

DATED

20[]

[LOCAL PLANNING AUTHORITY] (1)

[DEVELOPER / OWNER] (2)

[MORTGAGEE] (3)

**[Other potential parties: County Council. Other freehold
and leasehold owners]**

DEED OF AGREEMENT

**Under Section 106 of the Town and Country Planning Act
1990 (as amended) relating to the development of [INSERT
SITE ADDRESS]**

Planning Application ref: [INSERT REFERENCE]

DEED OF AGREEMENT

DATE

2014

BETWEEN:

- (1) **[LOCAL PLANNING AUTHORITY] [ADDRESS]** (“**the Council**”)
- (2) **[DEVELOPER / OWNER]** (Company Registration No.: []) whose registered office is situated at [] (“**the Owner**”)
- (3) **[MORTGAGEE]** (Company Registration No.: []) whose registered office is situated at [] (“**the Mortgagee**”)

WHEREAS:

- A. [The Owner is registered at the Land Registry as the freehold proprietor with Title Absolute of the Site subject to a charge to the Mortgagee.]
- B. The Planning Application has been submitted to the Council to develop the Site and the Council have resolved to grant the Planning Permission subject to the completion of this Deed.
- C. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and considers it expedient in the interests of the proper planning of its area that the development of the Site should be restricted or regulated in accordance with this Deed.
- D. For that purpose the Owner is willing to enter into this Deed pursuant to the provisions of Section 106 of the Act.
- E. The planning obligations on behalf of the Owner in this Deed are binding upon the Site.
- F. The Mortgagee is mortgagee under a legal charge dated [] registered under title number [] and is willing to enter into this Deed to give its consent to the same.

G. The Parties agree that the planning obligations contained in this Deed are necessary to comply with the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed the following words and phrases shall have the following meanings respectively:-

“the Act” means the Town and Country Planning Act 1990

“Affordable Housing” means social rented, affordable rented and intermediate housing provided to eligible households whose needs are not met by the market.

“Certificate of Practical Completion” means the final certificate issued by the Owner or Owner’s contractors certifying that the Development has been Completed

“Commencement of Development” means the carrying out on the Site of a material operation pursuant to the Planning Permission and “material operation” shall have the meaning given to it in Section 56(4) of the Act save that for the purposes of this Deed none of the following operations shall constitute a material operation:-

- 1) any archaeological or site investigations
- 2) works of excavation and
- 3) demolition
- 4) site clearance
- 5) diversion of services and installation of services for construction purposes only
- 6) site or soil investigations
- 7) remedial action in respect of any contamination
- 8) interim landscaping works and provision of construction access
- 9) noise attenuation works or the erection of hoardings and fences.

and the terms “Commence” “Commenced” and

“Commencement” shall be construed accordingly.

“Commencement Notice”	means a notice in writing to be served upon the Council by the Owner notifying it of the Owner’s intention to carry out Commencement of Development and such notice shall include confirmation of the date upon which Commencement is expected to take place and shall contain the reference number for the Planning Application and confirm the clause of this Deed pursuant to which it is being given
“Completed”	means the completion of the Development as evidenced by a Certificate of Practical Completion
“Development”	means the development of the Site to be permitted by the Planning Permission
[“Dwelling”]	means a residential flat or dwelling forming part of the Development]
“Index”	All Items Index of Retail Prices issued by the Office for National Statistics [All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation
“Interest”	means interest at 4% per annum above the base rate from time to time of Nat West Bank plc
[“Market Housing Unit”]	means any Dwelling
“Monitoring Fee”	means an amount of []
“Mortgagee in Possession”	means a mortgagee or chargee or any other body advancing loan finance to the Owner or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee and/or appointed pursuant to the Law of Property Act 1925
“Occupation”	means the actual occupation of any of the Dwelling constructed pursuant to the Planning Permission but

shall not include occupation for the purposes of construction or fitting out or for marketing purposes and “Occupy” and “Occupied” shall be construed accordingly

“Occupation Date” means the first date when any part of the Development is occupied and the phrases “Occupy” “Occupied” and “Occupation” shall be construed accordingly

“the Parties” means the Council the Owner and the Mortgagee

“the Planning Application” means a planning application validated by the Council on [] for Planning Permission for the Development under the Council’s reference number [].

