

DATED

201

**SCARBOROUGH BOROUGH COUNCIL (1)**

***[INSERT NAME OF THE OWNER] (2)***

***[INSERT NAME OF THE DEVELOPER (3)]***

***[INSERT NAME OF THE MORTGAGEE (4)]***

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**AGREEMENT**

pursuant to section 106

of the Town and Country Planning Act 1990 (as amended)

relating to the development of land at ***[insert details of the Land]***

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Director of Democratic and Legal Services

Scarborough Borough Council

Town Hall

St Nicholas Street

Scarborough

YO11 2HG

**THIS DEED** is made the

day of

201

**BETWEEN: -**

**(1) SCARBOROUGH BOROUGH COUNCIL** of Town Hall, St Nicholas Street, Scarborough, North Yorkshire, YO11 2HG (the "Borough Council");

**(2) [insert details]**

(the "Owner")

**[(3) Insert details of any other interested party e.g. Developer**

**("the Developer")]**

**[(4) (insert details of mortgage company)**

**(the "Mortgagee")]**

**[NB - If the Owner is a company a Surety may be required]**

**WHEREAS:**

(A) The Borough Council is the local planning authority for the purposes of the Act for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable.

(B) The Owner is registered at the Land Registry as proprietor of the Land with title absolute under Title Number [ **INSERT DETAILS** ]

[(C) *The Developer has an interest in the Land by way of a [insert details] dated [insert date] and made between the Owner and the Developer*]

[(D) *The Mortgagee has an interest in the Land by way of a registered charge dated [insert date] and made between the Mortgagee and the Owner*]

(E) The Owner submitted the Planning Application to the Borough Council for permission to carry out the Development on the Land.

(F) The Borough Council resolved on **[INSERT DETAILS]** to grant the Planning Permission for the Development subject to the making of this Deed without which Planning Permission would not be granted.

**OR**

The Borough Council is minded to grant the Planning Permission for the Development subject to the making of this Deed without which Planning Permission would not be granted.

(G) The Owner by entering into this Deed does so to create planning obligations in favour of the Borough Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Deed.

**NOW THIS DEED WITNESSES** as follows:

## **1 DEFINITIONS AND INTERPRETATION**

1.1 In this Deed the following words and expressions shall where the context so requires or admits have the following meanings: -

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

**“Affordable Housing<sup>1</sup>”** means housing including social rented affordable rented and low cost home ownership dwellings provided to specified eligible households whose needs are not met by the market and should: -

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<sup>1</sup> Definition for On Site Affordable Housing

- meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices
- include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision;

**“Affordable Housing”<sup>2</sup>** has the meaning given to it in Annex 2 of the “National Planning Policy Framework” published by the Department for Communities and Local Government

**“Affordable Housing Commuted Sum”<sup>1</sup>** means 60% of the Market Value of each Affordable Housing Unit sold on the open market in accordance with paragraph 1 of the Third Schedule;

**“Affordable Housing Contribution”<sup>2</sup>** Means the sum of [£ ( pounds)] (Index Linked) to be paid towards the cost of the provision of Affordable Housing within the Borough

**“Affordable Housing Scheme”<sup>1</sup>** means a scheme providing details of the proposed Affordable Housing Units to be provided within each Phase of the Development;

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<sup>2</sup> Definition for Affordable Housing Contribution

**“Affordable Standards”<sup>1</sup>**                      **Housing** means such specifications and standards as shall meet the Homes and Communities Agency’s current Design and Quality Standards (DQS) and Code for Sustainable Homes (CSH) standards as may from time to time be published by the Homes and Communities Agency (or such other standards and specifications as may be agreed between the Owner and the Registered Provider in consultation with the Borough Council within 10 Working Days of receipt of the full standards and specifications showing the original Homes and Communities Agency standards and specification for the Affordable Housing Units compared with the proposed other standards and specification) and shall be visually indistinguishable from the Open Market Dwellings unless otherwise agreed between the Owner and the Registered Provider in consultation with the Borough Council;

**“Affordable Housing Units”<sup>1</sup>** means *[insert number or %]* Dwellings which are to be constructed on the Land and which are to be Affordable Housing and **“Affordable Housing Unit”** shall mean an individual one of the Affordable Housing Units;

**“Affordable Rent”<sup>1</sup>** means an affordable rent of no more than 80% of the local market rent for *[insert region/area]*;

**“Affordable Rented** means *[insert no.]* of the total number of

**Dwellings”<sup>1</sup>**

Affordable Housing Units comprising: -

*[insert plot no’s ]*

or in such alternative locations or unit types as may be agreed in writing with the Borough Council which are to be constructed on the Land which will be offered for transfer to a Registered Provider at the Affordable Rented Dwelling Price and let to households who are eligible for social rented housing at the Affordable Rent and reference to “**Affordable Rented Dwelling**” shall mean any of the Affordable Rented Dwellings;

**“Affordable Rented Dwelling Price”<sup>1</sup>**

**Rented** means a price that will enable the Registered Provider to charge an Affordable Rent;

**“Approved Person”<sup>1</sup>**

means a person or persons identified in accordance with the procedure as set out in the Fifth Schedule;

**“Commencement of Development”**

**of** means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the Act **save that** the term “*material operation*” shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office or erection of

fencing to site boundary and reference to “Commence Development” and “Commencement of Development of each Phase of the Development” shall be construed accordingly;

**“Development”**

means the development to be carried out on the Land pursuant to the Planning Permission;

**“Dwelling”<sup>1</sup>**

means a residential unit that may be built on the Land as part of the Development and reference to “Dwellings” shall be construed accordingly;

**“Education Contribution”<sup>3</sup>**

*(precise wording may be subsequently amended by Council)*

means the sum of [£ ( pounds)] (Index Linked) to be paid to the Borough Council as a contribution towards *[leave blank - unless specific details have been indicated by the Borough Council]*

**“Family Member”<sup>1</sup>**

means a member of the family of a person who is entitled by virtue of the terms of this Deed to occupy a LCHO Dwelling, in that they are either: -

(a) a spouse of that person, or they are living together as husband and wife or partner;  
or

(b) a dependent parent, brother, sister, daughter or son of that person

and for the purposes of this definition a

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<sup>3</sup> Definition for Education Contribution

relationship by marriage shall be treated as a relationship by blood, a relationship of the half blood shall be related as a relationship of the whole blood, the step-child of a person shall be treated as their child and an illegitimate child shall be treated as the legitimate child of their mother and reputed father;

