

Dated

2014

(1) []

- and -

(2) []

- and -

(3) **WELWYN HATFIELD BOROUGH COUNCIL**

- and -

(4) **HERTFORDSHIRE COUNTY COUNCIL**

WORKING DRAFT DOCUMENT ONLY

**PLANNING OBLIGATION BY DEED OF
AGREEMENT PURSUANT TO SECTION 106 OF
THE TOWN AND COUNTRY PLANNING ACT
1990 RELATING TO A PLANNING APPLICATION
FOR [] (INCLUDING AFFORDABLE HOUSING
PROVISION)**

Mishcon de Reya
Summit House
12 Red Lion Square
London WC1R 4QD
Tel: 020 7440 7000
Fax: 020 7404 5982
Ref: WF/43934.1
E-mail:
wesley.fongenie@mishcon.com

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NOW THIS DEED WITNESSES as follows:

I. **DEFINITIONS AND INTERPRETATION**

I.1 **Definitions**

For the purposes of this Deed (including the Recitals) the following expressions shall have the following meanings:

"Act" means the Town and Country Planning Act 1990 (as amended)

"Affordable Housing" means housing provided to households whose needs are not met by the market as defined in Schedule 4

"Application" means the application for outline planning permission submitted to the Council dated [insert date] for the Development and allocated reference number [insert reference number]

"Application Site" means land at Northaw Road East, Cuffley, Hertfordshire as shown edged red on the Plan annexed hereto marked "Site Plan" being the land registered at the Land Registry under title number [insert title number]

"Charge" means the mortgage/charge dated [XXXXXXXX] made between the Land Owner and the Mortgagee [To be used if a Mortgagee is a party]

"Commencement Date" means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site survey site clearance archaeological investigations for the purpose of assessing ground conditions preparation work remedial or remediation work in respect of any contamination or other adverse ground conditions diversion and laying or removal of services erection of any temporary means of enclosure including fences and hoardings the temporary display of site notices or advertisements and "Commencement" and "Commence" and "Commences" and "Commenced" shall be construed accordingly

"Development" means redevelopment to provide a residential led mixed use development comprising 513 residential dwellings, 115 retirement units with associated care and administrative facilities; 2,668 sqm of retail / leisure / community floorspace; a new primary school (1 form entry); energy centre, together with associated infrastructure including new vehicular access, public open spaces, landscaping, car parking and other associated works

"Director for Environment" means the County's Chief Executive and Director of Environment for the time being and his agents

"Dwelling" means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and **"Dwellings"** shall be construed accordingly

"Fire and Rescue Authority" means that part of the County known as the Hertfordshire Fire and Rescue Service

"Head of Planning" means Head of Planning of the Council and shall include their duly authorised agents and representatives or any successor

"Interest" means the rate from time to time prescribed under the Land Compensation Act 1961

"Monitoring Fee" means the payment of £[] towards the Council's reasonable and proper administrative costs of monitoring compliance with the provisions of this Deed

"Notice of Commencement" means the written notice the form of which is contained at Appendix 2 of this Deed advising of the proposed Commencement Date and to include in the said notice information as to the number and type of Dwellings to be constructed as part of the Development and the net area of the Application Site

"Occupation" means physical use of the land or buildings for purposes permitted by the Planning Permission but not occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **"Occupied"** and **"Occupy"** shall be construed accordingly

"Parties" means []

"Plan" means the plan attached to this Deed labelled 'Site Plan'

"Planning Permission" means the planning permission to be granted by the Council pursuant to the Application or from any reserved matters submissions or resulting from any other planning application covering all or part of the Site for any of the uses comprised in the Planning Application whether granted by variation alteration substitution addition or replacement a draft of which is attached to this Deed at Appendix 1

"Practical Completion" means the issue of a certificate of practical completion of the Development by the Land Owner's architect or in the event that the Development is constructed by a party other than the Land Owner the issue of a certificate of practical completion by that other party's architect that the Development has been constructed and is available for Occupation

"Retail Price Index" means the measure of change in the prices charged for goods and services brought for consumption in the UK produced by the Office for National Statistics

"Schedules" means Schedules [1 to 7] contained in this Deed

"Working Days" means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory Bank Holiday and **"Working Day"** shall be construed accordingly

1.2 Interpretation

1.2.1 Where in this Deed reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Deed

1.2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa

1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeably in that manner

- 1.2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all of their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise
- 1.2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it
- 1.2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County the successors to their respective statutory functions
- 1.2.7 The headings and contents list are for reference only and shall not affect construction of this Deed
- 1.2.8 The words "**including**" and "**include**" shall be deemed to be followed by the words "**without limitation**"
- 1.2.9 References in this Deed to "**development**" shall have the meaning given to it by Section 55 of the Act

2. **LEGAL BASIS**

- 2.1 This Deed is 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 against the Land Owner
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 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
- 2.3 The Land Owner enters into the obligations for itself and its successors in title with the Council and the County with the intent that the obligations contained in this Deed shall be enforceable not only against the Land Owner but also against the successors in title of the Land Owner and any person claiming through or under the Land Owner an interest or estate in the Application Site or any part thereof

