

In this Deed:

- 2.1 **'the Act'** means the Town and Country Planning Act 1990
- 2.2 **'the Administration Charge'** means the sum of (£) being a payment towards the costs of the Council in administering planning obligations in the Borough of Swindon including the obligations under this Agreement
- [2.3 **'Affordable Housing'** means housing provided with or without public subsidy for purchase and/or rent or for any combination of purchase and rent significantly below market level as defined by the Housing Corporation and the Office of the Deputy Prime Minister to be made available for persons who cannot afford to buy or rent houses generally available on the open market
- [2.4 **'the Affordable Housing Contribution'** means the financial contribution of (£) towards the provision of Affordable Housing within the Borough of Swindon]
- 2.5 **'agreed'** or **'approved'** means agreed or approved in writing and given for the purpose of this Deed
- 2.6 **'the Application'** means the planning application dated and referenced made by the [Owner/Developer/ or Agent of the same] for planning permission to develop the Development Land by
- [2.7 **'Art Contribution'** means a financial contribution of Pounds (£) towards the provision of public art such provision to be entirely at the discretion of the Council in terms of size nature artistic influence and geographical location (but within the Borough of Swindon)]
- [2.8 **'the CCTV Contribution'** means the sum of pounds (£) towards the provision of closed-circuit television facilities within the Borough of Swindon]
- 2.9 **'the Commencement Date'** means the date on which the Planning Permission is begun by the carrying out of a material operation (as defined by Section 56 (4) of the Act)
- [2.10 **'the Community Facilities'** means the facilities described in Part 2 of the Third Schedule]
- [2.11 **'the Community Facilities Contribution'** means the sum of Pounds (£) towards the provision of the Community Facilities]

- [2.12 **'the Community Facilities Land'** means the site of the Community Facilities shown for identification purposes only hatched on the Plan having an area of hectares and referred to in clause 6.5 and the Third Schedule]
- 2.13 **'the Community Safety Contribution'** means the financial contribution of (£) towards a community safety scheme at
- 2.14 **'the Contributions'** means [the Affordable Housing Contribution the Arts Contribution the CCTV Contribution the Community Safety Contribution the Education Contribution the Highways Contribution the Leisure Contribution the Off-Site Infrastructure Contribution the Off-Site Open Space Contribution the Play Area Contribution the POS Maintenance Contribution the Public Realm Contribution the Social Contribution and the Transport Contribution]
- 2.15 **'the Developer Contributions Guidance Note'** means the supplementary planning guidance adopted by the Council at Planning Committee on 12th September 2006 or any update or modification of that guidance
- 2.16 **'the Development'** means the development of the Development Land proposed in the Application or permitted by planning permission granted pursuant to the Application or carried out substantially in accordance with such planning permission
- 2.17 **'the Development Land'** means the land edged red on the plan attached hereto in respect of which the Application has been submitted for the Development
- [2.18 **'the Education Contribution'** means the sum of Pounds (£) to provide additional educational facilities within the Borough of Swindon required as a consequence of the Development]
- [2.19 **'the Highways Contribution'** means the sum of pounds (£.....) to be used towards the implementation of]
- [2.20 **'the Highway Works'** means:-
- (a) the works described generally in Part 3 to the Fifth Schedule and indicated in outline on the Drawings (as defined in the Fifth Schedule)
 - (b) such other ancillary works as the Director may reasonably require

- (c) any accommodation works and
- (d) works which may as a consequence of (a) (b) or (c) be necessary to statutory undertakers' and telecommunications apparatus and all other equipment under in or over the highway
- (e) any variation to (a) (b) (c) or (d) as agreed between the parties in writing]

[2.21 **'Landscape Management Plan'** means the landscape management plan which describes in detail the future maintenance of the approved scheme for the landscaping of the Development referred to in clause 6.4 and Part 4 of the Second Schedule]

[2.22 **'the Leisure Contribution'** means the financial contribution of (£) towards culture and leisure facilities in the Borough of Swindon]

2.23 **'made available for occupation'** means (when used in the context of Residential Units) the date on which the Residential Unit appears on the valuation list of the District Valuer as being liable for Council Tax [or when used in the context of industrial/commercial/other units appears on the valuation list of the District Valuer as being liable for non-domestic or business rates]

[2.24 **'the Off-Site Infrastructure Contribution'** means the financial contribution of (£) referred to in clause 6.10 in order that the Council can arrange for the Off-Site Infrastructure Works to be carried out]

[2.25 **'the Off-Site Infrastructure Works'** means the off-site infrastructure works referred to in the Sixth Schedule to make good a deficiency in infrastructure provision arising from the Development]

[2.26 **'the Off-Site Open Space Contribution'** means the commuted sum of (£) to be applied to the provision of new and/or enhancement of existing off-site public open space and play areas within the wards of which sum may be applied to both or either a capital works and/or revenue maintenance programme referred to in clause 6.2]

2.27 **'the Plan'** means the plan attached to this Deed

[2.28 **'Play Areas'** means those areas designated as equipped play areas of LAP LEAP and NEAP standard as appropriate (to be construed in accordance with guidance issued by the National Playing Fields

Association from time to time) referred to in clause 6.3 and Part 2 of the Second Schedule

- 2.29 **'Play Area Contribution'** means the financial contribution of pounds (£) towards the ongoing maintenance of the Play Areas referred to in clause 6.3
- 2.30 **'Play Area Specification'** means the specification for the design provision laying out and equipping of the Play Areas as agreed between the Developer [and/or the **Owner**] and the Council and the drawings for the same submitted to and approved by the Council]
- [2.31 **'POS Maintenance Contribution'** means the commuted sum of pounds (£) towards the future maintenance of the POS referred to in clause 6.2
- 2.32 **'POS Specification'** means the specification for the design provision and laying out of the POS as agreed between the Developer [and/or the Owner] and the Council and may include a planting schedule and the drawings for the same submitted to and approved by the Council
- [2.33 **'the Public Open Space (POS)'** means that part of the Development Land shown for identification purposes hatched green on the Plan having an area of hectares and referred to in clause 6.2 and Part 1 of the Second Schedule]
- 2.34 **'the Public Realm Contribution'** means the financial contribution of (£) towards the enhancement of the Central Area of the Borough of Swindon
- [2.35 **'the Public Works Index'** means the Public Sector Construction Works Quarterly Building Price or the Cost Indices For Road Construction as appropriate or in the event that the base of the calculation of such index shall change or if such index ceases to be published (as to which the Council's reasonable decision shall be conclusive) such other published index of public works prices or the value of money as the Council and the Developer [and/or the Owner] may agree]
- 2.36 **'Residential Unit(s)'** means the unit or units constructed as part of the Development to be occupied as residential accommodation
- 2.37 **'Retail Prices Index'** shall mean the United Kingdom General Index of Retail Prices for Items including mortgage interest or in the event that the base of the calculation of such index shall change or if such index

2.51 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 the successors to their respective statutory functions

2.52 Where a clause or paragraph requires a decision election discretion or judgement to be made or exercised by any party then that decision election discretion or judgement shall be made or exercised reasonably unless otherwise expressed

3 Enabling Provisions

This Agreement is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 [Sections 38 72 and 278 of the Highways Act 1980] and all other enabling powers and has been entered into by the Council pursuant to [the Council's Planning Committee's resolution of (date) (Minute No (number)/an officers' decision under delegated powers dated]

4 Commencement

This Deed shall come into effect immediately on the date first before written but the obligation(s) in clauses 5 and 6 (apart from clause 6.17 which shall be effective on the date first before written) shall become effective only on the Commencement Date

5 Agreement

The Developer [and/or the Owner] covenants and agrees with the Council to perform the obligations or activities specified in clause 6 and the schedules to this Deed

6 Planning Obligations

The Developer [and/or the Owner] shall:-

6.1 [not allow more than Residential Unit(s) to be occupied until *either* the Affordable Housing is provided in accordance in all respects with the First Schedule *or* the Affordable Housing Contribution is paid]

6.2 [not allow more than Residential Unit(s) to be occupied until *either* the POS is designed provided laid out and made available for public use and the POS Maintenance Contribution paid in accordance in all respects with Part 1 of the Second Schedule *or* the Off-Site Open

- Space Contribution is paid]
- 6.3 [not allow more than Residential Unit(s) to be occupied until the Play Areas are designed provided laid out and equipped in the position shown on the Plan in accordance with the Play Area Specification and make the same available for public use and the Play Area Contribution is paid in accordance in all respects with Part 2 of the Second Schedule]
- 6.4 [produce and comply with the Landscape Management Plan in accordance with Part 4 of the Second]
- 6.5 [provide and pay for the Community Facilities in accordance with the Third Schedule]
- 6.6 [provide the Transport Facilities [and/or] pay the Transport Contribution at the Council's election in accordance with Parts 1 and 2 of the Fourth Schedule]
- 6.7 [produce implement and comply with the Travel Plan in accordance with Parts 3 and 4 of the Fourth Schedule]
- 6.8 [either (at the Council's election):-
- 6.8.1 pay the Art Contribution within seven days of the Commencement of the Development or
- 6.8.2 include as part of the Development a permanent work of public art to the value of the Art Contribution which is integral to the Development to be permanently affixed to the Development Land in which case the Developer [and/or the Owner] and the Council shall agree the precise nature of the work of art and its precise location on the Development Land prior to any residential unit being made available for occupation]
- 6.9 [pay the Highways Contribution and carry out the Highway Works in accordance with the Fifth Schedule]
- 6.10 [pay the Off-Site Infrastructure Contribution [on or before Residential Unit(s) [is/are] made available for occupation and shall not allow more than Residential Unit(s) to be occupied until the Off-Site Infrastructure Works are completed][or within months of the Commencement Date]
- 6.11 [pay the Education Contribution to the Council in its capacity as local education authority [on or before one Residential Unit is made available for occupation and shall not allow more than one Residential

Unit to be occupied until the Education Contribution is paid][or within
months of the Commencement Date]

- 6.12 [pay the CCTV Contribution to the Council [on or before one Residential Unit is made available for occupation and shall not allow more than one Residential Unit to be occupied until the CCTV Contribution is paid][or within months of the Commencement Date]
- 6.13 [pay the Social Contribution to the Council [on or before one Residential Unit is made available for occupation and shall not allow more than one Residential Unit to be occupied until the Social Contribution is paid][or within months of the Commencement Date]
- 6.14 [pay the Community Safety Contribution to the Council on or before one Residential Unit is made available for occupation and shall not allow more than one Residential Unit to be occupied until the Community Safety Contribution is paid] [or within months of the Commencement Date]
- 6.15 [pay the Leisure Contribution to the Council on or before one Residential Unit is made available for occupation and shall not allow more than one Residential Unit to be occupied until the Leisure Contribution is paid] [or within months of the Commencement Date]
- 6.16 [pay the Public Realm Contribution to the Council on or before one Residential Unit is made available for occupation and shall not allow more than one Residential Unit to be occupied until the Public Realm Contribution is paid] [or within months of the Commencement Date]
- 6.17 pay the Administration Charge to the Council on the date of this Agreement

7 Certificates

The Developer [and/or the Owner] covenants and agrees with the Council:

- 7.1 where this Agreement imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date to give to the Council prior written notice of the Specified Date
- 7.2 if the Developer [and/or the Owner] fails to give the notice required under clause 7.1 the Council shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Developer [and/or the Owner] of its determination

8 Payments

The Developer [and/or the Owner] agrees with the Council:-

- 8.1 to pay interest on sums due to the Council under this Deed but not paid on the Specified Date from the Specified Date until actual payment at a rate of 4% above the Co-Operative Bank PLCs base rate
- 8.2 that to the extent the Contributions (except the Highways Contribution and the Transport Contribution) remain to be paid then they shall be subject to an annual review on the anniversary and each subsequent anniversary of the date of this Deed so that the amount outstanding is increased or decreased by either the percentage increase or decrease in the Retail Prices Index between the date of this Deed and the relevant anniversary date
- 8.3 To the extent that the Highways Contribution and the Transport Contribution remain to be paid they shall be subject to an annual review on the anniversary and each subsequent anniversary of the date of this Agreement so that the amount outstanding is increased or decreased by either the percentage increase or decrease in the Public Works Index between the date of this Agreement and the relevant anniversary date
- 8.4 that the Contributions (except for the Play Area Contribution the POS Maintenance Contribution and the Off-Site Open Space Contribution insofar as Clause 8.6 saves it) should be spent or committed within 12 years of receipt by the Council and after 12 years any unspent or uncommitted sum should be repaid by the Council with such interest as has accrued

- 8.5 that the Play Area Contribution and the POS maintenance Contribution shall never be repaid
- 8.6 that the Off-Site Open Space Contribution insofar as the Council can demonstrate has been or is to be applied to a revenue maintenance programme shall never be repaid
- 8.7 that the Administration Charge shall never be repaid
- 8.8 the payment of any and all sums due to the Council under this Agreement shall only be made by electronic BACS transfer to the Council's Central Collections Account (a/c no. 61242014) of the Swindon Branch (Sort Code 08-90-12) of the Co-operative Bank PLC

9 Costs

Without Prejudice to the obligations and covenants in the Fifth Schedule the Owner and the Developer agree with the Council:-

- 9.1 to pay to the Council its legal costs incurred in preparing and entering into this Agreement amounting to Pounds (£)
- [9.2 to pay to the Council its legal costs incurred in connection with the transfers of land referred to in this Deed]
- [9.3 to pay the Council's fees and costs in accordance with paragraph 1.14 of Part 1 to the First Schedule]
- 9.4 to pay all costs and fees associated with registering this Agreement in accordance with Clause 13.6 and all Stamp Duty that may fall due on any instrument executed in connection with this Deed

10 Mortgagee's Consent

The Mortgagee consents to the Owner entering into this Agreement and acknowledges that this Agreement binds the Development Land and the Mortgagee agrees that in the event that it takes possession of the Development Land that it too will be bound by the obligations as if it were a successor in title to the Owner

11 Notices

All notices demands or other written communications to or upon the parties pursuant to this Deed shall be deemed to have been properly given or made if despatched by first class recorded delivery or letter to the party to whom such notice request demand or other written communication is to be given or made under this Deed and addressed as follows:-

The production of this draft does not bind the Council to enter into an agreement in this form or at all.

- 11.1 in the case of the Council to the Director of Law and Corporate Governance (except those given pursuant to the Fifth Schedule)
 - 11.2 in the case of the Council to the Director of Environment and Property (for those given pursuant to the Fifth Schedule)
 - 11.3 in the case of any other party to its company secretary at its registered office
- or such other address for service as shall have been previously notified to the other party

12 Indemnity

- 12.1 The Developer hereby indemnifies the Owner against all liability whatsoever in respect of this Deed until such time as the Development Land is transferred to it
- 12.2 The Owner hereby indemnifies the Council against all liability whatsoever in respect of this Deed until such time as the Development Land is transferred to the Developer [and/or the Owner] from which point the Developer [and/or the Owner] shall so indemnify the Council including (without limitation) claims made under Part I of the Land Compensation Act 1973 as amended
- 12.3 For the avoidance of doubt the Developer and the Owner hereby confirm that the indemnities given in this clause 12 cover (without limitation) any claims made against the Council where the Council itself provides any highways under this Agreement

13 General

The parties agree that:-

- 13.1 nothing in this Deed constitutes an obligation to grant planning permission
- 13.2 nothing in this Deed grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function
- 13.3 nothing in this Deed fetters or restricts the exercise by the Council of any of their powers
- 13.4 the obligations contained in this Deed are planning obligations for the purpose of section 106 of the Act and are enforceable as such by the Council
- 13.5 save as expressly provided it is hereby agreed by the parties hereto

that none of the provisions of this Deed are intended to or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Deed

- 13.6 This Deed is registrable as a local land charge for the purposes of the Land Charges Act 1975 and shall be registered as such by the Council and the Developer [and/or the Owner] shall if required by the Council at its absolute discretion consent to this Deed being entered onto the registered title of the Development Land as a notice or the unregistered title of the Development Land as a land charge
- 13.7 If the planning permission granted pursuant to the Application shall expire before the Development is begun as defined above or shall at any time be revoked this Deed shall forthwith determine and cease to have effect
- 13.8 At no time shall the validity of this Deed be challenged by any party to this Deed on the ground that it contains a covenant or obligation to transfer land or the fact that this Deed is made partly pursuant to Section 111 of the Local Government Act 1972
- 13.9 In the event that any of the provisions of this Deed are unenforceable this shall not effect the enforceability of the remaining provisions hereof
- 13.10 the modification of this Deed agreed between the Parties in writing pursuant to Section 106A of the Act shall not vitiate the remainder of this Deed which shall remain in full force and effect as modified
- [13.11 the Owner hereby agrees that in the event that a third party who is not the Developer begins or carries out the Development then all references to the Developer and obligations on him in this Deed shall be construed as if the same were referring and obliging the Owner and the Deed shall then operate to refer to and oblige the Owner directly]

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

FIRST SCHEDULE

Affordable Housing

In this First Schedule the following terms shall have the following meanings:-
'Affordable Housing Land' means that part of the Development Land shown for identification purposes only edged on [the Plan *or* plan no]

[having an area of hectares] (or such other place as the Council shall agree as part of the Application)

'Affordable Housing Unit(s)' means the number units of Affordable Housing to be built on the Affordable Housing Land or any one or more of them and the land within the curtilage of each unit (or 30% of the total number of the Residential Units on the Development Land whichever is the greater)

'Contract' means a joint contracts tribunal contract or such other form of contract in terms agreed between the Owner [and/or the Developer] and a Registered Social Landlord containing provisions for the construction and transfer of the Affordable Housing Units

'Open Market Units' means those Residential Units which are not Affordable Housing Units

'Registered Social Landlord' means a registered social landlord within the meaning of the Housing Act 1996 the identity of whom is nominated by the Council to the Owner and on the Council's list of approved Registered Social Landlords

Part 1

The Developer [and/or the Owner] covenants and agrees:-

- 1.1 to construct the Affordable Housing Units on the Affordable Housing Land
- 1.2 the Affordable Housing Units will comprise sixty per cent units for rent and forty per cent low cost homes being permanent accommodation on the Development Land either: -
 - 1.2.1 to be let on assured tenancies through the Registered Social Landlord; or
 - 1.2.2 if no Registered Social Landlord has been nominated within a period of two months from the date that the Developer [and/or the Owner] has asked the Council to nominate the Registered Social Landlord the Developer [and/or the Owner] shall then use its reasonable endeavours to identify a Registered Social Landlord to acquire the Affordable Housing Units and failing that then the Developer [and/or the Owner] shall let the Affordable Housing Units on assured or secure tenancies; or
 - 1.2.3 for the disposal on the basis of sale by an equity sharing scheme or shared ownership scheme or discount on market

- price scheme approved by the Council or such alternative scheme as may be approved in writing by the Council; or
- 1.2.4 any combination of the schemes referred to in paragraphs 1.2.1 – 1.2.3 inclusive
- 1.3 in the event that a Registered Social Landlord has been nominated by the Council not more than 50% of the Residential Units (excluding the Affordable Housing Units) shall be occupied until all the Affordable Housing Units have been constructed made available for occupation and transferred to a nominated Registered Social Landlord at a cost not exceeding that set out in Appendix 4 of the Developer Contributions Guidance Note
- 1.4 the transfer referred to in paragraph 1.3 shall be prepared by the Owner's solicitors at the cost of the Owner and shall contain those terms set out in Part 4
- 1.5 in the event that the Affordable Housing Units are not transferred to a Registered Social Landlord not more than 50% of the Residential Units (excluding the Affordable Housing Units) shall be occupied until all of the Affordable Housing Units have been constructed completed and made available for occupation.
- 1.6 following the completion of their construction the Affordable Housing Units or part thereof shall only be let or disposed of :-
- [1.6.1 to a key worker which shall mean any person employed by an organisation (or a self-employed person) which provides services that are essential for the continuing sustainability of the local community and local economy and such organisation or body shall include but not by way of limitation: -
- (a) the health services
 - (b) the social services
 - (c) the fire services
 - (d) police service
 - (e) public transport
 - (f) the teaching/education services
 - (g) any other organisation or body operating in the public sector previously approved in writing by the Council (such approval not to be unreasonably withheld) or
 - (h) any other organisation or body (whether or not operating in the public sector) previously approved in writing by

the Council (such approval not to be unreasonably withheld) and/or]

[1.6.2 to a nominated Registered Social Landlord or a designated person being any person or persons who at all material times immediately prior to the occupation of the Affordable Housing Units:-

- (a) is on the housing register or housing transfer list of the Council or
- (b) qualifies to move to the area in which the Development Land is situate pursuant to a mobility scheme to which the Council is the participating authority or
- (c) is owed a duty by the Council pursuant to Section 193 of the Housing Act 1996 or
- (d) is ordinarily resident or employed in the Borough of Swindon and is approved in writing to by the Council as being suitable to occupy the Affordable Housing Units or part thereof]

1.7 the Affordable Housing Units for rent will be let or disposed of at a level of outgoing not exceeding that specified through the rent restructuring regime of the Department of Communities and Local Government and built to standards set in the Housing Corporation's scheme development standards and Eco Homes Very Good standard with at least fifty per cent built to Lifetime Homes standards

1.8 the Affordable Housing Units for Low Cost Home Ownership will be constructed to an Eco Homes Standard of very good and 20% to Lifetime Homes standard

1.9 to agree the specifications of the Affordable Housing Units with the Council's Head of Housing Services and (if applicable) the Registered Social Landlord prior to the commencement of construction of the Affordable Housing Units

1.10 not to use the Affordable Housing land for any purpose other than the provision of Affordable Housing

1.11 to provide a vehicular access foul and surface water sewers and water gas electricity and telecommunication service systems for the Affordable Housing Land linking in each case to the estate roads sewers and service systems to be constructed and laid as part of the

- remainder of the Development and connected ultimately to highways and sewers maintainable at the public expense
- 1.12 not to dispose of or cause or allow the disposal of any individual Affordable Housing Unit built on the Affordable Housing Land other than:
- 1.12.1 in respect of those Affordable Housing Units mutually agreed and identified in advance to be disposed by way of shared ownership lease and
- 1.12.2 in respect of those Affordable Housing Units mutually agreed and identified in advance to be disposed by way of an assured tenancy agreement complying with the guidance given by the Housing Corporation under Section 36 of the Housing Act 1996 or
- 1.12.3 by way of the right to buy or the preserved right to buy under the Housing Act 1985 or the Right to Acquire under the Housing Act 1996
- and in any case to a person who satisfies the qualifications set out in paragraph 1.6
- 1.13 to provide parking provision for the Affordable Housing Units to at least the same standard as for the Open Market Units
- 1.14 upon transfer of the Affordable Housing Land to the Registered Social Landlord or other body agreed or determined in accordance with paragraph 1.2 to procure the execution by the Registered Social Landlord and delivery to the Council of a deed of nomination in the form set out in Part 3 and in the event that variations are required to this form then they shall be made only with the prior written consent of the Council at the Council's absolute discretion
- 1.15 to take all reasonable and prudent steps to avert the repossession of the Affordable Housing Land or any Affordable Housing Unit erected on the Affordable Housing Land by any chargee or mortgagee or the exercise by any chargee or mortgagee of a power of sale
- 1.16 notwithstanding paragraph 1.15 in the event of default under the security or likely default the Developer [and/or the Owner] shall co-operate fully with the Council and the Housing Corporation to arrange a transfer of the Affordable Housing Land with sitting tenants to another Registered Social Landlord at a cost to be determined in accordance with paragraph 1.3 of this First Schedule or (at the

Council's option) to the Council and in particular shall inform the Council immediately in the event of the Owner receiving notification from such chargee or mortgagee of any breach or alleged breach by the Owner of any of its obligations under its security

- 1.17 that in the event of a default under any security referred to in paragraph 1.15 or in other circumstances warranting the intervention of the Housing Corporation (whether or not under Part I Chapter IV or Schedule 1 Part IV both of the Housing Act 1996) clause 1.12 shall not prevent the transfer of the freehold of the Affordable Housing Land or any part of it to another Registered Social Landlord
- 1.18 subject to and without prejudice to the powers and requirements of the Housing Corporation under the Housing Act 1996 that in the event of a default under any security referred to in paragraph 1.15 then paragraph 1.12 shall not prevent the sale of the freehold of the Affordable Housing Land or of any Affordable Housing Unit by the chargee or mortgagee in the exercise of its power of sale provided that the chargee or mortgagee shall have first followed the procedure set out in Part 2
- 1.19 that in the event the Housing Corporation exercises its right to require payment of social housing grant made in respect of the Social Housing Land in accordance with Section 27(2) of the Housing Act 1996 the Owner shall pay to the Council on the date upon which the payment of social housing grant falls due in accordance with the Housing Corporation's direction the whole amount of any grant or loan made by the Council pursuant to Section 22 of the Housing Act 1996 together with interest thereon in respect of the Affordable Housing Land
- 1.20 without prejudice to the provisions of this Part 1 to notify the Council immediately in the event of service of any notice under Sections 40 and 41 of the Housing Act 1996 or any notice order or direction served made or given under Schedule 1 Part IV of the Housing Act 1996

Part 2

The procedure referred to in paragraph 1.18 shall be as follows:

- 2.1 the chargee or mortgagee shall give not less than 3 months' prior notice to the Council of its intention to exercise its power of sale to enable the Council to secure the transfer of the Affordable Housing Land to another Registered Social Landlord or to the Council

- 2.2 the Council shall then have 3 months from the notice given pursuant to paragraph 2.1 within which to respond indicating that arrangements for the transfer of the Affordable Housing Land can be made in such a way as to safeguard the affordable housing character of the Affordable Housing Land and of any Affordable Housing Unit
- 2.3 if within the 3 months the Council does not serve its response to the notice served under paragraph 2.1 then the chargee or mortgagee shall be entitled to exercise its power of sale free of the restrictions set out in paragraphs 1.6 and 1.12
- 2.4 if within 3 months of the date of receipt by it of the notice served under paragraph 2.1 the Council serves its response indicating that arrangements can be made in accordance with paragraph 2.2 then the chargee or mortgagee shall co-operate with such arrangements and use its best endeavours to secure such transfer
- 2.5 the Council shall in formulating or promoting any arrangements referred to in paragraphs 2.2 and 2.4 give full consideration to protecting the interest of the chargee or mortgagee in respect of moneys outstanding under the charge or mortgage
- 2.6 if the Council or any other person cannot within 12 months of the date of service of its response under paragraph 2.4 secure such transfer then provided that the chargee or mortgagee shall have complied with its obligations under paragraph 2.4 the chargee or mortgagee shall be entitled to exercise its power of sale free of the restrictions set out in paragraphs 1.6 and 1.12
- 2.7 if the chargee or mortgagee does not wish to exercise its power of sale at any time after the giving of notice under paragraph 2.1 or the Council does not wish to continue with the exercise of its powers under paragraph 2.4 after the giving of its response under paragraph 2.2 that party shall give to the other not less than 7 days' written notice of its intention to discontinue
- 2.8 in the event of the chargee or mortgagee exercising its power of sale the Owner shall pay to the Council no later than 14 days after the date of any such sale the whole amount of any grant or loan made by the Council in respect of the Affordable Housing Land pursuant to Section 22 of the Housing Act 1996 together with interest calculated at the rate of 2% above the base rate of the Co-Operative Bank PLC

Part 3

THIS DEED OF NOMINATION RIGHTS is made the ... day of

BETWEEN:

- (1) (name of Registered Social Landlord) [company number (number)] whose registered address is at (address) ('the RSL') and
- (2) SWINDON BOROUGH COUNCIL of Civic Offices, Euclid Street, Swindon ("the Council")

1 Definitions

In this Deed:

- 1.1 'Initial Let' means the first tenancy or lease of such newly constructed and previously unoccupied Rented Unit or Shared Ownership Unit
- 1.2 'Local Connection' means in relation to an individual:
 - 1.2.1 such individual who:
 - 1.2.1.1 immediately before taking up occupation of a Rented Unit or Shared Ownership Unit had his only or principal home in the Borough of Swindon for a continuous period of not less than 3 years or
 - 1.2.1.2 has or a member of whose household has a parent adult child brother or sister whose only or principal home is and has been for a continuous period of not less than 3 years in the Borough of Swindon and he wishes to be near that relative or
 - 1.2.1.3 is and has been permanently employed in the Borough of Swindon for a continuous period of not less than 3 years
- 1.3 'Nomination List' means the list to be supplied by the Council pursuant to clauses 3.1.3 and 3.2.1 (as may be updated from time to time in accordance with clause 3.3.3)
- 1.4 'Nominee' means a person named in the Nomination List who satisfies the Local Connection and is specified by the Council as being suitable for the category of Rented Unit or Shared Ownership Unit in respect of which the RSL is in accordance with this Deed to select a person from the Nomination List to offer a Tenancy Agreement or Shared Ownership Lease
- 1.5 'Property' means the land at (address) shown edged red on the attached plan
- 1.6 'Rented Units' means (number) [houses or flats or maisonettes]
- 1.7 'Shared Ownership Units' means (number) [houses or flats or maisonettes]

- 1.8 'Shared Ownership Lease' means a lease substantially in the form annexed or agreed between the parties
- 1.9 'Subsequent Nominee' means a Nominee to be offered a Tenancy Agreement pursuant to clause 3.2.3
- 1.10 'Tenancy Agreement' means an assured tenancy agreement in a form prepared by the RSL and containing terms which accord with the form of tenancy agreement being used by the RSL from time to time for its general lettings
- 1.11 'Vacancy Notice' means a written notice given by the RSL to the Council (in a form to be agreed between the RSL and the Council within 5 weeks from the date of this Deed) the function of such notice being the notification to the Council by the RSL that the construction and fitting out of the Rented Unit or Shared Ownership Unit is completed
- 1.12 'Void' means a Rented Unit which is vacant otherwise than as a result of the tenant having:
- 1.12.1 moved to other accommodation either by transfer or decant provided by the RSL
- 1.12.2 moved to other accommodation under a reciprocal arrangement provided by another registered social landlord registered with the Housing Corporation under the Housing Act 1996
- 1.13 'Void Notice' means a written notice given by the RSL to the Council (in a form to be agreed between the RSL and the Council within 5 weeks from the date of this Deed) the function of such a notice being the notification to the Council of a Void

2 Enabling Provisions

This Agreement is made pursuant to Section 111 of the Local Government Act 1972 and all other enabling powers and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982

3 Procedure

The parties agree that the following nomination procedure shall apply to the nomination of persons in respect of the Rented Units or Shared Ownership Units

3.1 Initial lets

- 3.1.1 The RSL shall give the Council not less than 4 months' written notice of the date when the Initial Let units will be ready for occupation

- 3.1.2 The RSL shall serve Vacancy Notices in respect of the Rented Units or Shared Ownership Units not earlier than 2 months prior to such newly constructed and previously unoccupied Rented Units or Shared Ownership Units becoming available for occupation
- 3.1.3 The Council shall within 5 working days of receipt of a Vacancy Notice serve upon the RSL a list of the names of persons whom the Council considers have a Local Connection
- 3.1.4 The list to be served by the Council under clause 3.1.3 shall:
 - 3.1.4.1 specify the appropriate category of Rented Unit or Shared Ownership Unit
 - 3.1.4.2 indicate the priority for the housing of the persons named
- 3.1.5 The RSL shall have the right to let the Initial Let in respect of the Rented Units or Shared Ownership Units to persons of its own choosing in the event of the Council's failure to serve the list of names referred to in clause 3.1.3 within the period of 5 working days of receipt of the Vacancy Notice
- 3.1.6 The RSL shall within 10 working days of the date of receipt of the list referred to in clause 3.1.3 select a Nominee from the Nomination List taking into account the priority for housing indicated by the Council and shall use its reasonable endeavours to arrange viewing of the relevant Rented Unit or Shared Ownership Unit and offer a Tenancy Agreement or Shared Ownership Lease to such selected Nominee
- 3.1.7 If the selected Nominee fails to enter into a Tenancy Agreement or Shared Ownership Lease within 3 working days of receipt of the RSL's offer of a Tenancy Agreement or Shared Ownership Lease such selected Nominee shall be deemed to have rejected the RSL's offer and the RSL shall select another Nominee whereupon the procedure set out in clause 3.1.6 and this clause shall be repeated
- 3.1.8 In the event of the second selected Nominee failing to accept the RSL's offer of a Tenancy Agreement or Shared Ownership Lease within the time prescribed by clause 3.1.7 then the RSL shall make an offer to a third Nominee and the procedure set out in clauses 3.1.6 or 3.1.7 shall apply but in the event of such

third selected Nominee failing to accept the RSL's offer of a Tenancy Agreement or Shared Ownership Lease within the prescribed time limits the RSL shall not be bound to make any further offers of accommodation to Nominees in respect of such vacancy of the Rented Unit or Shared Ownership Unit but shall be entitled to let the Rented Unit or Shared Ownership Unit to a tenant of its own choosing

3.2 Voids

3.2.1 Should a Rented Unit or Shared Ownership Unit become a Void after the Initial Let or the RSL has reasonable cause to believe it will become a Void then and in each case:

3.2.1.1 the RSL shall serve a Void Notice in respect of the relevant vacant Rented Unit or Shared Ownership Unit and

3.2.1.2 within 5 working days of receipt of the said notice the Council shall serve upon the RSL a list of the names of persons whom the Council considers to have a Local Connection and which shall contain the information referred to in clause 3.1.4

3.2.2 The RSL shall have the right to let the relevant vacant Rented Unit or Shared Ownership Unit to a person of its own choosing in the event of the Council's failure to serve the list referred to in clause 3.2.1.2 within 5 working days of receipt of the Void Notice

3.2.3 Upon receipt of the list referred to in clause 3.2.1.2 the RSL shall follow the procedure set out in clauses 3.1.6–3.1.8 mutatis mutandis

3.2.4 The RSL shall not be obliged to follow the procedure set out in clauses 3.2.1–3.2.3 if it would result in the Subsequent Nominees exceeding 75% of the Rented Units or Shared Ownership Units available after the Initial Let

3.3 Provision of information and alteration of lists

3.3.1 The RSL shall give notification to the Council of the occurrence of the following events within 5 working days of their occurrence:

3.3.1.1 a Nominee failing to view a Rented Unit or Shared Ownership Unit within the time limit prescribed by this Deed

3.3.1.2 a Nominee failing to accept the offer of a Tenancy Agreement or Shared Ownership Lease within the time limit prescribed by this Agreement

- 3.3.1.3 a Nominee accepting an offer of a Tenancy Agreement or Shared Ownership Lease
- 3.3.1.4 a person accepting an offer of a tenancy from the RSL
- 3.3.1.5 the RSL rejecting a Nominee in accordance with clause 3.3.7
- 3.3.2 In the event of a notice being served pursuant to clause 3.3.1 then the name of such Nominee shall be removed from the Nomination List
- 3.3.3 Within 5 working days of the Council receiving notice served in accordance with clause 3.3.1 save for notice under clause 3.3.1.4 the Council shall serve upon the RSL the name and address of a Nominee to add to the Nomination List such notice to include the information set out in clause 3.1.4
- 3.3.4 If the Council shall within the period mentioned in clause 3.3.3 notify the RSL that the Council then has no suitable Nominee the Council shall advise the RSL of a suitable replacement Nominee as soon as reasonably practicable
- 3.3.5 The RSL shall have the right to let a Rented Unit or Shared Ownership Unit to a person of its choosing if the Council's failure to provide a Nominee creates a Void in respect of that Rented Unit or Shared Ownership Unit
- 3.3.6 On 1st January 1st April 1st July and 1st October in each year the RSL shall serve the Council with details of the letting activities of the Rented Units and Shared Ownership Units in a format to be agreed between the RSL and the Council
- 3.3.7 The RSL shall have the right to interview and make enquiries of each Nominee and by serving written notice upon the Council to that effect to reject any Nominee if in the opinion of the RSL the grant of an assured tenancy to such Nominee would be in contravention of the RSL's registered rules or its letting criteria
- 3.3.8 The Council shall immediately notify the RSL in writing if any Nominee is withdrawn from the Nomination List
- 3.3.9 When calculating percentages for the purposes of this Deed percentages in excess of 0.5 shall be rounded up and percentages equal to or less than 0.5 shall be rounded down

3.3.10 The Council and the RSL agree that the nomination rights contained in this Deed may be varied from time to time by agreement in writing by the parties

4 Notices

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any notice shall be deemed to have been served 2 working days after posting

5 Transfers to other Registered Social Landlords

The RSL shall ensure that any Registered Social Landlord to which the Property and Rented Units and Shared Ownership Units erected thereon are transferred otherwise than by direction of the Housing Corporation under its statutory powers shall enter into a similar agreement mutatis mutandis with the Council

6 Disputes

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by or on behalf of the President for the time being of the Chartered Institute of Housing on the application of either party

7 Costs

The RSL agrees with the Council to pay the legal costs which the Council incurs in preparing and entering into this deed

8 Agreements and declarations

The parties agree:

8.1 nothing in this Deed fetters or restricts the exercise by the Council of any of its powers

8.2 the obligations contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33

IN WITNESS whereof the parties hereto execute this their Deed the day and year first before written

The Common Seal of)
SWINDON BOROUGH)
COUNCIL was affixed to)
this Deed in the presence of)

The Common Seal of)
)
was affixed to this Deed)
in the presence of)

Part 4

- 4.1 All provisions reasonably necessary for the beneficial enjoyment of the Affordable Housing Units
- 4.2 A reservation of all rights of access and passages of services and rights of entry reasonably necessary for the beneficial enjoyment of the Development
- 4.3 A covenant by the Registered Social Landlord not to use the Affordable Housing Units other than for residential purposes
- 4.4 A covenant by the Registered Social Landlord to enter into a Nominations Agreement with the Council within twenty-eight days of the transfer of the Affordable Housing Land to the Registered Social Landlord
- 4.5 A covenant by the Registered Social Landlord not to dispose of any Affordable Housing Unit other than by sale by way of shared ownership or equity share or by other suitable arrangement to the intent that the Affordable Housing Unit shall be used for the purposes of providing housing with or without public subsidy for purchase and/or rent or for any combination of purchase and rent significantly below market level as defined by the Housing Corporation and the Department of Communities and Local Government to be made available for persons who cannot afford to buy or rent houses generally available on the open market and who:-
 - 4.6.1 is on the housing register or housing transfer list of the Council or
 - 4.6.2 qualifies to move to the area in which the Development Land is situate pursuant to a mobility scheme to which the Council is the participating authority or
 - 4.6.3 is owed a duty by the Council pursuant to Section 193 of the Housing Act 1996 or

4.6.4 is ordinarily resident or employed in the Borough of Swindon and is approved in writing to by the Council as being suitable to occupy the Affordable Housing Units or part thereof

PROVIDED THAT the transfer from the Registered Social Landlord to the purchaser in housing need shall contain a restriction to the effect that the purchaser cannot offer the property for sale on the open market until such time after he has first offered the Registered Social Landlord the option to repurchase the property at open market value for a period of not less than eight weeks

4.6 Subject to and with the benefit of:

4.6.1 all matters registered or capable of registration as local land charges whether registered or not;

4.6.2 all notices orders proposals or requirements affecting or relating to the Affordable Housing Land given or made by any government department statutory undertaker public local or other authority;

4.6.3 all rights easements quasi-easements and privileges in the nature of light air drainage way and passage and other like rights used or enjoyed over the Affordable Housing land

SECOND SCHEDULE

In this Second Schedule the following terms shall have the following meanings:-

‘the Completion Notice’ means the notice or notices issued by the Council either prior to or during the Interim Period requiring any works that it considers (at its absolute discretion) to be necessary for the Play Areas or the POS to be in accordance with the Play Area Specification or the POS Specification as appropriate including (without limitation) with regard to the POS re-planting of unhealthy or failed plants and a timescale within which those works are to be completed

‘the Final Certificate’ means the certificate issued by the Council in accordance with paragraphs 1.2.3(a) and 2.2.3(a) as appropriate

‘the Final Inspection’ means the inspection or inspections of the POS or Play Areas as appropriate conducted by the Council after twelve months of commencement of the Interim Period (or an alternative time period at the Council’s discretion) to ensure that all works have been carried out in

accordance with the Play Area Specification or the POS specification as appropriate (and in the case of the POS that the plants are in good health) and to determine whether it is appropriate to issue a Completion Notice or the Final Certificate in the Council's absolute discretion

'the First Inspection' means the inspection conducted by the Council after six months of commencement of the Interim Period (or an alternative time period at the Council's discretion) to ensure that the planting and landscaping has been properly undertaken in accordance with the POS specification and that the plants are in good health and to determine whether it is appropriate to issue a Completion Notice

'the Interim Period' means the period between the issue of the Provisional Certificate and the outcome as set out in paragraph 1.1.3 or 2.1.3 as appropriate is achieved in either case such period being not less than twelve months

'the Provisional Certificate' means the certificate or certificates issued by the Council once the Council is satisfied that the POS and/or Play Areas has/have been completed along with the other obligations in paragraph 1.1.1 or 2.1.1 as appropriate

Part 1 POS

- 1.1 The Developer [and/or the Owner] shall:-
- 1.1.1 notify the Council in writing within 7 days of compliance with Clause 6.2
 - 1.1.2 maintain the POS for the Interim Period and comply with any Completion Notice issued by the Council
 - 1.1.3 once the Final Certificate has been issued either:-
 - (a) transfer the POS to the Council within two calendar months of receipt of the Final Certificate for a total consideration of one pound (£1.00) and the transfer shall contain the terms contained in Part 3 and any necessary reservations to allow the Development to be carried out and completed and pay the POS Maintenance Contribution to the Council contemporaneously therewith or
 - (b) immediately on receipt of the Final Certificate implement the Landscape Management Plan and thereafter maintain the POS in accordance with the Landscape

Management Plan for a period of eighty years (which shall be the perpetuity period applicable thereto)

1.2 The Council shall:-

- 1.2.1 (a) inspect the POS within a reasonable period having received notification from the Developer [and/or the Owner] under paragraph 1.1.1 or in the event that no such notification has been received at the Council's discretion to determine whether to issue the Provisional Certificate and
 - (b) carry out the First Inspection and
 - (c) carry out the Final Inspection
 - (d) as appropriate in the event that a Completion Notice is issued
- 1.2.2 If appropriate:-
- (a) following an inspection under paragraph 1.2.1(a) issue the Provisional Certificate
 - (b) following the First Inspection issue a Completion Notice
- 1.2.3 Following the Final Inspection either:-
- (a) issue the Final Certificate or
 - (b) issue a Completion Notice

1.3 The Developer [the Owner] and the Council agree as follows:-

- 1.3.1 If a Completion Notice is issued under paragraph 1.2.2 or paragraph 1.2.3 then the timetable for issuing the Final Certificate under this Deed shall be deemed amended accordingly in order for compliance of the Completion Notice to be achieved and a further inspection or inspections to be carried out by the Council
- 1.3.2 In the event that a Completion Notice is not complied with the Council may elect to enter onto the Development Land and complete the works as required by the Completion Notice at the expense of the Developer [and/or the Owner] rather than serve a further Completion Notice

Part 2 Play Areas

2.1 The Developer [and/or the Owner] shall:-

- 2.1.1 notify the Council in writing within 7 days of compliance with Clause 6.3
 - 2.1.2 maintain the Play Area for the Interim Period and comply with any Completion Notice issued by the Council
 - 2.1.3 Once the Final Certificate has been issued transfer the Play Areas to the Council for a total consideration of one pound (£1.00) within two calendar months of receipt of the Final Certificate and the transfer shall contain the terms contained in Part 3 and any necessary reservations to allow the Development to be carried out and completed
- 2.2 The Council shall:-
- 2.2.1 (a) inspect the Play Areas within a reasonable period having received notification from the Developer [and/or the Owner] under paragraph 2.1.1 or in the event that no such notification has been received at the Council's discretion to determine if the works under paragraph 2.1.1 have been carried out so that in either case it may determine whether to issue the Provisional Certificate and
 - (b) carry out the Final Inspection and
 - (c) as appropriate in the event that a Completion Notice is issued
 - 2.2.2 If appropriate following an inspection under paragraph 2.2.1(a) issue the Provisional Certificate
 - 2.2.3 Following the Final Inspection either:-
 - (a) issue the Final Certificate or
 - (b) issue a Completion Notice

Part 3

- 3.1 The Owner shall transfer the POS and the Play Areas
- 3.2 The POS and Play Areas are transferred subject to and with the benefit of:
 - 3.2.1 all matters registered or capable of registration as local land charges whether registered or not;
 - 3.2.2 all notices orders proposals or requirements affecting or relating to the POS and Play Areas given or made by any

The production of this draft does not bind the Council to enter into an agreement in this form or at all.

government department statutory undertaker public local or other authority;

- 3.2.3 all rights easements quasi-easements and privileges in the nature of light air drainage way and passage and other like rights used or enjoyed over the POS and Play Areas

Part 4 Landscape Management Plan

The Developer [and/or the Owner] shall:-

- 4.1 within months of the date of this Deed to submit to the Council for its approval the draft Landscape Management Plan
- 4.2 not remove uproot destroy lop or damage any tree or shrub on the Development Land unless and until the Landscape Management Plan has been submitted to and approved by the Council
- 4.3 not to carry out any works comprised within the Development on the Application Site before the Landscape Management Plan has been approved by the Council
- 4.4 to implement the Landscape Management Plan as approved by the Council as soon as approval of it is obtained

THIRD SCHEDULE
Community Facilities

Part 1

The Developer [and/or the Owner] covenants and agrees:-

- 1 to provide and lay out (including construction of buildings to at least a shell state) the Community Facilities Land in accordance with a specification approved by the Council and to the Councils satisfaction for the purpose of accommodating the Community Facilities described in Part 2 to this Third Schedule
- 2 to complete the works of provision and laying out in accordance with paragraph 1 [on or before Residential Unit(s) [is/are] made available for occupation and shall not allow more than Residential Unit(s) to be occupied until the Community Facilities Land is provided and laid out][or within months of the Commencement Date] and to notify the Council in writing within seven days of completion of the same
- 3 within 2 months of the completion of the works referred to in paragraph 2 to transfer the Community Facilities Land to the Council
- 4 to pay to the Council on the date of the transfer in paragraph 3 the Community Facilities Contribution

Part 2

Specify Community Facilities

FOURTH SCHEDULE

Part 1 Transport Contributions and Facilities

The Developer [and/or the Owner] covenants and agrees:-

- 1 to pay to the Council the Transport Contribution of £... towards the provision of the Transport Facilities within months from the date of this Deed and/or
- 2 to undertake and complete the Transport Facilities in accordance with Part 2 to this Fourth Schedule [on or before Residential Unit(s) [is/are] made available for occupation and shall not allow more than Residential Unit(s) to be occupied until the Transport Facilities are completed][or within months of the Commencement Date] and shall notify the Council in writing within seven days of completion of the same

Part 2 Transport Facilities

Specify Transport Facilities (including specification and programme etc)

Part 3 Travel Plan

The Developer [and/or the Owner] covenants and agrees:-

- 3.1 to provide the Travel Plan within three months of Commencement of the Development
- 3.2 to implement the Travel Plan within six months of the Development or part of it being made available for occupation
- 3.3 to provide annual statistics to the Council (once the Travel Plan has been implemented) showing the number of employees and visitors who travel to and from the Development and their modes of travel in the preceding twelve month period
- 3.4 the Travel Plan will include the establishment of baseline figures from an employee and visitor survey and site audit
- 3.5 the Travel Plan will have the overall objective of reducing the need for travel by private car and encouraging the use of modes of transport other than car and will comply with the requirements set out in Part 4 to this Fourth Schedule
- 3.6 to appoint a Travel Plan Co-ordinator before occupation of the Development to be responsible for the day to day implementation of the measures contained within the Travel Plan
- 3.7 the Council may request a meeting with the Travel Plan Co-ordinator at

any time when the Council in its sole discretion considers that a problem has arisen concerning the operation of the Travel Plan and a meeting shall take place within 21 days of such a request being made unless a different timetable is agreed in writing between the Council and the Travel Plan Co-ordinator

- 3.8 at its own cost to carry out surveys two, five, seven, ten, twelve and fifteen years from the date at which the Travel Plan is first implemented to review the Travel Plan and agree with the Council any action that is required which will then be implemented as soon as possible thereafter
- 3.9 at its own cost to appoint independent consultants agreed by the Council to carry out the site audits and surveys set out in the Travel Plan
- 3.10 the Travel Plan will contain targets for the reduction in use of private motor vehicles to access and egress the Development and obligations to be performed by the Developer [and/or the Owner] in the event that those targets are not met which may include (without limitation) the Developer [and/or the Owner] being responsible for all costs associated with the making bringing into force implementing and enforcing of traffic regulation parking or other orders the carrying out of highway works and the payment of liquidated damages as deemed to be required by the Council acting reasonably as a direct or indirect result of the Developer [and/or Owner] failing to meet those targets

Part 4 Travel Plan Requirements

The travel plan shall include the following:-

- 4.1 Aims and objectives for the Developer [and/or the Owner] / the local environment/ the community
- 4.2 An audit of existing travel patterns and facilities. Existing Modal splits should be provided where possible or a likely modal split where no existing modal split exists. The following issues must be covered in the audit:-
- Site location
 - Employee and visitor numbers
 - Existing car parking patterns, both on-site and off site (e.g. side roads and public car parks)
 - Pedestrian facilities
 - Cycle parking

- Access to bus stops and public transport provision
 - Lockers for cyclists, joggers etc.
- 4.3 Modal split targets should be set for years 2 and 5. The targets set should be related to targets set within the Swindon Borough Council Local Transport Plan (SBCLTP). At a minimum the modal split percentage for car journeys to work should seek to improve on the existing 34% of journeys within the Borough of Swindon by modes other than the car ('Journey to work by mode %' shown in Table 1.2 Chapter 1 SBCLTP taken from the 1991 census)
- 4.4 A separate target will be negotiated for visitors to take into consideration the specific operation at the site
- 4.5 Modal split targets should be as per the following categories:-
- Single occupancy car
 - Walking
 - Cycling
 - 2-wheel motorised vehicles
 - car sharing
 - public transport
- 4.6 Firm projects which are or will be put in place to achieve the targets including:-
- Car parking restraint, charges and management
 - Bus lanes, bus stops, stations
 - Cycle path
 - Pool bikes
 - Trip end facilities
 - Discounted public transport tickets
 - Tele-working and home working
 - Car-sharing register
- 4.7 Monitoring procedures including reporting back to the Council on progress at 2 and 5 years from the initial submission of the travel plan

FIFTH SCHEDULE

Highways Obligations

In this Fifth Schedule the following terms shall have the following meanings:-

‘the Bond’ means a bond for securing the performance of its obligations (as to the Highway Works) in this Deed such bond to be in the form contained at Part 4 of this Fifth Schedule and with a Bondsman approved by the Council and in a sum equal to the sum estimated by the Director to be the reasonable cost to the Council of carrying out the Highway Works

‘the Completion Certificate’ means the provisional certificate of completion issued by the Director when the Highway Works have been completed to his satisfaction

‘the Director’ means the Director of Environment and Property Services from time to time of the Council and in the event that the post is abolished the holder of the post responsible for the Council’s functions relevant to the particular context in this Deed to which the term relates or an officer duly authorised on his or her behalf

‘the Drawings’ means those drawings showing an outline indication of the Highway Works dated and referenced

‘Letter of Technical Approval’ means written confirmation from the Director that all matters concerning the Highways Work have been agreed

‘Liquidated Damages’ means a sum calculated and falling due in accordance with paragraphs 2.15 and 2.16 being a sum arising from the Developer’s [and/or the Owner’s] delay and not a penalty

‘the Maintenance Certificate’ means the final certificate of completion issued by the Director after the Completion Certificate has been issued and the Highway Works have been maintained for the Maintenance Period to the satisfaction of the Director in accordance with Part 2

‘the Maintenance Period’ means the period of twelve months from the issue of the Completion Certificate

‘the Programme’ means a programme and method statement for carrying out the Highway Works

‘the Rate of Liquidated Damages’ means the sum of £ per day/week such sum being a conclusive and agreed estimate between the parties of the damages likely to be suffered by the Council if the whole of the Highway Works is not completed by the date prescribed in accordance with paragraph 2.3

Part 1

The Developer [and/or the Owner] covenants and agrees with the Council:-

- 1 to pay the Highways Contribution to the Council within seven days of the Commencement of the Development as a contribution towards the implementation by the Council of
- 2 to undertake and complete the Highway Works in accordance with Part 2 [on or before Residential Unit(s) [is/are] made available for occupation and shall not allow more than Residential Unit(s) to be occupied until the Highway Works are completed][or within months of the Commencement Date] and shall notify the Council in writing within seven days of completion of the same

Part 2

- 2.1 The Developer [and/or the Owner] hereby covenants with the Council:-
 - 2.1.1 to obtain a licence and approval from the Council's Highways Operations Manager prior to commencing works on the highway
 - 2.1.2 at its expense to carry out the Highway Works
 - 2.1.3 before commencing any part of the Highway Works to submit to the Director for approval:-
 - (a) such additional detailed drawings plans and specifications as the Director may require
 - (b) a plan showing existing/additional highways including the route of any drains
 - (c) the name and address of the Contractor whom the Developer [and/or the Owner] proposes to employ for carrying out the Highway Works and all insurance details of that Contractor that the Council may require from time to time
 - (d) the Programmeand not to commence any part of the Highway Works until he receives the Letter of Technical Approval
 - 2.1.4 not to permit any building constructed on the Development Land to be occupied or used for trading until the matters contained in Part 3 have been carried out to permit vehicular traffic to enter and leave the Development Land safely
 - 2.1.5 not to permit any vehicular traffic to enter or leave the Development Land other than by way of the new access or

egress route provided by the Highway Works once the same is brought into use save only that during construction of the Highway Works an alternative route agreed with the Director may be used and this alternative route shall be closed off and its use discontinued immediately once the use of the new access or egress route provided by the Highway Works is brought into use as aforesaid

- 2.1.6 to complete the Highway Works in accordance with the Drawings the Programme the Letter of Technical Approval and any other plans drawings and specifications approved under paragraph 2.1.3 and any instructions as to the materials or method of working given by the Director to his reasonable satisfaction and obtain the Completion Certificate in accordance with paragraph 2.7 no later than the date set by him under paragraph 2.3 save only that if the completion by such date becomes impossible by reason of circumstances beyond the control of the Developer [and/or the Owner] the date for completion shall be such later date as may be agreed having regard to the circumstances
- 2.1.7 to employ the Contractor approved under paragraph 2.1.3(c) for carrying out the Highway Works and give to the Council's Highways Operations Manager adequate contact details for the Contractor so as to enable the Contractor to be contacted at all hours of each day and each night
- 2.1.8 to provide wheel-cleaning facilities of a nature approved by the Director on the Development Land before commencing any part of the Highway Works and to ensure that during the period from the commencement of the Highway Works until the issue of the Completion Certificate under paragraph 2.7 or such later date as the Director shall notify in writing to the Developer [and/or the Owner] before leaving the Development Land the wheels of all vehicles are sufficiently cleaned to prevent mud from the Development Land being deposited on the highway PROVIDED THAT any later date notified by the Director as aforesaid shall not be later than such date as he considers that a stage of development on the Development Land will have been reached when there will no longer be a risk of mud being deposited on

- the highway in consequence of construction work being carried out on the Development Land
- 2.1.9 if required by the Director so to do to provide temporary traffic signal controls such controls to be of a type which meet Department of Transport requirements
- 2.1.10 to construct all drains and sewers to the current standards from time to time of the adopting authority
- 2.1.11 to comply with all other terms and conditions of this Agreement
- 2.2 Before any part of the Highway Works are begun the Developer [and/or the Owner] shall:-
- 2.2.1 serve on the Director not less than two weeks notice subsequent to the issue of the Letter of Technical Approval of its intention to commence the Highway Works
- 2.2.2 enter into and complete the Bond not later than the date for commencement of the Highway Works the Bond to be cancelled when the Highway Works have become maintainable at the public expense in accordance with paragraph 2.9
- 2.2.3 pay to the Director of Law and Corporate Governance of the Council a sum equal to % of the sum estimated by the Director to be the cost of the Highway Works towards the administrative and technical expenses incurred by the Council, including the cost of supervising and inspecting the Highway Works as they proceed and the issue of the Completion and Maintenance Certificates
- 2.2.4 make all necessary arrangements for carrying out the Highway Works including the service of any necessary notices under the provisions of the New Road and Street Works Act 1991 and in particular in relation to statutory undertakers' and telecommunications apparatus and all other equipment over or under the highway and for enabling it to comply with the provisions of this Agreement
- 2.3 The Director shall set the date for completion of the Highway Works having due regard to the Programme and shall confirm such date in writing to the Developer [and/or the Owner] at the same time as issuing his Letter of Technical Approval
- 2.4 The Developer [and/or the Owner] shall throughout the period from the commencement of the Highways Works until the issue of the

Completion Certificate under paragraph 2.7 or such later date as the Director shall notify in writing to the Developer [and/or the Owner] ensure that:

- 2.4.1 adequate warning signs lights and cones are provided and maintained in good working order in accordance with chapter 8 of the Traffic Signs Manual published by her Majesty's Stationery Office
- 2.4.2 any mud from the Development or the Highway Works which may be deposited on the highway maintainable at the public expense by vehicles leaving the Development Land or the Highway Works is removed immediately
- 2.4.3 any temporary traffic signal controls required by the Director under paragraph 2.1.9 are maintained in proper working order
- 2.5
 - 2.5.1 If at any time during the period specified in paragraph 2.4 the Developer [and/or the Owner] fails to provide adequate warning signs lights or cones or any such provided are not in good working order or mud is deposited on the highway maintainable at the public expense and not immediately removed the Director may take such action as he considers necessary to remedy the failure and shall deduct the full cost of so doing including materials plant transport and labour from the sum deposited by the Developer [and/or the Owner] pursuant to paragraph 2.15.1
 - 2.5.2 On each and every occasion when the Director takes action as provided paragraph 2.5.1 or responds to a justifiable complaint he shall be entitled to deduct from the sum deposited under paragraph 2.15.1 the sum of fifty pounds or 15% of the cost of the action taken whichever is the greater in respect of his administrative costs in addition to the cost of any action taken in remedying the failure
 - 2.5.3 If any deductions which shall be made under paragraphs 2.5.1 and 2.5.2 exceed the sum deposited or any balance thereof the Developer [and/or the Owner] shall pay to the Council the shortfall within 21 days of the Director serving notice of the amount due
 - 2.5.4 The Council shall repay to the Developer [and/or the Owner] no later than twenty-eight days following the date of the Completion Certificate issued pursuant to paragraph 2.7 or such later date

as the Director shall have notified under paragraph 2.4 the sum deposited under paragraph 2.15.1 or such part thereof as has not been expended pursuant to the foregoing provisions of this Clause

- 2.6 Until the issue of the Maintenance Certificate pursuant to paragraph 2.8 the Developer [and/or the Owner] hereby grants to the Council their servants and agents
 - 2.6.1 free access to every part of the Highway Works for the purposes of inspecting the same as they proceed and inspecting and testing all materials used or intended to be used therein and the cost of reasonable analysis and test in connection therewith shall be at the expense of the Developer [and/or the Owner]
 - 2.6.2 the right to enter upon such parts of the Development Land as it is necessary so to do in furtherance of the terms of this Agreement
- 2.7 When the Highway Works have been completed in accordance with paragraph 2.1 including all works described in Part 3 to his satisfaction the Director will issue the Completion Certificate and thereafter the Developer [and/or the Owner] shall continue to maintain the Highway Works until the Maintenance Certificate is issued in accordance with paragraph 2.8
- 2.8 The Maintenance Certificate shall be issued by the Director when the following conditions have been satisfied:
 - 2.8.1 the Maintenance Period has elapsed
 - 2.8.2 all defects that may have become apparent during the Maintenance Period have been remedied and made good by the Developer [and/or the Owner] at its own expense and to the satisfaction of the Director such defects to include damage or excessive wear caused to the Highway Works during the Maintenance Period
 - 2.8.3 the cleansing of all sewers gullies catchpits and manholes and the sweeping of the carriageway and footpaths and the cutting of grass to the reasonable satisfaction of the Director
 - 2.8.4 the Highway Works have been directly connected to a carriageway which is a highway maintainable at the public expense
 - 2.8.5 the Highway Works have been provided with proper street

- lighting traffic signs road markings and street name plates and furniture to the reasonable satisfaction of the Director
- 2.8.6 that any damage to the Highway Works howsoever caused including (without limitation) acts of third parties has been remedied by the Developer [and/or the Owner] at the Developer [and/or the Owner]'s cost
- 2.8.7 where the surface water sewers other than gullies and connections draining the Highway Works are to be vested in and under the control of the Council or the Water Authority in accordance with the provisions of the Water Industry Act 1991 written confirmation has been received by the Council from the appropriate authority that the sewers have been constructed to their satisfaction and have been adopted by that authority
- 2.8.8 the Developer [and/or the Owner] has delivered to the Director drawings in a format as required by the Director which the Director agrees (such agreement not to be unreasonably withheld) show the Highway Works as constructed
- 2.8.9 the Developer [and/or the Owner] has delivered to the Council the Health and Safety file in relation to the Highway Works in accordance with the Construction (Design and Management) Regulations 1994 containing those matters set out in paragraphs 18-23 inclusive of Part 3
- 2.8.10 the Developer [and/or the Owner] has undertaken any remedial works as required by a Stage 3 Safety Audit
- 2.9 The Council shall from the date of the Maintenance Certificate maintain that part of the Highway Works which constitute alterations and additions to the existing publicly maintainable highway and adopt the remaining Highway Works as part of the highway maintainable at the public expense
- 2.10 Without prejudice to any other remedy of the Council in the event of any default by the Developer [and/or the Owner] in preparing for or carrying out the Highway Works or any failure by the Developer [and/or the Owner] to comply with any requirement of the Council in relation to the Highway Works the Council may do all such things including the preparation of plans drawings and specifications and the carrying out of or remedying defects in works as they may deem necessary to secure proper construction of the Highway Works and the Developer

[and/or the Owner] shall pay to the Council the full cost of taking such action including all design supervision construction and administrative costs PROVIDED ALWAYS that before taking any such action as aforesaid the Council shall give to the Developer [and/or the Owner] written notice of the matter in default and shall take no action thereon until twenty-eight days from the date of such notice shall have elapsed without the Developer [and/or the Owner] or its successors in title remedying fully the matter in respect of which the default has arisen

- 2.11 This Agreement does not authorise interference with statutory undertakers' apparatus or works without their consent nor the installation or use of telecommunication apparatus without the consent of the owner nor entry upon nor doing works to or on any land other than the highway
- 2.12 If the parking facilities provided as part of the Development prove insufficient (as shall be conclusively proved by the parking of vehicles associated with the use of the development on the public highway) then the Developer [and/or the Owner] shall pay on demand the sum of POUNDS (£) towards the Council's costs in advertising and implementing a traffic regulation order restricting the waiting of vehicles on the new road to be constructed as part of the Highway Works
- 2.13 The Developer [and/or the Owner] hereby undertakes and agrees with the Council that in the event of any claim for compensation or otherwise or costs or charges arising in connection with or incidental to or in consequence of the carrying out of the Highway Works including any such whether mandatory or discretionary which may be incurred by virtue of any enactment or statutory instrument and not otherwise hereby provided it will hold the Council fully indemnified from and against all claims charges costs and expenses in connection therewith or arising thereout
- 2.14 2.14.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable in respect thereof
- 2.14.2 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right

to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

2.15 The Developer [and/or the Owner] shall pay to the Council immediately on demand

2.15.1 before any part of the Highway Works are begun the sum of pounds (£) in respect of costs which may be incurred by the Council by virtue of paragraph 2.5

2.15.2 the Council's full legal and administrative costs incurred in the preparation and/or making of temporary traffic regulation orders whether implemented or not to regulate traffic entering or leaving the Development Land or otherwise occasioned or necessitated by construction of the Development and the full cost of such traffic signs and markings (including labour costs) as the Director shall deem necessary to give effect to the same as and when any costs have been incurred and within 28 days of receipt by the Developer [and/or the Owner] from the Council of invoices therefor

2.15.3 the Liquidated Damages

2.16 The Developer [and/or the Owner] and the Council agree as follows:-

2.16.1 that in the event the Developer [and/or the Owner] has not completed the Highway Works by the date prescribed by the Council in accordance with paragraph 2.3 then Liquidated Damages shall become due at the Rate of Liquidated Damages

2.16.2 that Liquidated Damages payable by the Developer [and/or the Owner] to the Council shall be the sum equivalent to the Rate of Liquidated Damages applied for each whole day/week for the period between the date prescribed in accordance with paragraph 2.3 and the date that the Highway Works are actually completed up to a maximum of £

2.16.3 that the date of actual completion of the Highway Works (for the purposes of calculating Liquidated Damages under this paragraph 2.16 only) shall be the date that the Council deems it appropriate that the Completion Certificate can be issued whether or not the Completion Certificate is actually issued on that date

Part 3

Carry out the following highway improvement works and construction of new highway as generally indicated on the Drawings

1. XXXX
2. Reshape existing carriageway
3. Provide highway drainage
4. Carry out alterations to existing street lights, provide and erect new as necessary
5. Provide road markings, signs and bollards as necessary
6. Re-grade and re-seed highway verge where necessary to the reasonable satisfaction of the Director
7. All highway drainage
8. All other drainage contained in the highway
9. All kerbing including kerb foundations and where appropriate including lowering at vehicle crossings and pram-ramps.
10. Carriageway sub-base road base and any supporting structures thereto, carriageway base course
11. Vision splays and verges
12. Pedestrian ways
13. Street lighting and street furniture
14. Temporary traffic management
15. Carriageway wearing course
16. Permanent road marking
17. Street name plates
18. Construction details of the road or roads
19. As built plans showing the position of services within the road or roads including connections up to the back of footway edging
20. As built plans showing the surface water drainage for the road or roads
21. Plans showing the position of street lighting columns and the associated service cables
22. A method statement from the contractors
23. Stage 1 2 and 3 safety audits

Part 4

BY THIS BOND (Company Registration Number) whose registered office is situate at ("the Developer") [(Company Registration Number) whose registered office is situate at

The production of this draft does not bind the Council to enter into an agreement in this form or at all.

(“the Owner”) and **[INSERT NAME OF SURETY]** (Company Registration Number) whose registered office is situate at **[INSERT ADDRESS]** (“the Surety”) and their respective successors in title and assigns are bound jointly and severally to the **SWINDON BOROUGH COUNCIL** of Civic Offices Swindon SN1 2JH (“the Council”) for the payment to them of the sum of Pounds (£)

EXECUTED AS A DEED this day of

WHEREAS

1. By an agreement dated **[INSERT DATE]** relating to **[INSERT SITE NAME ETC]** [and highway works in the vicinity of **INSERT SITE IF THIS IS APPROPRIATE**] and made between **[INSERT PARTIES]** and Swindon Borough Council (“the Agreement”) the Developer [and/or the Owner] covenanted with the Council to carry out the Highway Works as defined and referred to in the Agreement
2. It is intended that this Bond shall be construed as one with the Agreement
3. The Developer [and/or the Owner] is to carry out the Highway Works as detailed in the Agreement and this Bond is in respect of those Highway Works only as detailed
4. At the time of entering into this Bond and on the faith thereof the Surety has agreed to concur with the Developer [and/or the Owner] in this Bond for the due performance and fulfilment of the Highway Works by the Developer [and/or the Owner] as defined and referred to in the Agreement

NOW THE CONDITION of the above written Bond is such that if the Developer [and/or the Owner] his successors and assigns shall carry out the Highway Works as defined and referred to in the Agreement or if on default by the Developer [and/or the Owner] the Surety shall satisfy and discharge the sums due from and payable by the Developer [and/or the Owner] to the Council under the Agreement up to the amount of Pounds (£) **THEN** the above written Bond shall be void **OTHERWISE** to continue in full force and the giving by the Council of any extension of time for the carrying out of the Highway Works as defined and referred to in the

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Agreement or anything therein mentioned or contained and on the part of the Developer [and/or the Owner] to be performed or fulfilled or any other forgiveness or forbearance on the part of the Council to the Developer [and/or the Owner] or its successors or assigns shall not in any way release the Surety from the Surety's liability under the above written Bond

THE COMMON SEAL of
[INSERT NAME OF DEVELOPER]
was hereunto affixed in the presence of: -

Director

Secretary

THE COMMON SEAL of
[INSERT NAME OF OWNER]
was hereunto affixed in the presence of: -

Director

Secretary

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**THE COMMON SEAL OF
[INSERT NAME OF SURETY]**
was hereunto affixed in the presence of: -

Director

Secretary

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SIXTH SCHEDULE
Off-Site Infrastructure Works

Specify Off-Site Infrastructure Works and Specification

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The COMMON SEAL)
[OWNER])
was affixed to this Deed)
in the presence of)

Director/Co Sec

The COMMON SEAL)
[MORTGAGEE])
was affixed to this Deed)
in the presence of)

Director/Co Sec

The COMMON SEAL)
[DEVELOPER])
was affixed to this Deed)
in the presence of)

Director/Co Sec

The Common Seal of)
SWINDON BOROUGH)
COUNCIL was affixed to)
this Deed in the presence of)

Director of Law and Democratic Services

The production of this draft does not bind the Council to enter into an agreement in this form or at all.

DATED _____

OWNER

MORTGAGEE

DEVELOPER

AND

SWINDON BOROUGH COUNCIL

AGREEMENT under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to land at

**DIRECTOR OF LAW AND DEMOCRATIC SERVICES
SWINDON BOROUGH COUNCIL
CIVIC OFFICES
EUCLID STREET
SWINDON
SN1 2JH**