“the Planning Permission” planning permission for the Development granted pursuant to the Planning Application and in the form of the draft planning permission annexed as Appendix 2

“the Site” means the land at [INSERT ADDRESS] as shown edged with a solid red line on the OS Map shown on the Site Plan comprising land within title number SY818290

“the Site Plan” means the plan showing the location of the Site edged with a solid red line on the OS Map and attached hereto as Appendix 1

1.2 In this Deed a reference to:-

1.2.1 a person includes a reference to a body corporate, association or partnership

1.2.2 the plural includes a reference to the singular and vice versa

1.2.3 a clause or schedule unless the context otherwise requires, is a reference to a clause or schedule to this Deed

1.2.4 one gender shall include other genders

1.3 The headings in this Deed are for reference only and shall not affect its interpretation.

1.4 References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending, consolidating or replacing them respectively from time to time and for the time being in force.

1.5 Covenants made hereunder:-

If made by more than one person are made jointly and severally and

- 1.5.1 Subject to the provisions of Clause 9.0 and First Schedule are made to the intent that the same shall bind whomsoever shall become a joint or successors in title to the Site and
- 1.5.2 Are made to the intent that the same shall operate as a charge on the land and shall be registered in the Register of Local Land Charges.
- 1.5.3 Are made to the intent that each of the same shall be a planning obligation for the purposes of Section 106 of the Act.

2. STATUTORY PROVISIONS AND CONDITIONALITY

- 2.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers enabling in that behalf.
- 2.2 The covenants restrictions and requirements imposed upon the Owner under this Deed are planning obligations pursuant to Section 106 of the Act and enforceable by the Council as the local planning authority (and to the extent mentioned in clauses [] by the County Council) against the Owner.
- 2.3 It is hereby agreed between the Parties to this Deed that the provisions of this Deed shall come into effect on the date hereof with the exception of the covenants undertakings and obligations contained within Clause 3.0 of this Deed and the First Schedule which shall becoming binding on the Owner upon the grant of the Planning Permission.
- 2.4 This Deed shall cease to have effect and become null and void in the event that the Planning Permission:-
 - 2.4.1 is quashed or revoked prior to Commencement of Development or
 - 2.4.2 expires prior to Commencement of Development,but the cessation of this Deed shall not affect the liability of any party for any antecedent breach of this Deed.
- 2.5 The term "Parties" shall where the context states otherwise include their successors in title.

2.6 Except for the provisions of clauses [] (which shall come into effect on today's date) all obligations contained in this Deed shall come into effect and bind the Site and every part of the Site from the Commencement of Development.

2.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted after the date of this Deed.

2.8 Nothing in this Deed fetters or restricts the exercise by the Council of its powers.

3. THE OWNER COVENANTS

The Owner hereby covenants with the Council:-

3.1 To observe and perform the obligations set out in the First Schedule on behalf of itself and its successors in title and all persons claiming under or through him or them and so as to bind each and every part of the Site;

3.2 To notify the Council of any disposal of its interest in the Site (save for the disposal of a Dwelling or disposal of the Site to the Owner) and of the name and address of the new owner and the date of the disposal within 14 days of such disposal;

3.3 Not to Commence the Development before the service of the Commencement Notice;

3.4 To notify the Council with the Certificate of Practical Completion; and

3.5 [To notify the Council of the date the first Dwelling is Occupied within 14 days of its occurrence.]

4. WAIVER

4.1 Nothing contained or implied in this Deed shall prejudice or affect the rights powers and duties of the Council in the exercise of their functions as Local Planning Authority and their rights powers and duties under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed PROVIDED ALWAYS for the avoidance of doubt the Council shall comply with the obligations on its part contained in this Deed.

4.2 If any provision of this Deed shall be held to be invalid illegal or unenforceable the validity and legality and enforceability of the remaining provisions hereto shall not in any way to be deemed thereby to be affected or impaired.

- 4.3 No waiver (whether express or implied) by a party of any breach or default in performing or observing any of the terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent a party from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof.
- 4.4 The Owner and its respective successors in title and assigns to the Site shall not be liable for a breach of the obligations contained in this Deed committed after they have parted with all of their interest in the Site (or in respect of which such breach occurs) but without prejudice to any claim that the Council may have for any antecedent breach of covenant.
- 4.5 [No purchaser (or his mortgagee) or their respective successors in title of any [Dwelling] nor any statutory authority or service company acquiring part of the Site or any electricity sub-station gas governor or other land within the Site shall be liable for any breach of this Deed.]
- 4.6 The Owner and its successors in title and assigns to the Site shall not be deemed to have any interest in the Site or any part of it where they retain the benefit of any exception and reservation and/or covenant and/or it is a chargee (unless it is a mortgagee in possession).