3. **CONDITIONALITY**

- 3.1 This Deed shall come into immediate effect save for clause 5.1.1, 5.1.2, 5.1.4, 5.1.5 and 5.1.6 all of which are conditional upon the grant of the Planning Permission and the Commencement of the Development

4. **MISCELLANEOUS**

- 4.1 The Land Owner shall pay to the Council and County on completion of this Deed their respective reasonable legal costs and disbursements incurred in connection with the negotiation preparation and execution of this Deed
- 4.2 The Land Owner shall pay to the Council the Monitoring Fee on completion of this Deed

- 4.3 No provisions of this Deed shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 nor does it confer or purport to confer any right to enforce any of the terms and provisions of this Deed to any person who is not a party or successor in title or statutory successor to a party hereto
- 4.4 This Deed shall be registrable as a Local Land Charge by the Council and County
- 4.5 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:-

In respect of the Land Owner at:

[]

[]

In respect of the Council at

The Head of Planning

Council Offices

The Campus

Welwyn Garden City

Herts

AL8 6AE

Ref: XXXXXXXXXX

In respect of the County at:

The Chief Legal Officer

Hertfordshire County Council

County Hall,

Pegs Lane

Hertford

Hefts SG13 8DE

Ref: XXXXXXXXXX

- 4.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 4.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires prior to the Commencement Date
- 4.8 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Application Site except to the extent that they have caused or contributed to that breach save that they will remain liable for any breaches of this Deed occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Application Site in any transfer of the Application Site will constitute an interest for the purposes of this clause
- 4.9 Any agreement obligation covenant or undertaking contained in this Deed and given by the Land Owner, the Mortgagee, the County or the Council as the case may be which comprise more than one person or entity shall be joint and several. Where any agreement obligation covenant or undertaking is made with or undertaken towards any of the parties to this Deed which comprise more than one person it shall be construed as having been made with or undertaken towards each such person separately
- 4.10 No compensation shall be payable by the Council or the County to any party to this Deed or their successors in title and assigns arising from the terms of this Deed and unless specified otherwise in this Deed all works and activities to be executed under this Deed (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the successors in title to the Land Owner and at no cost to the Council or the County
- 4.11 The Land Owner grants an irrevocable licence to the Council and/or the County and/or any person duly authorised or instructed by them to enter upon any part of the Application Site at any reasonable time subject to providing not less than five Working Days prior written notice to the Land Owner (and immediately in the event of an emergency) to ascertain whether the terms of this Deed and/or of the Planning Permission are or have been complied with subject to complying with all health and safety requirements required by the Land Owner
- 4.12 Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the Council or the County of any statutory powers exercisable by them respectively under the Act or under any other act or authority
- 4.13 Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council and the County in the exercise of their functions in any capacity and the rights powers duties and obligations of the Council and the County under private public or subordinate legislation may be effectively exercised as if neither were a party to this Deed (and in particular neither shall be precluded from entering into any agreement under the Act and/or under any other act or authority with any other party and shall not be deemed to be in breach of this Deed by so doing)

- 4.14 The Parties acknowledge and agree that the planning obligations imposed in this Deed satisfy the tests in Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 in that they are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and are reasonably related in scale and kind to the Development

5. **OBLIGATIONS OF THE LAND OWNER**

- 5.1 The Land Owner so as to bind the Application Site covenants with the Council and the County
- 5.1.1 To comply with its obligations set out in all the Schedules to this Deed;
- 5.1.2 To pay the Monitoring Fee to the Council on Commencement of the Development;
- 5.1.3 To provide the Notice of Commencement to the Council and the County no later than twenty (20) Working Days prior to the Commencement Date using the pro-forma set out in Appendix 2;
- 5.1.4 To give the County and the Council no less than five (5) Working Days' notice of the Occupation of the Development such notice to be in writing using the pro-forma set out in Appendix 2;
- 5.1.5 To give the County and the Council no less than five (5) Working Days' notice of the Practical Completion of the Development such notice to be in writing using the pro-forma set out in Appendix 2; and
- 5.1.6 To use all reasonable endeavours to retain Metropolis PD as lead design architect and planning consultants on the Development subject but not limited to insolvency or other incapacity or as otherwise agreed by the Council and the County in writing acting reasonably

6. **COVENANTS BY THE COUNCIL**

- 6.1 The Council covenants with the Land Owner:
- 6.2 to issue the Planning Permission within five (5) Working Days after the completion of this Deed
- 6.2.1 to provide written confirmation, at the written request of the Land Owner, of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed;
- 6.2.2 to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Deed. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Deed, the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation;
- 6.2.3 to use all sums received from the Land Owner under the terms of this Deed for the purpose(s) specified in this Deed for which they are paid;

6.2.4 that it will pay upon written request to the Land Owner a sum equal to the amount of any payment made by the Land Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within ten (10) years of the date of receipt by the Council of such payment together with any interest accrued on such unexpended sum from the date of receipt to the date of payment.

