

DATED

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HAMBLETON DISTRICT COUNCIL

and

XXX

**PLANNING OBLIGATION BY DEED OF AGREEMENT**

**UNDER SECTION 106 OF THE TOWN AND COUNTRY**

**PLANNING ACT 1990**

Relating to the development of Land at

Planning ref.

DATE .....

## PARTIES

- (1) **HAMBLETON DISTRICT COUNCIL** of Civic Centre, Stone Cross, Northallerton, North Yorkshire, DL6 2UU ("District Council")
- (2) **XXX**

## **INTRODUCTION**

1. The District Council is the Local Planning Authority for the purposes of the Act for the area in which the Site is situated
2. The Owner is the freehold owner of the Site
3. The Applicant has submitted the Application and joins in this Deed to consent to its provisions
4. The purpose of this Deed is to secure the fact that 100% of the Dwellings to be constructed pursuant to the Planning Permission are to be maintained and managed as Affordable Housing and it is understood and acknowledged that the Development is not viable without public subsidy and that 100% of the Dwellings to be constructed pursuant to the Planning Permission are to receive such public subsidy

## **NOW THIS DEED WITNESSES AS FOLLOWS**

### **1. Definitions**

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

"Act"	the Town and Country Planning Act 1990;
"Affordable Housing"	means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any successor policy or legislation in respect of affordable housing);
"Affordable Housing Units"	all 12 Dwellings to be provided on the Site and constructed in accordance with the Planning Permission to be delivered as Rented Affordable Housing Units (and "Affordable Housing Unit" shall be construed accordingly);
"Affordable Rent"	means a rent which is set in accordance with the Government's rent policy for Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); to be in accordance with Annex 2 of the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it);
"Age Requirement"	<p>A person meets the Age Requirement if he or she meets one or more of the following criteria:-</p> <p>(i) persons of an age of fifty five (55) years or above except where a Dwelling is occupied by a husband and a wife or by two</p>

partners one person may be aged under fifty five (55) years providing that they are of an age fifty (50) years and above and are living in the same residence as the partner **PROVIDED THAT** if the Dwelling is so Occupied and the person aged over fifty five (55 ) years should die leaving the survivor aged under fifty five (55) years of age there will be no breach of this paragraph provided the Widow/Widower or ex-partner remains the sole occupant and/or

(ii) disabled and/or frail persons requiring accommodation of the type comprised in the Development

“Application”

the application for full planning permission received by the District Council on the XXX for the Development and allocated reference number XXX;

“Chargee”

any mortgagee or chargee of any one or more of the Affordable Housing Units (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**));

"Chargee's Duty"

means the tasks and duties set out in paragraph 1.6 of the Second Schedule;

“Commencement  
Development”

of 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 clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly;

"Council's Housing Services Manager" means for the purposes of this Agreement the District Council's Housing Services Manager (or any officer succeeding to the duties currently undertaken by the District Council's Housing Services Manager) or such other officer of the District Council nominated by the District Council for the purpose of this Agreement;

"Development" the development of the Site to consist of [INSERT SCHEME MIX];

"Dwelling" an apartment to be constructed pursuant to the Planning Permission;

"In Need of Accommodation" shall be interpreted as set out in Part 2 of the Third Schedule;

"Northallerton Hinterland" means Northallerton and those areas listed in Part 3 of the Third Schedule; [AMEND HINTERLAND AS APPROPRIATE TO LOCATION]

“Occupation and “Occupied” occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

“Protected Tenant” means any tenant who:-

(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit

(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit

(c) has acquired an Affordable Housing Unit outright from a Registered Provider through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, or any amendment or replacement thereof; and

(d) has a Shared Ownership Lease and has staircased to 100% to own the Property outright,

and any person or body and/or their mortgagee deriving title through or from any of the parties mentioned in paragraphs (a) to (d) above;

