



**Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country
Planning Act 1990**
Relating to the development of land at

Dated : 201X

(1) WARWICK DISTRICT COUNCIL
(2)

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DATE

201X

PARTIES

- (1) WARWICK DISTRICT COUNCIL of Riverside House Milverton Hill Leamington Spa CV32 5HZ (“Council”)
- (2) [FREEHOLDER] of [.....insert address.....]
 (“Owner”)
- (3) [OTHER INTERESTED PERSON] of [.....insert address.....]
 (“Mortgagee”)

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site which is registered at HM Land Registry under Title Number [*insert title number*]
- 3 The Mortgagee is
- 4 The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 5 The Council resolved on [....*insert date*....] to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

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

- | | |
|----------------------|--|
| “Act” | means the Town and Country Planning Act 1990 as amended |
| “Affordable Housing” | means housing to be provided to those persons identified by the District Council as being in local need of affordable housing as defined in the Warwick District Local Plan 1996-2011. Such housing may comprise subsidised housing which will primarily consist of rented housing but may also consist of intermediate housing as defined in the Supplementary Planning Document which will be of an adequate standard and that will be available to persons who cannot afford to rent or buy houses generally on the open market within Warwick District. Where shared ownership housing is allowed the mortgage cost for each unit must be no more than three and a half times the average household income of newly forming households within Warwick District |
| | “Affordable Housing Units” means a total of [<i>insert number and type of property</i>] (being 40% of the total |

	number of dwellings to be constructed on the Application Site) for the provision of Affordable Housing to be provided in the location marked [<i>insert</i>] on the Plan attached or in such other location as shall be agreed in writing between the Owner and the District Council and comprising [<i>insert number and type of property</i>] for shared ownership [or social rented housing]
“Application”	means the application for full planning permission dated [<i>insert date</i>] submitted to the Council for the Development and allocated reference number [<i>insert application number</i>]
“Application Site”	means the land which is the subject of the Application and against which this Deed may be enforced as shown edged red on the Plan.
“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 begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly.
“Development”	means the Development of the Application Site by [<i>insert description</i>] as set out in the Application
“HomeChoice Allocation Scheme”	This Scheme is a choice based lettings Scheme which includes Council owned and Housing Association owned properties for rent or shared ownership.
“Index”	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation.
“Interest”	interest at 3% per cent above the base lending rate of the HSBC Bank Plc from time to time
“Local Lettings Policy”	means the Council’s Local Lettings Policy dated November 2009 or where this policy is superseded the Local Lettings Policy adopted by the Council and in force at the time
“Occupation” and “Occupied”	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
“Open Market Housing Units”	means those Dwellings which are not Affordable Housing Units

“Plan”	means the plan attached to this Deed
“Planning Permission”	means the full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule.
“Registered Social Landlord”	a registered social landlord as defined in Part 1 of the Housing Act 1996 who is registered with the Homes and Communities Agency and the Tenant Services Authority pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act and which is party to the District Council’s Joint Commissioning Partnership or as otherwise agreed in writing by the District Council.
“Serviced Condition”	means access to services including roads sewers gas electricity water and telecommunications up to the boundary of each Affordable Housing Unit rendering them ready for immediate Occupation
“Supplementary Planning Document”	means the Council’s Supplementary Planning Document in respect of Affordable Housing dated January 2008 or where this document is superseded the Supplementary Planning Document in respect of Affordable Housing currently adopted by the Council

2 CONSTRUCTION OF THIS DEED

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

successors to their respective statutory functions save where specifically provided to the contrary by this Deed.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act.

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, the successors in title of the Owner and any persons claiming through or under the Owner an interest or estate in the land or any part thereof.

3.3 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to powers contained in Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000.

4 CONDITIONALITY

This Deed is conditional upon:

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

SAVE FOR the provisions of Clauses 7.1, 14, 15 and 16 legal costs clause arbitration jurisdiction and delivery clauses which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

The Owner covenants with the Council to observe and perform the Covenants as set out in the Third Schedule.

6 CONFIRMATION OF INTEREST

The Owner hereby warrants and confirms that apart from the parties hereto there are no other persons with a legal and equitable interest in the Site or any part thereof.