7. COVENANTS BY THE COUNTY

7.1 The County covenants with the Land Owner:

7.1.1 to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Deed. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Deed, the County will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation;

7.1.2 to use all sums received from the Land Owner under the terms of this Deed for the purpose(s) specified in this Deed for which they are paid;

7.1.3 that it will pay upon written request to the Land Owner a sum equal to the amount of any payment made by the Land Owner to the County under this Deed which has not been expended in accordance with the provisions of this Deed within ten (10) years of the date of receipt by the County of such payment together with any interest accrued on such unexpended sum from the date of receipt to the date of payment PROVIDED THAT such written request shall only be made within one (1) year commencing from the date of the expiry of the aforementioned ten (10) year period and in the event of no written request being made within such period any unexpended sum together with accrued interest shall be released free of any liability and obligations to the County.

8. MORTGAGEE'S CONSENT

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

9. WAIVER

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

10. CHANGE IN OWNERSHIP

Otherwise than in relation to transfers to the utility companies the Land Owner shall give to the Council and the County within 1 (one) month of the Land Owner disposing of any

part of the Application Site written notice of the name and address of the person to whom the Application Site or any part has been transferred

11. **INTEREST**

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

12. **VALUE ADDED TAX**

All contributions paid in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

13. **DISPUTE PROVISIONS**

13.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares

13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares

13.3 Any experts appointment shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty- eight working days after the expert has received any file or written representation

13.4 The expert shall be required to give notice to each of the parties requiring them to submit to him/her within ten working days of notification of his/her appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days

13.5 The provisions of this clause shall not affect the ability of the Council and/or the County as the case may be to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief

14. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

15. **DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated

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

SCHEDULE I AFFORDABLE HOUSING

In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

"the 2008 Act" means the Housing and Regeneration Act 2008

"Affordable Housing" means Dwellings that are to be Occupied either on a Social Rented or Shared Ownership or Affordable Rented Housing or Intermediate Affordable Housing basis to be built to the essential design standards of the Homes and Communities Agency scheme development standards current edition

"Affordable Housing Dwellings" means 155 Dwellings located within the Development show for identification purposes only on Metropolis drawing number 1967D4100rev02 attached to this Deed as Plan [] being 30% of the Dwellings on the Development to be constructed as follows:

- (a) [..insert %] [..insert No...] Bedroom units for rented occupation;
- (b) [..insert %] [. insert No.] Bedroom units for rented occupation;
- (c) [..insert %] [.. insert No.] Bedroom units for rented occupation;
- (d) [. Insert %] [... insertNo..] Bedroom units for shared ownership;
- (e) [... insert %] [... insertNo..] Bedroom units for shared ownership.

"Affordable Rented Housing" means

"Affordable Housing Price" means

"Alternative Provider" means a body other than a Registered Provider whose objectives include the provision of and/or ownership and management of Affordable Housing and is approved by the Council

"the Buyer" means a purchaser of the Shared-Ownership Dwelling nominated by the Council and **"Buyers"** shall be construed accordingly

"Certificate of Completion" means a Certificate issued by the Land Owner's Architect (or equivalent certifying officer) to confirm that the Affordable Housing has been completed

"Chargee" means any mortgagee or chargee of the Registered Provider or the Alternative Provider or the Shared Owner or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 lawfully exercising its power of sale in respect of an Affordable Housing Dwelling

"Contract" means a contract between the Land Owner and the Registered Provider and/or the Alternative Provider for the transfer of the Affordable Housing Dwellings at a peppercorn which shall require the Registered Provider or the Alternative Provider to enter into the Nominations Agreement with the Council prior to the Occupation of any Affordable Housing Dwelling

"Eligible Household(s)" means a person or persons nominated by the Council from its Housing Needs Register in accordance with the Council's allocation policy through its Choice Based Lettings (CBL) and Allocation Policy or such other policy as may from time to time be agreed between the Council and the Registered Provider or on similar registers held by the Registered Provider and/or the Alternative Provider to which the Affordable Housing Dwellings have been transferred

"Financial Terms" means: (a) the Market Value of each Shared- Ownership Dwelling and the purchase price of each Shared-Ownership Dwelling and any annual rent charge payable on the Retained Equity in respect of each Shared-Ownership Dwelling to be equal to or less than [] % of the value of the Retained Equity which may be increased (where appropriate) by not more than the Retail Price Index plus ½ per annum and (b) (if appropriate) any annual service charge payable in respect of each Shared-Ownership Dwelling PROVIDED THAT on Initial Let the aggregate weekly Housing Cost associated with (a) does not exceed the Maximum Housing Cost

"First Affordable Housing Contribution" means []

"Homes and Communities Agency" means the public body set up to fund and regulatory body for registered social landlords as defined by the 2008 Act Section 81 or anybody appointed by Government to undertake its functions and any successor body

"Household" means any person or persons living as or who could be reasonably expected to live as an independent domestic unit and **"Households"** shall be construed accordingly

"Housing Cost" means

"Housing Needs Register" means the register maintained by the Council or its nominee for Eligible Households

"Intermediate Affordable Housing" means

"Initial Let" means an Affordable Housing Dwelling that has achieved Practical Completion and is ready to be let

"Land Registry Restriction" means a restriction that is entered on the relevant register of the Land Registry to regulate dispositions of that registered estate