**“First Occupation”**

means the first occupation of a Dwelling excluding all subsequent occupation and reference to **“First Occupies”** and **“First Occupier”** shall be construed accordingly;

**“Government Target Rents”<sup>1</sup>**

means the target rents published by the Homes and Communities Agency as amended from time to time;

**“Homes and Communities Agency”<sup>1</sup>**

means the Homes and Communities Agency or any body undertaking the existing functions of the Homes and Communities Agency 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);

**“Housing Need”<sup>1</sup>**

means the need for housing as defined in the Borough Council’s housing allocation policy from time to time;

**“Index”**

means the Building Costs Information All in Tender Price Index published by the Royal Institution of Chartered Surveyors (or contained in any official publication substituted



therefore) or such other index as may from time to time be published in substitution thereof;

**“Index Linked”**

means increased on an annual basis or pro rata per diem from the date of this Deed until such time that payment of any sum in this Deed is made such index linking to be equivalent to any inflationary increase in such sums taking as the basis for the measure of inflation the Index last published before the date of this Deed or any publication substituted for it;

**“Interest”**

means interest at the rate of 2% above the base lending rate of the Bank of England in force at the due date which shall mean the date when interest first becomes payable;

**“Land”**

means the land at **[insert details]** which is for the purposes of identification shown edged in red on the Plan

**"LCHO Dwellings"<sup>1</sup>**

means **[insert no.]** of the total number of Affordable Housing Units for low cost home ownership comprising: -

**[insert details/plot no's]**

or in such alternative locations or unit types as may be agreed in writing with the Borough Council which are to be constructed on the Land that will be for shared ownership, shared equity, discounted sale submarket rent, rent to homebuy, or any such other form

of intermediate affordable housing that meets the criteria of Annex 2 to the National Planning Policy Framework (or any official publication substituted therefore) to be agreed between the Owner and the Borough Council and which, for the avoidance of doubt, should include any initiative subject to receipt of Homes and Communities Agency funding which will be offered for transfer to a Registered Provider at the LCHO Dwelling Price and reference to “**LCHO Dwelling**” shall mean any of the LCHO Dwellings;

**“LCHO Dwelling Price”<sup>1</sup>**

means a price not exceeding 50% of the Market Value for an equivalent Open Market Dwelling;

**“Management Company”<sup>4</sup>**

means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes of carrying out future maintenance of the Play, Green Space and Sports Facilities and :-

1. which is incorporated in England and Wales;
2. which has a registered office in England; and
3. whose primary objects permit it to maintain and renew the Play, Green Space and Sports Facilities;

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|--|---|
| <b>“Market Value”</b> <sup>1</sup>         | means the amount for which a relevant Dwelling should sell on the date of valuation between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;    |
| <b>“Monitoring Fee”</b>                    | means the sum of [£ ( pounds)] (Index Linked) payable towards the Borough Council’s reasonable costs of monitoring compliance with the obligations in this Deed;  |
| <b>“Nominee”</b> <sup>1</sup>              | means a person from the Borough Council’s housing waiting list being nominated as a potential purchaser of the respective LCHO Dwelling;  |
| <b>“Occupation”</b>                        | means the beneficial occupation for the purpose for which a Dwelling was granted planning permission but shall exclude occupation for the purposes of decoration, fit out or marketing and reference to <b>“Occupy”</b> and <b>“Occupied”</b> shall be construed accordingly; |
| <b>“Open Market Dwelling”</b> <sup>1</sup> | means a residential unit that is built on the Land as part of the Development which is not an Affordable Housing Unit and reference to <b>“Open Market Dwellings”</b> shall be construed accordingly;   |
| <b>“Phase”</b> <sup>1</sup>                | means a phase of the Development which may be agreed between the Owner and the  |

Borough Council and reference to “Phases” shall be construed accordingly;

**“Plan”** means the plan attached at the First Schedule;

**“Planning Application”** means the application submitted by the Owner to the Borough Council and validated by the Borough Council on *[insert details]* for permission for *[insert details]* and allotted reference *[insert details]*;

**“Planning Permission”** means a planning permission issued by the Borough Council pursuant to the Planning Application substantively in the form attached at the Second Schedule

**“Play, Green Space and Sports Facilities”<sup>4</sup>** means the areas within the Development which are to be identified as open space (whether or not provided with play and/or sports facilities) and made available for public use and provided in accordance with paragraph **[ 3 ]** of the Third Schedule;

**“Play, Green Space and Sports Facilities Commuted Sum”<sup>4</sup>** means the sum of **[£ ( pounds)]** (Index Linked) to be paid by the Owner to the Borough Council in accordance with the provisions of paragraph **[ 3 ]** of the Third Schedule;

**“Play/ Green Space/ Sports Facilities Contribution”<sup>5</sup>** Means the sum of **[£ (pounds)]** (Index Linked) to be paid towards the provision of

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<sup>4</sup> Definition for On Site Play, Green Space and Sports Facilities

*\*(precise wording may be subsequently amended by Council)* ***[leave blank - unless specific details have been indicated by the Borough Council]***

**“Play, Green Space and Sports Facilities Scheme”<sup>4</sup>** means a scheme to provide manage and maintain the Play, Green Space and Sports Facilities to include details of: -

i) the parts of the Land where the Play, Green Space and Sports Facilities is to be provided;

ii) planting plans and specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants and proposed numbers and densities;

iii) a programme relating to timescales for implementation;

iv) the proposed maintenance of the Play, Green Space and Sports Facilities setting out how it will be repaired maintained and cleaned in accordance with the principles of good estate management and good horticultural practice; and

iv) the proposed long term ownership and management of the Play, Green Space and Sports Facilities;

**“Practical Completion”<sup>1</sup>** means the issue of a certificate(s) of practical completion in relation to any aspect of the Development by an architect or such other

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<sup>5</sup> Definition for Off Site Play/ Green Space/ Sports Facilities

person who has been supervising the Development;

**“Registered Provider”<sup>1</sup>**

means a registered provider operating in the area of the Land as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered by the Tenant Services Authority under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant as may be proposed by the Owner and approved by the Borough Council;

**“Report”<sup>1</sup>**

means a report to be submitted by the Owner to the Borough Council at three monthly intervals following the Commencement of Development of the first Dwelling detailing the date of:-

