

**DATED** \_\_\_\_\_

**HAMBLETON DISTRICT COUNCIL**

- and -

**XXX**

- 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:

Planning Reference: XXX

**THIS AGREEMENT** is made \_\_\_\_\_

**BETWEEN:**

1. **HAMBLETON DISTRICT COUNCIL** of Civic Centre, Stone Cross, Rotary Way, Northallerton, North Yorkshire DL6 2UU ("District Council"); and
2. **XXX ("Owner")**; and
3. **XXX ("Developer")**;

hereinafter called the "**Parties**" and reference to "**Party**" shall be construed accordingly.

**INTRODUCTION**

1. The District Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
2. The Owner is the owner of the Site registered with HM Land Registry (title absolute) under title registration number XXX free from encumbrances save only as mentioned in the registered titles to the Site.
3. The Developer has an interest in the Site pursuant to an agreement for sale dated XXX and made between the Owner (1) and the Developer (2).
4. The Developer has submitted the Application to the District Council and the Parties have agreed to enter into this Agreement in order to secure the planning obligations contained herein.

**NOW THIS AGREEMENT WITNESSES AS FOLLOWS**

**1. Definitions**

1.1 For the purposes of this Agreement the following expressions shall have the following meanings:

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

**"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;

**"Affordable Housing Commuted Sum"**

means if applicable a commuted sum (to be calculated in accordance with the District Council's Housing Supplementary Planning Document adopted XXX (or any successor supplementary planning document)) to be used by the District Council in lieu of the provision or part provision of Affordable Housing Units on the Site towards a broad range of schemes and initiatives linked to providing Affordable Housing within Hambleton district which may include but not be limited to the following:

1. Support for Registered Providers for both the development and acquisition of Affordable Housing, including facilitating any necessary works or improvement or repair;
2. Support for specific initiatives to regenerate the existing housing stock e.g. grants for empty properties and grants for housing in multiple occupation which give the District Council nomination rights for qualifying individuals;
3. Support for specific schemes which are developed to provide permanent homes to meet and identified need e.g. the lack of suitable accommodation for homeless families or a scheme to meet the accommodation needs of young single people;
4. Support for any District Council post which facilitates the delivery and allocation of Affordable Housing within Hambleton district;

<b>"Affordable Housing Contribution"</b>	means the sum of £X to be paid to the Council in lieu of the provision of X of a unit of Affordable Housing on the Site;
<b>"Affordable Housing Units"</b>	means units of Affordable Housing the number of which units shall be XXX Dwellings comprising of [MIX] XXX Social/Affordable Rented Affordable Housing Units and x Shared Ownership Affordable Housing Units and reference to " <b>Affordable Housing Unit</b> " shall be construed accordingly;
<b>"Affordable Rent"</b>	means a total rent which shall be determined in accordance with the government's rent policy and associated guidance relating to affordable rent as published from time to time by the government or Homes England or any successor thereto but which at no time will equate to more than 80% of the local market rent in any event;
<b>"Application"</b>	means the full planning application for the construction of XXX no. residential dwellings (as per amended drawings received by the District Council on XXX and allocated reference number XXX;
<b>"X [INSERT NAME] Hinterland"</b>	means the Parishes that comprise XXX and then followed by the XXX hinterland as referred to in the Local Plan (Adopted 22 February 2022) and set out in Part 4 of the Fourth Schedule;
<b>"Chargee"</b>	any mortgagee or chargee of the Registered Provider 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 or protected tenant after any mortgagee or chargee of the Registered Provider;
<b>"Chargee's Duty"</b>	means the tasks and duties set out in paragraph 1.8 of the Second Schedule;

<b>“Commencement of Development”</b>	means the carrying out of a material operation as defined in section 56(4) of the 1990 Act in respect of the Development but excluding (for the purposes of this Agreement and for no other purposes) 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, laying of any construction access road or service media for the purposes of the Planning Permission;
<b>“Development”</b>	means the Development of the Site in accordance with the Planning Permission together with any Section 73 Permission;
<b>"District Council's Agreed Transfer Price"</b>	<p>means:</p> <ol style="list-style-type: none"> <li>1. £XXX for each X bedoomed Affordable Housing Unit (house) to be not less than X sqm; and</li> <li>2. £XXX for each X bedoomed Affordable Housing Unit (house) to be not less than X sqm;</li> </ol>
<b>"District Council's Housing Services Manager"</b>	means for the purposes of the Fourth Schedule the District Council's Housing Services Manager for the time being (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 them for the purposes of this Agreement;
<b>“Dwelling”</b>	means a dwelling (including a house, flat, bungalow or maisonette) to be constructed pursuant to the

