

DATED

11th February

2015

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT 1990 RELATING TO LAND AT BRIARS LANE
STAINFORTH DONCASTER**

between

DONCASTER BOROUGH COUNCIL

and

PROSPECT ESTATES LIMITED

and

SVENSKA HANDELSBANKEN AB (PUBL)

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SCHEDULE

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THIS DEED is dated

2015

- 11th February
- (1) **DONCASTER BOROUGH COUNCIL** of Civic Office, Waterdale, Doncaster DN1 3BU (**Council**).
 - (2) **PROSPECT ESTATES LIMITED** (company number 03189093) whose registered office is at Prospect Court 2 Courthouse Street Otley West Yorkshire LS21 1AQ (**Owner**).
 - (3) **SVENSKA HANDELSBANKEN AB (PUBL)** (incorporated in Sweden) of 3 Thomas More Square, London E1W 1WY and whose address for service is Earl Grey House, 75-85 Grey Street, Newcastle upon Tyne NE1 6EF ("**Mortgagee**")

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property registered at the Land Registry under Title Numbers SYK316974 and SYK515511
- (C) The Owner has made the Planning Application and is proposing to carry out the Development.
- (D) The Mortgagee is the registered proprietor of the charges dated 10 April 2013 referred to in entry number 4 of the charges registers of Title Numbers SYK316974 and SYK515511 and has agreed to enter into this deed to give its consent to the terms of this deed.
- (E) The Council as local planning authority has decided that Planning Permission should be granted for the Development subject to the prior completion of this deed.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this deed:

Affordable Housing: shall be as defined in accordance with the National Planning Policy Framework (NPPF) Appendix 2 or subsequent legislation or guidance

Affordable Dwelling Value: the value or values attributable to each of a 2 bedroomed Dwelling 3 bedroomed Dwelling, 4 bedroomed Dwelling by the FVA for a prospective sale to a Social Landlord of such Dwellings as either Affordable Rented Housing or Shared Ownership Housing but which values shall not be less than:

	Social Rented	Shared Ownership
2 bedroom	£42,000	£58,000
3 bedroom	£46,000	£94,000
4 bedroom	£50,000	£100,000

Affordable Housing Element: the provision of 40 Dwellings to be constructed on the Property in accordance with Schedule 1 and subject to the FVA in Schedule 1.

Affordable Housing: built Dwellings being either 2 bedroomed Dwellings, 3 bedroomed Dwellings, 4 bedroomed Dwellings or a number of each type of Dwelling the combined total of which shall be no more than six Dwellings to be built on the Property. Such housing can be Social Rented Housing, and/or Affordable Rented Housing and/or Shared Ownership Housing subject to the provisions elsewhere of this Agreement and as defined by the National Planning Policy Framework annex 2.

Affordable Rented Housing: housing let by the Council or Private Registered Providers of Social Housing to households who are eligible for Social Rented Housing and subject to rent controls that require a rent of no more than 80% of the local market rent (including service charge, where appropriate)

Base Rate: the higher of 5% and the base rate from time to time of Co-operative Bank plc.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.

Commence and Commences shall be construed accordingly.

Commencement Date: the date Development Commences.

Commuted Sum: a figure payable where the Gross Development Profit is at or above 20% and is calculated as follows:

$$CS = [P/AH] \times 105\% \times 100$$

Where

P= the cost to the Owner of providing on site Affordable Housing (Total Y Transfer value)

AH= the net percentage of open market dwellings where Affordable Housing is met by on site provision

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property authorised by the Planning Permission.

Dwelling: a residential unit to be constructed on the Land in accordance with the Planning Application and "Dwellings" should be construed accordingly

FVA: a financial viability appraisal of the Development that will show the projected level of Gross Development Profit (if any)

Gross Development Profit: the level of return on investment either anticipated by the Owner as shown in the FVA or achieved from the Development as shown in the Final FVA calculated as follows:

$$R - (A+B+C)$$

Where:

A= the purchase price for the Land and all legal fees disbursements, Stamp Duty Land Tax and Land Registry fees expended by the Owner;

B = the build costs for all Dwellings (whether or not Affordable Housing) including associated abnormal costs and development infrastructure (including roads, drains, utility services, walls, fences and other boundary structure or items);

C=all professional fees, contractors fees and all or any other costs expended in decontamination or other remedial works to make the Land suitable for the Development;

R= the anticipated sales revenue generated by sales of Dwellings erected or to be erected on the Development including Dwellings that may be made available for Affordable Housing and the revenue for such Affordable Housing shall be assessed using the Affordable Dwelling Value excluding any amount paid for items as extras such items not falling within the standard specification of a Dwelling

Index Linked: increased in accordance with the following formula:

Amount payable = the payment specified in this deed x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date the payment is due.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed.

Open Market Value: the sales value of the Affordable Housing at the date of the FVA as freehold property with vacant possession determined by reference to the definition and guidance contained in the Royal Institution of Chartered Surveyors Appraisal and Valuation Manual (“the Red Book”) current at the date of the FVA

Private Registered Providers of Social Housing: providers as defined in Section 80 of the Housing and Regeneration Act 2008

Shared Ownership Housing: housing for shared ownership or shared equity or such other form of intermediate affordable housing that meets the criteria of Annex 2 to the National Planning Policy Framework and made available on shared ownership terms.

Social Landlord: a landlord registered with the Homes and Communities Agency pursuant to the Housing Act 1996 (or as defined by any amendment, replacement or re-enactment of such Act and “Social Landlords” shall be construed accordingly

Social Rented Housing: housing for which guideline target rents are determined through the national rent regime and owned by the Council, Private Registered Providers of Social Housing or which are owned by other persons and provided under equivalent rental regimes as agreed with the Council or the Homes and Communities Agency

Plan: the plan attached to this deed.

Planning Application: the application for full planning permission registered by the Council on 5th December 2013 under reference number 13/00897/FULM.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

Property: the land at former industrial estate at Briars Lane Stainforth Doncaster

TCPA 1990: Town and Country Planning Act 1990.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement and any additional replacement tax.

Working Day: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; provided that, as between the parties, no such amendment, extension or re-enactment shall apply to this deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** does not include faxes or e-mail.
- 1.11 A reference to "this deed" or to any other agreement or document referred to in this deed is a reference to this deed or such other document or deed as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

- 1.12 References to clauses, plans, schedules and appendices are to the clauses, plans, schedules and appendices of this deed.
- 1.13 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. CONDITIONALITY

With the exception of clauses 2, 3, 11, 13, 15, 20, 21 and 25 (which take effect immediately), this deed is conditional on the grant and issue of the Planning Permission;

4. COVENANTS TO THE COUNCIL

The Owner and the Mortgagee covenants with the Council to:

- (a) observe and perform the covenants, restrictions and obligations contained in Schedule 1.
- (b) give at least seven Working Days written notice to the Council of the intended Commencement Date.

~~5. COVENANTS BY THE COUNCIL~~

~~The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 2.~~

6. INDEXATION

6.1 All financial contributions payable to the Council shall be Index Linked.

6.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

7. RELEASE

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

8. MORTGAGEE'S CONSENT

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

9. DETERMINATION OF DEED

The obligations in this deed (with the exception of clause 11) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

10. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

11. COUNCIL'S COSTS

The Owner shall pay to the Council on or before the date of this deed:

- (a) the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.
- (b) the Council may apply five per cent of any sums payable to the Council under the terms of this deed towards the cost of negotiating administering monitoring and collecting payments attributable to this and any other agreement completed by the Council pursuant to section 106 of the TCPA.

12. INTEREST ON LATE PAYMENT

Where any sum or amount has not been paid to the Council by the date on which it is due, the Owner shall pay the Council interest at the Default Interest Rate on that amount for the period from the due date to and including the date of payment.

13. OWNERSHIP

- 13.1 The Owner warrants that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Property.
- 13.2 Until the covenants, restrictions and obligations in Schedule 1 have been complied with, the Owner will give to the Council within seven Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:
 - (a) the name and address of the person to whom the disposition was made; and
 - (b) the nature and extent of the interest disposed of.

14. REASONABLENESS

Any approval, consent, direction, authority, agreement or action to be given by the Council under this deed shall not be unreasonably withheld or delayed.

15. CANCELLATION OF ENTRIES

- 15.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.
- 15.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to clause 9 (and subject to the payment of the

Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

16. DISPUTES

If any dispute arises out of this deed, the dispute shall be referred to an arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

17. NO FETTER OF DISCRETION

Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

18. NO COMPENSATION PAYABLE

No compensation shall be payable by the Council as a result of the obligations contained in this deed.

19. WAIVER

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants, restrictions or obligations of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions contained in this deed or acting on any subsequent breach or default of this deed.

20. FUTURE PERMISSIONS

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

21. AGREEMENTS AND DECLARATIONS

The parties agree that:

- (a) nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and

- (b) 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.

22. NOTICES

22.1 Any notice required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice at its address as set out below:

- (a) Council: Head of Development Management, Civic Office, Waterdale, Doncaster DN1 3BU;
- (b) Owner: Prospect Court 2 Courthouse Street Otley West Yorkshire LS21 1AQ.

or as otherwise specified by the relevant person by notice in writing to each other person.

22.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

23. THIRD PARTY RIGHTS

No person other than a party to this deed, and their respective successors and permitted assigns, shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

24. SEVERANCE

24.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.

24.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, [the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

25. VALUE ADDED TAX

- 25.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.
- 25.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

26. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a Deed by affixing

THE COMMON SEAL of

Doncaster Borough Council
in the presence of:-



Authorised by Assistant Director
Legal and Democratic Services

Seal No. 63780

EXECUTED as a DEED by

PROSPECT ESTATES LIMITED

in the presence of:-

[Redacted signature block]

Director/Secretary

[Redacted signature block]

EXECUTED AS A DEED by

SVENSKA HANDELSBANKEN

Authorised Signatory

AB (PUBL) acting by two authorised

signatories:

Authorised Signatory

**"Executed as a deed on behalf of
SVENSKA HANDELSBANKEN AB (publ)
a public banking Company
Incorporated in Sweden.**

by..

and

**being persons who, in accordance with the laws of that territory,
are acting under the authority of the Company"**

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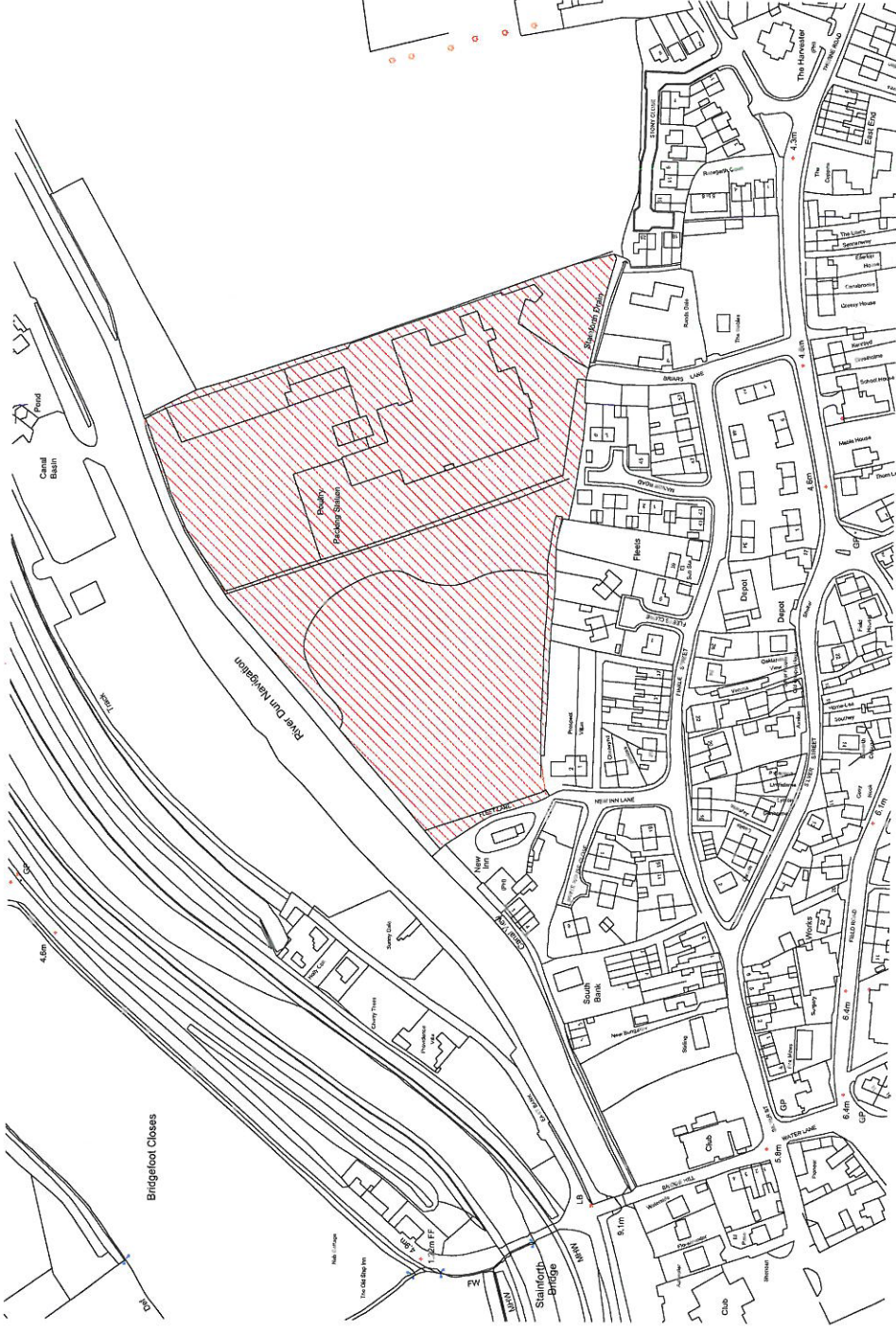
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ADDITIONAL NOTES

ALL WORKS TO BE CARRIED OUT IN ACCORDANCE WITH THE BUILDING REGULATIONS AND THE REQUIREMENTS OF THE LOCAL AUTHORITY.



REV DESCRIPTION DATE

PROSPECT ESTATES LTD

LAND AT STAINFORTH DONCASTER

GENERAL ARRANGEMENT Planning Information Site Location Plan

SCALE 1:1250 @ A1 DATE APRIL 13

DRAWING NO: 1382/107

DRAWN BY JR CHECKED BY

PURPOSE OF DRAWING

PLANNING APPLICATION

FOR THE PROPOSED DEVELOPMENT

FOR THE PROPOSED DEVELOPMENT

ADDITIONAL COMMENTS DENOTED ON DRAWINGS (CDM)
PROPOSED SIGNIFICANT RESIDENTIAL RISKS THAT ARE
EITHER OR A COMBINATION OF THE FOLLOWING:
2017 OFFICIALS UNUSUAL DIFFICULT TO MANAGE
2024

CDM 2007

CONSTRUCTION

USE

MAINTENANCE

DECOMMISSION

Schedule 1 Covenants to the Council.

- 26.1 On the third anniversary of the date of this agreement the Owner shall complete and submit to the Council a scheme for the provision of Affordable Housing
- 26.2 The scheme for the provision of the Affordable Housing shall be assessed against the following requirements:
- (a) The Owner shall undertake complete and submit to the Council an FVA on the third anniversary of the date of this agreement
 - (b) The FVA shall be submitted to the Council by guaranteed delivery and shall be deemed to have been received by the Council on the day after its submission
 - (c) If the Council fail to respond in writing to the Owner as the case may be about the FVA and/or Gross Development Profit within 12 weeks of the date of deemed receipt of the FVA, the FVA will be deemed approved by the Council
 - (d) The Council and the Owner will use all reasonable endeavours to agree the Gross Development Profit within 12 weeks from the date of deemed receipt of the FVA by the Council
 - (e) If no agreement is reached between the Council and the Owner on the Gross Development Profit then the matter shall be referred to independent surveyor for determination in accordance with the terms of clause 15 of this deed. The Council agrees the Owner may continue with construction of and sales of Dwellings notwithstanding determination of Gross Development Profit has then to be determined
 - (f) Any Affordable Housing to be provided shall accord with the approved plans referred to under the Application and be constructed in accordance with the Owner's standard product specifications and appropriate Building Regulation approvals. The Developer shall notify the Council of the commencement date of the construction of the Affordable Units and completion/handover dates. Prior to commencement the Developer shall obtain written approval from the Council to the location and house type mix and designs being offered.
 - (g) If the agreed GDP is 20% or less then the Council agree that the Owner shall not make available any Affordable Housing or pay a Commuted Sum
 - (h) If the GDP is more than 20% then the following provisions shall apply
 - (i) The Owner shall use all reasonable endeavours to identify a Social Landlord or Social Landlords who may be willing and able to purchase Affordable Housing on the Development and shall enter into negotiations with such Social Landlord or Social Landlords.

- (j) The Owner and the Social Landlord shall determine the Affordable Housing to be offered for sale by adopting the following formula:

CS

(OMV – ADV)

Where:

“CS” is the Commuted Sum;

“OMV” is the Open Market Value; and

“ADV” is the combined total of the Affordable Dwelling Value to be taken for a 2 bedroomed Dwelling, 3 bedroomed Dwelling, 4 bedroomed Dwelling or a number of each type of Dwelling for either Affordable Rented Housing, Social Rented Housing or Shared Ownership Housing or a mix of such Dwellings and use. The result (in whole positive numbers only rounded up or down to the nearest whole number and where the fraction is .5 the number shall be rounded down) shall be the number of Dwellings the Owner shall make available as Affordable Housing within the Development.

- (k) The Owner will offer for sale in writing to the Social Landlord it has identified and with which negotiations have occurred the freehold title to the Affordable Housing and shall use all reasonable endeavours to secure a contract for and complete the sale of the Affordable Housing on reasonable terms satisfactory in all respects to the Owner.
- (l) If having offered for sale the Affordable Housing the Social Landlord does not wish to purchase the Affordable Housing or does not enter into a contract to purchase the Affordable Housing within two months from the date of the offer having first been made in writing to that Social Landlord then the Owner shall in conjunction with the Council identify a second Social Landlord in accordance with the provisions of paragraphs 1.2(k) and (l) of this Schedule and in the event that second Social Landlord declines to acquire the Affordable Housing the process shall be repeated with a third Social Landlord and in the event that the third Social Landlord declines to acquire the Affordable Housing then:
- (i) There shall be no continuing obligation upon the Owner to provide Affordable Housing and all covenants to do so shall henceforth be released; and
 - (ii) The Commuted Sum shall become payable to the Council in lieu of the provision of Affordable Housing on the Development.
- (m) The Owner shall provide written evidence to the Council of its contact with and negotiations with each of the Social Landlords it approaches in relation to the provision of Affordable Housing on the Development.
- (n) The Commuted Sum shall be payable as follows:
- 30% within three months of the date of either a Social Landlord refusing a written offer for sale of the Affordable Housing or a Social Landlord

failing to enter into a legal binding contract at arm's length for value for the purchase of such Affordable Housing within six months from the date of the offer having first been made in writing to that Social Landlord whichever is the latest ("the First Instalment");

- the balance (if any) within 12 months of having paid the First Instalment