7 MISCELLANEOUS

7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

7.2 The Owner shall notify the Council's Head of Planning and Engineering in writing of the Commencement of Development.

7.3 It is hereby agreed and declared that unless specifically agreed no provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.4 This Deed shall be registrable as a local land charge by the Council.

7.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed or the Owner is required to serve notice upon the Council:

- (i) such agreement, approval or consent or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction;
- (ii) shall be given on behalf of the Council by the Housing Strategy Manager;
- (iii) and any notices shall be deemed to have been properly served on the Council if sent by recorded delivery to the Housing Strategy Manager at the Council's principal address

unless specifically stated otherwise in this agreement or the registered office (as appropriate) of the relevant party.

- 7.6 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon written request from the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.8 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 expires prior to the Commencement of Development.
- 7.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.11 Nothing contained or implied in this Deed shall prejudice or otherwise affect the rights powers duties and obligations of the Council in the exercise of its functions either as Local Planning Authority or in any other capacity and that all rights powers duties and obligations under any public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council was not a party to this Deed.
- 7.12 If there is any conflict between the terms of this Deed and any conditions attached to the Planning Permission the latter shall take precedence.
- 7.13 If there is any conflict between the terms of this Deed and the terms of any previous agreement the terms of this agreement shall take precedence.

8 MORTGAGEE'S CONSENT

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 **SAVE THAT** the Mortgagee shall have no liability under this Deed unless it takes possession of the Site in which case it will be bound by the obligations contained in Fourth Schedule.

9 WAIVER

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

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

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date of this Deed until the date on which such sum is payable.

12 INTEREST

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

13 VAT

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

14 ARBITRATION

In the event of any dispute or difference arising out of this Deed between the parties (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Deed) such dispute or difference shall be referred to a sole arbitrator to be agreed between the parties and being a member of the Royal Institution of Chartered Surveyors or in the absence of agreement on the application of any party by the President of the Royal Institution of Chartered Surveyors and in these respects these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 the cost of such referral to be borne equally by the Parties.

15 JURISDICTION

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

16 DELIVERY

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

FIRST SCHEDULE

[Details of the Owner's Title, and description of the Site]

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SECOND SCHEDULE

[Form of notice of planning permission]

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THIRD SCHEDULE

The Owner's Covenants with the Council

AFFORDABLE HOUSING

- 1.1 The Owner shall notify the Council in writing of the anticipated date for completion of the construction of the Affordable Housing Units within the Development and shall not Commence Development until it has entered into a binding contract ("the Contract") with a Registered Social Landlord for the construction and sale of the Affordable Housing Units in accordance with the provisions of this Schedule.
- 1.2 The price to be paid by the Registered Social Landlord to the Owner for the transfer of the Affordable Housing shall be a percentage of the value of the properties if they were sold on the open market (as at the intended date of the exchange of contract in respect of the Affordable Housing) to be agreed between the Owner, the Registered Social Landlord and the Council's Housing Strategy Manager being such a percentage to enable the Affordable Housing to be made available within Homes and Communities Agency (HCA) rent targets without the need for the Registered Social Landlord to apply for HCA grant funding and to enable the Affordable Housing to be made available to purchasers at a mortgage cost of each unit to be no more than three and a half times the average household income of newly forming households within Warwick District.
- 1.3 The Owner covenants with the Council that the affordable housing units to be built on the land shall be constructed according to the minimum standards set out in the Supplementary Planning Document or as otherwise agreed in writing with the Council.
- 1.4 The Owner covenants that the Affordable Housing Units shall be provided for disposal to a Registered Social Landlord in a Serviced Condition and in any event of any disagreement as to whether the Affordable Housing Units are in a Serviced Condition a dispute shall be taken to have arisen which shall be dealt with under the provisions of Clause 14
- 1.5 The Owner shall use its best endeavours to provide the Affordable Housing Units in accordance with such scheme as is approved by the Council (and a failure of the Council to respond to the Owner on a submitted scheme within 28 days shall constitute approval by the Council) and shall provide to the Council within 14 days of request evidence of the action taken to satisfy the obligations under this paragraph
- 1.4 The Contract for the transfer of the affordable housing shall first be approved in writing by the Council (such approval not to be unreasonably withhold or delayed PROVIDED THAT the Council shall be entitled to withhold its consent if the Contract does not comply with the requirements of this Schedule).
- 1.5 The Contract shall provide for the transfer of the freehold or leasehold title of the Affordable Housing Units on the following terms:
 - 1.5.1 The Owner will deduce good and marketable freehold or leasehold title to the Affordable Housing Units and will transfer the Affordable Housing Units with full title guarantee with