"Local Housing Needs" means (i) Households who are in need of residential accommodation suitable for their needs as their sole or principal home otherwise unable to obtain such suitable accommodation within the administrative area of the Council by reason of a lack of financial resources and whom it is reasonable to live in the locality or persons for the time being registered on the Council's maintained housing register and/or other housing register maintained for the purpose of identifying Local Housing Need in accordance with the policy of the Council and (ii) in the event that there shall be no such persons ready willing and able to occupy an Affordable Housing Dwelling at the material time then a Household which is assessed by a Registered Provider or the Council to be in genuine and urgent housing need and **"Local Housing Need"** shall be construed accordingly

"Market Value" means the price which the whole interest in the Affordable Housing would be expected to command as part of the Residential Development if sold by a willing seller to a willing purchaser for residential purposes subject to the terms of this Deed but free of the restrictions contained in this Schedule

"Maximum Housing Cost" means

"Moratorium Period" means in relation to any proposed sale of the Affordable Housing Dwellings (or any part thereof) by a Chargee the Moratorium Period arising under either section 145 or 147 of the Housing and Regeneration Act 2008.

"Registered Provider" means a body registered as a provider of social housing under the 2008 Act and approved by the Council (such approval not to be unreasonably withheld or delayed)

"Retained Equity" means

"Nomination Agreement" means a nomination agreement in respect of the Affordable Housing Dwellings in a form to be agreed between the Registered Provider and/or the Alternative Provider and the Council (acting reasonably and without delay) in favour of the Council granting the Council 100% nomination rights of all Affordable Housing Dwellings

"Nominees" means those Households nominated or to be nominated under the terms of the Nomination Agreement

"Open Market Dwellings" means those Dwellings which are not Affordable Housing Dwellings

"Phase" means a phase of the Development

"Practical Completion" means the date that the Land Owner's Architect (or equivalent certifying officer) confirms that the Affordable Housing has been completed and **"Practically Completed"** shall be construed accordingly

"Retained Equity" means the proportion of the Market Value in a Shared-Ownership Dwelling represented by such share of unsold equity

RTA Purchaser" means a former tenant of an Affordable Housing Dwelling who purchases it under the provisions of the Right to Acquire created by section 16 of the Housing Act 1996 or the preserved right to buy created by Part V Housing Act 1985 or any other statutory right in force from time to time entitling tenants of Registered Providers to purchase their homes

"Second Affordable Housing Contribution" means []

"100% Staircaser" means a former Shared Owner who has staircased to 100% of the equity of the Affordable Housing Dwelling

"Shared Ownership" means housing for sale at a price below Market Value which accords with the Financial Terms on a Shared Ownership Lease whereby a residential buyer is able to purchase a share of the equity in an Affordable Housing Dwelling at a minimum of 25% initially (at the option of the buyer) and pay an annual rent of up to 2.75% on the Retained Equity with no limitation on the aggregate equity that can be owned by the lessee and **"Shared Owner"** and **"Shared Ownership Dwelling"** shall be interpreted accordingly

"Shared Ownership Dwelling" means

"Shared Ownership Lease" means a form of lease for the time being prescribed by the Homes and Communities Agency and in other cases in the usual form of the Registered Provider being a Registered Social Landlord (or as otherwise approved by the Council)

"Social Rented" means

"Subsequent Let" means an Affordable Housing Dwelling that is vacant after an Initial Let

"The Council of Mortgage Lenders" means the national body of lender organisations that are regulated and authorised by the Financial Services Authority

- I. The Land Owner hereby covenants with the Council as follows:
 - I.1 **Where Affordable Housing not identified, no registered provider identified**
 - I.2 Not less than [number-words] (£ [number-figure]) Dwellings approved pursuant to the Planning Permission representing [number-words] (number-figure) per centum of the total Dwellings to be constructed shall be provided and maintained as Affordable Housing in accordance with the terms of this Deed or the relevant Nomination Agreement as appropriate
 - I.3 Not to Commence the Development until the Land Owner has submitted to the Council and the Council has approved in writing (such approval shall not be unreasonably withheld) the layout and location of the Affordable Housing within the Development
 - I.4 Within ten (10) Working Days after the Development has Commenced to notify that fact in writing to the Council's Head of Planning and the Land Owner and to give written notice to the Council's Head of Planning within one (1) month of first Occupation of the first Open Market Dwelling to be Occupied
 - I.5 Not to Occupy more than 75% of the Open Market Dwellings in a Phase unless and until all of the Affordable Housing in that Phase has been constructed in accordance the quality and design standards of the Homes and Communities Agency and are ready for Occupation
 - I.6 Not to Occupy more than 75% of the Open Market Dwellings in a Phase until the Land Owner has offered to enter into a Contract with a Registered Provider for the sale of the Affordable Housing in the relevant Phase in accordance with this Schedule I
 - I.7 The Contract with the Registered Provider shall provide for the sale of the Affordable Housing to the Registered Provider at the Affordable Housing Price and that the Affordable Housing shall not be used other than for Affordable Housing
 - I.8 For the purposes of each Phase the Land Owner's obligations under this Schedule shall be discharged upon the issue of a Certificate of Completion or equivalent and having first offered to enter into a Contract with a Registered Provider pursuant to paragraph 1.6 of this Schedule.
 - I.9 Not to Occupy any of the Open Market Dwellings in each Phase until the Registered Provider to whom the Affordable Housing in the relevant Phase is to be offered has been approved by the Council's Head of Planning (such approval not to be unreasonably withheld or delayed) and subject to such offer having been accepted by the Registered Provider by no later than [] Working Days after receipt by it of the offer to procure the entering into of a Deed of Nomination Rights between the Council and the Registered Provider

upon such terms and conditions as agreed between the Council and the Registered Provider