Planning Permission and reference to "Dwellings" shall be construed accordingly;

**"Homes England"**

means Homes England or any bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act);

**"In Need of Accommodation"**

shall be interpreted as set out in part 3 of the Fourth Schedule;

**"Interest"**

means interest at 1 (one) per cent above the base lending rate of the Bank of England from time to time;

**"Management Company"**

means a limited company registered at Companies House which may already be in existence or which may be formed by the Owner for the purpose of carrying out future maintenance of the Open Space Land and / or if applicable managing other aspects of the Development and:

1. which is incorporated in England, Wales or Scotland;
2. which has its registered office in England; and
3. whose primary objects permit it to maintain and renew the Open Space Land and / or if applicable managing other aspects of the Development;

**"Market Housing Units"**

means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing Units and reference to "**Market Housing Unit**" shall be construed accordingly;

<b>"National Planning Policy Framework"</b>	means the National Planning Policy Framework published by the Ministry of Housing, Communities and Local Government in February 2019 (as updated in June 2019) (or any future guidance or initiative that replaces or supplements it);
<b>"Occupation"</b> and <b>"Occupied"</b> and <b>"Occupy"</b>	means occupation for the purposes permitted by the Planning Permission together with any Section 73 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;
<b>"Offer Documentation"</b>	means plans, drawings, specifications and other documentation which the Registered Provider may reasonably require in order to make an offer to take a transfer of the Affordable Housing Units;
<b>"Offer Period"</b>	means a period of 6 (six) months from issue by the Owner to a Registered Provider of the Offer Documentation for the Affordable Housing Units;
<b>"Off-Site Public Open Space/Play Area Contribution"</b>	means the sum of £XXX towards improvements to the play area located XXX as required as a consequence of the Development;
<b>"Open Space Land"</b>	means the area within the Development which is to be laid out and provided as public open space as shown on Plan 2;
<b>"Open Space Works"</b>	means the works to be carried out on the Open Space Land to provide the public open space in accordance with a condition(s) to the Planning Permission;
<b>"Open Space Works Scheme"</b>	means a scheme to be submitted to the Council for approval in accordance with the provisions of paragraph 3 of the Second Schedule such scheme to include:

1. a programme relating to timescales for implementation and completion of the Open Space Works; and
2. the future management and maintenance of the Open Space Land which shall include a requirement that following their completion the Open Space Land shall thereafter be retained repaired maintained and cleaned in accordance with the principles of good estate management and good horticultural practice;

<b>"Parish Council"</b>	means XXX;
<b>"Performance Bond"</b>	has the meaning ascribed in paragraph 3.4 of the Second Schedule;
<b>"Plan 1"</b>	means the plan attached to this Agreement at Annex 1 marked "Plan 1" showing the Site edged red;
<b>"Plan 2"</b>	means the plan attached to this Agreement at Annex 2 marked "Plan 2" showing the Open Space Land;
<b>"Planning Permission"</b>	means a planning permission subject to conditions to be granted by the District Council pursuant to the Application substantially in the form as set out in the Fifth Schedule;
<b>"Reasonable Endeavours"</b>	means that it is agreed by the Parties that the Party under such an obligation will not be required to take proceedings (including any appeal) in any court, public inquiry, or other hearing (unless specified to the contrary) but subject to these and to other terms of this deed such party will be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable to expect;

<b>"Receiver"</b>	has the meaning ascribed in paragraph 1.9.2 of the Second Schedule;
<b>"Registered Provider"</b>	means a 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 as may be proposed by the Owner and approved by the District Council;
<b>"Rented Affordable Housing Requirements"</b>	means the requirements set out in Part 1 of the Fourth Schedule;
<b>"Section 73 Permission"</b>	means a planning permission that may be granted by the District Council pursuant to section 73 of the 1990 Act which modifies deletes replaces or otherwise discharges any condition attached to the Planning Permission;
<b>"Shared Ownership Affordable Housing Requirements"</b>	means the requirements set out in Part 2 of the Fourth Schedule;
<b>"Shared Ownership Affordable Housing Units"</b>	means X of the Affordable Housing Units to be provided as part of the Development comprising of X x X bedroom houses to be constructed on plots XXX or in such other locations that may be agreed in writing between the District Council and the Owner which will be offered for disposal to a Registered Provider at the District Council's Agreed Disposal Price to be disposed of by the Registered Provider on a shared ownership, discounted sale, sub-market/intermediate rent, rent to buy basis or any other sub-market/intermediate type/model and which complies with either definition (c) "Discounted market sales housing" or definition (d) "Other affordable routes to home ownership" as set out within

Annex 2 of the National Planning Policy Framework and any other initiative which qualifies for Homes England funding and reference to "**Shared Ownership Affordable Housing Unit**" shall be construed accordingly;