"Plan"	the plan showing the Site and annexed to this deed at Appendix 1
"Planning Permission"	the full planning permission subject to conditions to be granted by the District Council pursuant to the Application
"Registered Provider"	means XXX Housing Association Limited or such other registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes England for receipt of social housing grant as may be proposed by the Owner and approved by the District Council;
"Rented Affordable Housing Requirements"	means the requirements set out in Part 1 of the Third Schedule;
"Rented Affordable Housing Units"	means X Affordable Housing Units comprising [INSERT MIX], which will be made available at an Affordable Rent and reference to "Rented Affordable Housing Unit" shall be construed accordingly;
"Statutory Undertaker"	means any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and/or television communications electricity gas water or drainage and any authorised successor to any such undertaking;

## **2. Construction of this Deed**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the District Council the successor to its statutory functions

## **3. Legal Basis**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all powers so enabling.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council as Local Planning Authority against the Owner



#### **4. Conditionality**

4.1 This Deed is conditional upon:

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

save for the provisions of Clauses 6.1, 11 and 12 (costs, jurisdiction and delivery clauses) which shall come into effect immediately upon completion of this Deed

#### **5. The Owner's Covenants**

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

#### **6. Miscellaneous**

6.1 The Applicant shall pay to the District Council on completion of this Deed £500 towards the costs of the District Council incurred in the negotiation, execution and monitoring of compliance with this Deed

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

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

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council under the terms of this Deed such Agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the District Council only by its Housing Services Manager or equivalent and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party

- 6.5 Following the performance and satisfaction of all the obligations in this Deed the District Council shall upon written request forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 6.6 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
- 6.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 6.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or that part of the Site in relation to which the breach occurs but without prejudice to that party's liability for any subsisting breach arising prior to parting with such interest
- 6.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 6.10 The Owner shall notify the District Council in writing in advance of the Commencement of Development
- 6.11 The obligations in this deed shall not be enforceable against:
- 6.11.1 the buyers of an Affordable Housing Unit save for the provisions of the Second and Third Schedule which shall apply; or
- 6.11.2 a Statutory Undertaker which has an interest in any part of the Site solely for the purposes of its undertaking.

**7. Waiver**

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

**8. Change in Ownership**

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

**9. Interest**

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

**10. VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any Value Added Tax properly payable

**11. Jurisdiction**

This Deed is governed by and interpreted in accordance with the law of England and Wales

## **12. 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

## **13. Expert Determination**

13.1 If the terms of any conveyance transfer or other Disposal (including any contract thereof) cannot be agreed by the Owners and the District Council and / or any dispute or difference arises between the parties as to their respective rights duties or obligations under this Deed or as to the failure of the District Council to give or confirm its consent agreement or approval where required under this Deed or as to any other matter or thing arising out of or connected with the subject matter of this Deed or any failure to agree upon any matter it shall be dealt with as follows: -

13.1.1 in the case of any design requirement or matter regarding the Affordable Housing Units the same shall be referred to an independent chartered surveyor of at least fifteen years standing who shall be nominated in default of agreement between the Owner and the District Council by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to be decided as provided below;

13.1.2 in the case of any legal requirements how contributions payable under this Deed are to be spent or matters regarding the documentation or rights for the Affordable Housing Units the same shall be referred to an independent solicitor experienced mediator or arbitrator of at least fifteen years standing who shall be appointed in default of agreement between the Owner and the District Council by the President of the Law Society or his deputy to be decided as provided below;

13.1.3 any matter referred to an independent chartered surveyor or independent solicitor in accordance with the foregoing provisions shall be decided by such person as an expert not as an arbitrator and such independent person ("**Expert**") shall consider the written submissions of the parties and his determination shall be made in writing and in each

case be final and binding on such parties and the costs of such determination shall be paid as the expert shall direct.

**14. Community Infrastructure Levy Regulations 2010**

14.1 The Parties to this Deed have given due consideration to the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No. 948) (as amended) and agree that the planning obligations it contains are: -

- a) necessary to make the Development acceptable in planning terms;
- b) directly and fairly related to the Development; and
- c) fairly and reasonably related in scale and kind to the Development.

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

## **FIRST SCHEDULE**

### **THE SITE**

The Land XXX as identified edged red on the Plan.

## **SECOND SCHEDULE**

### **(The Owner's Covenants with the District Council)**

#### **1 AFFORDABLE HOUSING**

##### **On-Site Provision**

- 1.1 To procure that the Affordable Housing Units are not constructed otherwise than in accordance with the Planning Permission and approved plans or in accordance with any amended plans submitted to and approved by the District Council.
- 1.2 To notify the District Council in writing 10 days prior to the Commencement of the Development of any Dwellings.
- 1.3 Subject always to paragraph 1.5 of this Second Schedule not to Occupy or allow the Rented Affordable Housing Units to be occupied other than in accordance with the Rented Affordable Housing Requirements in the Third Schedule.
- 1.4 It is agreed that the Affordable Housing Units shall be X Affordable Housing Units let at an Affordable Rent or such alternative tenure that may be agreed in writing between the Owner and the District Council's Housing Services Manager.

##### **General Provisions – Affordable Housing**

- 1.5 It is agreed that the obligations in this Schedule and the Third Schedule inclusive shall not be binding on:
  - 1.5.1 any Protected Tenant or any mortgagee chargee or receiver of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees chargees or receivers; or
  - 1.5.2 any Chargee or successor in title thereto provided that the Chargee shall have first complied with the Chargee's Duty; or

- 1.5.3 any purchaser from a mortgagee or chargee or receiver of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor or any successor in title thereto

**PROVIDED THAT** any sums received by a Registered Provider resulting from the disposals of any units pursuant to paragraphs 1.5.1 and 1.5.3 of this Schedule shall be reinvested in Affordable Housing in the Hambleton district **AND PROVIDED FURTHER THAT** it is agreed that the Registered Provider will keep a record of the disposals of any units pursuant to paragraphs 1.5.1 and 1.5.3 of this Schedule and will provide to the District Council on an annual basis a report detailing the sums received as a result of repossession and the reinvested made in Affordable Housing in the Hambleton district.

- 1.6 The Chargee shall prior to seeking to dispose of any Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than 30 Working Days prior notice to the District Council of its intention to dispose and:

1.6.1 in the event that the District Council responds within 30 Working Days from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and shall use its best endeavours to secure such transfer;

1.6.2 if the District Council does not serve its response to the notice served under paragraph 1.6.1 of this Schedule within 30 Working Days then the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Schedule;

1.6.3 if the District Council or any other person cannot within 2 months of the date of service of its response under paragraph 1.6.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.6 of this Schedule the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

**PROVIDED THAT** at all times the rights and obligations in this paragraph 1.6 shall not require the Chargee to act contrary to its duties under the charge or



mortgage and that the District Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

### **THIRD SCHEDULE**

#### **(Rented Affordable Housing Requirements)**

##### **PART 1**

#### **(Rented Affordable Housing Requirements)**

1. Not to allow or permit any person or persons to occupy any of the Rented Affordable Housing unless he or she is a tenant or licensee of the Registered Provider or a lodger or family member of a tenant or:
  - (a) has succeeded to a tenancy under the provisions of the Housing Act 1985 or Housing Act 1988 upon the death of the former tenant of the accommodation; or
  - (b) upon the death of the former tenant has succeeded to the tenancy and was a member of the former tenant's family who resided with the former tenant throughout the period of 12 months ending with the former tenant's death and who occupied the accommodation as their only home at the time of the former tenant's death; or
  - (c) has succeeded to the tenancy as a result of a Court Order.
2. Upon completion of construction of the Rented Affordable Housing and at all times subsequently upon a unit of accommodation of the Rented Affordable Housing becoming unoccupied to allocate each unoccupied unit of accommodation to a person who meets the Age Requirement and is In Need of Accommodation and who:
  - (a) has immediately prior to such allocation been ordinarily resident within the XXX Hinterland for a period of at least 12 months; or
  - (b) has within the last 10 years prior to such allocation been ordinarily resident in the XXX Hinterland for a period of at least five years; or
  - (c) has immediately prior to such allocation a mother, father, sister, brother, son or daughter or other close relative approved in writing by the District Council's Housing Services Manager who has been ordinarily resident in the XXX Hinterland for at least 12 months; or