- I.10 For the purposes of each phase of the Development if the First Registered Provider fails to accept the offer referred to in paragraph [1.6] above and to exchange contracts with the Owner for the purchase of the Affordable Housing Units in the relevant Phase at the Affordable Housing Price by no later than [] Working Days after receipt of the offer the Owner shall no later than Five Working Days after the expiration of the [] Working Day period advise the Council in writing of this and of the reasons for the failure and shall then offer the Affordable Housing Units to the Further Registered Providers whose identity and details shall first and by no later than Fifteen Working Days after receipt of notice from the Owner have been provided to the Owner by the Council at the Affordable Housing Price such offer to include;
- (i) the grant by the Owner to the acquiring Further Registered Provider of all reasonable rights of access light air support entry and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units;
 - (ii) a reservation of all rights of access light air support entry passage of services and other rights reasonably necessary for the purposes of the remainder of the Development; and
 - (iii) such other covenants as the Owner may reasonably require for the construction and maintenance of the Development and the preservation of its appearance.
- I.11 For the purposes of each Phase if neither of the Further Registered Providers accepts the offer to sell the Affordable Housing Units and to exchange contracts with the Owner for the Affordable Housing Units at the Affordable Housing Price by no later than [] Working Days after receipt of the Owner's offer the Owner shall subject to first advising the Council in writing of this and of the reasons for the failure be free to dispose of all of the Affordable Housing Units in the relevant Phase as Open Market Dwellings subject to payment to the Council of;
- (i) The First Affordable Housing Contribution by no later than Occupation of the [] Open Market Dwelling; and
 - (ii) The Second Affordable Housing Contribution by no later than Occupation of the [] Open Market Dwelling.
- I.12 Subject to either the First Registered Provider or either of the Further Registered Providers referred to in paragraphs [] and [] above accepting the offer referred to in paragraph [] or paragraph [] above and to such offer being made at the Affordable Housing Price not to Occupy more than 75% of the Open Market Dwellings in a Phase without first having transferred the Affordable Housing Units in the relevant Phase to such Registered Provider.
- I.13 Not to Occupy more than 75% of the Open Market Dwellings in each Phase until:-
- I.13.1 All roads giving access to the Affordable Housing have been laid to base course level and are open ready for use, or a reasonably suitable alternative safe means of access has been provided to the satisfaction of the Registered Provider and the Council; and

- 1.13.2 All foul and surface water sewers required to be laid to serve the Affordable Housing have been constructed ready for connection to and use by the Affordable Housing; and
 - 1.13.3 All mains gas, water, electricity and telecommunication services have been laid with adequate capacity for the Affordable Housing and a suitable point of connection provided for the Affordable Housing;
 - 1.13.4 Subject Always to paragraph 1.11 above the Affordable Housing has been constructed and offered to a Registered Provider pursuant to paragraphs 1.6 and if relevant 1.10 of this Schedule
- 1.14 Prior to Occupation of more than 75% of the Open Market Dwellings in a Phase the Land Owner or the Registered Provider shall submit to the Council for written approval of the Financial Terms to demonstrate the affordability of the Affordable Housing in that Phase to meet Local Housing Need
- 1.15 Prior to Occupation of more than 75% of the Open Market Dwellings in a Phase the Land Owner shall four months prior to the Affordable Housing in that Phase being Practically Completed opleted and ready for Occupation give to the Council written notice of Practical Completion of the Affordable Housing in that Phase such notice to include:
- 1.15.1 Layout plans of the Affordable Housing
 - 1.15.2 The total number of Affordable Housing Dwellings
 - 1.15.3 Copies of the plans and specification information leaflet and any other written information concerning the Affordable Housing which it is proposed to make available to Nominees including the Financial Terms
- 1.16 Upon giving the Council notice pursuant to paragraph 1.15 of this Schedule the Council shall be permitted to nominate sufficient persons or households to the Affordable Housing
- 1.17 The Affordable Housing Dwellings shall be [insert % age] Social Rented and [insert % age] Shared Ownership and/or any other Intermediate Housing that meet the Government's definitions of Affordable Housing and is consistent with the Council's prevailing Affordable Housing Policy and to be specified in writing by the Council as to mix type and size of the Affordable Housing Dwellings
- 1.18 Affordable Housing that is sold on a shared ownership basis shall be sold on a Shared-Ownership Lease which would enable the Buyer to acquire the remaining equity and which is generally acceptable to lenders who are full members of The Council of Mortgage Lenders
- 1.19 [The initial equity share of Affordable Housing sold in accordance with paragraph 1.17 of this Schedule shall be no less than 25% and no more than 50% and any proceeds realised from any subsequent sale of any equity share in excess of 50% shall be paid to the Council to use for housing purposes]
- 1.20 On the Initial and Subsequent Lets of the Affordable Housing in accordance with this Schedule the Shared Ownership Dwellings shall be subject to a Land Registry Restriction being placed on the register of the title to the relevant Shared-Ownership Dwelling