1. Commencement of Development of each Dwelling; and
2. First Occupation of each Dwelling

within each preceding three month period up until the Practical Completion of the Development;

**“Second Nominee”<sup>1</sup>**

means a second person from the Borough Council’s housing waiting list to be nominated as a potential purchaser of the respective

LCHO Dwelling;

**"Social Rent"<sup>1</sup>**

means a rent which is comparable to the average rents charged in the Borough Council's administrative area by Registered Providers for properties of an equivalent type age and floor area to the Social Rented Dwellings (in accordance with the Government Target Rents) and any increases or decreases shall be in accordance with the Registered Provider's rent setting policy and the Homes and Communities Agency's guidance at the time;

**"Social Rented Dwellings"<sup>1</sup>**

means *[insert no.]* of the total number of Affordable Housing Units comprising: -

*[insert plot no's ]*

or in such alternative locations or unit types as may be agreed in writing with the Borough Council which will be offered for transfer to a Registered Provider at the Social Rented Dwelling Price and let to occupiers and reference to **"Social Rented Dwelling"** shall mean any of the Social Rented Dwellings;

**"Social Rented Dwelling Price"<sup>1</sup>**

means a price that will enable the Registered Provider to charge a Social Rent;

**"Third Nominee"<sup>1</sup>**

means a third person from the Borough Council's housing waiting list to be nominated as a potential purchaser of the respective LCHO Dwelling;

**“Transport Contribution”<sup>6</sup>** Means the sum of [£ ( pounds)] (Index Linked) to be paid towards the provision of *[leave blank - unless specific details have been indicated by the Borough Council]*

*(precise wording may be subsequently amended by Council)*

**“Working Day”** means any day except Saturdays Sunday or a bank holiday and reference to **“Working Days”** shall be construed accordingly.

## **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 shall 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 severally 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.

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<sup>6</sup> Definition for Transport Contribution



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 Borough Council the successors to its statutory functions.

2.7 The headings are for reference only and shall not affect construction.

### **3 LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act and all other 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 Borough Council as local planning authority against the Owner and any person deriving title under him.

### **4 CONDITIONALITY**

4.1 The planning obligations contained in this Deed shall not become effective until the following conditions are satisfied: -

4.1.1 the Planning Permission has been granted; and

4.1.2 unless otherwise stated the Commencement of Development

save for the provisions of clauses 7.1, [7.2], 8, 11, 15 and 16 which shall come into effect immediately upon completion of this Deed.

### **5 THE OWNER'S COVENANTS**

The Owner hereby covenants with the Borough Council so as to bind the Land to perform the obligations and observe the restrictions specified in the Third Schedule.

### **6 THE BOROUGH COUNCIL'S COVENANTS**

The Borough Council covenants with the Owner to perform the obligations and observe the restrictions specified in the Fourth Schedule.

## 7 MISCELLANEOUS

- 7.1 The Owner shall pay to the Borough Council on completion of this Deed the sum of £ [ ? ] ([ ? ] pounds) being a contribution to the reasonable legal costs of the Borough Council incurred in the negotiation, preparation and execution of this Deed
- [7.2 The Owner shall pay to the Borough Council on completion of this Deed the sum of £ [ ? ] ([ ? ] pounds) being the Borough Council's planning drafting charge]*
- 7.3 This Deed does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999.
- 7.4 This Deed shall be registrable as a local land charge by the Borough Council.
- 7.5 Following the performance and satisfaction of all the planning obligations contained in this Deed the Borough Council shall following receipt of a written request forthwith effect the cancellation of all related entries in the Register of Local Land Charges in respect of this Deed.
- 7.6 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.
- 7.7 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.

- 7.8 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 Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 The covenants contained in this Deed shall not be enforceable against a statutory undertaker holding an interest in the Land for the purposes of his or its undertaking
- 7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.11 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.12 Any notice agreement consent acknowledgment or approval required to be given under this Deed shall not be unreasonably withheld or delayed and shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or facsimile transmission.
- 7.13 The address for service of any such notice consent acknowledgment or approval as aforesaid shall: -
- 7.13.1 in the case of service upon the Borough Council be at its address aforesaid or such other address for service as shall have been previously notified by the Borough Council; and
- 7.13.2 in the case of service upon the Owner, be the registered offices or such other address for service as shall have been previously notified by the Owner to the Borough Council.
- 7.14 A notice agreement consent acknowledgment or approval under this Deed shall be deemed to have been served as follows: -

7.14.1 if personally delivered at the time of delivery;

7.14.2 if posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;

7.14.3 if sent by facsimile transmission at the time of successful transmission on the day of transmission if sent before 3.30pm otherwise the following working day;

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid or recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be.

## **8 DISPUTE RESOLUTION**

8.1 If the terms of any conveyance transfer or other disposal (including any contract thereof) cannot be agreed by the Owner and the Borough Council and / or any dispute or difference arises between the parties as to their respective rights duties or obligations or as to the failure of the Borough Council to give or confirm its consent 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:

8.1.1 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 Borough Council by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to be decided as provided below;

- 8.1.2 in the case of any legal requirements or how contributions payable under this Deed are to be spent or matter arising from this Deed **and / or regarding the documentation or rights for the Affordable Housing Units** the same shall be referred to an independent Solicitor or Barrister of at least fifteen years standing who shall be appointed in default of agreement between the Owner and the Borough Council by the President of the Law Society or his deputy to be decided as provided below;
- 8.1.3 in the case of any design requirement **or matter regarding the Play, Green Space and Sports Facilities or the calculation of the Play, Green Space and Sports Facilities Commuted Sum** the same shall be referred to an independent third party who shall either individually or through a company of which he/she is a director or employee be a Member of the British Association of Landscape Industries of at least fifteen years standing who shall be nominated in default of agreement between the Owner and the Borough Council by the President for the time being of the British Association of Landscape Industries or his / her deputy to be decided as provided below
- 8.2 Any matter referred to an independent chartered surveyor or independent solicitor or chartered accountant or member of the British Association of Landscape Industries in accordance with the foregoing provisions shall be decided by such person as an expert not as an arbitrator and such independent person 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 independent person shall direct.

## **9 MORTGAGEE'S CONSENT**

*The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Land 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 Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.*

## **10 WAIVER**

No waiver (whether expressed or implied) by the Borough Council (or the 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 Borough Council (or the Owner) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **11 CHANGE IN OWNERSHIP**

The Owner agrees with the Borough Council to give the Borough Council immediate written notice of any change in ownership of any of its interests in the Land 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 Land or unit of occupation purchased by reference to a plan.