<b>"Site"</b>	means the land against which this Agreement may be enforced comprising the land described in the First Schedule and shown for the purposes of identification only edged red on Plan 1;
<b>"Social Rent"</b>	means a rent determined in accordance with the Government's Rent Standard for which guideline target rents are determined through the national rent regime;
<b>"Social/Affordable Rented Affordable Housing Units"</b>	means X the Affordable Housing Units to be provided as part of the Development comprising of X x X bedroom houses to be constructed on plots XXX or in such other locations that may be agreed in writing between the District Council and the Owner which will be offered for Disposal to a Registered Provider at the District Council's Agreed Transfer Price and reference to " <b>Social/Affordable Rented Affordable Housing Unit</b> " and " <b>Rented Affordable Housing</b> " shall be construed accordingly;
<b>"Statutory Undertaker"</b>	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 television communications electricity gas water or drainage and any authorised successor to any such undertaking;
<b>"Surety"</b>	means the financial institution to be instructed by the Owners in accordance with the Performance Bond;
<b>"Transfer"</b>	means a transfer on a freehold or leasehold basis (with a minimum 125 (one hundred and twenty five) year

term) in relation to an Affordable Housing Unit and includes any re-transfer and reference to "**Transferred**" shall be construed accordingly;

**"Working Day"** means a weekday (Saturdays, Sundays and public holidays days excepted) and reference to "**Working Days**" shall be construed accordingly;

**"Works"** has the meaning ascribed in paragraph 1 of the Sixth Schedule;

**"Works Costs"** has the meaning ascribed in paragraph 3 of the Sixth Schedule;

## **2. Construction of this Agreement**

- 2.1 Where in this Agreement 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 Agreement.
- 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 Agreement shall include the successors in title to that Party and to any party or body deriving title through or under that Party or body and in the case of the District Council the successors to its statutory functions.

2.7 Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing.

3. **Legal Basis**

3.1 This Agreement is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement bind the Site and create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the District Council as the local planning authority against the Owner.

4. **Conditionality**

4.1 This Agreement is conditional upon and shall not become effective until the following conditions are satisfied:

(a) the grant of the Planning Permission; and

(b) the Commencement of Development

save for the provisions of Clauses 12, 13 and 14 (District Council's fees, jurisdiction and delivery clauses) and any other relevant provisions where the context so provides which shall come into effect immediately upon completion of this Agreement

5. **The Owner's Covenants**

5.1 The Owner covenants with the District Council to comply with the planning obligations in the Second Schedule and Fourth Schedule and the Owner and the Developer acknowledge that the Site will be bound by the planning obligations in the Second Schedule and the Fourth Schedule.

6. **The District Council's Covenants**

6.1 The District Council covenants with the Owner and the Developer as set out in the Fourth Schedule and where applicable in the Second Schedule.

7. **Miscellaneous**

7.1 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

7.2 This Agreement shall be registrable as a Local Land Charge by the District Council.

7.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council under the terms of this Agreement 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 the District Council's Housing and 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 as set out in this Agreement.

7.4 Following the performance and satisfaction of all the obligations in this Agreement the District Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

7.5 Insofar as any clause or clauses of this Agreement 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 Agreement.

7.6 Save where a Section 73 Permission has been granted which remains extant this Agreement 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.

7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission and any Section 73 Permission) granted (whether or not on appeal) after the date of this Agreement.

7.9 The Owner shall provide the District Council with:

7.9.1 no later than 10 (ten) days' prior notice in writing of the date of the Commencement of Development;

7.9.2 no later than 15 (fifteen) Working Days' prior notice in writing of the date of the Occupation of the:

(a) 10 (ten) Market Housing Unit; and

(b) 1<sup>st</sup> (first) and 9<sup>th</sup> (ninth) Dwelling;

on the Development.

7.10 The obligations in this Agreement shall not be enforceable against:

7.10.1 the owners, occupiers or tenants in occupation of a Market Housing Unit (or a mortgagee of an individual Market Housing Unit lending money to such owners, occupiers or tenants) constructed on the Site pursuant to the Planning Permission; or

7.10.2 the buyers, occupiers or tenants of an individual Affordable Housing Unit or a Registered Provider or a mortgagee, chargee or a Receiver of a Registered Provider or successor in title (save for the provisions of paragraph 1 of the Second Schedule which for the avoidance of doubt shall apply); or

7.10.3 a Statutory Undertaker which has an interest in any part of the Site solely for the purposes of its undertaking.

