

DATED 2010

**LEEDS CITY COUNCIL (1)**

-and-

**(2)**

-and-

**(3)**

[MORTGAGEE]

**AGREEMENT**

under Section 106 of the Town and Country Planning Act 1990 (as amended)

relating to land at [] Leeds West Yorkshire

Nicole Jackson  
Assistant Chief Executive (Corporate Governance)  
Civic Hall  
Leeds,  
LS1 1UR

**THIS AGREEMENT** (signed as a deed) is made the \_\_\_\_\_ day of \_\_\_\_\_ 2010

**BETWEEN: -**

- (1) **LEEDS CITY COUNCIL** Civic Hall, Leeds LS1 1UR ("**the Council**") of the first part;
- (2) [ ] (Company Registration Number ) whose registered office is at [ ] ("**the Owner**") of the second part
- (3) **XXX BANK PLC** whose registered office is at ("**the Mortgagee**") of the third part

## **1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following expressions shall have the following meanings:

### **DEFINITIONS**

#### **GENERAL**

#### **DEFINITIONS**

|                               |  |
|-------------------------------|--|
| "1990 Act"                    | means the Town and Country Planning Act 1990 as amended;   |
| "Application"                 | means the application reference number xxxx and registered by the Council on xxxx  |
| "Chief Planning Officer"      | means the Chief Planning Officer of the Council for the time being or such other officer of the Council nominated by him for the purposes of this Agreement;   |
| "Commencement of Development" | means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(2) of the 1990 Act Save That the term " <i>material operation</i> " shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound |

erection of site office erection of fencing to site boundary and Commencement of Development shall be construed accordingly;

“Contributions” means the Education Contribution Greenspace Contribution Off-Site Highways Contribution and Public Transport Infrastructure Contribution such payments to be Indexed Linked

"Development" means the development of the Land in accordance with the Planning Permission;

“Education Contribution” means the sum of xxx Index Linked to be paid by the Owner to the Council towards the provision of and/or improvement of educational facilities within the [specify area] required as a consequence of the Development

“Greenspace Contribution” means the sum of £[] ( pounds) to be paid by the Owner to the Council towards the provision of and/or the enhancement to greenspace within the community area or adjoining community area in which the Land is located in accordance with Policy N4 of the Leeds Unitary Development Plan (as reviewed) and SPG4

“Index” means the Building Costs Information All-in Tender Price Index published by the Royal Institution of Chartered Surveyors except where the terms of this Agreement specify otherwise

|  |   |
|--|---|
| “Index Linked”                                 | means such increase to sum or sums payable to the Council under this Agreement on an annual basis or pro rata per diem from the date of the resolution by the appropriate Plans Panel of the Council to approve the grant of Planning Permission or from the date of the delegated decision taken by the Chief Planning Officer to approve the grant of Planning to the date of payment based upon the specified Index last published before the date of the decision to approve the grant of Planning Permission or any publication substituted for it |
| “Land”   | means all that land situate at [ ] West Yorkshire shown edged red on the Plan   |
| “Management Fee”                               | means the sum of £[] ( pounds) being the Owner's maximum total contribution towards the costs incurred or to be incurred by the Council in monitoring, keeping of appropriate data and mechanisms up to date and related staff cost;  |
| “Off-site Highways Works Contribution”         | means the sum of £[].00 ( pounds) to be used by the Council in undertaking such off-site highways works as the Council may decide in its absolute discretion are necessary as a result of the Development   |
| "Plan”   | means the plan attached to this Agreement   |
| “Planning Permission”                          | means a planning permission to be granted pursuant to the Application the draft of which is annexed in the Second Schedule  |
| “Public Transport Infrastructure Contribution” | means the sum of £[].00 ( pounds) relating to public transport or other environmental improvements within the vicinity of the Development or elsewhere within the   |

administrative are of the Council required as a consequence of the Development as the Council may in its absolute discretion may decide

**AFFORDABLE  
HOUSING  
DEFINITIONS**

“Affordable Dwellings”

Means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex B of PPS3 and includes Social Rented and Submarket/Intermediate Affordable Units

“Affordable Housing Contribution”

means the difference between the sum of the Open Market Value of the Affordable Units at the expiration of the Offer Period and the sum produced by multiplying the total gross internal floor space of the Social Rented Affordable Units by the Social Rent Price, plus the sum produced by multiplying the total gross internal floorspace of the Submarket Affordable Units by the Sub-Market Price to be used by the Council in lieu of the Affordable Units on the Land, for the provision of, or improvements to existing Affordable Units elsewhere within the Council’s area in the event that paragraph 1.7 of the First Schedule is applicable

“Affordable Units”

*On full applications:*

means [no. of ] Affordable Dwellings comprising [no. ] Submarket/Intermediate Affordable Units and [no.] Social Rented Affordable Units which are situated and shown edged red and blue respectively on plan 2

*On outline applications:*

means [%] (rounded up) of the total number of units,

of which [%] will be Submarket Affordable Units and [%] will be Social Rented Affordable Units, the location, mix and type to be agreed in writing with the Council before the Commencement of Development

“Homes and Communities Agency”

means the Homes and Communities Agency or the Tenant Services Authority as may be or any bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act)

"Housing Association"

means any one or more of the housing associations identified on the Fourth Schedule or any other housing association or registered social landlord registered in accordance with Part 1 Chapter 1 of the Housing Act 1996 (or as redefined by any amendment, replacement or re-enactment of such Act) or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant as proposed by the Owner and approved by the Chief Planning Officer

“Independent Surveyor”

means a member of the Royal Institution of Chartered Surveyors appointed by the Owner at its own costs but first approved by the Council and the phrase “Independent Surveyors” shall be construed accordingly;

Marketing Strategy

means written proposals setting out what measures the house builder will take over what time period to advertise the availability of Submarket/ Intermediate Affordable Units to the public to help the Housing Association raise awareness about the availability of such dwellings to suitable households

- "Offer Documentation" means plans, drawings, specification and other documentation which the Housing Association may reasonably require in order to make an offer for the Affordable Units including the following documents relating to the Affordable Units which shall be provided by the Owner to a Housing Association: -
- (i) drawings showing the size, layout and design of the Affordable Units; and
  - (ii) site layout showing position of the Affordable Units in relation to the Open Market Dwellings and the nature of the Open Market Dwellings; and
  - (iii) a copy of the Planning Permission and this Agreement
- "Offer Period" means a period of six months from receipt of the Offer Documentation by a Housing Association or Housing Associations during which the Housing Association or Housing Associations may submit an offer for the purchase of the Affordable Units;
- "Open Market Dwellings" means the residential units that may be built on the Land as part of the Development excluding the Affordable Dwellings and Open Market Dwelling shall be construed accordingly;
- "Open Market Value" means the open market value agreed between the Council and the Owner as being the open market value of an Affordable Dwelling or if not agreed shall mean an average price based on the opinions of two independent surveyors of the price at which the sale of an interest in property would have been completed unconditionally for cash consideration on the date of valuation assuming:-

- (a) a willing seller;
- (b) that any restrictions imposed on the dwelling by reason of this Agreement are disregarded;
- (c) that there are no restrictions as to the persons who may occupy the unit or to whom a transfer or lease of a dwelling may be granted or assigned; and

that both parties to the transaction had acted knowledgeably prudently and without compulsion;

Practical Completion means the stage when an Affordable Dwelling has been constructed and fitted out and is ready for occupation

“Retail Price Index” means the Retail Price Index published by the Office for National Statistics or any official publication substituted for it.

“Social Rented Affordable Units” Means Affordable Dwellings to be disposed of at the Social Rent Price to a Housing Association(s), the units not to be occupied by persons other than tenants of a Housing Association(s) at no greater than the Social Rent

Social Rent Price means no greater than the following sum per square metre of gross internal floor space during the year 2010/11, in accordance with the Council’s SPG Annex July 2005, Revision April 2010 and thereafter updated annually on 1 April by the Retail Price Index :  
In respect of the Social Rented Dwellings the sum of £520 or a price that enables the Housing Association to achieve the Social Rent.

Social Rent means a rent no higher than Homes and Communities Agency target rents

Sub Market/Intermediate Affordable Units means Affordable Dwellings to be disposed of at the Sub Market Price to a Housing Association(s), to be disposed of by the Housing Association(s) at prices and rents above those of Social Rent, but below market prices or rents, to include shared ownership, shared equity, discounted sale, sub market/intermediate rent, rent to buy, or any other sub market/intermediate type/model that meets the definition in Annex B PPS3.

Sub Market/Intermediate Price means no greater than the following sum per square metre of gross internal floor space during the year 2010/11, in accordance with the Council's SPG Annex July 2005, Revision April 2010 and thereafter updated annually on 1 April by the Retail Price Index (or proportionally if the relevant date is part way through a year):

A) In respect of the Submarket houses (for sale or rent) the sum of £958

B) In respect of the Sub-Market flats (for sale or rent) the sum of £1,197 (£1,437 for city centre sites)

“Verification Fee” means the reasonable fee to be charged by the Council or its agent for verification of the Open Market Value and subsequent Affordable Housing Contribution in accordance with paragraph 1.9(a) of the First Schedule

1.2 Where the context so requires: -

1.2.1 The singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation sole or aggregate;

- 1.2.2 References to any party in this Agreement shall include the successors in title and assigns of that party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.2.3 Where a party includes more than one person any obligations of that party shall be joint and several;
- 1.2.4 Any covenant by the Owner not to knowingly do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing;
- 1.2.5 A reference to an Act of Parliament refers to the 1990 Act as it applies at the date of this Agreement;
- 1.2.6 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement.

## **2 RECITALS**

- 2.1 By virtue of the 1990 Act the Council is the local planning authority for the purposes of this Agreement for the area in which the Land is situated and is the Authority by whom the planning obligations hereby created are enforceable.
- 2.2 The Owner is the registered proprietor with absolute title of the Land registered at HM Land Registry under Title Number
- 2.3 The Mortgagee is mortgagee of the Land by virtue of a legal charge dated xx and registered on xx and acknowledges that the Land shall be bound by the provisions of this Agreement
- 2.4 The Council would not grant Planning Permission for the Development unless the planning obligations contained herein were entered into by the Owner [OR the Council would not have been willing to grant the Planning Permission but for this Agreement]

2.5 The Owner by entering into this Agreement does so to create planning obligations in respect of the Land and each part of it in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.

### **3 OPERATIVE PROVISIONS**

3.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and all other powers so enabling.

3.2 The planning obligations comprised in this Agreement shall not become effective until the date of this Agreement.

3.3 The Owner hereby covenants with the Council that the Land shall be permanently from the date hereof subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule hereto.

3.4 It is agreed and declared as follows: -

3.4.1 For the purpose of such parts of this Agreement as may be subject to the law against perpetuities this Agreement shall remain in force for a period of 80 years from the date hereof or (if sooner) as long as any of such of the covenants conditions stipulations and agreements herein may not have been performed.

3.4.2 In this Agreement the expressions "the Council" and "the Owner" shall where the context so admits be deemed to include their respective successors in title and assigns.

- 3.4.3 No party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement occurring after he or it has parted with his or its interest in the Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);
- 3.4.4 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with clause 3.4.5 below to the determination of an independent Chartered Surveyor.
- 3.4.5 Any reference to an independent Chartered Surveyor in accordance with clause 3.4.4 above shall be to a reputable Chartered Surveyor unconnected to any of the parties hereto and experienced in residential development matters who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such independent Chartered Surveyor shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error) and if the parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Chartered Surveyor shall act as an expert pursuant to the terms of this clause 3.4.5 then each of the parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Chartered Surveyor himself) shall be paid.

- 3.4.6 Where any notice or confirmation is to be served on the Chief Planning Officer or the Council under the terms of this Agreement such notice or confirmation shall be sent to the Chief Planning Officer at Leonardo Building, 2 Rossington Street, Leeds LS2 8HD quoting reference number
- 3.4.7 If the Planning Permission shall expire before the Commencement of Development or shall at any time be revoked this Agreement shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Agreement from the Register of Local Land Charges.
- 3.4.8 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights powers duties and obligations in any capacity as a local or public authority.
- 3.4.9 The obligations hereby created shall be registered as a Local Land Charge.
- 3.4.10 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.
- 3.4.11 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted after the date of this Agreement.
- 3.4.12 The Owner shall pay to the Council its reasonable legal fees on completion of this Agreement
- 3.4.13 The Owner shall pay to the Council the Management Fee within one month of the date of this Agreement by sending or delivering the same to the Chief Planning Officer at Leonardo Building 2 Rossington Street Leeds LS2 8HD quoting the Application reference number

**FIRST SCHEDULE**  
("the Owners Covenants")

The Owner hereby covenants with the Council: -

**1. AFFORDABLE HOUSING**

1.1 to notify the Council of the Commencement of Development within two weeks thereof.

1.2 to procure that all Sub-Market/Intermediate Affordable Units shall be constructed on the Land in accordance with the Planning Permission and approved plans or in accordance with any amended plans showing the location type and mix of the affordable units submitted to and approved by the Council (such approval not to be unreasonably withheld or delayed) for disposal to a Housing Association or Housing Associations by agreement between the Owner and a Housing Association or Housing Associations as Submarket Affordable Units at the Sub-Market Price.

1.3 to procure that all Social Rented Affordable Units shall be constructed on the Land in accordance with the Planning Permission and approved plans or in accordance with any amended plans showing the location, type and mix of the affordable units submitted to and approved by the Council (such approval not to be unreasonably withheld or delayed) for disposal to a Housing Association or Housing Associations by agreement between the Owner and a Housing Association or Housing Associations at the Social Rent Price, the Social Rented Affordable Units not to be occupied by persons other than tenants of a Housing Association at no greater than the Social Rent except as provided by Chapters II and IV of the Housing Act 1996.

SubMarket/Intermediate Affordable Units

1.4 Upon the Commencement of Development to submit a Marketing Strategy to the Chief Planning Officer. On approval of the Marketing Strategy by the Chief Planning Officer (such approval not to be unreasonably withheld or delayed), to provide Offer Documentation in relation to the SubMarket/Intermediate Affordable Units to the Housing Associations and at the same time to supply a copy of the Offer Documentation to the Chief Planning Officer and to use reasonable endeavours to dispose of the Sub-Market/Intermediate Affordable Units to a

Housing Association or Housing Associations during the Offer Period (and beyond this period if negotiations with particular housing associations continue) at the Sub-Market Price.

Social Rented Affordable Units

1.5 Upon the Commencement of Development to provide Offer Documentation in relation to the Social Rented Units to the Housing Associations and at the same to supply a copy of the Offer Documentation to the Chief Planning Officer and to use reasonable endeavours to dispose of the Social Rented Affordable Units to a Housing Association or Housing Associations during the Offer Period (and beyond this period if negotiations with particular Housing Associations continue) at the Social Rent Price.

General Provisions – SubMarket/Intermediate Affordable Units and Social Rented Affordable Units

1.6 In the event that no offers are received from a Housing Association within the Offer Period to purchase the Social Rented Affordable Units at the Social Rent Price or the Sub-Market/Intermediate Affordable Units at the Sub-Market Price on the terms and conditions of this Agreement pursuant to paragraphs 1.4 and 1.5 of this Schedule the Owner shall notify the Chief Planning Officer within 14 days thereof and shall submit evidence of its compliance with paragraphs 1.4 and 1.5 of this Schedule to the Chief Planning Officer together with evidence from the Housing Association(s) that they are not willing to so purchase the Affordable Units (if such evidence is available).

1.9 If the Chief Planning Officer acting reasonably confirms his approval in writing (such approval not to be unreasonably withheld or delayed) that he is satisfied that the Owner has used all reasonable endeavours and no offers have been received from the Housing Association(s) to purchase the Affordable Units during the Offer Period pursuant to paragraphs 1.4 and 1.5 hereof, the Owner shall thereafter be free to dispose of the Affordable Units on the open market at the Open Market Value, or if a Housing Association has offered to purchase some but not all the Affordable Units then the provisions of this paragraph shall apply to any Affordable Units in respect of which no offer has been received, **SUBJECT TO** the following provisions:-

- (a) the Owner shall first pay to the Council the Verification Fee; and
- (b) the Owner shall pay 25% of the total Affordable Housing Contribution attributable to the relevant Affordable Units to the

Council within 25 working days of the sale of 25% of the Affordable Units on the open market;

- (c) the Owner shall pay the remaining 75% of the total Affordable Housing Contribution attributable to the relevant Affordable Units to the Council within 25 working days of the sale of 75% of the Affordable Units on the open market;
- (d) on payment of the total Affordable Housing Contribution the Owner shall be released from all obligations in this paragraph 1 of this Schedule relating to those particular Affordable Units on the Land ;

1.8 not to permit (unless the Owner has paid to the Council the Affordable Housing Contribution pursuant to paragraph 1.7 of this Schedule or the Owner is entitled to dispose of the Affordable Units on the open market in accordance with the provisions of this Schedule):-

- (a) occupation of more than 25% of the Open Market Dwellings until the Owner has entered into a legally binding contract with a Housing Association for the purchase of the Affordable Units
- (b) occupation of more than 75% of the Open Market Dwellings until Practical Completion of all the Affordable Units.

1.9 On production to the Council of a certified copy of the executed and dated transfer between the Owner and the Housing Association(s) in accordance with this Schedule the obligations to provide Affordable Units hereunder shall be discharged and this shall be noted on the entry relating to the Agreement in the Local Land Charges Register.

1.10 Any transfer of the Affordable Units shall contain reasonable provisions ensuring that the Affordable Units remain affordable in perpetuity but nothing in this Schedule shall apply upon:

- (i) the exercise by any person of a statutory right to buy, right to acquire or right to staircase out and take a subsequent freehold transfer under the terms of a Shared Ownership Lease based substantially on the Homes and Communities Agency's model lease; or
- (ii) the exercise of its power of sale by a mortgagee of any of the Affordable Units or the sale by a receiver appointed by

such mortgagee pursuant to statutory powers or the provisions of any mortgage or charge as required by a Court Order; or

- (iii) any subsequent disposition of the properties following a disposal falling within (i) or (ii) above

## **2. GREENSPACE CONTRIBUTION**

- 2.1. To pay to the Council the Greenspace Contribution prior to the Commencement of Development

## **3. OFF-SITE HIGHWAYS WORKS CONTRIBUTION**

- 3.1. To pay to the Council the Off-Street Highways Contribution prior to the Commencement of Development

## **4. PUBLIC TRANSPORT INFRASTRUCTURE CONTRIBUTION**

- 4.1. To pay to the Council the Public Transport Infrastructure Contribution prior to the Commencement of Development

## **5. EDUCATION CONTRIBUTION**

- 5.1 To pay to the Council the Education Contribution prior to the Commencement of Development

**SECOND SCHEDULE**

("Decision Notice")

**THIRD SCHEDULE**

("the Council's Covenants")

The Council hereby covenants with the Owner: -

- 1 To issue separate receipts on request for any sum paid to the Council under this Agreement.
- 2 To place the Contributions and the Affordable Housing Contribution if applicable in an interest bearing account or in separate accounts as the Council shall in its discretion decide.
- 3 Not to apply the Contributions or the Affordable Housing Contribution for any purpose otherwise than for the purposes set out in this Agreement within the Council's area.
- 4 That in the event the Contributions or the Affordable Housing Contribution or any part or parts thereof are not expended within 10 years of the date of payment then the sum or sums not expended plus interest accrued will be repaid to the Owner or its nominee.

## **FOURTH SCHEDULE**

(“List of Housing Associations approved by the Council”)

1. Yorkshire Housing Association.
2. Chevin Housing Group
3. Unity Housing Association.
4. The Home Group.
5. Leeds Federated Housing Association.
6. Leeds and Yorkshire Housing Association
7. Connect Housing Association
8. Headrow Housing Group
9. Sanctuary Housing Association
10. Accent Group
11. Northern Counties Housing Association
12. Affinity Sutton Housing Association

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

**THE COMMON SEAL** of )

**LEEDS CITY COUNCIL** )

was hereunto affixed in the presence of: - )

Assistant Chief Executive  
(Corporate Governance)

**THE COMMON SEAL** of )

was hereunto affixed in )

the presence of: - )

Director/Secretary

Director