vacant possession and subject to all existing entries under Title Number [insert title number] as at the date of this Deed but otherwise the transfer shall be free from any other rights or encumbrances save for any existing rights and encumbrances and such other rights reservations and covenants as are reasonably necessary to enable the Owner to develop the rest of the Land

- 1.5.2 The Transfer shall grant of rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units
- 1.5.3 The Transfer shall include the covenants set out in the Fifth Schedule hereto or such other provisions or covenants of a similar nature as the Council may reasonably require.
- 1.6 The Affordable Housing Units shall not be Occupied other than as Affordable Housing SAVE THAT this covenant shall not be binding or enforceable against any mortgagee or chargee or receiver appointed by the mortgagee or chargee which shall have the benefit of a legal mortgage or charge secured against all or any of the Affordable Housing Units and any person who shall derive title directly or indirectly from such mortgagee or chargee or receiver appointed by the mortgagee or chargee (other than a Registered Social Landlord) Provided Always that the mortgagee or chargee or receiver appointed by the mortgagee or chargee or any successors in title to such mortgage, chargee or receiver shall have obtained a Certificate from the Council stating that it has followed the procedure set out in the Fourth Schedule to this Deed.
- 1.7 The Owner covenants not to dispose of their interest in the freehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to a Registered Social Landlord
- 1.8 The Owner covenants that the Affordable Housing Units shall be allocated in accordance with the Local Lettings Policy.
- 1.9 The Owner covenants that the Affordable Housing Units shall not be sold outright to any occupier
- 1.10 The Owner covenants that insofar as legally possible the Affordable Housing Units shall be excluded from any arrangements whereby tenants may “swap” tenancies (unless a tenant who wishes to swap and move into one of the Affordable Housing Units falls within the definition of a person with a demonstrable need to be housed in the locality as defined in the Sixth Schedule)
- 1.11 The Owner covenants that insofar as legally possible the Affordable Housing Units shall be excluded from any Purchase Grant scheme as referred to in the 1995 White Paper “Our Future Homes” and/or the Housing Act 1996 from any right to buy introduced in favour of the Occupiers of the Affordable Housing Units and/or from any other mechanism that could result in any of the Affordable Housing Units becoming available for sale in the private housing market
- 1.12 The Owner covenants that it will require in the contract and thereafter use its best endeavours to procure that the Registered Social Landlord shall keep the Council’s Housing Strategy Manager for the time being informed in writing as to the addresses of the Affordable Housing Units
- 1.13 The Owner covenants to require in the Contract and thereafter to ensure that the rent to be charged by the Registered Social Landlord for the social rented Affordable Housing Units when first let must conform to the Homes and Communities Agency’s target rent regime as set out in the Housing Corporation’s publication entitled “Rent Influencing Regime: Implementing the Rent Restructuring Framework” or such other amount as may be permitted by any subsequent publication then in force and the rate of increase shall be no greater than the rate stipulated by the

Homes and Communities Agency guidance for registered social landlords for the West Midlands region or if such rate of increase shall cease to be or otherwise not stipulated by the Homes and Communities Agency the rents shall be increased by no greater than Retail Price Indexation + 1% per annum

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FOURTH SCHEDULE

Mortgagee In Possession

1. The covenants contained in this Deed shall not be binding on a mortgagee in possession of any or all of the Affordable Housing Units (hereinafter called “the Mortgaged Properties”) or a bona fide purchaser for value thereof from such a mortgagee in possession (except in the case of a purchaser which is a Registered Social Landlord) or the successors in title of such purchaser PROVIDED THAT the following procedure shall have been followed in all respects:
 - 1.1 Any mortgagee entitled to exercise a right of disposal in accordance with this procedure shall first serve written notice on the Council’s Housing Strategy Manager of its intention to commence legal proceedings to seek possession of the Mortgaged Properties as soon as practicable and no less than seven days prior to the commencement of such proceedings.
 - 1.2 In the event that a mortgagee entitled to exercise a right of disposal in accordance with this procedure shall determine to commence proceedings for possession it shall at the time it commences such proceedings send copies of any notices or other documents served in relation to such proceedings to the Council’s Housing Strategy Manager.
 - 1.3 In the event that a mortgagee entitled to exercise a right of disposal in accordance with this procedure shall take possession of the Mortgaged Properties, it shall use its best endeavours to the reasonable satisfaction of the Council’s Housing Strategy Manager over a period of three months from the date on which it took possession to dispose of the Mortgaged Properties to a Registered Social Landlord approved in writing by the Council on terms which are reasonable in all respects to enable the same to be used for the purposes specified in this Deed and for a consideration determined in accordance with paragraph 1.6 below.
 - 1.4 If the mortgagee is unable within the said period of three months to dispose of the Mortgaged Properties in accordance with paragraph 1.3 and the Council shall have certified in writing that it is satisfied that the mortgagee has complied with paragraph 1.3 then the mortgagee shall be entitled to sell or otherwise dispose of the Dwellings in the Development designated as Affordable Housing as Open Market Dwellings free from all obligations or restrictions.
 - 1.5 For the avoidance of doubt if the Council is not satisfied that the mortgagee has complied with the requirements of paragraph 1.3 hereof, the mortgagee shall not be released from the obligations contained in this Deed until such time as the Council is so satisfied and certifies as such in writing.
 - 1.6 The consideration in accordance with paragraph 1.3 above shall be determined subject to any leases or tenancies subsisting the amount of such consideration to be agreed between the Registered Social Landlord and the mortgagee and failing such agreement to be determined by a Member of the Royal Institution of Chartered Surveyors acting as an expert and not as an arbitrator to be appointed by joint agreement of the parties or in default of agreement on application by either party by the President for the time being of the Royal Institution of Chartered Surveyors (the cost of his appointment and acting to be met by the parties in equal shares).

FIFTH SCHEDULE

Covenants to be included in the Transfer of the Affordable Housing Units

The Transfer to the Registered Social Landlord or the Deed of Covenant shall include the following provisions:

- 1 The Affordable Housing Units shall not be Occupied other than as Affordable Housing SAVE THAT this covenant shall not be binding or enforceable against any mortgagee or chargee or receiver appointed by the mortgagee or chargee which shall have the benefit of a legal mortgage or charge secured against all or any of the Affordable Housing Units and any person who shall derive title directly or indirectly from such mortgagee or chargee or receiver appointed by the mortgagee or chargee (other than a Registered Social Landlord) Provided Always that the mortgagee or chargee or receiver appointed by the mortgagee or chargee or any successors in title to such mortgage, chargee or receiver shall have obtained a Certificate from the Council stating that it has followed the procedure set out in the Fourth Schedule to this Deed.
- 2 The Affordable Housing Units shall be allocated in accordance with the Local Lettings Policy.
3. The Affordable Housing Units shall not be sold outright to any occupier
4. Insofar as legally possible the Affordable Housing Units shall be excluded from any arrangements whereby tenants may “swap” tenancies (unless a tenant who wishes to swap and move into one of the Affordable Housing Units falls within the definition of a person with a demonstrable need to be housed in the locality as defined in the sixth Schedule)
5. Insofar as legally possible the Affordable Housing Units shall be excluded from any Purchase Grant scheme as referred to in the 1995 White Paper “Our Future Homes” and/or the Housing Act 1996 from any right to buy introduced in favour of the Occupiers of the Affordable Housing Units and/or from any other mechanism that could result in any of the Affordable Housing Units becoming available for sale in the private housing market

SIXTH SCHEDULE

Definition of demonstrable need to be housed in the locality

1. The allocation of the Affordable Housing Units shall be made in accordance with the Local Lettings Policy.
2. For the purposes of paragraph 5.0 of the Local Lettings Policy the adjoining parishes will be (listed in priority order):

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