## **12 INDEXATION**

Any sum referred to in the Third Schedule shall be Index Linked.

## **13 INTEREST**

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

#### **14 VAT**

The amount of all considerations, contributions and payments referred to in this Deed shall be increased by any value added tax properly payable on the consideration, contribution or payment.

#### **15 JURISDICTION**

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

#### **16 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 this Deed has been duly executed by the parties the day and year first before written

**FIRST SCHEDULE**

**The Plan**



**SECOND SCHEDULE**

**Draft Decision Notice**

## THIRD SCHEDULE

### Owner's Covenants

The Owner hereby covenants with the Borough Council as follows: -

#### 1 AFFORDABLE HOUSING

- 1.1 To construct the Affordable Housing Units in accordance with the Planning Permission and the approved plans or any variations that may be agreed between the Borough Council and the Owner from time to time to the Affordable Housing Standards and to provide the Affordable Housing Units in accordance with paragraphs 1.2 to 1.17 of this Schedule.
- 1.2 Save unless the terms of paragraphs 1.10 and / or 1.17 of this Schedule apply not to: -
  - 1.2.1 allow the occupation of more than 50% of the Open Market Dwellings within a Phase of the Development until construction has been commenced of the Affordable Housing Units to be provided within that phase; and
  - 1.2.2 allow the occupation of more than 80% of the Dwellings within a Phase of the Development until the Practical Completion of the Affordable Housing Units to be provided within that Phase.
- 1.3 To notify the Borough Council in writing seven Working Days prior to the Commencement of Development.
- 1.4 Upon the Commencement of Development of each Phase of the Development to nominate one or more Registered Provider(s) for the Borough Council's approval **PROVIDED THAT** if the Borough Council does not notify the Owner within 30 Working Days of receipt of nomination (or such longer period if agreed between the Borough Council and the Owner) of its approval or disapproval of the Registered Provider(s) nominated by the Owner it shall be deemed that the

Borough Council has approved the Registered Provider(s) nominated by the Owner.

#### LCHO Dwellings

- 1.5 Immediately upon receiving confirmation of the Borough Council's approval or deemed approval of the nominated Registered Provider in accordance with paragraph 1.4 of this Schedule the Owner will offer to enter into negotiations with the nominated Registered Provider and use reasonable endeavours to contract to dispose of all of the LCHO Dwellings to the nominated Registered Provider at the LCHO Dwelling Price for disposal by the Registered Provider to an Approved Person.
- 1.6 In the event that the nominated Registered Provider declines to accept a transfer of all of the LCHO Dwellings or no sale of all of the LCHO Dwellings has been effected within six calendar months of the date when the Owner nominated the Registered Provider in accordance with paragraph 1.4 of this Schedule (whichever is the later) the Owner shall submit to the Borough Council in writing evidence as to why it is unable to achieve such a sale despite taking reasonable steps to reach an agreement with a nominated Registered Provider together with evidence from the Registered Provider that they are not willing to so purchase the LCHO Dwellings (if such evidence is available) and the Borough Council shall be invited to nominate an alternative Registered Provider within 30 Working Days thereof **PROVIDED THAT** if the Borough Council does not nominate an alternative Registered Provider within the 30 Working Day period the Owner will be entitled to nominate an alternative Registered Provider of its choice.
- 1.7 Immediately upon receiving confirmation of the Borough Council's approval to the alternative Registered Provider or in the event the Owner is entitled to nominate an alternative Registered Provider in accordance with paragraph 1.6 of this Schedule the Owner will offer to enter into negotiations with the alternative Registered Provider and use reasonable endeavours to contract to

dispose of all of the remaining LCHO Dwellings to the alternative Registered Provider on the terms set out in paragraph 1.5 of this Schedule.

- 1.8 If any offer pursuant to paragraph 1.7 of this Schedule is not accepted by an alternative Registered Provider for the transfer of all of the remaining LCHO Dwellings or no sale of all of the remaining LCHO Dwellings has been effected within six calendar months of the date when the Borough Council or the Owner nominated the alternative Registered Provider in accordance with paragraph 1.6 of this Schedule (whichever is the later) the Owner shall submit to the Borough Council in writing evidence as to why it is unable to achieve such a sale despite taking reasonable steps to reach an agreement with an alternative Registered Provider together with evidence from the alternative Registered Provider (s) that they are not willing to so purchase the LCHO Dwellings and upon acknowledgement by the Borough Council of receipt of such evidence the Owner will thereafter continue to use its reasonable endeavours until the expiration of twelve calendar months from the Commencement of Development of the Phase within which the LCHO Dwellings are being provided to contract to transfer all of the remaining LCHO Dwellings at the LCHO Dwelling Price to a Registered Provider.
- 1.9 At the expiration of the twelve calendar month period referred to in paragraph 1.8 of this Schedule the Owner will offer to contract to transfer all of the remaining LCHO Dwellings to any further Registered Provider nominated by the Borough Council and the Registered Provider shall have four calendar months from receipt of an offer by the Owner to accept the offer.
- 1.10 If any offer pursuant to paragraph 1.9 of this Schedule is not accepted or if once accepted the Registered Provider then decides not to proceed with the transfer the Owner shall notify the Borough Council as soon as reasonably practicable and shall provide written evidence of such non-acceptance of an offer or refusal to proceed with the transfer together with evidence from a Registered Provider(s) that they are not willing to so purchase the remaining LCHO Dwellings and upon acknowledgement by the Borough Council of receipt of such evidence the Owner shall offer the remaining LCHO Dwellings to the

Registered Provider as Social Rented Dwellings and/or Affordable Rented Dwellings in accordance with paragraphs 1.11 and 1.12 of this Schedule. If after the expiration of the six month period referred to in paragraph 1.12 the Registered Provider declines to accept a transfer of all of the remaining LCHO Dwellings offered as Social Rented Dwellings and/or Affordable Rented Dwellings the Owner shall have no further obligation to offer the LCHO Dwellings relating to that Phase to any Registered Provider or in any event if the LCHO Dwellings (or any individual unit or units comprised in the LCHO Dwellings that has / have not been transferred) have not been transferred to a Registered Provider within 30 calendar months of the Commencement of Development of a particular Phase the obligations in paragraphs 1.5 to 1.10 of this Schedule shall cease and be of no effect and the Owner shall be entitled to sell the LCHO Dwellings that have not been transferred to a Registered Provider on the open market free of the obligations contained in this Deed relating to the provision of the LCHO Dwellings **provided that** within 28 Working Days of the completion of the sale of the final LCHO Dwelling on the open market the Owner shall pay the Affordable Housing Commuted Sum to the Borough Council.

#### Social Rented Dwellings and Affordable Rented Dwellings

- 1.11 Immediately upon receiving confirmation of the Borough Council's approval or deemed approval to the nominated Registered Provider(s) in accordance with paragraph 1.4 of this Schedule the Owner will offer to enter into negotiations with the nominated Registered Provider(s) and use reasonable endeavours to contract to dispose of all of the: -
- 1.11.1 Social Rented Dwellings to the nominated Registered Provider(s) at the Social Rented Dwelling Price; and
  - 1.11.2 Affordable Rented Dwellings to the nominated Registered Provider(s) at the Affordable Rented Dwelling Price.

- 1.12 The Owner will leave the offer open for acceptance by the nominated Registered Provider for a period of six months and will during that period use reasonable endeavours to agree with the nominated Registered Provider the terms other than price **PROVIDED THAT** it will be a term of the transfer of Social Rented Dwellings and the Affordable Rented Dwellings that the nominated Registered Provider shall not dispose of or cause or permit the disposal of: -
- 1.12.1 a Social Rented Dwelling other than for the purpose of providing tenancies at an Social Rent to a person or persons identified in accordance with the Borough Council's allocation policy; or
- 1.12.2 an Affordable Rented Dwelling other than for the purpose of providing leases at an Affordable Rent to a person or persons identified in accordance with the Borough Council's allocation policy.
- 1.13 In the event that the nominated Registered Provider declines to accept a transfer of all of the Social Rented Dwellings and/or the Affordable Rented Dwellings or no sale of all of the Social Rented Dwellings and/or the Affordable Rented Dwellings has been effected within six months of the date when the Owner nominated the Registered Provider in accordance with paragraph 1.4 of this Schedule (whichever is the later) the Owner shall submit to the Borough Council in writing evidence as to why it is unable to achieve such a sale despite taking reasonable steps to reach an agreement with a nominated Registered Provider together with evidence from the Registered Provider(s) that they are not willing to so purchase the Social Rented Dwellings and/or the Affordable Rented Dwellings (if such evidence is available) and the Borough Council shall be invited to nominate an alternative Registered Provider within 30 Working Days thereof **PROVIDED THAT** if the Borough Council does not nominate an alternative Registered Provider within the 30 Working Day period the Owner will be entitled to nominate an alternative Registered Provider of its choice.
- 1.14 Immediately upon receiving confirmation of the Borough Council's approval to the alternative Registered Provider or in the event the Owner is entitled to

nominate an alternative Registered Provider in accordance with paragraph 1.13 of this Schedule the Owner will offer to enter into negotiations with the alternative Registered Provider and use reasonable endeavours to contract to dispose of all of the remaining Social Rented Dwellings and the Affordable Rented Dwellings to the alternative Registered Provider in accordance with the terms set out in paragraph 1.12 of this Schedule.

1.15 If any offer pursuant to paragraph 1.14 of this Schedule is not accepted by an alternative Registered Provider for the transfer of all of the Social Rented Dwellings and/or the Affordable Rented Dwellings or no sale of all of the Social Rented Dwellings and/or the Affordable Rented Dwellings has been effected within six calendar months of the date when the Borough Council or the Owner nominated the alternative Registered Provider in accordance with paragraph 1.13 of this Schedule (whichever is the later) the Owner shall submit to the Borough Council in writing evidence as to why it is unable to achieve such a sale despite taking reasonable steps to reach an agreement with an alternative Registered Provider together with evidence from the alternative Registered Provider(s) that they are not willing to so purchase the Social Rented Dwellings and/or the Affordable Rented Dwellings (if such evidence is available) and upon acknowledgement by the Borough Council of receipt of such evidence the Owner will thereafter continue to use its reasonable endeavours until the expiration of twelve calendar months from the Commencement of Development of the Phase within which the Social Rented Dwellings and/or the Affordable Rented Dwellings are being provided to contract to transfer the remaining: -

1.15.1 Social Rented Dwellings at the Social Rented Dwelling Price; and

1.15.2 Affordable Rented Dwellings at the Affordable Rented Price to a Registered Provider.

1.16 At the expiration of the twelve calendar month period referred to in paragraph 1.15 of this Schedule the Owner will offer to contract to transfer the remaining Social Rented Dwellings and/or the Affordable Rented Dwellings to any further Registered Provider nominated by the Borough Council and the Registered

Provider shall have four calendar months from the making of an offer by the Owner to accept the offer.

- 1.17 If any offer pursuant to paragraph 1.16 of this Schedule is not accepted or if once accepted the Registered Provider then decides not to proceed with the transfer the Owner shall notify the Borough Council as soon as reasonably practicable and shall provide written evidence of such non-acceptance of an offer or refusal to proceed with the transfer and upon acknowledgement by the Borough Council of receipt of such evidence the Owner shall have no further obligation to offer the Social Rented Dwellings and/or the Affordable Rented Dwellings relating to that Phase to any Registered Provider or in any event if the Social Rented Dwellings and/or the Affordable Rented Dwellings (or any individual unit or units comprised in the Social Rented Dwellings and/or the Affordable Rented Dwellings that has / have not been transferred) have not been transferred to a Registered Provider within 30 calendar months of the Commencement of Development of a particular Phase the obligations in paragraphs 1.11 to 1.16 of this Schedule shall cease and be of no effect and the Owner shall be entitled to dispose of the Social Rented Dwellings and/or the Affordable Rented Dwellings that have not been transferred to a Registered Provider on the open market free of the obligations contained in this Deed relating to the provision of the Social Rented Dwellings and the Affordable Rented Dwellings and the provisions of paragraph 1.10 of this Schedule relating to the payment to the Borough Council of the Affordable Housing Commuted Sum shall apply equally to the Social Rented Dwellings and/or the Affordable Rented Dwellings as the case may be as if reference to LCHO Dwelling in paragraph 1.10 of this Schedule were to Social Rented Dwelling or Affordable Rented Dwellings as the case may be.

#### General Provisions

- 1.18 Subject to paragraphs 1.10 and 1.17 of this Schedule not to allow permit or suffer the Affordable Housing Units to be used other than for the provision of accommodation by a Registered Provider.



1.19 Save with the consent in writing of the Borough Council not to allow permit or suffer any of the LCHO Dwellings to be occupied by persons who are not identified in accordance with the procedure set out in the Fifth Schedule.

1.20 The provisions of paragraphs 1.4 to 1.19 of this Schedule shall not be binding against :-

1.20.1 a disposal being required by: -

- (i) any statutory provisions now or hereafter in force; or
- (ii) the Homes and Communities Agency; or
- (iii) a Court Order.

1.20.2 a mortgagee of chargee of :

- (i) a Registered Provider;
- (ii) a LCHO Dwelling; or
- (iii) a Social Rented Dwelling or Affordable Rented Dwelling in the event of 100% of the equity of such a Dwelling having been acquired whether pursuant to the rights granted by the lease of such dwelling or pursuant to the provisions of the Housing Act 1996 (or any legislation amending or replacing the same) or under any future legislation conferring such a right which is binding on any Registered Provider

seeking to dispose of the Affordable Housing Unit pursuant to its power of sale

**PROVIDED ALWAYS** that any such mortgagee or charge exercising its power of sale:-

- (a) must be a body corporate registered by the Financial Services Authority (or any successor body whose function is to regulate mortgages and loans); and
- (b) shall first seek to dispose of the said Affordable Housing Unit to a Registered Provider by giving 3 months notice (such notice to be writing and sent by registered first class post) of its intention to

exercise its power of sale (the Borough Council being entitled to nominate a Registered Provider or the Home and Communities Agency for these purposes by service in writing to such mortgagee or charge within 56 days of such mortgagee or charge notifying the Council in writing of intention to exercise its power of sale) and if arrangements for the transfer of the Unit can be made in such a way to safeguard it as Affordable Housing then the mortgagee or charge shall use reasonable endeavours to secure transfer to achieve that outcome **PROVIDED THAT** such mortgagee or chargee shall not be under any obligation to dispose of the Unit for any sum less than the monies outstanding pursuant to its mortgage or charge

**AND PROVIDING ALSO** that the successors in title to any mortgage charge or receiver referred to in paragraphs 1.20.2 shall be bound by the provisions of paragraphs 1.4 to 1.19 of this Schedule;

**OR**

**1. AFFORDABLE HOUSING CONTRIBUTION**

- 1.1. To notify the Borough Council in writing seven Working Days prior to the Commencement of Development
- 1.2. Not to Commence Development until the Affordable Housing Contribution has been paid to the Borough Council.

**2. [PLAY/ GREEN SPACE/ SPORTS FACILITIES]\* CONTRIBUTION**

Not to Commence Development until the [Play/ Green Space/ Sports Facilities]\* Contribution has been paid to the Borough Council.

*\* Precise wording may be subsequently amended by Council to reflect that agreed in 'Definitions & Interpretations' Section of this document.*

### 3. ON SITE PLAY, GREEN SPACE AND SPORTS FACILITIES

- 3.1. The Owner shall not Commence Development of the Phase or Phases of the Development within which the Play, Green Space and Sports Facilities is being provided until they have submitted to the Borough Council for approval a Play, Green Space and Sports Facilities Scheme.
- 3.2. Within 50 Working Days of the Borough Council receiving from the Owner the Play, Green Space and Sports Facilities Scheme the Borough Council will notify the Owner in writing of its approval to the Play, Green Space and Sports Facilities Scheme proposed by the Owner or will acting reasonably provide in writing its proposed amendments to the Play, Green Space and Sports Facilities Scheme pursuant to which the Owner acting reasonably shall submit a revised Play, Green Space and Sports Facilities Scheme incorporating those amendments as are reasonable and accepted **Provided That** if the Borough Council does not notify the Owner of its approval or proposed amendments to the Play, Green Space and Sports Facilities Scheme within the 50 Working Days referred to above (or such other period of time that may be agreed) it shall be deemed that the Borough Council has approved the Play, Green Space and Sports Facilities Scheme submitted by the Owner **And Further Provided That** if agreement cannot be reached between the Borough Council and the Owner within 80 Working Days of the date of its submission to the Borough Council (or such other period of time that may be agreed) then the provisions of clause 8 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 Borough Council's approval or deemed approval to the Play, Green Space and Sports Facilities Scheme pursuant to paragraph 3.2 of this Schedule (or upon receipt of expert determination in relation to the Play, Green Space and Sports Facilities Scheme if applicable) the Owner shall implement the approved Play, Green Space and Sports Facilities Scheme in

accordance with the implementation programme agreed as part of the Play, Green Space and Sports Facilities Scheme and: -

- 3.3.1. subject to paragraph 3.5 below allow the public access to the Play, Green Space and Sports Facilities on foot (and where applicable on foot and cycle) only at all times;
- 3.3.2. ensure that the Play, Green Space and Sports Facilities are kept in a clean and tidy state and properly maintained.
- 3.4. Upon the Play, Green Space and Sports Facilities being completed to the Borough Council's reasonable satisfaction in accordance with the approved Play, Green Space and Sports Facilities Scheme the Owner will either: -
  - 3.4.1. maintain and manage in perpetuity the Play, Green Space and Sports Facilities in accordance with the Play, Green Space and Sports Facilities Scheme (or any variations that may be agreed in writing from time to time between the Borough Council and the Owner) **In Default of Which** the Borough Council shall be entitled upon giving reasonable prior written notice of no less than 25 Working Days to the Owner to carry out any maintenance works reasonably required to the Play, Green Space and Sports Facilities and recover the proper and reasonable costs and expenses involved from the Owner ; or
  - 3.4.2. within 6 months of completion of the Play, Green Space and Sports Facilities Scheme transfer title for the Play, Green Space and Sports Facilities to a Management Company (having supplied to the Borough 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 Borough Council and all further maintenance shall be thereafter carried out by the Management Company **Provided That** it shall be a term of the transfer that the Management Company will: -