7.11 In the event that Section 73 Permission is granted (and the Council is satisfied that no revised planning obligations are required as a result of such Section 73 Permission) references to Planning Permission in this deed shall be to the Section 73 Permission 1990 and this Agreement shall apply to and remain in full force in respect of that Section 73 Permission without the need for a further agreement or a deed of variation to be entered into pursuant to Section 106 or Section 106A of the 1990 Act as the case may be.

## 8. **Waiver**

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

## 9. **Change in Ownership**

The Owner agrees with the District Council to give the District Council written notice within 5 (five) Working Days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Agreement 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 purchased by reference to a plan **PROVIDED THAT** it is agreed that the requirement for the Owner to give the District Council immediate written notice of any change in ownership of any of its interests in the Site will not apply in respect of individual residential plot sales.

10. **Interest**

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

11. **VAT**

All consideration (financial or otherwise) given in accordance with the terms of this Agreement shall be deemed to be inclusive of any Value Added Tax properly payable.

12. **Costs of this Agreement**

Prior to completion of this Agreement the Developer is to pay to the District Council the sum of £500.00 (five hundred Pound Sterling) legal costs in connection with the preparation, negotiation and completion of this Agreement.

13. **Jurisdiction**

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

14. **Delivery**

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

15. **Expert Determination**

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

- 15.1.1 in the case of any design requirement or matter regarding the Affordable Housing Units or any dispute of any sums payable or verification of any costs calculation pursuant to this Agreement the same shall be referred to an independent chartered surveyor of at least 15 (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;
- 15.1.2 in the case of any legal requirements 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 15 (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.

15.2 Any matter referred to an independent chartered surveyor or independent solicitor in accordance with clause 15.1 shall be appointed 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.

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

**FIRST SCHEDULE**

(Description of the Site)

means the land registered at the Land Registry under Title Number XXX being land as shown edged  
red on Plan 1

## **SECOND SCHEDULE**

(Owner's covenants with the District Council)

The Owner hereby undertakes and covenant with the District Council as follows:

### **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 together with any Section 73 Permission and approved plans or in accordance with any amended plans submitted to and approved by the District Council.
- 1.2 Before the expiry of a period of 6 (six) months following the Commencement of Development (unless otherwise agreed in writing by the District Council) the Owner shall:
  - 1.2.1 provide Offer Documentation in relation to the Affordable Housing Units to one or more Registered Providers and invite the/each Registered Provider to make a written offer to purchase the Affordable Housing Units at the District Council's Agreed Transfer Price within the Offer Period; and
  - 1.2.2 use Reasonable Endeavours to enter into a contract during the Offer Period with a Registered Provider for the disposal of the Affordable Housing Units (and beyond this period if negotiations with a particular Registered Provider continue).
- 1.3 In the event that the Registered Providers who received an invitation pursuant to paragraph 1.2 of this Schedule to purchase the Affordable Housing Units at the District Council's Agreed Disposal Price fail to enter into a contract with the Owner in respect of the of the Affordable Housing Units (or any unit thereof) on the terms of this Agreement within the Offer Period at no less than the District Council's Agreed Disposal Price the Owner shall notify the District Council's Housing and Planning Policy Manager within 14 (fourteen) days thereof and shall submit evidence of its compliance with paragraphs 1.2.1 and 1.2.2 of this Schedule to the District Council's Housing and Planning Policy Manager together with evidence from the Registered Providers that they are not willing to purchase the Affordable Housing Units (if such evidence is available).
- 1.4 If the District Council's Housing and Planning Policy Manager confirms his approval in writing that he is satisfied that the Owner have complied with paragraphs 1.2.1 and 1.2.2 of this Schedule and no reasonable offers have been received from the Registered Providers during the Offer Period at no less than the District Council's Agreed Disposal Price then the Owner shall

pay to the Council an Affordable Housing Commuted Sum and thereafter shall be able to transfer the Affordable Housing Units (or any unit thereof) on the open market free from the obligations in this Schedule and the Fourth Schedule.

1.5 Unless otherwise agreed in writing by the District Council not to Occupy or allow to be Occupied more than 10 (ten) of the Market Housing Units until:

- 1.5.1 the Affordable Housing Units have been constructed completed and Transferred to a Registered Provider at the District Council's Agreed Transfer Price; or
- 1.5.2 an Affordable Housing Commuted Sum in lieu of on-site Affordable Housing equivalent to X the Affordable Housing Units has been paid to the District Council in accordance with paragraph 1.4 of this Schedule; or
- 1.5.3 all X of the Affordable Housing Units have been provided through a combination of Affordable Housing Units being constructed, completed and Transferred to a Registered Provider at the District Council's Agreed Transfer Price and an Affordable Housing Commuted Sum in lieu of on-site Affordable Housing in accordance with paragraph 1.4 of this Schedule;

**PROVIDED THAT** on production to the District Council of a certified copy of the executed and dated disposal between the Owner and a Registered Provider or upon the Council receiving the Affordable Housing Commuted Sum in lieu of Affordable Housing in accordance with paragraph 1.4 of this Schedule or a combination of the two if appropriate the relevant obligations to provide Affordable Housing Units hereunder shall be discharged.

1.6 To notify the District Council in writing 7 (seven) days prior to the Commencement of Development of any Dwellings.

1.7 Not to Occupy or allow the Affordable Housing Units to be Occupied other than by a person or persons who at the time of their first Occupation are In Need of Accommodation and have occupied the Affordable Housing Units in accordance with the Rented Affordable Housing Requirements or the Shared Ownership Affordable Housing Requirements as the case may be.

1.8 It is agreed that the proportion of Affordable Housing Units shall be:

- 1.8.1 X Affordable Housing Units let (or to be let) at a Social Rent or an Affordable Rent or a combination of the two;

1.8.2 X Affordable Housing Units Transferred (or to be Transferred) by the Registered Provider, or the Owner in respect of any starter homes, as Shared Ownership Affordable Housing Units;

or such alternative different tenure split that may be agreed in writing between the Owner and the District Council.

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

1.9 It is agreed that the obligations in paragraphs 1.1 to 1.8 (inclusive) of this Schedule and in the Fourth Schedule inclusive shall not apply or be binding:

1.9.1 following the exercise by any person of a statutory right to buy, right to acquire or upon any person or mortgagee, chargee or receiver (including and administrative receiver) exercising a right to staircase out and take a subsequent freehold interest under the terms of a shared ownership lease based substantially on Homes England's model lease from time to time; or

1.9.2 upon any mortgagee or chargee or any receiver (including and 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 including a housing administrator (however appointed whether pursuant to statutory powers or the provisions of any mortgage or charge as required by Court Order or otherwise) including a housing administrator (each a "**Receiver**") of the whole or any part of the Affordable Housing Units or any persons deriving title through such mortgagee, chargee or Receiver; or

1.9.3 any subsequent disposition of the Affordable Housing Units following a disposal falling within paragraph 1.9.1 or 1.9.2 of this Schedule.

**PROVIDED THAT** any sums received by a Registered Provider resulting from the disposals of any units pursuant to paragraphs 1.9.1 to 1.9.3 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 1.9.1 to 1.9.3 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.

1.8 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 (thirty) Working Days prior notice to the District Council of its intention to dispose and:

- 1.8.1 in the event that the District Council responds within 30 (thirty) 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;
- 1.8.2 if the District Council does not serve its response to the notice served under paragraph 1.8.1 of this Schedule within 30 (thirty) Working Days then the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Schedule;
- 1.8.3 if the District Council or any other person cannot within 2 (two) months of the date of service of its response under paragraph 1.8.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.8 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 1.8 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.

#### **Affordable Housing Contribution**

1.10 To pay the Affordable Housing Contribution to the District Council prior to the Occupation of 9 (nine) of the Market Housing Dwellings and not to Occupy 9 (nine) of the Market Housing Dwellings until the Affordable Housing Contribution has been paid to the District Council.

#### **2 Off-Site Public Open Space/Play Area Contribution**

2.1 To pay the Off-Site Public Open Space/Play Area Contribution to the District Council prior to the Occupation of any of the Market Housing Dwellings and not to Occupy any of the Market Housing Dwellings until the Off-Site Public Open Space/Play Area Contribution has been paid to the District Council.

### 3 Open Space Land

3.1 Not to Commence Development until an Open Space Works Scheme has been submitted to and approved by the District Council.

3.2 Within 30 (thirty) Working Days (or within such other time period of not more than an additional 20 (twenty) Working Days that the District Council may reasonably require and which it notifies the Owner of within the initial 30 (thirty) Working Day period) of the District Council receiving from the Owner the Open Space Works Scheme the District Council will notify the Owner in writing of its approval to the Open Space Works Scheme proposed by the Owner or will acting reasonably provide in writing its proposed amendments to the Open Space Works Scheme pursuant to which the Owner acting reasonably shall submit a revised Open Space Works Scheme incorporating those amendments as are reasonable and accepted **PROVIDED THAT** if the District Council does not notify the Owner of its approval or proposed amendments to the Open Space Works Scheme within the 30 (thirty) Working Days referred to above (or such other period of time of not more than an additional 20 (twenty) Working Days that may be agreed in writing) it shall be deemed that the District Council has approved the Open Space Works Scheme submitted by the Owner **AND FURTHER PROVIDED THAT** if agreement cannot be reached between the District Council and the Owner within 50 (fifty) Working Days of receipt of the Open Space Works Scheme by the District Council (or such other period of time that may be agreed in writing) then the provisions of Clause 15 relating to expert determination can be invoked by any Party in relation to only those matters that are in dispute.

3.3 Upon receipt of the District Council's approval or deemed approval to the Open Space Works Scheme pursuant to paragraph 3.2 of this Schedule (or upon receipt of expert determination in relation to the Open Space Works Scheme if applicable) the Owner shall deliver the Open Space Works in accordance with the implementation programme agreed as part of that Open Space Works Scheme (unless otherwise agreed in writing by the District Council) **PROVIDED THAT** in the event of non-compliance with the provisions of this paragraph the Owner will be bound by the default provisions contained in the Sixth Schedule.

3.4 Upon the commencement of provision of the Open Space Works to:

3.4.1 pay to the District Council (or otherwise secure in a manner acceptable to the District Council) a reasonable sum (to be determined by the District Council and notified to the Owner by the District Council in writing and acting reasonably) representing the cost for the laying out and landscaping of the Open Space Land by the District Council

in the event of non-compliance by the Owner with the provisions of paragraph 3.3 of this Schedule; or

3.4.2 provide to the District Council a written bond in a form provided by the Surety approved by the District Council which has the same effect;

**(“Performance Bond”)** **PROVIDED THAT** it is agreed that if the amount of a Performance Bond cannot be agreed between the District Council and the Owner within 30 (thirty) Working Days of the commencement of provision of the Open Space Works (or such other period of time that may be agreed in writing) then the provisions of Clause 15 relating to expert determination can be invoked by any party in relation to only those matters that are in dispute.

3.5 Upon the District Council confirming in writing that the Open Space Works Scheme has been completed to its reasonable satisfaction to transfer the Open Space Land to:

3.5.1 a Management Company (having first supplied to the District Council a certified copy of the Memorandum and Articles of Association of the Management Company) on the terms agreed between the Owner and the Management Company in consultation with the District Council and all further maintenance shall be thereafter carried out by the Management Company; or

3.5.2 the Parish Council on the terms agreed between the Owner and the Parish Council in consultation with the District Council and all further maintenance shall be thereafter carried out by the Parish Council;

**PROVIDED THAT** it shall be a term of the transfer that the Management Company or the Parish Council as the case may be will only allow the use of the Open Space Land for public access and recreation and for no other purpose and will maintain the Open Space Land in accordance with the approved Open Space Works Scheme.

3.6 Not use or allow or permit the use of the Open Space Land for any purpose than as open space in accordance with the Open Spaces Act 1906 or any other successor provision in force from time to time.

3.7 To allow the public access to the Open Space Land on foot and where applicable bicycle only at all times but subject to the following provisions:

3.7.1 public access to the Open Space Land shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner or the Management Company or the Parish Council as the case may be having regard to overriding reasons

of safety, security and prudent management **PROVIDED THAT** such requirements and regulations shall not be imposed without the District Council's prior approval **SAVE ALWAYS FOR** any temporary requirements and/or regulations which are imposed in the event of an emergency;

- 3.7.2 the Owner or the Management Company or the Parish Council as the case may be may erect notices on the Open Space Land and access to them may be denied by the Owner or the Management Company or the Parish Council as the case may be for 1 (one) day each year in order to prevent public rights of way or common rights coming into being;
- 3.7.3 access may be denied by the Owner or the Management Company or the Parish Council as the case may be for the maintenance, repair, cleansing or renewal of the Open Space Land or any building or land abutting it subject to the District Council's prior approval;
- 3.7.4 the Owner or the Management Company or the Parish Council as the case may be may close the Open Space Land or any part thereof for reasonable periods by reason of:
  - (a) emergency;
  - (b) cleansing, maintenance and repair;
  - (c) at the direction of the emergency services or other lawful authority;
- 3.7.5 to ensure that the Open Space Land is kept in a clean and tidy and safe state and properly maintained in accordance with the Open Space Works Scheme.

3.8 The Owner hereby declare that pursuant to Section 31(6) Highways Act 1980 that the Open Space Land has not been dedicated to the public nor is any use by the public of any part of the Open Space Land to be taken in any way as an intention by the Owner to dedicate the same as highway.

### **THIRD SCHEDULE**

(The District Council's covenants with the Owner)

The District Council hereby undertakes and covenants with the Owner as follows:

#### **1. Affordable Housing Commuted Sum & Affordable Housing Contribution**

- 1.1 To pay the Affordable Housing Contribution and if applicable the Affordable Housing Commuted Sum into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable.
- 1.2 To apply the Affordable Housing Contribution and if applicable the Affordable Housing Commuted Sum towards the purposes specified in this Agreement and not apply the Affordable Housing Contribution and if applicable the Affordable Housing Commuted Sum for any other purposes and the Council shall (on the reasonable written request of the payee or the payee's nominee) provide evidence that the monies have been so applied.
- 1.3 In the event that the Affordable Housing Contribution and/or if applicable the Affordable Housing Commuted Sum have not been spent by the Council within 10 (ten) years following the date of receipt the Council shall refund to the Owner (or the Owner's nominee) any part of the Affordable Housing Contribution and/or if applicable the Affordable Housing Commuted Sum which has not been spent, together with any accrued Interest.

#### **2. Off-Site Public Open Space/Play Area Contribution**

- 2.1 To pay the Off-Site Public Open Space/Play Area Contribution into a separately identified interest-bearing section of the District Council's combined accounts as soon as reasonably practicable.
- 2.2 To apply the Off-Site Public Open Space/Play Area Contribution towards the purposes specified in this Agreement and not apply the Off-Site Public Open Space/Play Area Contribution for any other purposes and the District Council shall (on the reasonable written request of the payee or the payee's nominee) provide evidence that the monies have been so applied.
- 2.3 In the event that the Off-Site Public Open/Play Area Contribution has not been spent by the District Council within 7 (seven) years following the date of receipt of the final instalment the District Council shall refund to the Owner (or the Owner's nominee) any part of the Off-Site Public Open Space/Play Area Contribution which has not been spent, together with any accrued Interest.

### **3. Open Space Land**

3.1 If the Owner comply in all respects with the provisions of paragraph 3 of the Second Schedule then upon completion by it of the Open Space Works to the reasonable satisfaction of the District Council under the hand of the District Council's Housing Services Manager to:

3.1.1 repay to the Owner or its nominee the Performance Bond together with Interest from the date of payment of the Performance Bond to the District Council until the date of the repayment of the Performance Bond; and/or (as the case may be);

3.1.2 release the Owner and the Surety from the written bond as the case may be.

### **4. Discharge of Obligations**

4.1 At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed.

**FOURTH SCHEDULE**  
(Affordable Housing Requirements)

The Owner hereby undertake and covenant with the District Council as follows:

**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 (twelve) 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 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 (twelve) months; or
  - (b) has within the last 10 (ten) years prior to such allocation been ordinarily resident in the XXX Hinterland for a period of at least 5 (five) years; or
  - (c) has immediately prior to such allocation a mother, father, son or daughter or some other close relative approved in writing by the District Council's Housing and Planning Policy Manager who has been ordinarily resident in the XXX Hinterland for at least 12 (twelve) 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 an Executive Director of the District Council) who has been ordinarily resident in XXX Hinterland for at least 12 (twelve) months ; or

- (e) has immediately prior to such allocation been in permanent employment in the XXX Hinterland for a period of at least 6 (six) months out of the last 12 (twelve) 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 of this Part of this Schedule as confirmed in writing by the District Council's Housing and Services Manager then the Owner shall allocate the unit of accommodation to a person who is In Need of Accommodation and who:

- (a) has immediately prior to such allocation been ordinarily resident within the Hambleton District (as defined in the District Council's Local Plan) for a period of at least 12 (twelve) months; or
- (b) has within the last 10 (ten) years prior to such allocation been ordinarily resident in the Hambleton District (as defined in the District Council's Local Plan) for a period of at least 5 (five) years; or
- (c) has immediately prior to such allocation a mother, father, son or daughter or other close relative approved in writing by the District Council's Housing and Planning Policy Manager who has been ordinarily resident in the Hambleton District (as defined in the District Council's Local Development Framework) for at least 12 (twelve) 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 an Executive Director of the District Council ) who has been ordinarily resident in the XXX Hinterland for at least 12 (twelve) months; or
- (e) has immediately prior to such allocation been in permanent employment in the Hambleton District for a period of at least 6 (six) months out of the last 12 (twelve) months or is taking up permanent employment in the Hambleton District (as defined in the District Council's Local Plan);

but if there is no such person then to any person In Need of Accommodation as nominated 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.