- 1.21 Subject to paragraph 1.23 of this Schedule from the date of Practical Completion of the Affordable Housing, the Affordable Housing shall not be used other than for Affordable Housing except where a Buyer or subsequent occupant exercises any right to acquire an unrestricted long lease or where an occupant acquires 100% ownership of the Shared-Ownership Dwelling
- 1.22 The Land Owner shall use reasonable endeavours to ensure that the lessee or Buyers of the Affordable Housing Dwelling will covenant to give written dated notice thereof to the Registered Provider or Council when proposing to make any voluntary disposal specifying the sale price the address of the dwelling and the contact name and telephone number for prospective purchasers to obtain details and a draft contract for purchase and shall not dispose of the Affordable Housing Dwelling for a period of three months thereafter other than to a person nominated by the Council or Registered Provider as having a Local Housing Need under the terms of this Deed who shall upon request in that behalf be supplied with a draft contract to exchange contracts in priority to any other person thereby ensuring (where possible) the Affordable Housing Dwelling remains affordable and available to meet Local Housing Need unless the lessee has purchased 100% of the equity (in which case the provisions of this Clause shall cease to apply in respect of such Affordable Housing Dwelling)
- 1.23 The Land Owner (or where appropriate the Registered Provider) shall include within any lease or transfer of the Affordable Housing Dwelling provision that the Registered Provider shall agree criteria to fix any subsequent Financial Terms payable for the Shared Ownership
- 1.24 Any Chargee shall prior to seeking to dispose of the Affordable Housing pursuant to any default under the terms of its mortgage or charge give not less than three months written notice to the Council of its intention to dispose and:
- 1.24.1 In the event the Council responds within two months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its best endeavours to secure such transfer
- 1.24.2 If the Council does not serve its response to the notice served under paragraph 1.24.1 above within the two months then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply
- 1.24.3 If the Council or any other person cannot within two months of the date of service of its response under paragraph 1.24 above secure such transfer then provided that the Chargee shall have complied with its obligations under this paragraph 1.24 the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule of this Deed which shall from the time of completion of the disposal cease to apply

PROVIDED THAT at all times the rights and obligations in this paragraph 1.24 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage

2. Where Affordable Housing Land has been identified and is to be transferred to RSL.

- 2.1 Clause to be added where local connection criteria applies - this clause is purely illustrative and is subject to change at any time. Further, different applications will have different criteria applied.
- 2.2 The Affordable Housing Dwellings shall be granted to applicants in the following priority order of category;
 - 2.2.1 Existing residents of *[insert...]* who have lived in the village for more than 12 months needing separate or alternative accommodation;
 - 2.2.2 Past residents of *[...insert...]* who lived in the village for a minimum period of 5 years and who moved away within the last 3 years because no suitable accommodation was available;
 - 2.2.3 People who need to live in *[...insert...]* due to their permanent employment or offer of permanent employment;
 - 2.2.4 People who are not resident in *[...insert...]* who need to live near family members currently residing in the village;
 - 2.2.5 Existing residents of adjoining villages;
 - 2.2.6 Existing residents who have lived in the Council's area for a period of 5 years or more.

SCHEDULE 2 HIGHWAYS WORKS

In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

"Section 278 Agreement" means a valid agreement executed as a deed and to be entered into with the County pursuant, inter alia, to Section 278 of the Highways Act 1980

"Highway Works" means the works to the highway shown in principle only on drawing numbered 0019A01 annexed to this Deed as Plan [] (subject as mentioned in clause 9 hereof) which works shall for the avoidance of doubt include a proposed roundabout junction involving new road construction and associated works and provision for a new pedestrian signalised crossing together with such ancillary works as may be required by the Director of Environment to facilitate the Development which ancillary works may without prejudice to the generality of the foregoing include the provision of street lighting traffic signs carriageway markings footways street furniture and drainage and any necessary alterations to statutory undertakers' equipment

I. Land Owners Covenants with the County

- I.1 The Land Owner hereby covenants with the County not to Occupy nor cause nor permit Occupation of any part of the Development (or not to Commence the Development) until such time as the Highway Works have been completed by the Land Owner to the satisfaction of the County as evidenced by issue of a certificate of completion by the Director of Environment in respect of the Highway Works in accordance with the Section 278 Agreement
- I.2 If the Department for Transport Technical Design Standards or Advice is amended after the date of this Deed the Director of Environment shall be at liberty to review the Highway Works and require any amendments he deems necessary to ensure that the Highway Works comply with the revised standards and advice SAVE THAT in circumstances where detailed contract drawings have been approved in writing by the Director of Environment and the Highway Works are commenced within three months of the date of the written approval then the Director of Environment shall not seek any amendments to the Highway Works

SCHEDULE 3
SALE OF DWELLINGS TO LOCAL PEOPLE/LOCAL WORKFORCE/ZERO CARBON

In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

DEFINITIONS

"Carbon Neutral Boilers" means either biodiesel or biomass boilers capable of supplying and servicing the heating and power requirements of the Development