- (a) maintain and manage in perpetuity the Play, Green Space and Sports Facilities in accordance with the Play, Green Space and Sports Facilities Scheme or any variations that may be agreed in writing by the Borough Council from time to time **In Default of Which** the Borough Council shall be entitled upon giving reasonable prior written notice of no less than 25 Working Days to the Management Company to carry out any maintenance works reasonably required to the Play, Green Space and Sports Facilities and recover the proper and reasonable costs and expenses involved from the Management Company; and
  - (b) only allow the use of the Play, Green Space and Sports Facilities for public access and recreation and for no other purpose; or
- 3.4.3. transfer or dedicate to the Borough Council the Play, Green Space and Sports Facilities (in whole or in separate parts on an ongoing basis as and when each part of the Play, Green Space and Sports Facilities is completed to the Borough Council's satisfaction) at nil cost and on terms to be agreed between the Owner and the Borough Council **Provided That** the Borough Council shall covenant in the said transfer to use the Play, Green Space and Sports Facilities for public access and recreation only and for no other purpose
- 3.4.4. in the event that paragraph 3.4.3 of this Schedule is applicable then upon or before the transfer of the Play, Green Space and Sports Facilities to the Borough Council the Owner will:-
  - (a) submit to the Borough Council for approval a proposed sum in relation to the Play, Green Space and Sports Facilities

Maintenance Commuted Sum which reflects the costs associated with carrying out 10 years future maintenance of the Play, Green Space and Sports Facilities; and

- (b) upon receipt of the Borough Council's approval pursuant to paragraph 3.4.4(a) of this Schedule to pay to the Borough Council with 30 Working Days the agreed Play, Green Space and Sports Facilities Maintenance Commuted Sum **Provided That** it is agreed that if the Play, Green Space and Sports Facilities is to be transferred or dedicated to the Borough Council in separate parts on an ongoing basis as and when each part of the Play, Green Space and Sports Facilities is completed then the agreed Play, Green Space and Sports Facilities Maintenance Commuted Sum shall be paid to the Borough Council on a pro rata basis commensurate to the areas of land transferred up until payment of the whole sum **And Further Provided That** in the event that the Borough Council does not accept the transfer of the Play, Green Space and Sports Facilities or in the event that the Owner and/or the Developer and the Borough Council are not able to agree the Play, Green Space and Sports Facilities Maintenance Commuted Sum within 30 Working Days the provisions of paragraph 3.4.1 or 3.4.2 shall apply.

3.5. To allow public access to the Play, Green Space and Sports Facilities but subject to the following provisions:

- 3.5.1. access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management **Provided That** such requirements and regulations shall not be imposed without the Borough Council's prior approval;

- 3.5.2. the Owner may erect notices on the Play, Green Space and Sports Facilities and access to them will be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being;
- 3.5.3. access may be denied by the Owner for the maintenance, repair, cleansing or renewal of the Play, Green Space and Sports Facilities or any building or land abutting it subject to the Borough Council's prior approval; and
- 3.5.4. the Owner may close the Play, Green Space and Sports Facilities or any part thereof for reasonable periods by reason of emergency; cleansing, maintenance and repair; at the direction of the emergency services or other lawful authority; or for construction activities whilst the Development is being built.
- 3.6. The Owner hereby declares that pursuant to Section 31(5) Highways Act 1980 the Play, Green Space and Sports Facilities has not been dedicated to the public nor is any use by the public of any part of the Play, Green Space and Sports Facilities to be taken in any way as an intention by the Owner to dedicate the same as highway.
- 3.7. Save for when paragraph 3.4.3 applies upon the tenth anniversary of the practical completion of the Play, Green Space and Sports Facilities the Owner may invite the Borough Council to accept a transfer of the Play, Green Space and Sports Facilities at nil cost and on the terms to be agreed between the Owner and the Borough Council. In the event that the Borough Council does not accept the transfer of the Play, Green Space and Sports Facilities in accordance with the provisions of this paragraph 3.7 the Owner and/or the Developer will continue to maintain the Play, Green Space and Sports Facilities in perpetuity in accordance with paragraphs 3.4.1 or 3.4.2 of this Schedule as

the case may be and in accordance with the Play, Green Space and Sports Facilities Scheme

#### 4. [EDUCATION]\*CONTRIBUTION

- 4.1. Not to Commence Development until the *[Education]\** Contribution has been paid to the Borough Council;

*\* Precise wording may be subsequently amended by Council to reflect that agreed in 'Definitions & Interpretations' Section of this document.*

#### 5. [TRANSPORT]\* CONTRIBUTION

- 5.1. Not to Commence Development until the *[Transport]\** Contribution has been paid to the Borough Council;

*\* Precise wording may be subsequently amended by Council to reflect that agreed in 'Definitions & Interpretations' Section of this document.*

#### 6. MONITORING FEE

- 6.1. The Owner shall pay the Monitoring Fee to the Borough Council in the following instalments:-

6.1.1 on completion of this Deed the sum of £ [ **50% of total fee** ] ([ ? ] pounds)

6.1.2 on Commencement of Development the sum of £ [ **balance of fee** ] ([ ? ] pounds)



**FOURTH SCHEDULE**  
**(Borough Council's Covenants)**

The Borough Council covenants with the Owner: -

- 1 To apply the Affordable Housing Contribution towards the provision of or improvement to Affordable Housing the need for which is generated by the Development and the Borough Council shall (on the reasonable request of the payer) provide evidence that the monies have been so applied.
- 2 If applicable to apply the Affordable Housing Contribution towards the provision of or improvement to Affordable Housing the need for which is generated by the Development and the Borough Council shall (on the reasonable request of the payer) provide evidence that the monies have been so applied
- 3 If applicable to apply the Play, Green Space and Sports Facilities Commuted Sum towards procuring the management and maintenance of the Play, Green Space and Sports Facilities the need for which is generated by the Development and (on the reasonable request of the payer) to provide evidence that the monies have been so applied.
- 4 To apply the [*Play/ Green Space/ Sports Facilities*]\* Contribution towards procuring new or improving existing [*leave blank - unless specific details have been indicated by the Borough Council*], which is within the vicinity of the Development and (on the reasonable request of the payer) to provide evidence that the monies have been so applied.
- 5 The Borough Council shall on receipt of any sum or sums referred to in this Schedule place the same into an interest bearing account or in separate accounts as the Borough Council shall in its discretion decide from which any expended part may be readily identified.
6. In the event the [*Play/Green Space/Sports Facilities Contribution\* / Affordable Housing Contribution*], and/or if applicable the [*Affordable Housing Commuted*

Sum/ Play, Green Space and Sports Facilities Commuted Sum] or any part or parts thereof are not expended within ten years after Practical Completion of the Development then the sum or sums not expended plus interest accrued will be repaid to the person who paid the sum or sums.

*\* Precise wording may be subsequently amended by Council to reflect that agreed in 'Definitions & Interpretations' Section of this document.*

## **FIFTH SCHEDULE**

### **(Approved Person)**

1. The Owner (which in this Schedule also means each and every subsequent owner of a LCHO Dwelling) shall: -
  - 1.1 on the first sale of each LCHO Dwelling, serve written notice on the Borough Council informing the Borough Council of when each LCHO Dwelling will be complete and ready for occupation; and
  - 1.2 on all subsequent sales of each LCHO Dwelling serve written notice on the Borough Council informing the Borough Council of the intention to dispose of the relevant LCHO Dwelling.
2. The Borough Council shall within 2 weeks of receipt of the notice referred to in paragraph 1 of this Schedule, serve written notice on the Owner nominating a Nominee.
3. Upon receipt of the notice served pursuant to paragraph 2 of this Schedule, the Owner shall offer the LCHO Dwelling for sale to the Nominee unless the Owner have justifiable concerns of the Nominee's ability to raise finance for purchase or any past or current history of anti social behaviour or issues concerning nuisance to neighbours or any other recurring disturbances of neighbouring occupiers' reasonable enjoyment of their dwelling.
4. If the Owner does not offer a LCHO Dwelling for sale to a Nominee on the grounds set out in paragraph 3 above then the Owner shall immediately inform the Borough Council of this in writing.
5. In the event that a notice has been served by the Owner pursuant to paragraph 4 of this Schedule then the Borough Council shall (for a period of 20 Working Days from receipt of such notice) have the right to nominate a Second Nominee.

6. Upon receipt of the notice by the Borough Council served pursuant to paragraph 5 of this Schedule, the Owner shall offer the LCHO Dwelling for sale to the Second Nominee unless the Owner have justifiable concerns of the Second Nominee's ability to raise finance for purchase or any past or current history of anti social behaviour or issues concerning nuisance to neighbours or any other recurring disturbances of neighbouring occupiers' reasonable enjoyment of their dwelling.
7. If the Owner does not offer a LCHO Dwelling for sale to a Nominee on the grounds set out in paragraph 6 above then the Owner shall immediately inform the Borough Council of this in writing.
8. In the event that a notice has been served by the Owner pursuant to paragraph 7 of this Schedule then the Borough Council shall (for a period of 20 Working Days from receipt of such notice) have the right to nominate a Third Nominee.
9. Upon receipt of the notice by the Borough Council served pursuant to paragraph 8 of this Schedule, the Owner shall offer the LCHO Dwelling for sale to the Third Nominee unless the Developer have justifiable concerns of the Third Nominee's ability to raise finance for purchase or any past or current history of anti social behaviour or issues concerning nuisance to neighbours or any other recurring disturbances of neighbouring occupiers' reasonable enjoyment of their dwelling.
10. In the event that: -
  - 10.1 a Nominee accepts the offer but has not exchanged contracts within three months of the offer being made; or
  - 10.2 a Nominee rejects the offer; or
  - 10.3 a Second Nominee accepts the offer but has not exchanged contracts within three months of the offer being made; or
  - 10.4 the Second Nominee rejects the offer; or

- 10.5 a Third Nominee accepts the offer but has not exchanged contracts within three months of the offer being made; or
- 10.6 the Third Nominee rejects the offer; or
- 10.7 the Borough Council fails to nominate a Nominee or a Second Nominee or a Third Nominee within the requisite timescales

then the provisions of paragraph 11 of this Schedule shall apply to the sale of the LCHO Dwelling.

- 11. In the event that one of the events set out in paragraph 10 of this Schedule occurs, then the Owner shall seek to sell the LCHO Dwelling to a person who has Housing Need **PROVIDED THAT** any such sale shall **NOT** be made at a sale-price which exceeds the LCHO Dwelling Price.
- 12. In trying to allocate the occupation of a LCHO Dwelling in accordance with paragraph 11 of this Schedule, the Owner will advertise in the local press for a period of 8 weeks for prospective purchasers who have Housing Need to put their names forward to purchase the LCHO Dwelling.
- 13. The Owner shall provide at its own cost such information, documentation and evidence to the Borough Council to satisfy the Borough Council (acting reasonably) that the requirements of paragraphs 11 and 12 of this Schedule have been followed.
- 14. If after the 8 week advertising period referred to in paragraph 12 of this Schedule has expired and the Owner has been unable to allocate a potential purchaser in accordance with the criteria specified in paragraph 11 of this Schedule, the Owner shall be free to advertise the LCHO Dwelling for sale on the open market **PROVIDED THAT** any such sale shall **NOT** be made at a sale-price which exceeds the LCHO Dwelling Price.
- 15. It is hereby **PROVIDED AND AGREED** that: -

- 15.1 every time a LCHO Dwelling shall become available for sale again in the future it shall be allocated to persons in strict accordance with the procedure and priority occupation criteria set out in this Schedule; and
- 15.2 any sale of a LCHO Dwelling shall **NOT** be made at a sale-price which exceeds the LCHO Dwelling Price which specified reduced sale-price shall apply to all future owners of the LCHO Dwelling whichever occupation criteria set out above they satisfy and whether they are nominated by the Borough Council for occupation of a LCHO Dwelling or not.

### **Family Members**

16. Nothing in this Deed shall prevent the occupation of a LCHO Dwelling by a Family Member of a person who is entitled by virtue of the terms of this Deed to occupy such LCHO Dwelling.
17. Nothing in this Deed shall prevent the continued occupation of a LCHO Dwelling by a person who at the time they commenced occupation of that LCHO Dwelling was a Family Member of a person entitled by virtue of the terms of this Deed to occupy such LCHO Dwelling.

EXECUTED AS A DEED BY  
**SCARBOROUGH BOROUGH COUNCIL**

whose COMMON SEAL was  
hereunto affixed  
in the presence of

**EXECUTED as a DEED by**  
**[OWNER]**

in the presence of: -

Director

Director / Secretary

***[EXECUTED as a DEED by***  
***[DEVELOPER]***

*in the presence of: -*

*Director*

*Director / Secretary]*

***[EXECUTED as a DEED by***  
***[MORTGAGEE]***

*in the presence of: -*

*Director*

*Director / Secretary]*