4. At all times in allocating or managing the Social/Affordable 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 the Social Rent or the Affordable Rent as the case may be;

**PROVIDED THAT** the District Council accepts that under its Choice Based Lettings Scheme or any other replacement lettings scheme (if any) a tenant of a Registered Provider may have a right to transfer into occupation of a Social/Affordable Rented Affordable Housing Unit who is not at the time of first occupying such a unit In Need of Accommodation **BUT FURTHER PROVIDED THAT** all the obligations in this paragraph shall be subject to paragraph 1.9 of the Second Schedule

## PART 2

### Shared Ownership Affordable Housing Requirements

[RESTRICTIONS WILL NOT BE APPLIED WHERE ANY OF THE SHARED OWNERSHIP HOMES ARE BEING FUNDED BY HOMES ENGLAND GRANT]

1. Upon completion of construction of the Shared Ownership Affordable Housing Units and at all times subsequently upon an Shared Ownership Affordable Housing Unit becoming unoccupied to allocate or sell each unoccupied unit of accommodation to a person who 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 (twelve) months; or
  - (b) has within the last 10 (ten) years prior to such allocation been ordinarily resident in the XXX Hinterland for a period of at least 5 (five) years; or

- (c) has immediately prior to such allocation a mother, father, son or daughter or some other close relative approved in writing by the District Council's Housing and Planning Policy Manager who has been ordinarily resident in the Bedale Hinterland for at least 12 (twelve) 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 an Executive Director of the District Council ) who has been ordinarily resident in XXX Hinterland for at least 12 (twelve) months; or
- (e) has immediately prior to such allocation been in permanent employment in the XXX Hinterland for a period of at least 6 (six) months out of the last 12 (twelve) months or is taking up permanent employment in the XXX Hinterland.

2. If upon an Shared Ownership Affordable Housing Unit becoming available for occupation whether on completion of the construction of the Shared Ownership Affordable Housing Unit or at any time subsequently the Registered Provider is unable to fill any vacancy arising in accordance with paragraph 1 of this Part of this Schedule as confirmed in writing by the District Council's Housing and Service Manager then the Owner shall allocate the unit of accommodation to a person In Need of Accommodation and who:

- (a) has immediately prior to such allocation been ordinarily resident within the Hambleton District (as defined in the District Council's Local Plan) for a period of at least 12 (twelve) months; or
- (b) has within the last 10 (ten) years prior to such allocation been ordinarily resident in the Hambleton District (as defined in the District Council's Local Plan) for a period of at least 5 (five) years; or
- (c) has immediately prior to such allocation a mother, father, son or daughter or other close relative approved in writing by the District Council's Housing and Planning Policy Manager who has been ordinarily resident in the Hambleton District (as defined in the District Council's Local Plan) for at least 12 (twelve) 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 an Executive Director of the District Council) who has been ordinarily resident in the Hambleton District (as defined in the District Council's Local Plan for at least 12 (twelve) months; or

(e) has immediately prior to such allocation been in permanent employment in the Hambleton District or is taking up permanent employment in the Hambleton District (as defined in the District Council's Local Plan);

but if there is no such person then to any person In Need of Accommodation as nominated by the District Council's Housing and Services Manager but if there is no such person then to any other person In Need of Accommodation **PROVIDED THAT** all the obligations in this paragraph shall be subject to paragraph 1.9 of the Second Schedule.

### **PART 3**

#### Definition of In Need of Accommodation

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 4**

(Definition of XXX Hinterland)

The hinterland of XXX as follows:

[LIST PARISHES]

**FIFTH SCHEDULE**  
**(Form of notice of planning permission)**

**SIXTH SCHEDULE**  
**(Open Space Land - Default Provisions)**

1. If the Owner has not completed the Open Space Works Scheme in accordance with the implementation programme agreed as part of the Open Space Works Scheme then (subject to any variations that may be agreed in writing between the District Council and the Owner) the District Council shall be permitted to enter upon the Site and carry out such works as it deems necessary to implement and complete the Open Space Works Scheme (“**Works**”).
2. The Owner shall indemnify the District Council its servants agents and contractors in respect of any claims for loss damage or injury made by any persons as a consequence of entry by the District Council upon the Site and carrying out the Works save in the case of negligence on the part of the District Council its servants agents and contractors.
3. Upon completion of the Works the District Council shall calculate the cost to itself (including administrative costs) of carrying out the Works (“**Works Costs**”) and shall return to the Owner the balance of the Performance Bond after deduction of the Works Costs.
4. Upon the completion of the Works the Owner shall procure the maintenance of the Open Space Land in accordance with the provisions of paragraph 3.5 of the Second Schedule.

**SEALED** as a **DEED** for )  
and on behalf of )  
**HAMBLETON DISTRICT COUNCIL** )

Authorised Signatory

**EXECUTED** as a **DEED** )  
(but not delivered until the date hereof) by )  
**XXX** )  
in the presence of: )

Witness Signature

Witness Name

Address

**EXECUTED** as a **DEED** on behalf of )  
**XXX** )  
acting by a director ) Director  
the presence of: )

Witness's signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**Annex 1**  
**(Plan 1)**

**Annex 2**  
**(Plan 2)**