall upon a disposal (of whatever nature) by a mortgagee chargee or receiver appointed by a mortgagee or chargee cease to apply and shall cease to apply and determine absolutely in respect of the land thereby disposed of; and

12.2 determine absolutely in respect of any Dwelling forming part of the Affordable Housing in circumstances where a tenant acquires a freehold or leasehold interest in such a Dwelling pursuant to a statutory enfranchisement provision; and

- 12.3 determine absolutely in respect of any Dwelling forming part of the Affordable Housing demised or to be demised by way of Shared Ownership Lease once “staircasing out” has been effected whereby the leaseholder acquires a 100% equity share in the Dwelling and either takes a transfer of the freehold reversion or directs that the freehold reversion is transferred to someone else; and
- 12.4 Be suspended in respect of any unit of accommodation demised or to be demised by way of shared ownership lease where the shared ownership lessee wants to transfer his interest has complied with the nomination provisions (if any) of the shared ownership lease and has first offered to sell his interest to a nominee of the Registered Social Landlord and the Registered Social Landlord has been unable or unwilling to provide a nominee within the time period specified in the shared ownership lease or such nominee has not exchanged contracts to acquire the lessee’s interest within the time period specified within such shared ownership lease

## **SECOND SCHEDULE**

### **FINANCIAL CONTRIBUTION TOWARDS EDUCATION NEEDS**

#### **(SUBJECT TO INDEXATION)**

Upon service of the notice referred to in Clause 9 of this Deed the Owner and or the Developer will pay to the Council the sum of

THOUSAND

POUNDS (£ ,000.00) subject to indexation to enable the provision by the Council of education needs arising from the Development

## **THIRD SCHEDULE**

### **ON-SITE OPEN SPACE**

#### **DEFINITIONS RELATING TO OPEN SPACE**

Existing Hedgerows and Trees Any hedgerows trees coppices ponds and similar features upon the Land identified as

such on the plan annexed hereto and which for the avoidance of doubt may be wholly or partly within or without areas of Open Space

Footpaths/Cycleways

Routes for pedestrians and/or cycles (including where the context allows joint use of Footpaths/Cycleways)

Head of Culture and Recreation

Means the Officer for the time being of the Council or such other Officer or Officers who may from time to time be responsible for the Council's power duties functions and responsibilities in relation to recreation

Landscape Specification

Means the Open Space and Play Space standards for Residential Provision (June 1989) a copy of which is annexed hereto as Annex 4

Maintenance Period

The Period for the maintenance of the Open Space by the Owner and or the Developer in accordance with Paragraph 5 hereof of which:-

(i) commences upon the issue of the Certificate of Practical Completion referred to in Paragraph 4 of this Schedule and

Open Space

(ii) is for a duration of not less than 12 months for grass 24 months for shrubs and areas of shrub planting and 36 months for Trees and areas of Tree planting

The land shown edged blue on the plan

Principal Arboricultural Officer

contained in Annex 1 to this Deed (which for the avoidance of doubt shall include any Footpaths/Cycleways to be constructed within such Open Space (except any Footpaths/Cycleways to be adopted as public highway under the provisions of S.38 Highways Act 1980) and any Existing Hedgerows and Trees located within such Open Space

Means the Officer for the time being of the Council or such other Officer or Officers who may from time to time be responsible for the Council's power duties functions and responsibilities in relation to trees and hedgerows

1. A scheme ("the Scheme") for the landscaping seeding turfing planting equipping and the construction of footways/cycleways and play and other areas shall be agreed with the Head of Culture and Recreation prior to the Commencement of Development such scheme to include where appropriate a programme and timetable for the implementation of the Scheme
2. The Owner and or the Developer will carry out in accordance with the Scheme (or such variations thereof as the Head of Culture and Recreation shall reasonably agree) all work of whatever description necessary to complete the Scheme and any works to Existing Hedgerows and Trees situated within the Open Space ("the Works") using good and suitable materials in all respects to the full satisfaction of the Head of Culture and Recreation and also fully in accordance with the Landscape Specification (and where appropriate, the Schedule of Tree Works referred to in Paragraph 9 below)
3. The Owner and or the Developer will complete the Works immediately following completion of the penultimate Open Market Dwelling upon the Land and prior to

the occupation of the final Dwelling or two years from the date of Commencement of Development (whichever is the earlier)

4. Upon the completion of the Works the Owner and or the Developer shall notify the Head of Culture and Recreation who shall inspect the Works as soon as reasonably possible thereafter but in any event within two weeks and shall issue a Certificate of Practical Completion in respect of the Works either forthwith or following the making good by the Owner of any defects reasonably identified by the Head of Culture and Recreation and notified to the Owner following the said inspection
5. The Owner shall maintain the Open Space regularly throughout the Maintenance Period and keep the same at all times clean cultivated and in good heart fed and watered and shall replace as necessary any defective equipment and surfacing all of which maintenance shall be carried out to the reasonable satisfaction of the Head of Culture and Recreation and fully in accordance with the Landscape Specification
6. At the end of the Maintenance Period the Owner shall notify the Head of Culture and Recreation who shall inspect the Works as soon as reasonably possible thereafter but in any event within two weeks of such notification and shall issue a Certificate of Final Completion in respect of the Works either forthwith or following the making good by the Owner and or the Developer of any defects reasonably identified by the Head of Culture and Recreation and notified to the Owner and or the Developer following the said inspection
7. On the issue of the Certificate of Final Completion referred to in Paragraph 6 hereof the Owner shall pay to the Council a sum fifteen times the annual maintenance costs index linked which said costs are to be agreed between the Owner and or the Developer and the Council once the detailed design of the landscaping scheme for the Open Space Land is known to cover the future costs that are expected to be incurred by the Council in the maintenance of the implemented landscaping scheme on the Open Space Land

8. Following the issue of the Certificate of Final Completion referred to in Paragraph 6 the Owner will at its sole expense execute a formal transfer to the Council of the Open Space which is to be maintained by the Council for consideration of ONE POUND (£1) such land to be transferred to the Council by the Owner upon the terms and conditions referred to in the Sixth Schedule of this Deed

#### EXISTING HEDGEROWS AND TREES

9. Prior to the commencement of any works or construction or development whatsoever upon the Land the Owner and or the Developer shall agree with the Head of Culture and Recreation a Schedule of Works for the proper maintenance of Existing Hedgerows and Trees

### **FOURTH SCHEDULE**

#### **CONTRIBUTION TOWARDS PROVISION OF OFF-SITE PUBLIC OPEN SPACE**

#### **SUBJECT TO INDEXATION**

Upon service of the Notice referred to in Clause 9 of this Deed the Owner and or the Developer will pay to the Council the sum of [            ] THOUSAND POUNDS (£ ,000.00) subject to indexation being a contribution towards the provision by the Council of off-site public open space to serve the area of Development in lieu of full on-site provision upon the Land ("the Open Space Contribution")

### **FIFTH SCHEDULE**

#### **INDEXATION PROVISIONS**

1. Sums and amounts referred to in this Deed which are payable by the Owner and or the Developer to the Council or otherwise due to the Council in connection with the Development pursuant to the planning obligations set forth in this Deed will subject to the remaining provisions of this Schedule be subject to increase by application of the principles of indexation as set out in this Schedule.
2. For the purposes of applying indexation (except in respect of the Affordable Housing Contribution) the index will mean the Building Cost Information Service All-in Tender Price Index (TPI) as published by the Royal Institution of Chartered

Surveyors (or in the event that such index ceases to be published then in its place such reasonably equivalent index as the Council shall specify)

3. For the purposes of applying indexation to the Affordable Housing Contribution the index will be taken to be the Halifax plc East Midlands Regional All Buyers House Price Index (Seasonally Adjusted) (or in the event that such index ceases to be published then in its place such index related to the cost of housing prices as is most nearly based on the equivalent index)
4. Indexation will commence on the first anniversary of the date of the grant of the Permission for the Development until the sums and amounts due are actually paid in full
5. The relevant contribution shall be increased by an amount equivalent to the percentage difference between the published TPI current at the date of this agreement and the published TPI current at the date of payment

#### **SIXTH SCHEDULE**

#### **TERMS AND CONDITIONS FOR LAND TRANSFER**

1. Completion of the Conveyance/Transfer of the land shall take place on such date as shall be agreed in writing between the Council and the Owner or in default of such agreement upon such date that shall be specified in a notice in writing given by the Council to the Owner or by the Owner to the Council such notice to be given not later than 28 days before the date specified for completion
2. The land shall be conveyed/transferred with full Title Guarantee and with vacant possession and in a clean condition
3. Title shall be deduced from a good root of title at least 15 years old or in accordance with the Land Registration Act 2002
4. The Conveyance/Transfer shall contain all such rights and easements whatsoever (including without prejudice to the generality of the foregoing the provision of all rights of access of services and service installations thereto) as

are required to facilitate the use of the site transferred for the purpose for which it is being transferred

5. The Conveyance/Transfer shall contain a covenant by the Council restricting the use of the land conveyed/transferred to the purpose for which it is laid out or transferred for and for no other use whatsoever except in the case of open space land as defined in the Open Spaces Act 1906 where the transfer will contain an agreement and declaration that such open space land shall be maintained as open spaces under the provisions of the Open Spaces Act 1906
6. The Standard Conditions of Sale (Third edition) shall apply to the said transfer so far as they are applicable to a sale by private agreement and are not varied by or inconsistent with the express terms of this present Agreement
7. The Owner shall pay to the Council the Council's reasonable legal costs

**SEVENTH SCHEDULE**  
**COUNCIL'S OBLIGATIONS**

THE COMMON SEAL of THE COUNCIL )

was hereunto affixed in the )  
presence of:- )

Authorised Signatory

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

Director

Company Secretary

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

Director

Company Secretary

11. It is hereby agreed and declared that after the date of the transfer of the Affordable Housing Site to a Registered Social Landlord the covenants contained in this Schedule shall

11.1 Not be binding upon a mortgagee or chargee of any of the Affordable Housing or any receiver appointed by any such mortgagee or chargee or any person or persons (including immediate and all subsequent successors in title to such persons) deriving title or an interest in the whole or any part of any such land from such mortgagee chargee or receiver to the intent that the provisions of this Agreement shall upon a disposal (of whatever nature) by a mortgagee chargee or receiver appointed by a mortgagee or chargee cease to apply and shall cease to apply and determine absolutely in respect of the land thereby disposed of

11.2 Determine absolutely in respect of any Dwelling forming part of the Affordable Housing in circumstances where a tenant acquires a freehold or leasehold interest in such a Dwelling pursuant to a statutory enfranchisement provision

11.3 Determine absolutely in respect of any Dwelling forming part of the Affordable Housing demised or to be demised by way of Shared Ownership Lease once "staircasing out" has been effected whereby the leaseholder acquires a 100% equity share in the Dwelling and either takes a transfer of the freehold reversion or directs that the freehold reversion is transferred to someone else