- (d) has immediately prior to allocation some other close relative or person giving or receiving care to or from the applicant (the relationship to have been approved in writing by the District Council's Housing Services Manager) who has been ordinarily resident in the XXX Hinterland for at least 12 months; or
  - (e) has immediately prior to such allocation been in permanent employment in the XXX Hinterland for a period of at least 12 months or is taking up permanent employment in the XXX Hinterland.
- 3. If upon a unit of accommodation within the Rented Affordable Housing becoming available for occupation whether on completion of the construction of the Rented Affordable Housing or at any time subsequently the Registered Provider is unable to fill any vacancy arising in accordance with paragraph 2 above as confirmed in writing to the District Council's Housing Services Manager then the Owner shall allocate the unit of accommodation to a person who meets the Age Requirement and is In Need of Accommodation and who:
  - (a) has immediately prior to such allocation been ordinarily resident within the Hambleton District for a period of at least 12 months; or
  - (b) has within the last 10 years prior to such allocation been ordinarily resident in the Hambleton District for a period of at least five years; or
  - (c) has immediately prior to such allocation a mother, father, sister, brother, son or daughter or other close relative approved in writing by the District Council's Housing Services Manager who has been ordinarily resident in the Hambleton District for at least 12 months; or
  - (d) has immediately prior to allocation some other close relative or person giving or receiving care to or from the applicant (the relationship to have been approved in writing by the District Council's Housing Services Manager) who has been ordinarily resident in the Hambleton District for at least 12 months; or
  - (e) has immediately prior to such allocation been in permanent employment in the Hambleton District for a period of at least 6

months or is taking up permanent employment in the Hambleton District;

but if there is no such person then to any person In Need of Accommodation with a local connection to North Yorkshire as confirmed in writing by the District Council's Housing Services Manager but if there is no such person then in accordance with the Registered Provider's allocations policy as confirmed in writing by the District Council's Housing Services Manager.

4. At all times in allocating or managing the Rented Affordable Housing Units:
  - (a) to comply fully with the rules of a Registered Provider and its current published housing waiting list and allocation system and in all cases in accordance with any published Homes England Policies and Guidance Notes or rules policies and systems which are similar to such Registered Provider documents from time to time; and
  - (b) to charge rents which are no higher than an Affordable Rent;

**PROVIDED THAT** the District Council accepts that under its Choice Based Lettings Scheme or any other replacement lettings scheme a tenant of a Registered Provider may have a right to transfer into occupation of a Rented Affordable Housing Unit.

## **PART 2**

(Definition of In Need of Accommodation)

1. A person is eligible for accommodation if:
  - (a) their social and economic circumstances are such that they have difficulty securing accommodation on the open market; or
  - (b) if they are or a member of the household is:
    - (i) occupying unsanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions; or
    - (ii) living in accommodation which is temporary or occupied on insecure terms; or

- (vii) needs alternative accommodation on medical or welfare grounds;  
or
- (iv) needs to move to receive or provide care or support; or
- (v) is establishing a separate household; or
- (vi) needs to move to be able to take up or sustain permanent employment; or
- (vii) is an existing tenant of a Registered Provider whose move will enable the optimum use of affordable housing stock.

### **PART 3**

(Definition of XXX Hinterland)

**[LIST PARISHES]**

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

Authorised Signatory

EXECUTED AS A DEED by )  
**XXX HOUSING ASSOCIATION LIMITED** )  
acting by a Member of its Board of Management )  
and the Company Secretary )

Member of the Board of Management

Secretary

## **APPENDIX 1**

### **PLAN**