5. COSTS

The Owner shall pay the Council's reasonable and proper legal expenses and costs associated with the negotiation and preparation of this Deed upon the completion of this Deed.

6. THIRD PARTY RIGHTS

This Deed gives no rights under the Contract (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act and it may be enforced by any successors in title of the parties and by any successor to the Council's statutory functions.

7. RELEASE OF LIABILITY

Neither the Owner or its successors in title nor any person deriving title from them shall be bound by the obligations in this Deed in respect of any period during which it no longer has an interest in the Site or an interest in the part of the Site in respect of which a breach occurs but without prejudice to the liability for any breach committed prior to the time it disposed of its interest.

8. CONSENT OF THE MORTGAGEE

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent to the intent that the planning obligations shall be binding on the Site and that the security of the mortgage/charge over the Site shall take effect subject to this Deed provided that the Mortgagee shall only be liable for any breach whilst mortgagee in possession and shall not be liable itself for any pre-existing breach.

9. JURISDICTION

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

10. GENERAL

This Deed is a Local Land Charge and the Council shall register it as such under the Local Land Charges Act 1975.

11. DISPUTE RESOLUTION

11.1 Without prejudice to the rights of any party to this Deed to take alternative action any dispute or disagreement arising under this Deed including questions of value or any question of reasonableness may be referred at the instance of any party for determination by a single expert whose decision shall be final and binding on the parties

11.2 The following provisions and terms of appointment shall apply to such disputes or disagreements and questions:

- a) The expert shall have at least ten years post qualification experience in the subject matter of the dispute
- b) The expert shall be agreed between the parties or appointed by the President of the Royal Institute of Chartered Surveyors at the request of any party to the dispute
- c) The party calling for the determination shall make written submissions to the expert and the other parties within ten working days of the expert's appointment
- d) The other parties shall have 21 working days from the receipt of such written submissions or such extended period as the expert shall allow to respond

- e) The expert shall disregard any representations made out of time and shall make his decision within 21 working days of receipt of the representations under sub clauses 11.2(d) or if none the expiry of the period referred to in sub clause 11.2(d)
- f) The expert's decision shall be in writing and the expert shall give reasons for his decision
- g) Each party shall bear its own costs save for the expert's fees and the costs of any independent expert's advice called for by the expert, both of which shall be included in the expert's award

12. NOTICES

- 12.1 Any notice to be given to the Council under this Deed shall be sent to [INSERT NAME AND ADDRESS] or to such other person at such other address as the Council shall at any time direct in writing
- 12.2 Any notice to be given to the Owner under this Deed shall be sent to [INSERT NAME AND ADDRESS] or to such other person at such other address as the Owner shall at any time direct in writing.
- 12.3 Any notice to be given to the Mortgagee under this Deed shall be sent to [INSERT NAME AND ADDRESS] or to such other person at such other address as the Mortgagee shall at any time direct in writing.

13. INDEXATION

Any sum referred to in the [] Schedule[s] shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

14. INTEREST

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

15. VAT

All sums payable under this Deed are exclusive of value added tax (unless the contrary is expressly stated).

THE FIRST SCHEDULE

The Obligations

The Owner hereby covenants with the Council as follows:-

1. The Owner shall pay the [Contributions] and Monitoring Fee to the Council prior to the Commencement of Development.
2. The Owner shall not carry out Commencement of Development until the [Contributions] and Monitoring Fee have been paid to the Council.

OTHER SCHEDULES

See Example Clauses Paper

APPENDIX 1

Site Plan

APPENDIX 2

Draft Planning Permission

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

THE COMMON SEAL of **[INSERT NAME**)

OF AUTHORITY])

was hereunto affixed in the)

presence of:-)

[Mayor]

[Chief Executive]

EXECUTED as a **DEED** by)

[OWNER])

Acting by a Director)

In the presence of:

EXECUTED as a DEED by)

[INSERT MORTGAGEE])

Acting by a Director)

In the presence of: