

Selby District Council

Draft

Affordable Housing

Supplementary Planning Document

July 2013

Access Selby

A new approach to public service

SELBY

DISTRICT COUNCIL

Moving forward with purpose

Consultation on the Draft Affordable Housing Supplementary Planning Document (AHSPD) begins on Thursday 4 July 2013 and representations should be submitted by 5pm on Friday 16 August 2013.

Copies of the documents are available at 'Access Selby' contact centre in Selby and at local libraries during normal opening hours.

Further detail on the consultation can be found on the Council's website at www.selby.gov.uk

A comments form is available from the Supplementary Planning Documents page on our website and comments can be submitted by email to ldf@selby.gov.uk or by post to the Policy and Strategy Team, Selby District Council, Doncaster Road, Selby YO8 9FT; or by fax to (01757) 292229

If you require any further help or advice or if you need this document in a different format, for example large print, audio, Braille or in another language, please contact the Policy and Strategy Team on (01757 292034) or email ldf@selby.gov.uk

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Section 1: Introduction

- 1.1 The Council believes that everyone should have the opportunity of a decent home which they can afford in a community in which they want to work or live. Selby District Council is committed to providing high quality affordable housing for people who cannot access or afford market housing in the Council's administrative area ("the District")
- 1.2 Housing affordability is one of the biggest challenges facing the District. House prices are higher than regional average, and almost tripled over the period 1996 to 2011¹ from £66,362 in 1996 to £182,442 in 2011. However average house prices in Selby are lower than the North Yorkshire average of £128,113.
- 1.3 Affordability ratios (house price to earnings) are also significantly higher than the 'Affordable Definition' of 3.5 (an affordable mortgage being three and a half times annual income)² particularly in the northern part of the District. In 2011 the affordability ratio for Selby District was 6.02³. This means that house prices are 6 times the annual income for Selby District.
- 1.4 The latest Strategic Housing Market Assessment (2009) ("SHMA") identifies the scale of the need for affordable housing in the District over the Local Plan period. The SHMA establishes an overall target of 30-50% intermediate housing and 50-70% social rented housing. To meet the identified demand, the affordable housing needs to be the right kind of housing in the right locations. Following the introduction of the Government's affordable rent category, the Council will be gathering evidence to establish the identified need and tenure split of rented housing. This will be set out through a combination of this SPD and future development plan documents (as appropriate) based on the Council's latest evidence of need.

Section 2: Purpose and Status of this Supplementary Planning Document

- 2.1 Supplementary Planning Documents ("SPD") were introduced by the Planning and Compulsory Purchase Act 2004, amended by the Localism Act 2011.
- 2.2 Central Government requires local planning authorities to help tackle the shortage of affordable housing by securing provision of affordable housing as a proportion of the total housing on residential and mixed use development

¹ DCLG Live Table 585 Housing market: mean house prices based on Land Registry data, by district, from 1996 - 2011

² DCLG (2007) Strategic Housing Market Assessment- Practice Guidance (Version 2)

³ DCLG Live Table 576 Ratio of lower quartile house price to lower quartile earnings by district, from 1997 - 2011

sites. Affordable housing provision will be required where site size thresholds, set out in this SPD are reached or exceeded, in accordance with Policy CP5 of the Selby District Core Strategy (“the Core Strategy”).

- 2.3 The purpose of this SPD is to set out the Council’s approach to delivering affordable housing in accordance with the Local Plan and national policy. It includes the range of approaches, standards and mechanisms required to deliver affordable housing which meets local needs and contributes towards attaining mixed sustainable communities and a balanced housing market.



- 2.4 It provides a clear and consistent approach to assist development management officers, the Planning Committee, landowners, developers, applicants, Registered Providers, Parish and Town Council and members of the public in understanding the requirements for the provision of affordable housing on all residential and mixed use development sites in the District.
- 2.5 Following the guidance contained in this SPD and discussing proposals with the Council at an early stage, so that affordable housing requirements are taken into account at site acquisition and scheme design stages, means applications are more likely to be validated expediently as the need for the Council to request additional information (which inevitably delays progress) would be minimised.
- 2.6 As set out in Policy LP1 of the Core Strategy, when considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained within the National Planning Policy Framework (NPPF). It will always work proactively with applicants to find solutions which mean that proposals can be approved (and affordable housing need can be delivered) wherever possible.

Section 3: National Planning Policy

- 3.1 The National Planning Policy Framework (NPPF) was issued in March 2012. This provides the national planning policy guidance for the preparation of Local Plans and provision of affordable housing. The affordable housing policies contained within the Core Strategy (CP5 and CP6) align with the NPPF guidance on affordable housing.
- 3.2 The NPPF Glossary definition of SPDs states that they add further detail to the policies in the Local Plan and *‘they can be used to provide further guidance for development on specific sites, or on particular issues, such as design⁴’*. The NPPF also confirms that SPDs are capable of being a material consideration in planning decisions, but are not part of the development plan.
- 3.3. Paragraph 204 sets out the National Policy on planning obligations. This paragraph is relevant as planning obligations are a mechanism for delivering affordable housing. Paragraph 204 states that *‘planning obligations should only be sought where they meet all of the following tests:*
- *necessary to make the development acceptable in planning terms;*
 - *directly related to the development; and*
 - *fairly and reasonably related in scale and kind to the development’.*
- 3.4 These tests are also contained in Regulation 122 of the Community Infrastructure Regulations 2010 (“the CIL Regulations”).
- 3.5 The affordable housing policies included in the Core Strategy are consistent with guidance set out in the National Planning Policy Framework.

Section 4: Affordable Housing

Affordable Housing Definition

- 4.1 The Council’s definition of affordable housing is set out in the Core Strategy (para 5.80), and is in accordance with the definition in national guidance. The current national guidance definition is contained within National Planning Policy Framework and provided in the Glossary of the NPPF, the Core Strategy and this SPD as follows:

⁴ Annex 2: Glossary, page 56

‘Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

Affordable Rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.

Homes that do not meet the above definition of affordable housing, such as “low cost market” housing, may not be considered as affordable housing for planning purposes.’

Rural Exception Sites Definition

- 4.2 A Rural Exception Site is a site where planning permission will only be granted for small scale rural affordable housing, as an exception to normal planning policy to meet an identified local need. Rural Exception Sites must be in scale and keeping with the settlement they are within or adjoining, and its setting. The Council’s (and the NPPF) definition of Rural Exception Sites is:

‘Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural Exception Sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. Small numbers of market homes may be allowed at the local authority’s discretion, for example where essential to enable the delivery of affordable units without grant funding (NPPF, Glossary)’.

- 4.3 Core Strategy Policy CP6 provides the criteria that must be met for a site to be considered a Rural Exception Site. Local need has to be evidenced by the results of a local (parish) housing needs survey, and the proposed scheme must demonstrate that it meets the evidenced local needs, as well as being in line with the Selby evidence base (set out in Section 6: Evidence).



- 4.4 The Rural Housing Enabler is a resource available to Selby District Council, to work with landowners, local communities and Registered Providers to enable rural affordable housing schemes. Landowners that wish to develop their land as a rural exception site should seek the advice of the Rural Housing Enabler.
- 4.5 Specific allocations of rural exception sites within and adjoining Development Limits in Secondary Villages and Designated Service Villages will be considered through the forthcoming site and policies local plan.
- 4.6 The Selby District Council policy on allowing a small number of market units on rural exception sites is set out in Policy CP6 of the Core Strategy (see section 5 below). Further detailed policies and proposals will be considered as part of the sites and policies plan. In the interim, the Council's approach on mixed market / affordable housing rural exception sites is set out in Section 7 of this SPD (in line with the NPPF and Core Strategy).

Section 5: Local Plan Context

Selby District Core Strategy

Overview

- 5.1 The Council has published the Inspector's Report following the completion of the Examination in Public of the Core Strategy.

- 5.2 The Core Strategy includes two policies on affordable housing provision. These being Policies CP5 and CP6.

Affordable Housing Policy

- 5.3 The two main aims of the Core Strategy affordable housing policy are:

- To establish the overall target for the provision of affordable housing in the District in accordance with national guidance on the definition and provision of affordable housing; and
- To set the broad framework within which developer contributions towards meeting affordable housing need will be sought in association with normal market housing.

- 5.4 Policy CP5 in the Core Strategy sets a requirement for up to 40% affordable housing on housing schemes of 10 units or above (or on housing schemes comprising 0.3 hectares or more). In exceptional circumstances, commuted sums may be acceptable where there are clear benefits in relocating all or part of the affordable housing dwellings.

- 5.5 For small sites below the 10 dwellings threshold a commuted sum in lieu of on-site provision of affordable housing will be sought. The basis of the calculation for the commuted sum is set out in this SPD (at Section 7 and Appendix 1).

- 5.6 The exact wording of Policy CP5 is set out below:

Policy CP5 Affordable Housing

A. The Council will seek to achieve a 40/60% affordable/general market housing ratio within overall housing delivery.

B. In pursuit of this aim, the Council will negotiate for on-site provision of affordable housing up to a maximum of 40% of the total new dwellings on all market housing sites at or above the threshold of 10 dwellings (or sites of 0.3 ha) or more.

Committed sums will not normally be accepted on these sites unless there are clear benefits to the community/or delivering a balanced housing market by re-locating all or part of the affordable housing contribution.

C. On sites below the threshold, a commuted sum will be sought to provide affordable housing within the District. The target contribution will be equivalent to the provision of up to 10% affordable units.

D. The tenure split and the type of housing being sought will be based on the Council's latest evidence on local need.

E. An appropriate agreement will be secured at the time of granting planning permission to secure the long-term future of affordable housing. In the case of larger schemes, the affordable housing provision will be reviewed prior to the commencement of each phase.

The actual amount of affordable housing, or commuted sum payment to be provided is a matter for negotiation at the time of a planning application, having regard to any abnormal costs, economic viability and other requirements associated with the development. Further guidance will be provided through an Affordable Housing SPD.

- 5.7 The requirement for an affordable housing contribution also applies to refurbishment and conversions where additional units are added to the housing stock. For example, if a house was converted to provide 3 flats, contributions would apply to the additional 2 units. However, it does not apply to new agricultural workers dwellings.

Future Local Plan Documents

- 5.8 The required tenure split of affordable housing is currently set out in the Core Strategy through the Strategic Market Housing Assessment. This will be updated through future development plan documents (as appropriate) based on the Council's latest evidence of need. (See section 7)

Rural Housing Exceptions Sites

- 5.9 The Core Strategy also includes a policy on Rural Housing Exceptions Sites. This enables small sites to be developed specifically for affordable housing in small rural communities. The policy is set out below:

Policy CP6 Rural Housing Exceptions Sites

In the Designated Service Villages and the Secondary Villages, planning permission will be granted for small scale 'rural affordable housing' as an exception to normal planning policy provided all of the following criteria are met:

- i) The site is within or adjoining Development Limits in the case of Secondary Villages, and adjoining development limits in the case of Designated Service Villages;
- ii) A local need has been identified by a local housing needs survey, the nature of which is met by the proposed development; and
- iii) The development is sympathetic to the form and character and landscape setting of the village and in accordance with normal development management criteria.

An appropriate agreement will be secured, at the time of the granting of planning permission to secure the long-term future of the affordable housing in perpetuity.

Small numbers of market homes may be allowed on Rural Exception sites at the local authority's discretion, for example where essential to enable the delivery of affordable units without grant funding in accordance with the NPPF. Future Local Plan documents will consider introducing a detailed policy and / or specific allocations for such sites.

- 5.10 Exception sites must be in scale and keeping with the settlement they are within or adjoining and its setting. Rural Exception sites will seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. See Paragraph 7.17 for more detail.

Future Local Plan Documents

- 5.11 The sites and policies local plan will consider further detailed policies and the allocation of Rural Exceptions Sites in line with the Core Strategy. Any rural exception allocations would be in Designated Service Villages or Secondary Villages as per Core Strategy Policy CP6. Any allocations will also consider the national requirements set out in the NPPF.

Section 6: Evidence

- 6.1 The SHMA and other relevant evidence base documents (existing and emerging) should be consulted for information on the latest evidence of housing need (see also paragraph 7.4).

Section 7: Detailed Affordable Housing Requirements

- 7.1 Applicants should consider this SPD in tandem with the Council's website which will contain the most up to date affordable housing guidance and appendices to this SPD, as the financial information and other data contained within this SPD is subject to change in conjunction with changes to housing need.

Site Size and Suitability

- 7.2 In accordance with the Core Strategy, Policy CP5, the Council will seek a maximum of 40% affordable housing on all market housing sites at or above the threshold of 10 dwellings (or sites of 0.3ha) or more.

For example for a planning application of 150 new dwellings, the Council will seek on-site affordable housing of a maximum of 60 affordable units.

- 7.3 On sites below the threshold of 10 dwellings (or sites of less than 0.3ha) a commuted sum in lieu of on site provision of affordable housing will be sought

to provide affordable housing within the District. The contribution sought will be equivalent to the provision of up to 10% on-site affordable housing units. For example, a 9 unit scheme would pay the cost of 0.9 of an affordable unit.

A commuted sum will be sought for planning applications for between one and nine residential units. For details on how it is proposed to calculate the commuted sum for schemes between one unit and nine units, please see Appendix 1.

Type, Size and Tenure

- 7.4 The exact type, size and tenure of affordable housing will be based on an assessment of need in the District. It will be based on the Council's latest evidence, which may include information from the most up to date Strategic Housing Market Assessment (SHMA), current information from the Selby District / North Yorkshire Housing Register, and evidence of existing affordable housing provision in the locality, including the Census 2011.
- 7.5 The starting point for negotiation on the type, size and tenure of affordable housing will be based on the current evidence base (SHMA 2009), until superseded by the Council's new evidence. The current evidence base indicates the following approach:
- A tenure split of 30 – 50% intermediate tenure (shared ownership, discounted sale and fixed equity products and intermediate rented options) and 50 – 70% social rent; and
 - A focus on 2-3 bed family housing to meet a range of need in flexible housing solutions in the longer term.
- 7.6 On developments where the affordable housing provision is subject to a service charge, most likely relating to shared communal areas, the charge should not be so great as to make occupancy unaffordable. The preferred approach by Registered Providers is to have limited shared areas within new developments, therefore resulting in no requirement for service charges to be payable. The Council will consider the levels of service charges in the context of prices, rents and overall affordability in relation to the findings of the latest SHMA.

Question 1: Are there any other factors / evidence that should be considered in relation to the type, size and tenure of affordable housing provided in Selby District?

Design and Layout

- 7.7 The Council expects affordable housing to be built to the same high standard of design and amenity as market housing. Affordable housing units within new residential developments should be of a similar size and quality to the open market housing and should be visually indistinguishable.



- 7.8 Any proposed affordable units are required to meet the latest Homes and Community Agency Design and Quality Standards (including the Code for Sustainable Homes Level 3 as this is a requirement for Registered Providers.)
- 7.9 Applicants should meet the design requirements set out in the Core Strategy (Policies CP12, CP13 and CP16), and any other future Selby District Council Development Management policies and guidance relating to design. Applicants should work with Registered Providers early to ensure that design standards meet their requirements.
- 7.10 Core Strategy Policy CP16 states that *'development schemes should seek to reflect the principles of nationally recognised design benchmarks to ensure that the best quality of design is achieved'*. The Core Strategy notes the Council is keen to encourage all new housing developments to attain Lifetime Homes standards and meet the Code for Sustainable Homes as well as supporting the key principles of the Building for Life scheme.

Question 2: Are there any other factors / evidence that should be considered in relation to the design and layout of affordable housing provided in Selby District?

Distribution of Affordable Housing

- 7.11 In order to create mixed and balanced communities, affordable housing should be dispersed through the application site, which depending on the scale of the scheme, may mean in small groups of units. There may be circumstances where Registered Providers have management reasons for seeking a proportion of the affordable housing to be sited together e.g. flatted schemes, but this should not prevent the remainder of the provision being distributed across the development.

Question 3: Are there any other factors / evidence that should be considered in relation to the distribution of affordable housing within an overall development scheme?

Registered Providers

- 7.12 In order to ensure the long term retention and management, perpetuity and availability of the affordable housing the Council's preferred model is that applicants work in partnership with Registered Providers.
- 7.13 The Council recommends that applicants put forward proposals with a partner Registered Provider in order that they can be involved in the negotiation at the earliest possible stage and preferably be party to the Section 106 Agreement which will be required (see below).
- 7.14 A list of approved Registered Providers (RPs) currently operating in the Selby District is provided at Appendix 2 and on the Council's website, in order to assist applicants. The list is not restricted and applicants may work with an RP that is not included in Appendix 2. However, the proposed RP must be approved in advance by the Council before any contract with the RP is entered into. All affordable housing units must be able to be allocated through the Council's allocation scheme (North Yorkshire HomeChoice or future arrangement approved by the Council).
- 7.15 The Council's preferred approach as set out in Core Strategy Policy CP5 is that the applicant builds and transfers the completed units to an RP at the transfer price (see section 8) for that particular dwelling. In some circumstances the applicant may transfer serviced land to the RP to enable the building of each affordable unit. This will be considered by the Council on a case by case basis. The key requirement will be that the Council must be satisfied that the affordable housing scheme will be delivered to meet the need and retained in perpetuity.

Local Connection

- 7.16 Selby District Council is part of North Yorkshire sub-regional Choice Based Lettings Partnership ("the North Yorkshire Homechoice"). This sets an agreed

North Yorkshire wide approach for partner Councils and Registered Providers for selecting new occupiers for their properties.

- 7.17 Rural Exception Sites by their nature will require a local (parish) connection for applicants in the first instance,(see Section 5.9) prior to the property being allocated on a cascade eg with adjacent parishes in the wider Selby district next and North Yorkshire partnership area last. Details will be contained in the Section 106 Legal Agreement (see below)

Section 106 Legal Agreement

- 7.18 The provision of affordable housing is a requirement for all housing and mixed use developments to contribute to meeting the shortage of affordable housing in the District.
- 7.19 Affordable housing will be secured through planning obligations under Section 106 of the Town and Country Planning Act 1990.
- 7.20 The Council's model Section 106 Agreements for sites of 10 units and above (or of 0.3 hectares or more) and sites under 10 units are included in Appendix 3 of the SPD. The model agreements detail affordable housing obligations only. Therefore, the model agreement will need to be tailored to individual site specific requirements and include other non-affordable housing planning obligations (including, for example, recreational open space, education, transport and highways and enhancement of the public realm) as may be required to make the proposed development acceptable in planning terms.
- 7.21 Applicants must submit a draft Section 106 Agreement, based on the appropriate model agreement with the planning application.

Small Number of Market Dwellings on Rural Exception Sites

- 7.22 In line with the National Planning Policy Framework and Selby Core Strategy Policy CP6, the Council may also consider rural exception sites that have a cross-subsidy from a small number of open market sales on the same site.
- 7.23 In considering such schemes the applicant would need to demonstrate to the Council's satisfaction that the open market element is essential to the delivery of the affordable housing development. This would need to be confirmed through dialogue with the Council's Rural Housing Enabler, with consideration of whether the scheme would meet local needs demonstrated through a local (parish) needs survey. The forthcoming sites and policies local plan will consider the allocation of Rural Exception Sites and the need for further detailed policy.

Section 8: Transfer Prices

- 8.1 The NPPF and Core Strategy Policy CP 5 sets out a clear preference for affordable housing to be provided as completed units on site, for schemes of 10 dwellings (or 0.3ha) or more.
- 8.2 Selby District Council work closely with Registered Providers to set transfer prices by property type, size and tenure. The transfer prices will be updated annually and can be found on the Selby District Council website at:
- [include link – when available]*
- 8.3 The transfer prices at the date of publication of this SPD (2013) are included in Appendix 1.

Question 4: Transfer prices have been provided by a number of Registered Providers and differ depending on providers. The transfer prices will be set out as an average per house type for social and for intermediate tenure. Do you agree with this approach? Please state your reasons.

Section 9: Development Viability

- 9.1 The Council expects that applicants have considered the overall cost of development, including the required planning obligations and any abnormal costs, prior to negotiating the purchase of land or the acquisition or sale of an option.



- 9.2 On certain sites, development viability may be affected by a range or combination of factors not identified prior to purchase, such as high abnormal costs⁵ and/or competing or existing land values.
- 9.3 Where the applicant considers that development viability is affected, the applicant should identify these issues and associated costs and submit a financial appraisal (at the applicant's own expense) to the Council at the earliest opportunity, and at the latest as part of any submitted planning application. The Appraisal should cover all of the costs and expected receipts arising from the development to provide a net residual valuation.
- 9.4 The Council will refer the submitted financial appraisal to a viability expert advisor ("the Valuer") for consideration and will require an open and co-operative approach between the applicant, the Council and the Valuer. The Valuer's costs will be met by the applicant. Further guidance on Financial Appraisals is set out in Appendix 4 of this SPD.
- 9.5 The Council will consider the Valuer's report and where the Council decides that development viability is proven to be affected to a critical point by the provision of affordable housing or a commuted sum, the Council may consider a reduction to either the overall numbers of affordable housing or changes to mix (unit types, sizes and tenures) or the commuted sum (as the case may be).

Question 5: Do you agree with this approach to viability?

Section 10: Commuted Sums

- 10.1 The Core Strategy Affordable Housing Policy CP5 requires all developments to contribute in some way towards meeting housing need.

Residential schemes of less than 10 dwellings

- 10.2 For schemes providing less than 10 dwellings Core Strategy Policy CP5 requires a commuted sum. The target contribution is equivalent of up to 10% affordable units. The commuted sum calculation for schemes of less than 10 dwellings is included in Appendix 1 of this SPD and the mechanism for payment will be secured through the Section 106 Agreement based on the Standard S106 Agreements in Appendix 3.

⁵ Abnormal costs can broadly be described as site conditions which a competent purchaser, having undertaken the necessary investigation, could not have reasonably foreseen prior to the acquisition of a site.

Residential schemes of 10 dwellings or more

- 10.3 For schemes providing 10 or more dwellings, Core Strategy Policy CP5 clearly states that Selby District Council's preference is for those units to be provided on site, in line with national policy. The relocation of all or some of the affordable housing provision, or commuted sums will not normally be accepted.
- 10.4 The Council will only accept a case for the affordable housing to be provided off-site in exceptional circumstances and if an applicant can demonstrate that the provision of a commuted sum rather than on-site provision will result in clear benefits to the community/or delivering a balanced housing market.
- 10.5 Core Strategy Policy CP5 makes provision for applicants to provide a commuted sum only in exceptional circumstances. Applicants must make a case to the Council regarding the provision of a commuted sum of some or all off-site provision, as a better alternative to on site provision. A key factor will be that off-site provision is not merely an alternative, but provides a better solution, a clear benefit or betterment than provision of on-site built units would deliver.
- 10.6 Selby District Council plan to update their Strategic Housing Market Assessment (SHMA) in 2013/2014. The new SHMA will seek to provide a detailed definition of what constitutes a balanced housing market. In the interim; for the purposes of implementing Core Strategy Policy CP5 and to provide applicants with guidance, Appendix 5 sets out some examples of the factors which might be considered to deliver clear benefits to the community and support the delivery of a balanced housing market. However, existing evidence in the 2009 SHMA considers the whole District to be a single housing market area and as such the contribution of schemes anywhere in the District will help meet the District wide affordable housing requirements and will deliver a balanced housing market. The Council does not accept that there are settlement based or sub-area based local housing markets which need balancing within themselves or against each other. The requirement for affordable housing is District wide and provision to meet that need is appropriate District-wide.
- 10.7 A financial contribution will be only be acceptable in-lieu of on-site provision if both the applicant and the Council agree that this is the preferred approach e.g. where the management of the affordable housing on site cannot be effectively secured. The commuted sum calculation can be found in Appendix 1 of this SPD and the mechanism for payment will be secured through the section 106 agreement.

Pooling of Commuted Sums

- 10.8 Contributions received in lieu of affordable housing on site will be held in a fund and used to meet the provision of affordable housing in the District.

Section 11: Procedures for Applications

- 11.1 Applicants are advised to reflect the Council's affordable housing requirements at the earliest opportunity within the site development process and identify these in proposed heads of terms. This should be prior to the land acquisition stage and prior to the submission of a planning application.
- 11.2 All relevant planning applications must be accompanied by an indicative layout plan, showing the location of the proposed affordable housing, a Affordable Housing Phasing Plan (if the site is proposed to be developed in phases), an Affordable Housing Plan (detailing the number, types, size, location and tenures of the affordable housing) and any financial viability appraisal information (if applicable). The Council will not validate a planning application where there is a requirement to provide an element of affordable housing, unless the application is supported by these documents. The definitions of these documents are included in the Glossary and Appendix 6 provides more information on their expected content.
- 11.3 All applications which include affordable housing will only be validated if they are also accompanied by a draft of the Section 106 Agreement (see Appendix 3) and for sites delivering 10 dwellings or more, a financial appraisal, if the applicant considers that the 40% on site affordable housing requirement cannot be achieved (see Appendix 4).
- 11.4 The Council's model Section 106 agreements for the provision of affordable housing for schemes of 10 dwellings or more (or of 0.3 hectares or more) and schemes of less than 10 dwellings can be found in Appendix 3.
- 11.5 A key element of this proactive approach is the provision of this SPD to guide applicants. In addition it is expected that applicants ensure that sufficient information is provided with applications and as such the Council requires that outline planning applications must be accompanied by an indicative layout plan showing the location of the proposed affordable housing.
- 11.6 Full planning applications and (in the context of outline planning applications) applications at the reserved matters stage must be accompanied by the following for the Council's consideration and approval:
- An 'Affordable Housing Plan' detailing the proportion, mix (unit types, sizes and tenures) and locations (specific plot numbers) of the affordable housing. An indicative layout plan showing the proportion and location of the affordable housing is required to be included.

- A 'Phasing Plan' identifying the phases of the development (if the development is intended to be developed in phases).
- 11.7 For single phase developments the proportion, mix (unit types, sizes and tenures) and locations (specific plot numbers) of affordable housing will be agreed at the time of a full application or at the time of reserved matters application for outline applications.
- 11.8 For multi-phase developments, the maximum and minimum amounts of affordable housing will be agreed at the time of the outline application. The proportion, mix (unit types, sizes and tenures) and locations (specific plot numbers) of affordable housing on each individual phase will then be agreed at the commencement of each phase.
- 11.9 Planning applications that accord with the policies in the Local Plan and the guidance included in this SPD will be determined without delay, unless material considerations indicate otherwise.

Glossary

Affordable Housing: The Council defines AH in the Core Strategy and uses the national policy definition. Currently this is provided in NPPF (2012) as follows: Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

Affordable Housing Plan: a detailed scheme confirming that the Applicant is providing 40% affordable housing and providing details of the proportion, mix (unit types, sizes and tenures) and location of the affordable housing, as well as the nominated Registered Provider. An Affordable Housing Plan will need to accompany any full or reserved matter planning application for 10 or more dwellings (or a site of 0.3 ha or more).

Where development is proposed in phases, the application will need to be accompanied by a **Phasing Plan:** a drawing to be submitted to the Council identifying the phases of the proposed development

Affordable Rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

Index Linked: The Commuted Sum will be adjusted in accordance with upwards changes in the All In Tender Price Index published by the Building Cost Information Service of Chartered Surveyors (or any other index as the Council may determine from time to time) from the date of adoption of this SPD to the date of payment

Indicative Layout Plan: an indicative plan setting out the location of the affordable housing units confirming that the Applicant is providing 40% affordable housing (for outline applications where the detail is reserved)

Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.

Homes that do not meet the above definition of affordable housing, such as “low cost market” housing, may not be considered as affordable housing for planning purposes.’

Local Housing Needs Survey: a local (parish) housing needs survey will need to accompany a planning application for a Rural Exception Site. The survey will need to set out the identified local needs and how the proposed development will meet these identified needs. This will normally be carried out in partnership with the Rural Housing Enabler and relevant Parish Council.

Rural Exception Sites: Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current or former residents or those who have an existing family or employment connection. Small numbers of market homes may be allowed as part of a scheme at the local authority's discretion, for example where essential to enable the delivery of affordable units without grant funding.

Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

Supplementary Planning Documents: Documents which add further detail to the policies in the Local Plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary Planning Documents are capable of being a material consideration in planning decisions but are not part of the development plan.

Question 6: Are there any other definitions that should be included in the glossary?

Appendix 1

Market Value, Transfer Prices and Commuted Sums

- A1.1 The NPPF and Core Strategy Policy CP5, set out a clear preference for the delivery of affordable housing on site. CP5 states that ‘commuted sums will not normally be accepted on these sites unless there are clear benefits to the community / or delivering a balanced housing market by relocating all or part of the affordable housing contribution’.
- A1.2 Only in those exceptional circumstances, where clear benefits to the community/ or delivering a balanced housing market can be demonstrated, will a commuted sum in lieu of on-site affordable housing be considered.
- A1.3 The following sets out the methodology which would be used to calculate the commuted sums in those exceptional circumstances.

a) Determining the Market Value Methodology

Market Value for schemes of 1-9 dwellings or more

- A.1.4 Transfer Prices and Commuted Sum provisions require a market value to be determined, except for schemes of 1-9 units where the SPD sets out a fixed sum. This is contained in Table 2 in this Appendix 1.

Market Value for schemes of 10 dwellings or more

- A.1.5 For schemes of 10 dwellings or over (or of 0.3 hectares or more), applicants will be required to demonstrate the market value of the types of housing equivalent to the types proposed as affordable housing for the Council to consider and approve.
- A.1.6 Valuation for schemes of 10 or more dwellings (or of 0.3 hectares or more) may be achieved by:
- Three separate estate agent/ surveyor valuations; or
 - Average value of past sales for equivalent dwelling types proposed as affordable housing. Values should originate from average sales within the last 12 months within the same settlement as the application site, and should be provided for each individual dwelling type proposed.

Question 7: Do you agree with the parameters we have included in relation to calculating market value?

b) Establishing Transfer prices – Methodology

A1.7 The Council works with Registered Providers to set transfer prices for a range of property types. Transfer prices are the amount of money that an RP pays to the developer to buy the affordable unit which will be built. Transfer prices vary by property type and size and also relate to the final tenure type to be provided. Transfer prices offered by Registered Providers are founded on an individual, Selby District basis; however they are linked to house prices and incomes in a given area.

Properties for rent

A1.8 RPs provide information on prices that could be paid based on the projected rental income and borrowing limits.

Intermediate properties

A1.9 A District average of 50% of market values calculated based on an affordable mortgage being 3.5 times a district average annual salary.

Table 1: Transfer Prices

Unit Type	Size Sq M	Price to Applicant – Affordable Rent	Price to develop – Shared Ownership
1 bed flat	50	£23,000/ £40,000	£36,000 / £40,500 / £44,539 ⁶
2 bed flat	65	£33,000/ £52,000	£46,000 / £50,800 / £44, 539
2 bed house	75	£56,000 / £56,400 / £56,250	£53,000 / £52,800 / £65,978 ⁷
3 bed house	85	£73,000 / £68,500 / £63,750	£65,000 / £62,200 / £65,978
4 bed house	100	£82,000 / £76,900 / £75,000	£74,000 / £72,000 / £65,978

[Note: figure in table based on three RP responses]

A1.10 For all schemes, these values provide an indicative benchmark for transfer prices. Registered Providers have the flexibility to offer slight increases in transfer prices on a scheme by scheme basis.

⁶ 1 Bed and 2 Bed Flats Shared Ownership prices to developer are based on 50% of Market Value of the 2013 Zoopla Z-Index for flats

⁷ 2 Bed House and 3 Bed House Shared Ownership prices to developer are based on 50% of Market Value of 2013 Zoopla Z-Index for detached houses

Question 8: The information set out in Table 1 is based on three Registered Providers responses to questions regarding the calculation of Transfer Prices, which offered separate values for affordable rent and shared ownership. Other local authorities have demonstrated that these figures could be averaged to offer a single value for each, and this is the approach the Council will take. Do you agree with this approach?

Proposed Options for Calculating Commuted Sums

A1.11 The Council has developed the following approach to the calculation of commuted sums based on the size of the proposed scheme. These are set out as follows:

- 1) Approach for Small Sites (for schemes of 1 to 9 dwellings);
- 2) Approach for Larger Sites (for schemes of 10 dwellings or more). This requires the implementation of a mechanism to make on-site provision more attractive than providing a commuted sum by capturing the market gain achieved.

1) Approach for Small Sites (Schemes of 1 to 9 units) Commuted Sum Calculation

A1.12 Fixed commuted sums will be required for small sites of 1 to 9 units. The commuted sum will be payable prior to commencement of the development.

A1.13 The commuted sum required is based on transfer prices and a market value specific to 2013. The values used are detailed below in Table 2. These values will be Index Linked upwards from adoption of the SPD to the date of payment of the commuted sum.

Applications for a single dwelling will be required to contribute only a nominal commuted sum. The calculation of a contribution of 10% affordable housing on a single dwelling results in a potential maximum payment of £9,225, but the Council propose a reduced sum of £5,000. This is because the Council, whilst seeking to ensure the provision of affordable housing also wish to reduce any additional burdens on individual developments of just one dwelling in order to support such developments which address the needs of different groups in the community such as but not limited to, people wishing to build their own homes.

A1.14 The following table represents the total fixed commuted sums payable to Selby District Council for each scheme size from 1- 9 dwellings.

Table 2: Maximum Commuted Sum for Schemes of 1-9 units (and less than 0.3 hectares)

Scheme Size	Required contribution	Cost to applicant for scheme
1 unit	nominal	£5,000
2 units	0.2	£18,450
3 units	0.3	£27,675
4 units	0.4	£36,900
5 units	0.5	£46,125
6 units	0.6	£55,350
7 units	0.7	£64,575
8 units	0.8	£73,800
9 units	0.9	£83,025

[The values used are based on 2013- specific transfer prices of £70,750⁸ and market value of £163,000^{9/10}].

The following calculation has been used for schemes of 2-9 dwellings

(A-B) x10% proportion of total dwellings

A is the market value of a dwelling (or sq m)

B is the transfer value of a dwelling (or sq m) to RP

Question 9a: Do you have any further comments on our approach to commuted sums for smaller sites (1 to 9 dwellings)?

Question 9b: Do you agree that a smaller fixed sum should be required for single dwelling?

Question 9c: Do you consider that 'cost to applicant' should be composed of different elements to the size and type of units to be developed?

Question 9d: Do you consider that the calculation for determining the maximum fixed sum should be published?

⁸ Based on Zed-Index for Selby. The Zed- Index is the average property value in a given area based on current Zoopla Estimates.

⁹ Based on two Selby District Registered Social Landlord responses for an average affordable rent 3 bedroom dwelling

¹⁰ Figures will be revised annually.

2) Approach to Larger Sites (10 dwellings or more) Commuted Sum Calculation

A1.15 For schemes of 10 dwellings or more, where the Applicant has demonstrated to the Council that there are clear community benefits to provide some units on site and some as a commuted sum, the following calculation will be used.

A1.16 The following calculation captures the market gain achieved from the provision of fewer affordable dwellings on any given site.

Part 1: Calculate On-site/ Commuted Sum contribution as percentage

$$\text{Proposed on-site provision} \div 100 = X$$

$$\text{Proposed off-site provision} \div 100 = Y$$

$$\text{Note: } X + Y = 0.4$$

Part 2: Calculate On- Site/ Commuted Sum contribution as actual number of Total Dwellings

$$(C \times D) = R$$

$$(X \times D) = S$$

$$(Y \times D) = O$$

Part 3: Calculate market housing gain

$$D - S = U$$

$$U - (D - R) = \text{Additional Market Dwellings on-site}$$

$$(C \times \text{Additional Market Dwellings on-site}) = \text{Additional Commuted Sum}$$

$$\text{Additional Commuted Sum} + O = F$$

Part 4: Calculate Affordable Housing Commuted Sum Contribution

$$(A - B) \times (F)$$

A is the market value of a dwelling

B is the transfer value of the dwelling

C is the total affordable housing percentage (Policy CP5: 40%)

D is the total number of dwellings

X is the proposed on-site contribution (as percentage of total dwellings)

Y is the proposed commuted contribution (as percentage of total dwellings)

R is the required number of affordable houses (of total dwellings)

S is the actual number of dwellings from proposed on-site contribution

O is the actual number of dwellings from proposed commuted sum contribution

U is the total number of market houses on site

F is the final commuted provision

Example 3, where the calculation is based on:

- *Market value of a dwelling is £163, 000¹¹*
- *Transfer value of a dwelling is £70,750¹²*
- *The Council's requirement for affordable housing is 40% or 0.4.*
- *The planning application includes 150 new residential units.*
- *The proposed on-site contribution is 0*
- *The proposed commuted sum contribution is 60 dwellings.*

Part 1: Calculate On-site/ Commuted Sum contribution as percentage of Total Dwellings

$$0 \div 100 = 0$$

$$40 \div 100 = 0.4$$

Part 2 : Calculate On- Site/ Commuted Sum contribution as actual number of Total Dwellings

$$(0.4 \times 150) = 60$$

$$(0 \times 150) = 0$$

$$(0.40 \times 150) = 60$$

Part 3: Calculate market housing gain from off-site provision proposal

$$150 - 0 = 150$$

$$150 - (150 - 60) = 60$$

$$(0.4 \times 60) = 24$$

$$60 + 24 = 84$$

Part 4: Calculate Affordable Housing Commuted Sum Contribution

$$(163,000 - 70,750) \times (84) = £7,749,000$$

The commuted sum calculation will result in the following maximum payments in relation to affordable housing. The table below is based on a transfer price of £70,750 and a Market Value of £163,000. It does not factor in a range of housing units and has been used to provide an indication of the required level of commuted sums and to explain the calculation

¹¹ Based on Zed-Index for Selby. The Zed- Index is the average property value in a given area based on current Zoopla Estimates.

¹² Based on two Selby District Registered Social Landlord responses for an average affordable rent 3 bedroom dwelling

Table 3: Resulting Maximum Commuted Sums for schemes of 10 units or above, using market gain capture approach at 2013 prices.

Scheme Size	Number of Units Required – as part of Commuted Sum Calculation	Cost to developer (Market Gain Capture)
50 units	28	£2,583,000
100 units	56	£5,166,000
200 units	112	£10,332,000
400 units	224	£20,664,000
1000 units	560	£51,660,000

Question 10: Do you have any comments on the proposed approach to calculating commuted sum on schemes of 10 units or more?

Appendix 2 – List Registered Providers currently operating in the Selby District

<p>Broadacres Housing Association</p> <p>Broadacres House Mount View Standard Way Northallerton DL6 2YD</p>	<p>Jephson Housing Association</p> <p>Jephson House Lowfields Business Park Old Point Way Elland HX5 9DE</p>
<p>Home</p> <p>Knight House 2 Sandbeck Court Wetherby LS22 7BA</p>	<p>Chevin Housing Group</p> <p>Harrison St Wakefield WF1 1PS</p>
<p>Yorkshire Housing</p> <p>6 Innovation Close Heslington York YO10 5ZF</p>	<p>Hanover (Elderly persons accommodation)</p> <p>The Wave 1 View Croft Road ShIPLEY BD17 7DU</p>
<p>York Housing Association</p> <p>2 Alpha Court, Monks Cross Drive, Huntington, York YO32 9WN</p>	<p>The Guinness Partnership Ltd</p> <p>Guinness Northern Counties 1 Tudor Court Tue Greenway Thorntree Middlesborough TS3 9PZ</p>
<p>South Yorkshire Housing Association</p> <p>43-47 Wellington Street Sheffield S1 4HF</p>	<p>Connect Housing</p> <p>205 Roundhay Road Harehills Leeds LS8 4HS</p>

Appendix 3

Standard S106 Agreements

Dated

201[]

(1) SELBY DISTRICT COUNCIL

and

(2) [OWNER]

and

[(3) [DEVELOPER]]

and

[(4) [MORTGAGEE]]

DEED PURSUANT TO

**Section 106 of the Town and Country Planning Act 1990
relating to land at [Site]**

INFORMATIVE:

This document is the Council's model form of section 106 Agreement detailing affordable housing planning obligations only.

It is to be used for residential developments of between 1-9 dwellings or a site which is less than 0.3 hectares.

This model form of section 106 Agreement may need to be amended by the Council to be tailored to individual site specific requirements and include other non-affordable housing planning obligations as may be required by the Council.

Scheme Size	Required contribution	Cost to applicant for scheme
1 unit	nominal	£5,000
2 units	0.2	£18,450
3 units	0.3	£27,675
4 units	0.4	£36,900
5 units	0.5	£46,125
6 units	0.6	£55,350
7 units	0.7	£64,575
8 units	0.8	£73,800
9 units	0.9	£83,025

to be used by the Council towards the provision of Affordable Housing in Selby District in lieu of provision of Affordable Housing on the Site

- “Affordable Housing SPD”** means the Affordable Housing Supplementary Planning Document adopted by the Council on [XXXX] 2013
- “Application”** means the application for [full] or [outline] planning permission registered by the Council on [date] and allocated planning application reference number [insert number]
- “Commencement of Development”** means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying out of services, erection of any temporary display of site notices or advertisements and **“Commence Development”** shall be construed accordingly
- “Development”** means the development of the Site by the erection of [XX] Dwellings and [insert full description] as set out in the Application
- “Dwelling”** means a unit of residential accommodation (including a house, flat or maisonette) that may be built on Site as part of the Development pursuant to the Planning Permission and **“Dwellings”** shall be construed accordingly
- “Index”** means in relation to construction the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation
- “Index Linked”** means that wherever reference in this Deed is made to a sum being Index Linked it shall mean that at the date when the said sum becomes due it shall be adjusted in accordance with upwards changes in the Index from the date of the adoption of the Affordable Housing SPD and

until the date upon which the payment becomes due

“Interest”	means 4% over the base lending rent for the time being of Barclays Bank Plc compounded quarterly from the date the payment is due until the date of actual payment
“Monitoring Fee”	means the sum of [£] to be used towards the Council’s administration and monitoring costs associated with this Agreement
“Notice of Commencement”	means written notification from the Owner to the Council [addressed to the Head of Planning] of the Commencement Date in accordance with the provisions of Paragraph 1 of the First Schedule hereof
“Occupation”	means occupation for the purposes authorised by the Planning Permission but not including occupation by personnel engaged in construction or fitting out or occupation in relation to marketing or display or security operations
“Plan”	means the plan attached to this Deed and marked [<i>insert number/drawing reference</i>]
“Planning Permission”	means the [full] <i>or</i> [outline] planning permission subject to conditions granted by the Council pursuant to the Application
“Selby District”	means the administrative area of the Council
“Site”	means the land known as [<i>address</i>] and registered at Land Registry under title number [<i>insert number</i>] against which this Deed may be enforced as shown edged red on the Plan

2. CONSTRUCTION OF THIS DEED

2.1 Where the context so requires:

- 2.1.1 Reference to any clause, paragraph or schedule or recital such reference is a reference to a clause, paragraph or schedule or recital in this Deed
- 2.1.2 Words importing the singular meaning include the plural meaning and vice versa
- 2.1.3 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
- 2.1.4 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
- 2.1.5 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

- 2.1.6 References to any party shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions
- 2.1.7 The clause headings in this Deed are for reference only and shall not affect construction of this Deed
- 2.1.8 Any reference to any officer of the Council shall include such officer for the time being of the Council as appropriate or anyone authorised by him or the Council to act on his behalf
- 2.1.9 Any reference to a working day shall exclude any day between 27th and 31st December in any year
- 2.1.10 Where any expiry date falls on a Saturday or Sunday then the period concerned shall actually expire on the next business day
- 2.1.11 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing by any person authorised by them

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to the following statutory provisions:
 - 3.1.1 Section 106 of the Act;
 - 3.1.2 Section 111 of the Local Government Act 1972;
 - 3.1.3 Section 2 of the Local Government Act 2000;
 - 3.1.4 Section 1 of the Localism Act 2012
- 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 Council as local planning authority against the Owner and shall bind any successors in title to the Site.
- 3.3 To the extent that any of the obligations are not planning obligations within the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2012 and all other enabling powers.
- 3.3 The parties hereto agree that the obligations contained in this Agreement satisfy the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010.

4. CONDITIONALITY

- 4.1 The covenants within Clause 5 shall come into effect upon the grant of the Planning Permission.
- 4.2 The covenants within Clause 7 (Costs), Clause 10 (Change in Ownership), Clause 14 (Jurisdiction), Clause 15 (Delivery), Clause 16 (Notices), Clause 18 (Disputes) and Clause 19 (warranty) shall come into effect immediately upon completion of this Deed.

5. THE OWNER'S COVENANTS

- 5.1 The Owner [*add any other party with an interest in the Site*] covenants with the Council as set out in the First Schedule.

6. THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Second Schedule.

7. COSTS

- 7.1 The Owner shall pay to the Council on completion of this Deed:

7.1.1 the reasonable legal and planning costs of the Council incurred in the negotiation, preparation and execution of this Agreement; and

7.1.2 the Monitoring Fee.

8. MISCELLANEOUS

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

- 8.2 This Deed shall be registerable as a local land charge by the Council.

- 8.3 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.

- 8.4 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.

- 8.5 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 interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 8.6 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties or obligations of the Council in the exercise of its functions as Local Planning Authority and its rights, powers, duties and obligations under all public and private statutes, byelaws and regulations may be fully and effectually exercised as if the Council were not a party to this Deed.

- 8.7 Nothing in this Deed shall be construed as granting planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

9. WAIVER

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

10. CHANGE IN OWNERSHIP

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

11. INDEXATION

- 11.1 Any sum referred to as due in the First Schedule shall be increased by an amount equivalent to the increase in the Index from the date of adoption of the Affordable Housing SPD until the date of payment of the sum payable.

12. INTEREST

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

13. VAT

- 13.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

14. JURISDICTION

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

15. DELIVERY

- 15.1 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.

16. NOTICES

- 16.1 Any notice or other communication given or made in accordance with this Deed shall be in writing and:

16.1.1 shall be delivered personally or sent by registered or recorded delivery;

16.2.2 shall in the case of a notice or other communication to the Council be served on the Council and addressed to [*details of the appropriate officer*] at the Council's address shown on the first page of this Deed [or such other address as the Council may from time to time notify the Owner and its successors as being its address for service for the purposes of this Deed];

16.2.3 shall in the case of a notice or other communication to the Owner be served on the Owner at the address of the Owner shown on the first page of this Deed [or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Deed]; and

16.2.4 shall in the case of a notice or other communication to the Mortgagee be served on the Mortgagee at the address of the Mortgagee shown on the first page of this Deed.

[Add any other party with an interest in the Site]

16.2 Notices shall not be sent by email or DX.

17. MORTGAGEE'S CONSENT

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

18. DISPUTES

18.1 All differences and disputes which may arise between the Parties hereto concerning this Deed shall:

18.1.1 Where the difference or dispute relates to the construction or interpretation of this Deed be referred to the determination (as an expert and not as an arbitrator) of an independent leading planning counsel (of not less than 7 years call) agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales or his Deputy on the application of any of the parties in dispute;

18.1.2 Where any dispute or difference shall arise between the parties hereto as to any works to be done or achieved and the costings thereof pursuant to this Deed the same shall be referred to the determination (as an expert and not as an arbitrator) of a surveyor agreed upon between the parties in dispute but in default of such agreement by the President for time being of the Royal Institution of Chartered Surveyors or his Deputy appointed upon the application of any party hereto

18.2 Any expert appointed pursuant to Clauses 18.1.1 or 18.1.2 shall:

18.2.1 act as an expert and not as an arbitrator;

18.2.2 on his appointment serve written notice thereof on the parties in dispute;

18.2.3 consider any written representations by or on behalf of those parties which are received by him within twenty one (21) working days of such service and immediately to forward a copy of the written representations of one party to the other party;

18.2.4 allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within fourteen (14) days of receipt by the other party thereof;

18.2.5 serve notice of his determination as soon as he has made it;

18.2.6 give full and clear reasons for his decision and whose decision (including the question of who shall pay his fees and outgoings in relation thereto) shall be delivered in writing to the parties hereto and shall be final and binding upon the parties

18.3 If the expert shall die delay or become unwilling or incapable of acting or if for any reason the President or his Deputy appointing the expert shall in his absolute discretion think fit he may in writing discharge the expert and appoint another in his place.

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

18.5 Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and other obligations of the Council in the exercise of its functions as a local planning authority or under any other statutes byelaws and regulations which may be exercised as if the Council were not a party hereto.

19. WARRANTY

19.1 The Owner warrants that there are no other interests in the Site as at the date of this Deed other than [the Owner] [and *add any other party with an interest in the Site*] as shown on H.M. Land Registry Title No. [*insert title number*]

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

THE COMMON SEAL of **SELBY**)
DISTRICT COUNCIL was hereunto)
affixed in the presence of:)

Chairman

Chief Executive

THE COMMON SEAL of)
[])
was affixed to this Deed in the)
presence of:)

Director

Director/Secretary

SIGNED as a Deed by)
[Owner])
acting by a director in the presence of:)

Director

Signature of witness:

Name
(in BLOCK CAPITALS)

Address
.....
.....
.....

THE FIRST SCHEDULE

The Owner's Covenants

Affordable Housing

The Owner covenants with the Council as follows:

1. Notices

1.1 To give the Council seven working days prior written Notice of Commencement.

2. Affordable Housing Commuted Sum

2.1 To pay the Council the Affordable Housing Commuted Sum calculated by the Council in accordance with the Index pursuant to Clause 11 hereof.

2.2 Not to cause permit or allow Commencement of Development unless and until the Affordable Housing Commuted Sum has been paid by the Owner to the Council.

THE SECOND SCHEDULE**The Council's Covenants**

The Council covenants with the Owner as follows:

1. Discharge of obligations

- 1.1 That at the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
- 1.2 Following the discharge of the obligations contained in this Deed pursuant to Paragraph 1.1 of this Second Schedule hereof or if pursuant to Clause 8.4 the Planning Permission shall be quashed, revoked or otherwise withdrawn or expires prior to the Commencement of Development the Council shall remove the entry in the Land Charges Register.

2. Affordable Housing Commuted Sum

- 2.1 On receipt of the notice pursuant to Paragraph 1.1 of this Schedule 1 hereof the Council will confirm by written notice to the Owner the Affordable Housing Commuted Sum calculated by the Council in accordance with the Index pursuant to Clause 11.1 of this Deed.
- 2.2 Not to apply the Affordable Housing Commuted Sum for any purposes other than towards those purposes referred to in the definition of Affordable Housing Commuted Sum.
- 2.3 In the event that any of the said Affordable Housing Commuted Sum has not been committed or applied by the Council before the tenth (10th) anniversary of the date of receipt thereof then the Council shall (if required by the person who paid it) repay the unapplied Affordable Housing Commuted Sum or the balance thereof (if any) to the person who paid it.

Dated

201[]

(1) SELBY DISTRICT COUNCIL

and

(2) [OWNER]

and

[(3) [DEVELOPER]]

and

[(4) [MORTGAGEE]]

DEED PURSUANT TO

**Section 106 of the Town and Country Planning Act 1990
relating to land at [Site]**

INFORMATIVE:

This document is the Council's model form of section 106 Agreement detailing affordable housing planning obligations only.

It is to be used for residential developments of 10 or more dwellings or sites of 0.3 hectares or more.

This model form of section 106 Agreement may need to be amended by the Council to be tailored to individual site specific requirements and include other non-affordable housing planning obligations as may be required by the Council

Council as part of the Reserved Matters Approvals]

- “Indicative Layout Plan“** means the indicative plan [marked as *insert*] appended to this Deed showing the location of the Affordable Housing Units [*for Outline Planning Applications with the detail reserved*]
- “Affordable Housing Plan”** means [the detailed scheme set out in Appendix [X] to this Agreement] or [the detailed scheme to be provided for the Council’s approval identifying the number, types, size, location, [phasing] and tenures of the Affordable Housing Units and the timetable for the construction and Practical Completion thereof to satisfy the requirements of the First Schedule hereof] subject to any modifications as may be approved in writing by the Council
- “Affordable Housing Sale Contract”** means a legally binding contract for the transfer of the Affordable Housing Land to a Registered Provider which shall be on substantially the same terms as the transfer of Market Units and shall include the following terms and conditions:
- (a) at a cost that allows the Registered Provided to let the Social Rented Dwellings at a Social Rent [and to let the Affordable Dwellings at an Affordable Rent];
 - (b) at a cost that allows the Registered Provider to sell the Intermediate Housing at a price that is affordable having regard to local incomes and local house prices and the latest Transfer Prices
- “Affordable Housing SPD”** the Affordable Housing Supplementary Planning Document adopted by the Council on [XXXX]
- “Affordable Housing Standards“** the design criteria in addition to level 3 of the Code for Sustainable Homes with which the Affordable Housing Units shall comply, namely:
- to be constructed to HCA Design and Quality Standards (“**DQS**”); and
 - designed to the same external design as the Market Units so as to be indistinguishable from the Market Units
- “Affordable Housing Units”** means the units of Affordable Housing which shall comprise 40% of the total number of Dwellings on the Site (rounded up to the nearest whole Dwelling) and of which:
- [%] shall be Intermediate Housing [*the percentage to be between 30-50% as may be agreed by the Council on a case by case basis and the number to be rounded up to the nearest whole dwelling*]; and
- [%] shall be Rented Housing [*the percentage to be between 30-70% as may be agreed by the Council on a*

case by case basis and the number to be rounded up to the nearest whole dwelling]

and “**Affordable Housing Unit**” shall be construed accordingly

- “**Affordable Rent**” means an Affordable Housing Unit which is let at a rent of no more than 80% of the local market rent and using the Royal Institution of Chartered Housing Surveyors approved valuation methods such rent shall not exceed Local Housing Allowance levels or equivalent replacement assessment
- “**Affordable Rented Unit**” means an Affordable Housing Unit let by the Registered Provider at an Affordable Rent and which meets the criteria of “affordable rented housing” in the definition of “affordable housing” in Annex 2 to the National Planning Policy Framework and “**Affordable Rented Units**” shall be construed accordingly
- “**Application**” means the application for [full] *or* [outline] planning permission registered by the Council on *date* and allocated planning application reference number *insert number*
- “**Commencement of Development**” means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological 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 display of site notices or advertisements and “**Commence Development**” shall be construed accordingly
- “**Development**” means the development of the Site by the erection of [XX] Dwellings and [*insert full description*] as set out in the Application
- “**Dwelling**” means a unit of residential accommodation (including a house, flat, bungalow or maisonette) that may be built on the Site as part of the Development pursuant to the Planning Permission and “**Dwellings**” shall be construed accordingly
- “**Fully Serviced**” means the relevant Dwelling has proper connections within its boundary so as to connect it to surface water drainage facilities and to mains foul drainage water gas electricity and telecommunications (or such of the aforesaid services, if any, the provision of which is anticipated to be required) and enjoys direct access to the public highway or a roadway constructed to adoptable standards which is connected to the public highway and which is adequate for the purpose of its prospective use

“HCA”	means the Homes and Communities Agency constituted pursuant to the Housing and Regeneration Act 2008 and any successor or successors for the time being and any future organisation carrying on substantially the same grant making functions
“Index“	means [in relation to Transfer Prices the House Price Index published by the Office of National Statistics] and [in relation to construction the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation] [in relation to
“Index Linked“	means that wherever reference in this Deed is made to a sum being Index Linked it shall mean that at the date when the said sum becomes due it shall be adjusted in accordance with upwards changes in the Index from the date of this Deed until the date upon which the payment becomes due
“Initial Market Sale“	means the first disposal of a Shared Ownership Unit [or a Shared Equity Unit]
“Initial Market Value“	means the market value of the Dwelling at the time of the Initial Market Sale of a Shared Ownership Unit [or Shared Equity Unit] such valuation having either been determined by three separate estate agents/surveyors being members of the Royal Institution of Chartered Surveyors <i>or</i> being the mean average of overall sales values of equivalent dwellings to the Dwelling within the same settlement as the Site over the previous 12 months from the date of the valuation as may be agreed by the Council.
“Intermediate Housing”	means Affordable Housing which meets the criteria of “intermediate housing” in the definition of “affordable housing” in Annex 2 to the National Planning Policy Framework and intended for those who cannot afford to purchase a Dwelling on the open market without assistance or subsidy which must include Shared Ownership Units [and may include Shared Equity Units or any other form or forms of intermediate affordable housing products which may be approved by the Council]
“Interest”	means 4% over the base lending rate for the time being of Barclays Bank PLC compounded quarterly from the date the payment is due until the date of actual payment
“Local Connection”	means a prospective occupier of the Affordable Homes who: <ul style="list-style-type: none"> • is registered with the North Yorkshire HomeChoice; and • currently lives in the Selby District and have been for at least 6 months; or • has lived in the Selby District for at least 3 years out of the last 5 years; or • has been employed in the Selby District for the last 6

months; or

- has close family member (parent, son, daughter, brother, sister) residing in the Selby District who has done so for at least 6 months

“Local Housing Allowance“	means the rent rate set annually by the Valuation Office (or any successor body thereto) for the area the Affordable Housing Units are located and which is used to calculate the maximum housing benefit entitlement for each tenant thereof
“Market Units”	means Dwellings which are not Affordable Housing Units and “Market Unit” shall be construed accordingly
“Monitoring Fee”	means the sum of £ to be used towards the Council’s administration and monitoring costs associated with this Agreement
“National Planning Policy Framework“	means the National Planning Policy Framework dated 27 March 2012 (and any future guidance or initiative that replaces or supplements it)
“Nomination Deed“	means the nomination deed substantially in the form of the draft annexed as Appendix 1
“Notice of Commencement“	means written notification from the Owner to the Council [addressed to the Head of Planning] of the Commencement Date in accordance with the provisions of Paragraph 1 of the First Schedule hereof
“North Yorkshire HomeChoice“	means the North Yorkshire HomeChoice choice based lettings scheme (or any replacement or successor scheme having the same or similar functions from time to time)
“Occupation”	means occupation for the purposes authorised by the Planning Permission but not including occupation by personnel engaged in construction or fitting out or occupation in relation to marketing or display or security operations
“Phase”	means a phase of the Development as shown on the Phasing Plan and “Phases” shall be construed accordingly
“Phasing Plan”	means the drawing approved by the Council pursuant to 2.1 of the First Schedule and identifying the Phases (subject to any variations to phasing that may be agreed in writing by the Council)
“Plan”	means the plan attached to this Deed and marked [<i>insert number/drawing reference</i>]
“Planning Permission”	means the [full] or [outline] planning permission subject to conditions granted by the Council pursuant to the Application

“Practically Completed”	means constructed, fitted out and Fully Serviced so as to be available for immediate Occupation and “Practical Completion” shall be construed accordingly
“Qualifying Person”	means a person or persons with a Local Connection who may be selected by the Council or by a Registered Provider to Occupy an Affordable Housing Unit and who are registered with North Yorkshire HomeChoice
“Registered Provider”	means a private registered provider of Affordable Housing as defined in Section 80 of the Housing and Regeneration Act 2008 which is registered with and regulated by the HCA or any similar future authority carrying substantially the same regulatory or supervisory functions body whose function
“Rented Housing”	means Affordable Housing Units let by a Registered Provider as Social Rented Units [and Affordable Rented Units as may be approved by the Council]
[“Reserved Approvals”	Matters means the relevant approvals by the Council of a reserved matters application made pursuant to the Planning Permission [<i>for outline applications</i>]
“Selby District”	means the administrative area of the Council
“Shared Equity Lease”	means the lease of an Affordable Housing Unit where 75% of the equity is sold on a long lease to a Qualifying Person and the remainder of the equity is retained in perpetuity by the Registered Provider and registered as such pursuant to the Shared Equity Sale Restriction
“Shared Equity Restriction”	means the following restriction to be entered in the Proprietorship Register at H.M.Land Registry in relation to each and every Shared Equity Unit (subject to any amendments thereto required by H.M.Land Registry and agreed between the parties hereto): “No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the solicitor of the disponor or the donee that the provisions of the First Schedule of the Section 106 Agreement dated [<i>date</i>] containing planning obligations relating to [<i>Site</i>] between (1) the Council and (2) [<i>the Owner</i>] [<i>add any other party with an interest in the Site</i>] have been complied with”
“Shared Equity Unit”	means an Affordable Housing Unit which is available on a Shared Equity Lease in accordance with the First Schedule and which is disposed of to Qualifying Persons subject to the Shared Equity Restriction and “Shared Equity Units” shall be construed accordingly
“Shared Ownership Lease”	means a shared ownership lease in the model form approved by the HCA the premium being no less than 25% and not more than 75% of the Initial Market Value as

defined in the model lease (PROVIDED THAT all reasonable endeavours shall be used to procure a lease share of 50% on such disposals) with the rent at or below 2.75% of the outstanding equity

- “Shared Ownership Unit”** means an Affordable Housing Unit which is disposed of by way of a Shared Ownership Lease granted by the Registered Provider to Qualifying Persons and **“Shared Ownership Units”** shall be construed accordingly
- “Site”** means the land known as [address] [and registered at H.M.Land Registry under title number [number]] against which this Deed may be enforced as shown edged red on the Plan
- “Social Rent”** means social rented housing owned by the approved Registered Provider to be occupied by Qualifying Persons on an assured tenancy agreement or an equivalent rental arrangement as approved by the Council at a rent not exceeding the guideline target rent determined through the national rent regime
- “Social Rented Unit”** means an Affordable Housing Unit which is let subject to a Social Rent and **“Social Rented Units”** shall be construed accordingly
- “Transfer Prices”** means the transfer prices (Index Linked) detailed in the Council’s Affordable Housing Supplementary Document adopted on [XXXX]

2. CONSTRUCTION OF THIS DEED

2.1 Where the context so requires:

- 2.1.1 reference to any clause, paragraph or schedule or recital such reference is a reference to a clause, paragraph or schedule or recital in this Deed;
- 2.1.2 words importing the singular meaning include the plural meaning and vice versa;
- 2.1.3 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;
- 2.1.4 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;
- 2.1.5 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;
- 2.1.6 references to any party shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions;

- 2.1.7 the clause headings in this Deed are for reference only and shall not affect the construction of this Deed;
- 2.1.8 any reference to any officer of the Council shall include such officer for the time being of the Council as appropriate or anyone authorised by him or the Council to act on his behalf;
- 2.1.9 any reference to a working day shall exclude any day between 27th and 31st December in any year;
- 2.1.10 where any expiry date falls on a Saturday or Sunday then the period concerned shall actually expire on the next business day; and
- 2.1.11 any covenant by the Owner *[add any other party with an interest in the Site]* not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing by any person authorised by them.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to the following statutory provisions:
- 3.1.1 Section 106 of the Act;
- 3.1.2 Section 111 of the Local Government Act 1972;
- 3.1.3 Section 2 of the Local Government Act 2000; and
- 3.1.4 Section 1 of the Localism Act 2012.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner *[add any other party with an interest in the Site]* under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner and shall bind any successors in title to the Site.
- 3.3 To the extent that any of the obligations in this Deed are not planning obligations within the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2012 and all other enabling powers.
- 3.3 The parties hereto agree that the obligations contained in this Agreement satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

4. CONDITIONALITY

- 4.1 The covenants within Clause 5 shall be conditional on the grant of the Planning Permission.
- 4.2 The covenants within Clause 7 (costs), Clause 10 (change in ownership), Clause 14 (jurisdiction), Clause 15 (delivery), Clause 16 (notices), Clause 18 (disputes) and Clause 19 (warranty) shall come into effect immediately upon completion of this Deed.

5. THE OWNER'S COVENANTS

- 5.1 The Owner *[add any other party with an interest in the Site]* covenants with the Council as set out in the First Schedule.

6. THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owner as set out in the Second Schedule.

7. COSTS

7.1 The Owner shall pay to the Council on completion of this Deed:

7.1.1 the reasonable legal and planning costs of the Council incurred in the negotiation, preparation and execution of this Deed; and

7.1.2 the Monitoring Fee

8. MISCELLANEOUS

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

8.2 This Deed shall be registered as a local land charge by the Council.

8.3 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.

8.4 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.

8.5 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 interest in the Site unless they hold an interest in the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.6 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties or obligations of the Council in the exercise of its functions as Local Planning Authority and its rights, powers, duties and obligations under all public and private statutes, byelaws and regulations may be fully and effectually exercised as if the Council were not a party to this Deed.

8.7 Nothing in this Deed shall be construed as granting planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

9. WAIVER

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

10. CHANGE IN OWNERSHIP

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

11. INDEXATION

- 11.1 Any sum referred to as due in the First Schedule shall be increased by an amount equivalent to the increase in the Index from the date of adoption of the Affordable Housing SPD until the date of payment of the sum payable.

12. INTEREST

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

13. VAT

- 13.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

14. JURISDICTION

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

15. DELIVERY

- 15.1 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.

16. NOTICES

- 16.1 Any notice or other communication given or made in accordance with this Deed shall be in writing and:

16.1.1 shall be delivered personally or sent by registered or recorded delivery;

16.1.2 shall in the case of a notice or other communication to the Council be served on the Council and addressed to [*details of the appropriate officer*] at the Council's address shown on the first page of this Deed [or such other address as the Council may from time to time notify to the Owner and its successors as being its address for service for the purposes of this Deed];

16.2.3 shall in the case of a notice or other communication to the Owner be served on the Owner at the address of the Owner shown on the first page of this Deed [or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Deed]; and

16.2.4 shall in the case of a notice or other communication to the Mortgagee be served on the Mortgagee at the address of the Mortgagee shown on the first page of this Deed.

[*Add any other party with an interest in the Site*]

16.2 Notices shall not be sent by email or DX.

17. MORTGAGEE'S CONSENT

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

18. DISPUTES

18.1 All differences and disputes which may arise between the parties hereto concerning this Deed shall:

18.1.1 where the difference or dispute relates to the construction or interpretation of this Deed be referred to the determination (as an expert and not as an arbitrator) of an independent leading planning counsel (of not less than 7 years call) agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales or his Deputy on the application of any of the parties in dispute;

18.1.2 where any dispute or difference shall arise between the parties hereto as to any works to be done or achieved and the costings thereof pursuant to this Deed the same shall be referred to the determination (as an expert and not as an arbitrator) of a surveyor agreed upon between the parties in dispute but in default of such agreement by the President for time being of the Royal Institution of Chartered Surveyors or his Deputy appointed upon the application of any party hereto.

18.2 Any expert appointed pursuant to Clauses 18.1.1 or 18.1.2 shall:

18.2.1 act as an expert and not as an arbitrator;

18.2.2 on his appointment serve written notice thereof on the parties in dispute;

18.2.3 consider any written representations by or on behalf of those parties which are received by him within twenty one (21) working days of such service and immediately to forward a copy of the written representations of one party to the other party;

18.2.4 allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within fourteen (14) days of receipt by the other party thereof;

18.2.5 serve notice of his determination as soon as he has made it; and

18.2.6 give full and clear reasons for his decision and whose decision (including the question of who shall pay his fees and outgoings in relation thereto) shall be delivered in writing to the parties hereto and shall be final and binding upon the parties.

18.3 If the expert shall die delay or become unwilling or incapable of acting or if for any reason the President or his Deputy appointing the expert shall in his absolute discretion think fit he may in writing discharge the expert and appoint another in his place.

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

18.5 Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and other obligations of the Council in the exercise of its functions as a local planning authority or under any other statutes byelaws and regulations which may be exercised as if the Council were not a party hereto.

19. WARRANTY

19.1 The Owner warrants that there are no other interests in the Site as at the date of this Deed other than [the Owner [and *add any other party with an interest in the Site*]] [as shown on the H.M.Land Registry Title Number [*insert title number*]].

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

THE COMMON SEAL of **SELBY**)
DISTRICT COUNCIL was hereunto)
affixed in the presence of:)

Chairman

Chief Executive

THE COMMON SEAL of)
[*Owner*])
was affixed to this Deed in the)
presence of:)

Director

Director/Secretary

SIGNED as a Deed by)
[Owner])
acting by a director in the presence of:)

Director

Signature of witness:

Name
(in BLOCK CAPITALS)

Address
.....
.....
.....

THE FIRST SCHEDULE

The Owner's covenants Affordable Housing

The Owner *[add any other party with an interest in the Site]* covenants with the Council as follows:

Part I

1. Notices

- 1.1 To give the Council seven working days' prior written Notice of Commencement.
- 1.2 To give the Council seven working days' prior written notice of first Occupation and seven working days' prior written notice of Occupation of [] % of the Market Units.

2. Phasing

- 2.1 [Not to Commence Development in any Phase] *or* [Not to submit an application for the Reserved Matters Approvals] until a Phasing Plan has been submitted to and approved by the Council and not to carry out the Development other than in accordance with the approved Phasing Plan.

3. Distribution

- 3.1 [Not to Commence Development] [in any Phase] *or* [Not to submit an application for the Reserved Matters Approvals] until the Affordable Housing Detailed Plan [for that Phase] has been submitted to and approved by the Council.

4. Affordable Housing Land

- 4.1 The Owner for and behalf of itself and its successors in title to the Affordable Housing Land covenants with the Council with the intention that the following provisions shall bind the Affordable Housing Land and every part of it into whosoever's hand it may come):

Quantum

- 4.1.1 The number of Affordable Housing Units [shall be] [are] identified in the Affordable Housing Plan and shall be not less than 40% of the total number of Dwellings on the Site.

Distribution

- 4.1.2 The location of the Affordable Housing Units shall be in accordance with the Affordable Housing Plan (or any subsequent modification of the same approved by the Council).
- 4.1.3 To ensure the creation of mixed and integrated communities the Affordable Housing Units shall not be visually distinguishable from the Market Units and unless the Council agrees otherwise it shall be in accordance with and shown on the Affordable Housing Plan and each group of Dwellings shall contain a mix of Affordable Housing Units and Market Units.

Tenure

4.1.4 The Affordable Housing Units shall be in the numbers and percentages set out in the Affordable Housing Plan which shall comply with the following tenure split:

(a) [%] Intermediate Housing *[to be between 30-50% as approved by the Council]*; and

(b) [%] *[to be between 50-70% Rented Housing as approved by the Council]*

Mix

4.1.5 The mix of Affordable Housing Units shall be as set out in the Affordable Housing Plan [appended at Appendix X of this Deed] [to be submitted and approved by the Council].

Construction

4.1.6 Not to construct the Affordable Housing Units otherwise than in accordance with the Affordable Housing Standards approved by the Council.

4.1.7 Not to construct the Affordable Housing Units otherwise than in accordance with the Affordable Housing Plan approved by the Council.

4.1.8 Not to Occupy more than [%] of the Market Units (rounded down to the nearest whole Market Unit) [in any Phase] until all of the Affordable Housing Units (comprising 40% of the total number of Dwellings) have been Practically Completed.

Rented Units

4.1.9 The rent payable by the occupant of any Social Rented Unit shall be the Social Rent.

4.1.10 The rent payable by the occupant of any Affordable Rented Unit shall be the Affordable Rent.

Occupation

4.1.11 The Affordable Housing Units shall be occupied only by Qualified Persons as their sole and main residence.

4.1.12 Not to Occupy or cause or permit the Occupation of the Affordable Housing Units otherwise than in accordance with this Schedule 1 hereof and the tenure split in the Affordable Housing Plan approved by the Council.

4.1.13 The Affordable Housing Units shall be advertised and allocated by the Registered Provider to Qualifying Persons.

4.1.14 The Affordable Housing Units shall only be Occupied by Qualifying Persons selected through the Council's Allocation Scheme, currently North Yorkshire HomeChoice.

4.1.15 Not to Occupy or cause or permit the Occupation of the Affordable Housing Units other than under the management and supervision of a Registered Provider as

landlord and/or freeholder in accordance with usual and normal terms and conditions of the type and style recommended by the HCA in such form as shall be appropriate for the Rented Housing and Intermediate Housing and as shall be approved in advance of its first use by the Council (which approval shall not be withheld or delayed in the case of drafting which is in accordance with the requirements of the HCA and amended as may be necessary as to take account of this Deed).

- 4.1.16 Not to Occupy or cause or permit the Occupation of more than [%] of the Market Units (rounded down to the nearest whole Market Unit) until all of the Affordable Housing Units have been transferred to the Registered Provider approved by the Council.

5 Registered Provider

- 5.1 The Owner shall appoint a Registered Provider approved by the Council and enter into the Affordable Housing Sale Contract prior to Practical Completion of [XX] Market Units on the Site PROVIDED THAT if such approved Registered Provider cannot or will not proceed to enter into the Affordable Housing Sale Contract then the provisions of Part II of this First Schedule shall take effect SUBJECT ALWAYS to the Council first confirming that such provisions may come into effect.
- 5.2 Within two (2) months of the Commencement of Development the Owner shall notify one or more Registered Providers to the Council for approval.
- 5.3 The Owner shall only be entitled to dispose of the Affordable Housing Dwelling to a Registered Provider approved in advance in writing by the Council
- 5.4 Immediately upon receiving confirmation of the Council's approval in accordance with Paragraph 5.3 of this Part I to the First Schedule (above) the Owner shall offer to enter into negotiations with the approved Registered Provider and use reasonable endeavours to enter into the Affordable Housing Sale Contract with the approved Registered Provider.
- 5.5 The Owner shall leave the offer open for acceptance by the approved Registered Provider for a period of two (2) months and will during that period use reasonable endeavours to agree the Affordable Housing Sale Contract with the approved Registered Provider
- 5.6 In the event that the nominated Registered Provider declines to accept a transfer of the Affordable Housing Units or no sale of the Affordable Housing Units has been effected within four (4) calendar months of the date when the Owner notified the Registered Provider in accordance with paragraph 5.2 of this Part I to the Second Schedule (whichever is the later) then Part II of this Second Schedule shall become operable.
- 5.7 Not to cause or permit the Commencement of Development until the Owner has:
- (a) first submitted to the Council the details of the proposed Registered Provider with whom it intends to enter an Affordable Housing Sale Contract; and
 - (b) obtained the Council's approval of the Registered Provider proposed.
- 5.8 Not to dispose of the Affordable Housing Land to anyone other than to a Registered Provider approved in advance in writing by the Council.
- 5.9 Not to Practically Complete the first 10% of the Market Units on the Site until the Affordable Housing Sale Contract has been entered into with the Registered Provider approved by the Council.

- 5.10 Not to complete the Affordable Housing Sale Contract referred to in Paragraph 5.9 of this Part I to the First Schedule (above) unless such transfer contains covenants which comply with this Schedule 1 hereof.
- 5.11 Prior to Occupation of the Affordable Housing Units the approved Registered Provider shall enter into a Nominations Deed substantially in the form annexed hereto at Appendix 1.
- 5.12 The approved Registered Provider shall obtain the Council's approval in advance of any changes to its nominations requirements or its criteria for selection of occupants for the Affordable Housing Units.

Appendix 1

Form of Nominations Deed

[Part II

Appointment of Alternative Registered Provider

- 6.1 In the event that the Affordable Housing Sale Contract with the approved Registered Provider has not been secured before the expiry of the four month period ("the Expiry Date") specified in paragraph 5.6 of Part I to this First Schedule then the Owner shall within five (5) days of the Expiry Date submit to the Council in writing:
- (a) evidence as to why despite taking reasonable steps to do so it has been unable to enter into the Affordable Housing Sale Contract; and
 - (b) evidence from the nominated Registered Provider that they are not willing to purchase the Affordable Housing Units

and thereupon with the prior written approval of the Council the Owner shall be entitled to nominate an alternative Registered Provider PROVIDED ALWAYS THAT the Owner shall nominate an alternative Registered Provider within 10 days of the Expiry Date.

- 6.2 Immediately upon receiving confirmation of the Council's approval to the alternative Registered Provider pursuant to Paragraph 6.1 of this Part II to the First Schedule (above) the Owner will offer to enter into negotiations with the alternative Registered Provider and use reasonable endeavours to enter into the Affordable Housing Sale Contract with the alternative Registered Provider PROVIDED THAT the terms of any transfer shall accord with the provisions in Paragraph 5 of Part I of this First Schedule.

Part III

7. EXCLUSIONS

- 7.1 The provisions of Parts I and II to this First Schedule and the Nominations Deed at Appendix 1 shall not be binding against any tenant Occupying the Affordable Housing Units (or person claiming title from such person) or any mortgagee charge or receiver of such Affordable Housing Units in the event of such person mortgagee chargee or receiver having acquired 100% of the equity of any such dwelling whether this is acquired pursuant to the rights granted by the lease of such dwelling or pursuant to the right to buy provisions of the Housing Act 1985 or the Housing Act 1996 (or any legislation amending

or replacing the same) or any future legislation conferring such a right to buy which is binding on any Registered Provider.

SECOND SCHEDULE

The Council's Covenants

The Council covenants with the Owner as follows:

1. Discharge of obligations

- 1.1 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
- 1.2 Following the discharge of the obligations contained in this Deed pursuant to Paragraph 1.1 of this Second Schedule (above) or if pursuant to Clause 8.4 the Planning Permission shall be quashed, revoked or otherwise withdrawn or expires prior to the Commencement of Development the Council shall remove the entry in the Land Charges Register.

Appendix 4 - Financial Appraisals

- A4.1 To justify the provision of less than the target for affordable housing, the Council requires a Financial Appraisal to be submitted with the planning application. The information contained in the Appraisal will only be made available to the Planning Officer and the viability expert advisor. It will not be placed on the public file nor made available to any third party.
- A4.2 The information to be supplied should include the value of the completed development proposed by this application, and all costs incurred or expected to be incurred in order to achieve this value. The information should ideally include the following as a minimum guide, but may also cover other items specific to the proposed development.

Value

- Gross internal area of units excluding garages and conservatories. Habitable roof-space should be listed separately.
- The value used per unit of area. Alternatively, valuations of the completed buildings.
- The cost of sales or lettings, broken down into marketing/estate agents' fees and legal fees.
- Affordable housing should be shown at the value to be paid by a Housing Association/Registered Provider as published on the Selby District Council website (and shown in Appendix 1 of this SPD).
- The physical state and use of the site, which are authorised and require no consent to continue.

Costs

- Build costs. Give the gross external area multiplied by the unit cost per square metre or square foot. State whether this is a tendered sum or an estimate.
- Preliminaries allowed for. State what is included.
- External works where applicable. Broken down, e.g. X ms of road @ £Y per m. Include boundary treatment, landscaping, demolition and site preparation costs as appropriate.
- Standard Planning Costs – Planning and Building Regulation fees, commuted sums.
- Professional fees – Architects, QS, CDM supervisor etc.

- Contingency allowance.
- Cost of finance. Indicate the period and interest rate.
- Community Benefits. If the scheme includes any exceptional benefits such as the restoration of a listed building or the provision of public open space above what is required, please state the cost of providing this.
- Abnormal costs if any, found since acquisition of site. What are these (e.g. contaminated land remediation) and when you became aware that there were potentially abnormal costs and what the costs are anticipated to be?
- Developers Profit – the amount or percentage included.
- Acquisition price as appropriate

Any other relevant items should be clearly defined and costed.

Question 11: Do you agree with the proposed level of information that should be provided to inform a viability assessment? Is there any additional information that you think should be provided?

Appendix 5: Exceptional Off-site provision

A5.1 This Appendix provides a broad review of the criteria which the Council would take into account when considering whether there is justification for all or part off-site provision of affordable housing or a commuted sum calculation. As set out in Core Strategy Policy CP5, Selby District Council's clear preference is for the delivery of affordable housing on site in accordance with the NPPF. It states that 'commuted sums will not normally be accepted on these sites [ten dwellings or more] unless there are clear benefits to the community / or delivering a balanced housing market by relocating all or part of the affordable housing contribution'.

Defining a Balanced Housing Market and Clear Benefit to the Community

a) Justification of a proposal delivering a Balanced Housing Market

A5.2 Selby District Council plan to update their Strategic Housing Market Assessment (SHMA) in 2013/ 2014. The new SHMA will seek to provide a detailed definition of what constitutes a balanced housing market.

A5.3 However, existing evidence in the 2009 SHMA considers the whole District performs as a single housing market area and as such the contribution of schemes anywhere in the District will help meet the District-wide affordable housing requirement and will deliver a balanced housing market. The Council does not accept that there are either settlement based or sub area based local housing markets which need balancing within themselves or against each other. The requirement for affordable housing is District wide and provision to meet that need is appropriate District wide.

A5.4 In the interim; for the purposes of implementing Core Strategy Policy CP5 the Strategic Housing Market Assessment (SHMA) confirms that the Selby District constitutes a single housing market area. It is therefore not possible to set criteria to assess if a commuted sum would result in a balanced housing market, as the District can only be assessed as a whole.

A5.6 Therefore based on current evidence, the Council cannot foresee that the exceptional circumstances for off-site provision can be demonstrated within the context of the balanced housing market test within Policy CP5. As such the only potential justification for off-site provision or commuted sum would be for an applicant to demonstrate a clear benefit to the community, as set out below.

b) Justification of a proposal delivering a clear benefit to the community

A5.7 As set out in the main part of this SPD (see section 10) a key factor will be that off-site provision is not merely an alternative but provides a better

solution, clear benefits or betterment compared to the provision on-site built would deliver.

A5.8 For the purposes of implementing Core Strategy Policy CP5 and to provide Applicants with guidance on the situations when partial off-site, off-site or commuted sum contributions might be considered, the Council would consider the following factors might form part of the assessment of any case put forward in terms of possible indicators of whether an off-site solution might deliver a clear benefit to the community.

A5.9 This is not a checklist against which proposals will be tested – i.e. just because it falls within one of the categories below it does not automatically qualify for being an acceptable alternative to on-site provision. The alternative must provide an improved offer in comparison to on-site provision; and:

- The proposal would support the Core Strategy development strategy, aims, objectives and policies, which seek to focus development in Selby Town, then LSC and then DSVs.
- The proposal results in the provision of affordable units in a location that is considered to have good access local services, facilities and access to public transport.
- If the proposal results in empty homes being brought back into use for affordable rent on an identified site.
- The proposed development would allow affordable housing to be delivered on an identified site, which would otherwise not be delivered by other means.
- The delivery of affordable units is within the same timescale as the provision of market units on site, defined in the S106 agreement.
- If a mechanism for delivery / delivery partner is identified to provide the affordable housing.

Question 12: Do you think there are any other factors / circumstances that should be taken into account when the Council is assessing whether a proposal might be considered to deliver a balanced housing market or clear benefits to the community? If so how could they be evidenced?

Appendix 6

Information to accompany a planning application – the Affordable Housing Plan

- A6.1 The Council require all planning applications for schemes of 10 dwellings or more to be submitted with an indicative layout plan, a Phasing Plan (as necessary) and an Affordable Housing Plan for full applications (or at reserved matters stage for outline applications). The detail will be dependent on the scheme.
- A6.2 The information submitted should at least comprise the following:
1. The proportion of dwellings provided to be affordable (target of 40% on schemes of 10 units or more).
 2. The proportion of affordable dwellings to be provided as affordable rent and intermediate housing (outline and full planning application).
 3. Identify the affordable dwellings by number, type, size, location, phasing (as applicable) and tenure (for full or reserved matter planning applications).
 4. Details of the Registered Provider who will be partnering on the site.
 5. Timing/trigger arrangement for the transfer of the affordable dwellings to the identified Registered Provider.
 6. Details of open market valuations of the affordable dwellings.
 7. Draft section 106 agreement (using the Council's relevant model section 106 Agreement).
 8. A financial appraisal if the 40% target is not achieved.
 9. Off-site or commuted sum details if the applicant has agreed with the Council that this is acceptable, with the justification meeting the criteria set out at Appendix 5.
- A6.3 For schemes of between 1 and 9 units, it is not considered necessary to provide a separate Affordable Housing Plan due to the more narrowly focussed scope for affordable housing on smaller sites. Instead, where a commuted sum is payable, the Design and Access Statement should include a statement to confirm the applicant's approach to the payment of the commuted sum.

Question 13: Should the Affordable Housing Plan include any further requirements?

Question 14: Do you have any other comments on the AHSPD or Section 106 Agreements?



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