"Construction Phase" means the period between commencement of the development and the date of issue of the Certificate of Completion for the final Phase of the Development

"Construction Trainee" means construction trainee apprentices employed on the construction of the Development

"Development" means the development of the land in accordance with planning permission (LPA ref []) dated []

"Dwelling" means the houses and flats comprised in each Phase and **"Dwellings"** shall be construed accordingly

"Economic Development Officer" means [TBC]

"Energy Centre" means the Energy Centre to be provided as part of the Development

"Local Area" means that area shown for the purposes of identification only edged red on the Local Area Plan"

"Local Area Plan" means plan [] attached to this Deed

"Local Labour" means any person aged 18 years or over who is a resident of the Local Area, has a close connection via an immediate family member to the Local Area or [works in the Local Area?]

"Monitoring Report" means the biennial monitoring reports to be produced by the Owner summarising the performance of the Zero Carbon Facility and the extent or otherwise to which it satisfies the Operational Requirements

"Operational Date" means [TBC]

"Operational Requirements" means [*Metropolis to populate*]

"Phase" means a phase of the Development

"Substantial Completion" means for the purposes of each Dwelling complete save in minor respects so that the Dwelling can be used for the purpose and operate in the manner for which it was designed and for the purpose of the Zero Carbon Pipework complete save in minor respects so that the Zero Carbon Pipework can be used for the purpose and operate in the manner for which it was designed

"Tariff Structures" means consumption charges standing charges management fees and plant replacement funds in connection with and for the purposes of the Zero Carbon Facility

"Triggering Event" means a finding in the Monitoring Report of one or more of the following:-

- (a) that the security of supply of heat and power to the Development is uncertain
- (b) that the security of supply of heat and power to the Development is no viable for the purposes of occupiers of the Development
- (c) that the Development has not been operating on a Zero Carbon basis for [X] months

"Zero Carbon" means [TBC]

"Zero Carbon Facility" means the anaerobic digestion plant to be provided at Cattlegate Farm

"Zero Carbon Facility Pipework" means the pipework to be laid between the Site and the Zero Carbon Facility for the purposes of providing heat and power from the Zero Carbon Facility to the Development

1. **Sale of Dwellings to Local People**

- 1.1 The Owners shall ensure that not less than 60% of the Dwellings in each Phase are first offered for sale to Local People in each case for not less than six weeks following Substantial Completion of the relevant Dwelling

2. **Local Workforce**

- 2.1 The Owner shall not Commence the Development unless it has first:-

- 2.1.1 Supplied the Council's Planning Officer (or other appropriate Officer to be confirmed) with a detailed labour plan for the duration of the Construction Phase identifying which skills services and employment are required for the Development during the Construction Phase

- 2.1.2 Notified the Council's Planning Officer (or other appropriate Officer to be confirmed) of all vacancies for employees sub-contractors and any other form of employment or service opportunity generated by the construction of the Development

- 2.2 The Owner shall

- 2.2.1 Use reasonable endeavours to procure that at all times during the Construction Phase a minimum of four construction trade apprentices are employed on the construction of the Development and that such construction trade apprentices are Local Labour

- 2.2.2 Supply the Council's Planning Officer (or other appropriate Officer to be confirmed) with a detailed six monthly labour return summarising the performance of all Construction Trade Apprentices employed on the construction of the Development in accordance with Clause 2.1.2 above

3. **Zero Carbon**

- 3.1 Not to Occupy any part of the Development unless and until it has produced evidence in writing satisfactory to the Council of a contractual commitment by the owners of the Zero Carbon Facility to supply the Development with sufficient capacity in all respects to serve the heating requirements of the Development and to that end to connect the Zero Carbon

Facility to the Development and that the Zero Carbon Facility shall export electricity of an amount equivalent to the Development electrical demand to the electricity grid

- 3.2 Subject always to the grant of Planning Permission for the Zero Carbon Facility Pipework and its Substantial Completion and connection to the Development by no later than the Operational Date
 - 3.2.1 To ensure that all Dwellings within the Development are subject always to clause 3.3 below [for the lifetime of the Development] connected to and supplied with heat from the Zero Carbon Facility and that the Zero Carbon Facility shall export electricity of an amount equivalent to the Development electrical demand to the electricity grid
 - 3.2.2 On each Monitoring Date to provide the Council with a detailed report summarising the operation of the Zero Carbon Facility its security of supply to each Dwelling within the Development and its Tariff Structures
- 3.3 Subject always to the occurrence of a Triggering Event forthwith to supply and retrofit the Carbon Neutral Boilers to the Energy Centre and to ensure that such Carbon Neutral Boilers supply heat to all Dwellings in the Development for the lifetime of the Development and that the Zero Carbon Facility shall export electricity of an amount equivalent to the Development electrical demand to the electricity grid
- 3.4 For the avoidance of doubt Tariff Structures for the delivery of heat from the Zero Carbon Facility shall be no greater than would have been the case [if an on-site combined heat and power network had been provided by the Owner]

SCHEDULE 4 GREEN SPACE AND PLAY FACILITIES

In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings

"Green Space Contribution" means the sum of (SEVENTY NINE THOUSAND NINE HUNDRED AND FORTY FOUR POUNDS AND FIFTY PENCE) (£79,944.54) (index linked as hereinafter provided) towards the provision of:

- (a) Repollarding of Hornbeam trees to restore the conservation attributes and wood pasture common;
- (b) Small tractor for use by The Friends of Northaw Great Wood Group;
- (c) Installation of 3 culverts to improve access/safety/timber extraction infrastructure around Northaw Great Wood;
- (d) Installation of all weather disabled access circular track to improve access for all user groups

all in proximity to the Development and within the Council's administrative area

"MUGA" means multi-use games area

"Play Facilities Contribution" means the sum of (TWO HUNDRED AND NINE THOUSAND SIX HUNDRED AND EIGHTY SIX POUNDS AND FOURTEEN PENCE) (£209,686.14) (index linked as hereinafter provided) towards the provision of:

- (a) one Local Area of Play
- (b) one Local Equipped Area for Play
- (c) one Neighbourhood Equipped Area for Play

"Local Areas for Play" means a small area of unsupervised open space specifically designated for young children (mainly 4-6 year olds) for play activities close to where they live and "Local Area for Play" shall be construed accordingly

"Local Equipped Areas for Play" means an unsupervised play area equipped for children of early school age (mainly 4-8 year olds) and should offer at least 5 types of play equipment and "Local Equipped Areas" shall be construed accordingly

"Neighbourhood Equipped Areas for Play" means an unsupervised site providing for a large residential area, catering for 8-14 year olds and should offer at least 8 types of play equipment and "Neighbourhood Equipped Area for Play" shall be construed accordingly

"School Site" means []

- I. The Land Owner covenants with the Council not to Occupy or permit the Occupation of more than [] Market Dwellings until the Green Space Contribution and the Play Facilities Contribution have been paid to the Council

2. Not to Occupy more than [] Market Dwellings until a floodlit MUGA has been provided within the Site in accordance with details first submit to and approved in writing by the Council
3. Not to Occupy more than [] Market Dwellings until a sport hall has been provided on the School Site to ensure that the Sports Hall is available for community use outside school hours between the hours of [] to []
4. **Indexation**
 - 4.1 The Green Space Contribution and the Play Facilities Contribution shall be index linked by reference to the Retail Price Index
 - 4.2 Where any sum to be paid to the Council under the terms of this Deed is required to be indexed then an interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within ten (10) Working Days of written demand by the Council once the relevant indices have been finalised

SCHEDULE 5
ENTRY FORM PRIMARY SCHOOL

In this Schedule unless the context otherwise requires the following words and expressions shall have the following meanings

"Entry Form Primary School" means a school with a building area of 1,427sqm for the provision of seven classes for 210 pupils

"Substantially Completed" means complete save in minor respects so that the Entry Form Primary School can be used for and operate in the manner for which it was designed namely for the provision of seven classes accommodating 210 pupils

1. Not to Occupy more than [] Open Market Dwellings unless details of the Entry Form Primary School have first been submitted to and approved in writing by the County
2. Not to Occupy more than [] Open Market Dwellings until the Entry Form Primary School has been Substantially Completed

SCHEDULE 6 DOCTORS SURGERY

In this Schedule unless the context otherwise requires the following words and expressions shall have the following meaning

"Doctors Surgery" means a doctors surgery providing for the needs of [] patients in the locality

"Locality" means TBC

1. Not to Occupy more than [] Open Market Dwellings until details of the Doctors Surgery have been submitted to and approved in writing by the Council
2. Not to Occupy more than [] Open Market Dwellings until the Doctor's Surgery has been substantially completed Provided Always that the cost of delivering the Doctor's Surgery shall not exceed £427,165 (Four hundred and twenty seven thousand one hundred and sixty five pounds)

SIGNED on behalf of **[NAME OF COMPANY]**

<i>Signature</i>
[Authorised person][Director]
<i>Print name</i>

SIGNED on behalf of **[NAME OF COMPANY]**

<i>Signature</i>
[Authorised person][Director]
<i>Print name</i>

SIGNED on behalf of **[NAME OF COMPANY]**

<i>Signature</i>
[Authorised person][Director]
<i>Print name</i>

SIGNED on behalf of **[NAME OF COMPANY]**

<i>Signature</i>
[Authorised person][Director]
<i>Print name</i>

Appendix I
Draft Planning Permission

**Appendix 2
(Form of Notice)**

Proforma Event Notification and Payment

Pursuant to Section 106 Agreement/Unilateral Undertaking

DATED :.....

MADE BETWEEN:

PLANNING PERMISSION REF:

WHBC REF:

HCC DU REF:

SITE ADDRESS:

.....

SITE OWNER DETAILS:

Name:

Contact Name:

Address:

.....

Telephone No: 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 obligations and compliance

.....

PAYMENT OF S.106 CONTRIBUTIONS

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

Payment of S.106 contributions can be made by BAC, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

(a) The Chief Legal Officer
Hertfordshire County Council
County Hall
Pegs Lane
Hertford
Hertfordshire SG13 8DE
Ref:

(b) The Head of Planning
Council Offices
The Campus
Welwyn Garden City
Herts AL8 6AE
Ref: