

**Dated** \_\_\_\_\_ **20[ ]**

[ ]

**and**

[ ]

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**Final Draft Example Development Agreement**

**in relation to Plots [ ] at [ ]**

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Draft

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THIS AGREEMENT is dated

20[ ]

**BETWEEN:**

(1) [ ] (Company No: [ ]) whose registered office is at [ ] (the "Seller")

(2) [ ] of [ ] (the "Buyer")

**TERMS AGREED:**

1. **Definitions**

1.1. In this Agreement unless the context otherwise requires the following words and expressions have the following meanings assigned to them respectively that is to say:

**Approved Plans** the drawings listed in Schedule 3 together with any amendments approved in accordance with the terms of this Agreement;<sup>1</sup>

**Buyer's Agent** Either the Buyer or such other appropriately qualified person appointed from time to time by the Buyer (and notified to the Seller in writing as such) for the purpose of agreeing that each Stage has been Stage Completed;

**Buyer's Solicitors** [ ]

**Completion** actual completion of the sale and purchase of the Property in accordance with this Agreement;

**Completion Date** [the later of]:  
(a) the date that is 5 Working Days after the First Stage is Stage Completed in relation to all of the Units in accordance with this Agreement; [or  
(b) the Seller providing evidence to the Buyer of completion of the application for registration of the Prior Transfer;]

provided it shall not take place between [20 December and 4 January];

**Contractor** If the main contractor undertaking the Development is not the Seller, the Seller's building contractor in relation to the Development;

**Contract Rate** 4% over the base rate of Barclays Bank Plc from time to time;

**Contract Sum** the sum of £[ ] ([in words] pounds) to be paid by the Buyer in respect of such of the construction costs of the Units as comprise the [Second Stage, the Third

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1 These will be agreed between the parties and attached

	Stage and the Fourth Stage] Payments, apportioned for each Unit as shown in Schedule 2;
<b>Defects Liability Period</b>	the period of 12 (twelve) calendar months commencing on the date that the relevant Unit has been Stage Completed to the [Fourth Stage];
<b>Deposit</b>	the sum of £[ ] ([in words] pounds) apportioned for each Unit as shown in Schedule 2;
<b>Development</b>	the construction on the Property of the Infrastructure and the Units in accordance with the Approved Plans, the Specification and the Requisite Consents;
<b>Estate Roads</b>	the roads and footpaths and appurtenant street lighting to be constructed to adoption standards on that part of the Property shown coloured [ ] on the Plan, or as subsequently agreed with the Highways Authority and which are to provide pedestrian and vehicular passage from the existing adopted highway known as [ ] to and from the Units [and that are intended to become roads and footpaths maintainable at public expense];
<b>Estate Sewers</b>	those sewers forming part of the Development providing foul and surface water drainage for the Units to be constructed to adoption standards on the Property [that are intended to become sewers maintainable at public expense]; <b>[DN: The specification will make it clear whether this wording is required]</b>
<b>Existing Matters</b>	the matters set out in Schedule 1;
<b>[Fourth Stage</b>	that the relevant Unit is completed in all respects and ready for occupation and is connected to the Estate Sewers and the Service Media save (if at all) for any Minor Works and that all Infrastructure required to permit full occupation and use of the Unit as a permanent dwelling is practically complete and for the avoidance of doubt in relation to the Estate Roads this shall mean construction to base course only of such part or parts of the Estate Roads as may be required to access the Units provided that all raised iron works are protected and all hazards are properly signposted;
<b>[Fourth Stage Payment</b>	the sum set out in Schedule 2 under the heading "Practical Completion (due in respect of the [Fourth] Stage)";
<b>[First Stage</b>	that: <ul style="list-style-type: none"> <li>(a) each of the Units is constructed to foundations plus two levels of brickwork above the damp proof course level as would amount to a partially constructed building and therefore zero-rated for VAT purposes together with all associated works including site clearance, and remediation as</li> </ul>

applicable in accordance with this Agreement;  
and

- (b) such of the Estate Roads as are reasonably required to enable access to and egress from each Unit from the existing adopted highway known as [ ] have been constructed to base course;] **[DN: If MMC is being contemplated this drafting will need to be amended]**

**[First Stage Payment** the sum set out in Schedule 2 under the heading "Golden Brick (due in respect of the First Stage)";]

**Infrastructure** the Estate Roads and footpaths to be constructed and laid to base course level together with the Estate Sewers and services to the standard necessary for the same to be approved and adopted by the local highway and water authority (as the case may be) and the Service Media with sufficient capacity necessary to serve the Units and all other works to the Property as are required to complete the Development in accordance with the Requisite Consents;

**Long Stop Date** (and subject to the provisions of clause 11.2) the date six months after the date for completion of each respective Stage as set out in Schedule 2;

**Land Price** the sum of £[ ] ([in words] pounds) apportioned for each Unit as shown in Schedule 2 (and for the avoidance of doubt the Land Price comprises the Deposit plus the First Stage Payment for all of the Units);

**Minor Works** items of a snagging nature (including for the avoidance of doubt turfing) which can reasonably be dealt with after Stage Completion of the [Fourth] Stage by the Seller and which do not materially affect or prevent the use, occupation and enjoyment of the relevant Unit (and for the avoidance of doubt the parking spaces shall be completed to base course level and all fencing completed and shall not comprise Minor Works)

**[NHBC]** [National House Building Council] **DN: See clause 11.7, LABC or other CML-compliant warranty providers may be used as an alternative to NHBC];**

**[NHBC] Cover Note** a cover note issued by [the NHBC] under its ["Buildmark Choice"] warranty scheme confirming a satisfactory final inspection of the Units;

**Plan** the plan annexed to this Agreement;

**Planning Permission** the planning permission for the Property issued by the Buyer in its capacity as local planning authority [pursuant to the planning application dated [ ] and bearing the reference [ ] [[dated [ ]

] with reference [ ] and such other variations or amendments as may be required by the Parties (acting reasonably); **[DN: Amend if the Buyer is not the LPA]**

**[Prior Transfer]** the transfer dated [ ] between (1) [ ] and (2) the Seller;]

**Property** the freehold land at [ ] which is currently registered at the Land Registry with title number [ ] on which the Development will be constructed;

**Quantity Surveyor** such suitably qualified and experienced quantity surveyor as is agreed between and appointed jointly by the parties (or as determined by the President of the Royal Institution of Chartered Surveyors on the application of either party in the absence of agreement within 5 Working Days) and it shall be a condition of the appointment that they shall use reasonable endeavours to determine any matter put to them within 10 Working Days of appointment and that they shall act as an expert and not as an arbitrator and that they shall invite the Seller and the Buyer to make representations to them and afford them the opportunity to comment to them on each other's representations and their fees and the cost of their appointment shall be paid as the Quantity Surveyor shall in their discretion direct;

**Requisite Consents** the Planning Permission, the Section 106 Agreement, and all consents approvals licences certificates and permits in legally effectual form as may be necessary lawfully to commence, carry out and complete the Development and/or to permit the occupation of the Units including without limitation building regulations;

**Retention** being part of the Contract Sum payable in respect of each Unit as set out in Schedule 2 under the heading "Retention" which is to be held by the [Buyer] [Buyer's Solicitors]<sup>3</sup> and released in full on expiry of the Defects Liability Period but subject to the provisions of clauses 21 and 22 and for the avoidance of doubt this sum is in addition to the Fourth Stage Payment and is not a deduction from this payment;

**[Second Stage]** that the relevant Unit is constructed to roof stage;]

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2 This allows for the situation where the developer has not yet completed its acquisition

3 It is likely that where the Buyer is using its in-house legal service, there will be no separate solicitor's client account to hold the Retention

<b>[Second Stage Payment</b>	the sum set out in Schedule 2 under the heading "Roof Stage (due in respect of the Second Stage)";]
<b>Section 106 Agreement</b>	[an Agreement dated [        ] [between (1) [the Buyer in its capacity as local planning authority] (2) [        ] and (3) the Seller] or [a unilateral undertaking] dated [        ] given by the Seller to the Buyer in its capacity as local planning authority] including any future variations, modifications, amendments and/or changes; <b>[DN: Delete alternatives and amend if the Buyer is not the LPA]</b>
<b>Seller's Representative</b>	the duly-qualified person or organisation nominated or appointed by the Seller to represent it in order to determine under the terms of this Agreement whether any Stage had been Stage Completed;
<b>Seller's Solicitors</b>	[        ] of [        ] (ref: [        ]);
<b>Service Media</b>	pipes, meters, sewers, drains, mains, ducts, gutters, watercourses, wires, cables, channels, flues and all other conducting media serving the Units and includes any fixing louvres, cowls and any other ancillary apparatus or other service media from time to time substituted therefor for the transmission of foul and storm water, sewerage, gas, electricity, mains water and telecommunications and (where relevant) SUDS basins, balancing ponds, electricity sub-stations, gas governors, pumping stations and other connecting apparatus;
<b>Specification</b>	the specification annexed as Annexure 1 subject in each case to such variations as may be agreed between the parties; <sup>44</sup>
<b>Stage</b>	the [First Stage, the Second Stage, the Third Stage or the Fourth Stage] as applicable and as in each case is further described in Schedule 2;
<b>Stage Completed</b>	in relation to any Stage, agreement between the Buyer's Agent and the Seller's Representative or, failing agreement, as determined by the Quantity Surveyor that the relevant Unit has been constructed to the relevant Stage and that all other works comprised within the Stage (as specified in this Agreement) have been completed in each case in accordance with this Agreement and "Stage Completion" shall be construed accordingly;
<b>Standard Conditions</b>	the Standard Conditions of Sale (Fifth Edition- 2018 Revision) and references therein to the seller and to the

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4 The Council will need to attach its required specification

buyer shall respectively be references to the Seller and Buyer;

**Target Date** the last day of the relevant month for the relevant Stage as set out in Schedule 2;

**[Third Stage** that the relevant Unit is constructed to plaster stage;]

**[Third Stage Payment** the sum set out in Schedule 2 under the heading "plaster stage (due in respect of the Third Stage)";

**Transfer** the form of transfer to be granted in respect of the Property attached at Annexure 3;5

**Units** the [ ] dwellings comprising plots [ ] together with their parking spaces, gardens, shared or private accesses and ancillary areas (if any) constructed or to be constructed on the Property and "relevant Unit" shall mean each of the Units (as the context requires);

**Working Day** any day (other than a Saturday or Sunday) upon which the London clearing banks are open for business.

## 2. **Interpretation**

- 2.1. Words importing gender include any other gender and words importing the singular where the context so requires include the plural and vice versa.
- 2.2. The clause headings shall not affect the construction of this Agreement.
- 2.3. References to statutory provisions shall be construed as references to those provisions amended or re-enacted or modified.
- 2.4. Wherever the Buyer is required to act reasonably in giving approval to an amendment or variation sought by the Seller, the Buyer shall be entitled to withhold its consent if such amendment or variation, were consent to be given, would or might materially adversely affect the use and enjoyment of the Units, the means of access thereto or the value of the same, or would impose additional material financial liability on the Buyer.
- 2.5. References to "the Parties" shall mean together the Buyer and the Seller, and references to "Party" shall be to the Buyer or the Seller (as the case may be).
- 2.6. References in this agreement to clause numbers and to parts of the Schedules shall be construed as references to clauses of this agreement and parts of the Schedules to this agreement as the case may be.

## 3. **Agreement for Sale**

- 3.1. The parties agree that:

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5 Form of transfer to be drafted on a site specific basis



3.1.1. the Seller will sell and the Buyer will purchase the Property with full vacant possession for the Land Price; and

3.1.2. thereafter the Seller shall complete the construction of the Units and the Infrastructure for the Contract Sum

on the terms and conditions contained in this Agreement.

3.2. [6The sale and purchase of the Property is conditional on satisfaction of the Planning Condition. The Seller will use reasonable endeavours to satisfy the Planning Condition as soon as possible after the date of this Agreement.

3.3. If the Planning Condition has not been satisfied on or before the Planning Long Stop Date either Party may determine this Agreement by not less than 10 Working Days' notice in writing served by either Party on the other at any time after the Planning Long Stop Date but without prejudice to the rights of either party in respect of any antecedent breach, following which the Deposit shall be returned to the Buyer forthwith.]

3.4. On the date hereof the Buyer shall pay to the Seller's Solicitors by means of a telegraphic transfer or direct transfer to the Seller's Solicitor's client account the Deposit and such Deposit will be held as stakeholder until provision of evidence of registration of the Development with [NHBC] in accordance with clause 11.7. **[DN: Appropriate warranty provider details to be included]**

3.5. The Property is sold subject to and with the benefit of the Existing Matters.

3.6. On the Completion Date the Parties shall complete the Transfer (it being the intention that one Transfer for the whole of the Property shall be completed).

#### 4. **Completion**

4.1. Completion shall take place on the Completion Date and shall be at the offices of the Seller's Solicitors or where they may reasonably direct.

4.2. On the Completion Date the Buyer shall pay to the Seller the First Stage Payment in relation to each of the Units.

4.3. The Buyer agrees with the Seller that the Buyer hereby grants to the Seller licence for the Seller and (where relevant) the Contractor, its sub-contractors and their respective agents, workmen, sub-contractors, licensees, invitees and all other persons or bodies engaged in the construction of the Development to enter onto such parts of the Property as is necessary to carry out its obligations under the terms of this Agreement and to remain there with vehicles, plant, equipment and materials for the purposes of carrying out the same and for the avoidance of doubt but without prejudice to the generality of the foregoing to:

4.3.1. erect and maintain temporary buildings including site cabins upon the relevant part of the Property of such size and in such positions as may be reasonably required by the Seller;

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6 Clauses 3.2 and 3.3 and associated defined terms will only be included if the site does not yet have planning permission

- 4.3.2. store and maintain vehicles, plant, equipment, building materials and waste materials upon the relevant part of the Property provided that the Seller shall obtain or procure the obtaining of all of the Requisite Consents necessary therefor;

Provided that:

- 4.3.2.1. the Seller will indemnify and keep the Buyer indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability arising or resulting from personal injury or the death of any person or damage to any property of any other persons arising from the carrying out of the construction and completion of the Development and the Seller shall take out and maintain (or (where applicable) shall procure that the Contractor shall take out and maintain) until the completion of the [Fourth] Stage in relation to the final of the Units and completion of the Infrastructure adequate insurance (including public liability insurance, contractor's all risks insurance and employer's liability insurance each at an appropriate level for a development of the type and size of the Development) against the liabilities referred to in this clause whether on the part of the Seller or on the part of any contractor, sub-contractor, agents, workmen, licensees or invitees;
- 4.3.2.2. such licence shall terminate for each relevant Unit on payment by the Buyer of the [Fourth] Stage Payment and in relation to the Property as a whole upon completion of the Infrastructure thereafter and shall terminate in respect of all Units in the event of and forthwith upon termination of this Agreement by the Buyer pursuant to clause 9.5 or 11.3; and
- 4.3.2.3. the construction and completion of the Development will be at the sole risk of the Seller until the [Fourth] Stage has been Stage Completed in relation to the final of the Units and completion of the Infrastructure thereafter.

## 5. **Capacity**

- 5.1. The Seller shall sell with full title guarantee but:
- 5.1.1. the words "at his own cost" in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 are replaced by the words "at the cost of the person requiring compliance with this covenant";
- 5.1.2. for the purposes of section 6(2)(a) all entries in any public register are deemed to be within the actual knowledge of the Buyer.

## 6. **Title**

- 6.1. Title to the Property is registered at the Land Registry with title absolute under title number [            ].
- 6.2. The Property is sold subject to the following:

- 6.2.1. all matters (other than any charges to secure monies) contained or referred to in the register of title [ ] at the Land Registry as at the date mentioned in clause 6.3 so far as the same relate to the Property;
- 6.2.2. any registered local land charges and any matter capable of being registered as a local land charge even if not so registered at the Completion Date;
- 6.2.3. any notice, order or proposal given or made by a government department or by any public or local authority, statutory undertaker or other competent body or person;
- 6.2.4. all charges, orders, proposals, restrictions, agreements, notices or other matters arising under the town and country planning or highways legislation which affect or relate to the Property and to any orders or regulations made under that or any other legislation;
- 6.2.5. all rates, charges and other outgoings which affect or are charged on the Property except for any mortgage or legal charge relating to money secured on the Property;
- 6.2.6. any unregistered interest that overrides the disposition effected pursuant to this Agreement under section 11(4)(c) or schedules 1, 3 or 12 Land Registration Act 2002;
- 6.2.7. all public or private rights of way and other rights, easements or quasi-easements and wayleaves affecting the Property;
- 6.2.8. [the Prior Transfer;]

and the Seller warrants to the Buyer that it has disclosed in writing to the Buyer or the Buyer's Solicitors all matters within clauses 6.2.1 to 6.2.8 as are within the Seller's actual knowledge at the date of this Agreement

- 6.3. Title to the Property comprising official copies of title number [ ] as at [ ] timed at [ ] [and the Prior Transfer] having been deduced prior to the date of this Agreement the Buyer is deemed to purchase with full knowledge of the contents of those documents at that date and time and will raise no requisitions on it save in respect of any matter revealed by the Buyer's searches at the Land Registry or at the Land Charges Department or at Companies Houses which have not been disclosed to the Buyer prior to the date of this Agreement.
- 6.4. The Property is sold subject to and together with the benefit of as the case may be the rights easements covenants agreements declarations exceptions reservations and other matters contained or referred to in the Existing Matters (other than any financial charges affecting the Property) insofar as they still subsist are capable of being enforced and relate to the Property or are contained or referred to in the Transfer.
- 6.5.
  - 6.5.1. On Completion the Buyer is to execute and deliver to the Seller a Transfer prepared by the Seller's Solicitors.
  - 6.5.2. [Prior to completion the Seller will provide either a signed and dated RX4 in respect of the restriction at [ ] or a certificate of compliance (and

evidence that this is satisfactory to the Land Registry) confirming that this will not carry forward to the Buyer's title to the Property.] **[DN: To be included if required by title]**

6.6. [The Seller shall procure that the Seller's Solicitors

6.6.1. use reasonable endeavours to procure the completion of the application to register the Prior Transfer including responding to requisitions as soon as possible so that the Seller becomes the registered proprietor of the Property with absolute title as soon as reasonably practicable following the date hereof; and

6.6.2. provide to the Buyer's Solicitor updated official copies evidencing completion of the application for registration of the Prior Transfer as soon as reasonably practicable following receipt of confirmation of completion of such application from the Land Registry.]

6.7. The Property is sold free of financial charges.

## 7. **Exclusion**

7.1. This Agreement incorporates the entire contract between the parties and the Buyer acknowledges that he has not entered into this Agreement relying upon any representations by or on behalf of the Seller save for any written replies to enquiries made of the Seller's Solicitor (and for the avoidance of doubt, for the purposes of this clause "written" includes e-mail and fax). Any liability of the Seller or remedy of the Buyer in respect of any representations is excluded to the extent authorised by the Misrepresentation Act 1967.

7.2. Any descriptive sales literature issued in connection with the Property the Units or the Development of which the Units form part is solely intended for the guidance and assistance of respective buyers (including the Buyer) and nothing contained in it shall be considered as forming part of this Agreement or as a warranty or representation inducing exchange.

## 8. **General**

8.1. This Agreement shall remain in full force and effect notwithstanding the execution and delivery of an assurance to the Buyer.

8.2. The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## 9. **Incorporation of Standard Conditions of Sale**

The Standard Conditions shall apply to this Agreement insofar as they are applicable to a sale by private treaty and are not inconsistent with any other terms of this Agreement and shall be amended as follows:

9.1. Condition 1.3.4 - insert after the word "delivered" the words "subject to contrary proof";

9.2. Condition 1.5 does not apply;

- 9.3. Conditions 2.2 and 5 shall not apply;
- 9.4. Condition 7.1 applies only to statements made or confirmed in writing by the Seller's Solicitors before the date hereof;]
- 9.5. Condition 7.6 - add as a new condition the following: "Seller's Insolvency - If after completion the Seller passes a resolution to wind up, is served with a petition for winding-up or bankruptcy or applies for an administration order or an order under section 253 of the Insolvency Act 1986 or if a receiver or an administrative receiver is appointed in respect of any of the assets of the Seller the Buyer may serve notice upon the Seller terminating the Agreement with immediate effect and without prejudice to the Buyer's other rights and remedies. In the event of such termination the Seller shall immediately give up possession of the Property and the Buyer shall be entitled to have the construction of the Development completed by others (but in accordance with the Approved Plans, the Specifications and the Requisite Consents).

10. **VAT**

All sums made payable under this Agreement are inclusive of VAT and the Seller warrants that no election to waive a VAT exemption and no option to charge VAT has been made in respect of the Property and shall not be made by or on behalf of the Seller prior to Completion.

11. **Seller's Obligations**

The Seller agrees with the Buyer:

11.1. **Commencement of Development**

Unless prevented by any act, matter or thing beyond the reasonable control of the Seller (and subject to the provisions of clause 11.2.1) to procure in an expeditious and diligent manner (to the extent consistent with the proposed Target Dates and subject to clause 11.2) the design construction and completion of the Development in a thoroughly sound, proper and workmanlike manner and with good-quality, new, sound materials sufficient and proper of their several kinds and in conformity in every respect (save only as hereinafter mentioned) with the Approved Plans, the Specification, the Requisite Consents and the required standards of [NHBC] in accordance with this Agreement and in conformity with all regulations or requirements of the local or other authorities and in compliance with any other approvals required under this Agreement as appropriate so that the Units shall be constructed to Stage Completion of the [Fourth Stage] and fit for occupation in accordance with clause 11.2 in accordance with the provisions of Schedule 4 and the Infrastructure shall be completed in accordance with the Requisite Consents [, and the Seller shall procure that the Contractor shall maintain until the date 12 years after Practical Completion of the [Fourth] Stage in relation to the final of the Units a professional indemnity insurance policy at an appropriate level for such a Development and when reasonably requested by the Buyer shall produce evidence to the Buyer that such a policy is in place].

11.2. **Practical Completion of the Development**

To complete the construction of the Development as soon as reasonably practical and use its reasonable endeavours to do so by the relevant Target Date and in any event by the relevant Long Stop Date unless prevented by any event or circumstances that are beyond the reasonable control of the Seller in which case the Seller shall be entitled to a reasonable extension

of time provided that the Seller has used reasonable endeavours to mitigate any delay caused by such matters such extension to be agreed with the Buyer within 10 Working Days of any such occurrence or in the absence of such agreement (but not otherwise) determined pursuant to clause 18.

- 11.2.1. In the event that the Seller becomes aware that it will not be able to complete construction of any part of the Development as detailed at clause 11.2 the Seller shall immediately notify the Buyer and provide the Buyer without delay an updated schedule of estimated handover dates.
  - 11.2.2. To complete the relevant parts of the Infrastructure required to serve each of the Units by no later than the date of Stage Completion of the relevant Unit in the manner required in Schedule 2 and in accordance with the terms of this Agreement generally.
  - 11.2.3. [The Seller shall enter into an agreement under the Highway Act 1980 section 38 and/or Section 278 for the adoption of the Estate Roads and an agreement under the Water Industry Act 1991 section 104 for the adoption of the Estate Sewers in both cases with appropriate supporting bonds (if applicable) with the relevant authority and company as soon as reasonably practicable and shall keep the Buyer informed of the actions it is taking in this respect and shall send the Buyer certified copies or abstracts thereof as soon as reasonably practicable after they have been completed].**[DN: This clause will be amended to reflect the situation applicable to the site the subject of the agreement]**
  - 11.2.4. Save as provided in the Transfer the Seller shall indemnify the Buyer against any costs claims or demands made in respect of the Estate Roads and Estate Sewers.
- 11.3. That if the Seller fails to complete any Stage by the Long<sup>7</sup> Stop Date and if the Seller is not diligently proceeding to complete the relevant Stage within 20 Working Days from the Buyer notifying breach (or the Seller is otherwise in material breach which has not been remedied within a reasonable time following notice) the Buyer shall be entitled to terminate this Agreement by notice in writing to the Seller without prejudice to any accrued cause of action or other remedy of either party against the other in respect of any breach non-observance or non-performance of any of the obligations contained or referred to in this Agreement (following which the Seller shall (in the event of the termination of the Agreement before the Completion Date) return the Deposit to the Buyer forthwith).
- 11.4. Comply with Statutes, Regulations
- 11.4.1. To do or to procure the doing of all acts and things in the completion of the Development required by law and to procure the carrying out of the Development in conformity in all respects with the Requisite Consents and with the by-laws, regulations and proper requirements of the relevant local authority and all public utility undertakings respectively and to pay all proper claims for the fees, charges, fines, penalties and other similar payments which during the progress of the Development may become payable or be properly or lawfully demanded by any competent authority in respect of the Development. When reasonably requested by the Buyer the Seller shall

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<sup>7</sup> As drafted the longstop date is capable of extension for force majeure.

provide the Buyer with a current copy of the Health and Safety file which the Seller has a duty to prepare and update in accordance with the Construction (Design and Management) Regulations 2007.

- 11.4.2. The Seller shall be the sole client for the purposes of the Construction (Design and Management) Regulations 2015 and shall notify the Health and Safety Executive accordingly.

11.5. Inspection of Units

To permit the Buyer and the Buyer's Agent to enter onto such parts of the Property as are reasonably necessary at reasonable times after reasonable prior notice to view the state and progress of the Units and/or the Infrastructure and to inspect and test the material and workmanship for the purpose of ascertaining generally that all the obligations of the Seller under this Agreement are being duly observed and performed and for any other reasonable purpose Provided That the person so permitted shall:

- 11.5.1. not interfere with the carrying out of the Development or impede its progress;
- 11.5.2. comply with all site rules and reasonable instructions of the Contractor;
- 11.5.3. refer all matters whether of complaint or otherwise to the Seller or the Seller's representative and not to the Seller's sub-contractors, agents or workmen; and
- 11.5.4. comply with The Health and Safety at Work etc Act 1974 and any similar regulations imposed upon the Seller in relation to the Development.

11.6. Restrictions on Use

Not to use or permit or suffer to be used the Property or any part thereof for any purpose other than complying with the terms of the Requisite Consents and the terms of this Agreement.

11.7. [NHBC and LABC - ]

To procure that the Units are entered and retained on the register maintained by [NHBC] and that the Units and the Infrastructure built by it on the Property will be built so as to comply with the [NHBC]'s requirements and so as to qualify for the [NHBC's Full Certificate the "Buildmark Choice"] scheme (including developer's insolvency cover) and to supply evidence of such registration to the Buyer or the Buyer's Solicitors.**[DN: The clause will be amended to reflect the cover agreed to be offered which must be an acceptable new home warranty, wherever possible including developer's insolvency cover]**

11.8. Proprietary Materials

That the copyright in all plans drawings specifications (but excluding house types) calculations schedules reports software (whether computer generated or not) and other work prepared by or on behalf of the Seller in relation to the Development (the "**Proprietary Materials**") shall remain vested in the Seller or other relevant party, but the Seller hereby grants to the Buyer with full title guarantee an irrevocable royalty free non-exclusive licence which shall carry the right to grant sub licences and shall be transferable to third parties) to use and reproduce the Proprietary Material for all

purposes relating to the Development but such licence shall not include a licence to reproduce the designs contained in the Proprietary Material for any extension of the Development or for any other property. The Seller shall not be liable for the consequences of any use by the Buyer or any other party of the Proprietary Material for any purpose than that for which it was prepared or provided.

## 12. **Variation of Approved Plans**

- 12.1. In the event of the Seller recommending any alteration to the Approved Plans relating to the Units which in the opinion of the Seller is reasonably necessary in order to achieve Stage Completion of the Units the Buyer shall not unreasonably withhold or delay consent to such alteration provided that the Buyer shall not in consequence of such changes be required to accept a property of lower value than that specified herein or accept materials of a lower value or that do not comply with British Standards, the Requisite Consents or the requirements of [NHBC].
- 12.2. The Seller reserves the right to employ or use alternative or substitute materials in the construction of the Property and to vary the Approved Plans or Specifications in such manner as it may in its reasonable discretion think fit and the Buyer shall not be entitled to raise any objection or make any claims for compensation or loss in consequence thereof provided that:
  - 12.2.1. the Buyer shall not in consequence of such changes be required to accept a property of lower value than that specified herein;
  - 12.2.2. any alternative or substitute materials shall be used only in the event that it is necessary to do so due to shortages of materials as outlined or referred to in the Approved Plans and Specifications and the alternative or substitute materials are as nearly as may be of the same value and quality as the original materials as specified or referred to in the Approved Plans and Specifications; and
  - 12.2.3. the alternative or substitute materials must comply with British Standards, the Requisite Consents and the requirements of [NHBC].
- 12.3. In respect of clause 12.2 (but subject as therein provided) the Seller will notify the Buyer of any such variations but the Seller will not be required to obtain the approval of the Buyer to the variations.

## 13. **Payment for the Units**

The following procedure will apply in relation to certifying Stage Completion of each of the [First Stage, the Second Stage, the Third Stage and the Fourth Stage] in relation to each of the Units (in each case **the relevant Stage**):

- 13.1. the Seller will serve not less than 7 Working Days' written notice on the Buyer before Practical Completion of the relevant Stage save that the Seller will serve 20 Working Days' notice before Stage Completion of the [Fourth Stage];
- 13.2. the Buyer's Agent and the Seller's Representative will meet at the Property within 5 Working Days of the date stated within the written notice from the Seller to inspect the relevant part of the Development to agree whether or not the relevant Stage has been Stage Completed;



- 13.3. if the Parties agree that the relevant Stage has been Stage Completed, payment shall be due in accordance with clause 13.9;
- 13.4. if the Parties agree that the relevant Stage has not been Stage Completed, the Seller will procure the carrying out of the necessary outstanding works as soon as reasonably practicable having regard to the nature of the works to be carried out and the Parties will reinspect the relevant Stage when the Seller believes the relevant Stage has been Stage Completed;
- 13.5. if the Parties disagree whether the relevant Stage has been Stage Completed, the issue shall be referred to the Quantity Surveyor under clause 14;
- 13.6. if the Parties agree that the relevant Stage has been Stage Completed subject to the remediation of Minor Works the Parties shall agree and sign a list of such items and the Seller shall remedy the same within 20 Working Days subject only to an extension of time pursuant to the provisions of clause 11.2 for delays. Payment shall be due under clause 13.3 when Stage Completion is agreed.
- 13.7. Following payment of the Fourth Stage Payment the Buyer shall continue to hold the Retention in respect of the Units in accordance with Clauses 21 and 22.
- 13.8. Practical Completion
- 13.8.1. Notwithstanding the provisions of clause 13.1, the Buyer shall not be obliged to agree that a Stage has been Stage Completed to the [Fourth] Stage (and the Seller shall not be entitled to refer the question of the same to the Quantity Surveyor):
- 13.8.1.1. on a statutory bank holiday or other public holiday or between 12 December and 5 January immediately following; and
- 13.8.1.2. unless and until the Seller has provided to the Buyer confirmation in writing from the Buyer (in its capacity as local planning authority) that conditions [ ] of the Planning Permission and paragraphs [ ] of the Section 106 Agreement have been discharged.<sup>8</sup> **[DN: Amend if the Buyer is not the LPA]**

13.9. Payments

The Buyer shall pay to the Seller as follows:

- 13.9.1. on the date hereof the Deposit as per clause 3.4;
- 13.9.2. on the Completion Date the First Stage Payment for all of the Units;
- 13.9.3. within 7 Working Days after the earlier of the date on which it is agreed or deemed (pursuant to clause 13) or determined (pursuant to clause 14) that

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<sup>8</sup> Although the local authority is also the LPA, as it is acquiring as landowner (i.e. in a different capacity), then it should still look for these to be in place before handover of the units.

each of the Units have been Stage Completed to the [Second Stage the Second Stage Payment] for each of the Units;

13.9.4. within 7 Working Days after the earlier of the date on which it is agreed or deemed (pursuant to clause 13) or determined (pursuant to clause 14) that each of the Units have been Stage Completed to the [Third Stage the Third Stage Payment] for each of the Units;

13.9.5. (subject to the terms of clause 13.10) within 7 Working Days after the earlier of the date on which it is agreed or deemed (pursuant to clause 13) or determined (pursuant to clause 14) that each of the Units have been Stage Completed to the [Fourth Stage the Fourth Stage Payment] for each of the Units and handover of the Unit[s] shall take place on the date of payment;

13.10. Notwithstanding the terms of clause 13.9.5, the Buyer shall not be required to make the [Fourth] Stage Payment unless and until the Seller shall have handed over to the Buyer on Stage Completion of the [Fourth Stage] the documents and information set out in Annexure 2 in relation to each relevant Unit.

#### 14. **Disputes Relating to Stages of Construction**

In accordance with clause 13.5, if it is disputed that the relevant Stage has not reached Stage Completion, the matter shall be referred to the Quantity Surveyor whose decision shall be final and binding on the parties hereto and the following shall apply:

14.1. if the Quantity Surveyor determines that the stage of construction referred to in the notice in accordance with clause 13.1 has been achieved the Buyer shall pay to the Seller the payment for the Stage to which such notice relates within 5 Working Days of receipt of the Quantity Surveyor's written determination;

14.2. if the Quantity Surveyor shall determine that the stage of construction referred to in such notice has not been achieved the Seller shall carry out such works required by the Quantity Surveyor and upon completion of such works to the reasonable satisfaction of the Quantity Surveyor the Buyer shall pay to the Seller the instalment due within 5 Working Days of receipt of the Quantity Surveyor's written confirmation that the stage of construction has been achieved;

14.3. for the avoidance of doubt the Buyer shall not be required to make any Stage Payment unless and until the Seller has provided evidence to the Buyer that the Seller has registered all the Units with [NHBC] in accordance with clause 11.7;

14.4. the determination of the Quantity Surveyor as to whether an item is a defect falling to be rectified pursuant to clause 21 shall be binding upon the parties except in the case of manifest error.

#### 15. **Section 106**

The Parties shall observe their respective obligations in Schedule 4 of this Agreement in relation only to the Units. **[DN: Obligations will need to be separated to clarify which party is responsible i.e. the Seller for the development obligations and the Buyer for post-development obligations]**

16. **No Partnership**

Nothing in this Agreement or arising through any of the documents referred to in this Agreement shall constitute a partnership between the Seller and the Buyer and neither shall act as agent of the other.

17. **Interest**

If either party shall fail to pay any sum due under this Agreement on the due date such sum shall bear interest at the Contract Rate from the date the same became due to the date of actual payment.

18. **Expert Determination**

18.1. In the event of any dispute arising under this Agreement other than those which are properly referable to the Quantity Surveyor the following provisions shall apply:

18.1.1. the Parties shall jointly appoint an expert who is suitably qualified and experienced to determine the disagreement in question (the Expert) but so that in the absence of agreement as to the Expert either party may apply to the President of the Royal Institution of Chartered Surveyors to nominate the Expert;

18.1.2. the Expert shall act as an expert and not an arbitrator and his decision shall be final and binding and the following shall apply:

18.1.2.1. the Expert shall give notice in writing of this nomination (if applicable) to the Seller and the Buyer;

18.1.2.2. the Expert shall invite the Seller and the Buyer (as appropriate) to submit to him within a specified period (which shall not exceed twenty one days) a statement of reasons accompanied by a valuation (if desired and/or applicable) and shall consider any reasons and valuation submitted to him within (but not after the expiration of) twenty-one days but he shall not in any way be limited or fettered by any valuation and/or statement of reasons submitted to him and he shall determine the issues in accordance with his own judgement and opinion and shall notify his determination to the Seller and the Buyer in writing as soon as reasonably practicable after his appointment;

18.1.2.3. if the Expert shall die or unreasonably delay or become willing to act or incapable of acting the President (or failing him the person designated to act in his place) for the time being of the Royal Institution of Chartered Surveyors shall at the request of either the Seller or the Buyer by writing discharge the Expert and nominate another person to act in his place who shall proceed as if there had been no prior nomination;

18.1.2.4. the fees and expenses of the Expert shall be paid in the proportions or shares determined by the Expert and if not so determined by the Seller and the Buyer in equal shares and if either of them shall pay the share properly payable by the

other of them (in order to procure the issue of the notice of the determination of the Expert) the amount so paid shall be repayable on demand with interest at the Contract Rate from the date of payment to the date of repayment calculated from day to day and compounded with monthly rests and shall be recoverable action with interest (as well as before any judgement);

18.1.2.5. the Expert shall comply with any time limits reasonably specified by the parties.

19. **Non-Merger**

This Agreement shall remain in full force and effect insofar as anything remains to be performed and observed pursuant to it after the completion of the Transfer to the Buyer.

20. **Notices**

20.1. Any notice or notification required to be given hereunder shall be in writing to be sent by personal delivery, document exchange or recorded delivery and shall be deemed to have been received simultaneously with delivery if by personal delivery and if sent by document exchange or recorded delivery the same shall be deemed to have been received on the second Working Day following the date of despatch or posting. No notice may be served by e-mail or fax.

20.2. Any notice or notification or acknowledgement to the Seller or the Buyer may be given to or by the Seller's Solicitors or the Buyer's Solicitors respectively.

21. **Defects Liability Period**

21.1. The Seller shall procure that any defects (excluding normal wear and tear arising through usage of the Unit) in the Property notified in writing to the Seller by the Buyer before or during the period of 12 months following practical completion of a Unit ("the Defects Liability Period") are made good as soon as reasonably practicable having due regard to the nature and the urgency of the defect.

21.2. Notwithstanding clause 21.1 the Buyer may whenever it considers necessary (but acting reasonably and properly) issue instructions requiring any defect or other fault which shall appear within the Defects Liability Period and which is due to failure of the Seller to comply with its obligations under this Agreement to be made good and the Seller shall within a reasonable time after receipt of such instructions comply with the same at no cost to the Buyer.<sup>9</sup>

21.3. In the event of non-compliance by the Seller of satisfactorily making good the defect or fault then the Buyer shall be entitled to make good and deduct the cost of so doing from the Retention and where the Retention (or balance thereof) is insufficient to meet the costs incurred by the Buyer, those costs shall be due from the Seller to the Buyer as a debt due under the terms of this Agreement.

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<sup>9</sup> The Seller may try to impose specific timescales here depending on the nature of the defects – or the Local Authority may wish to do so to align them with their obligations to tenants.

21.4. Where there are either no defects or other faults which appear within the Defects Liability Periods or there are defects or other faults which appear within the Defects Liability Period and which are not due to failure of the Seller to comply with its obligations under this Agreement the Buyer shall pay the Retention relating to all Units to the Seller or to the Seller's Solicitors within 10 Working Days of the expiry of the Defects Liability Period.

22. **Long Stop Date**

Practical Completion of the [Fourth] Stage of the Units shall be achieved on or before the relevant Long Stop Date. In respect of each and every Unit for which Practical Completion of the [Fourth] Stage shall not have been reached by that date then the Seller shall in consequence of such late delivery pay to the Buyer by way of agreed estimate of the Buyer's loss the sum of<sup>10</sup> [£100.00 (One hundred pounds)] per week per Unit for each week or part thereof that Practical Completion of the [Fourth] Stage of such Unit is delayed beyond the relevant Long Stop Date. The Buyer will issue a notice to the Seller under this clause 22 setting out the amount it requires the Seller to pay in liquidated damages, in which case the Buyer may withhold or deduct liquidated damages for the amount in the notice from monies due to the Seller and/or recover the same as a debt due on demand. The Buyer shall be entitled to deduct any amount due from the Seller in respect of such penalty from any sums payable by the Buyer in respect of Retention.

23. **Evidence of Identity of Discharge of Registered Charge**

23.1. This clause 23 applies where a charge over the Property is to be discharged on or before completion and the party with the benefit of that charge (the "Lender") is to execute a discharge of that charge in Land Registry Form DS1 or a release in Land Registry Form DS3.

23.2. On or before the Completion Date, the Seller's Solicitors will provide to the Buyer's Solicitors either an undertaking to provide a DS1 or a DS3 in respect of any financial charges on the Property ([and in particular the charge to [ ] dated [ ] ("Charge")) in a form acceptable to the Buyer acting reasonably, or a signed and dated DS1 or a signed and dated DS3 in respect of any financial charges ([and in particular the Charge]). If an undertaking is provided, then following completion the Seller's Solicitors will provide either a signed and dated DS3 or DS1 in respect of any financial charges ([and in particular the Charge]).

23.3. On or before the Completion Date, the Seller's Solicitors will use reasonable endeavours to provide to the Buyer's Solicitors one of the following:-

23.3.1. the name, address and reference of the conveyancer (as defined in Rule 217 Land Registration Rules 2003) acting for the Lender;

23.3.2. a duly completed Land Registry Form DS2/AP1 signed by either the current registered proprietor's Solicitors or the Lender; or

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<sup>10</sup> The Local Authority will wish to include an amount payable as liquidated and ascertained damages to cover a delay in handover and a consequent loss of rental income to it or cost of temporarily housing tenants due to move in.

23.3.3. a duly completed Land Registry Form ID1 or ID2 (as appropriate) in respect of the Lender (if required in respect of the relevant Lender).

24. **GDPR**

The Buyer acknowledges that in relation to the remediation of defects and Minor Works (if any) the Seller shall not be required to liaise directly with any tenant or lessee of the Buyer and that all communications relating thereto shall be with the Buyer. The Seller shall pass all details of communications thereto to the Buyer without undue delay. The parties acknowledge for the purposes of GDPR, the parties will be joint Controllers of personal data received by the Seller under this provision.

25. **Non-Fetter**

Save as otherwise expressly provided, the obligations of the Buyer under this Agreement are obligations of the Buyer in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Buyer in any other capacity, nor shall the exercise by the Buyer of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Buyer to the Seller.



**Schedule 2 - Units and Contract Sum**

<b>Stage</b>	<b>Percentage of Contract Sum (TBC BY PURCHASER)</b>	<b>Target Date</b>
Land transfer at First (Golden Brick) stage	25%	[                    ] [202[ ]
Second (Roofed-in and watertight)	25%	[                    ] [202[ ]
Third (First fixed and Plastered)	25%	[                    ] [202[ ]
Fourth (Practical Completion)	20%	[                    ] [202[ ]
Retention	5%	

**[Stages to be agreed, and full description of the works required to evidence Stage Completion. This will include the elements of the Infrastructure required to be completed at each Stage] [DN: Descriptions to be agreed for each site by Local Authority clerk of works]**



**Schedule 3- List of Approved Plans**

<b>Project Title</b>	<b>Drawing Title</b>	<b>Drawing Number</b>

Draft

## Schedule 4 - Affordable Housing Obligations

In this Schedule:

**the Planning Permission** shall have the same meaning as expressed at clause 1.1 of this Agreement; and

**Section 106 Agreement** shall have the same meaning as expressed at clause 1.1 of this Agreement.

1. **Section 106 Agreement**

- 1.1. The Seller agrees to observe and perform or procure the observance and performance of all the covenants and obligations of the Section 106 Agreement (excluding those that are referred to at clause 1.1 above) and shall indemnify the Buyer against all loss or liability arising as a result of any breach, non-observance or non-performance of the same.
- 1.2. The Seller shall not apply for or consent to any alteration to the tenure of the Units without the Buyer's prior written consent (to be given at its absolute discretion).

**SIGNED**

for and on behalf of the Seller

by [ ]

Authorised Signatory

**SIGNED**

for and on behalf of the Buyer

by [ ]

Authorised Signatory

Draft

**Annexure 1 - Specification**

Draft

## **Annexure 2 - Practical Completion Documents for each Unit**

### **[DN: List not definitive and can be added to on a site specific basis]**

1. [NHBC Cover Note and Buildmark Choice pack]/[NHBC cover note and activation code]/[any other warranty provider cover note/insurance certificate – ensure definition of correct warranty provider included once confirmed] (where applicable) (electronic copy);
2. Energy Performance Certificate (electronic copy);
3. Building Regulation Completion Certificate (electronic copies);
4. Compliance and Installation Certificates
  - 4.1. Gas Appliance Installation Certificates
  - 4.2. Boiler Book Commissioning Checklists
  - 4.3. Gas Safe Building Regulation Compliance Certificate (electronic copy);
  - 4.4. NICEIC Electricity Safety Test Certificates in respect of all electrical appliances in the Unit (electronic copy);
  - 4.5. Gas Safety Test Certificate (electronic copy);
  - 4.6. Benchmark Gas Installation Log Book (electronic copy);
  - 4.7. Smoke alarm installation certificate (electronic copy);
  - 4.8. Gas capping certificate (electronic copy);
5. Schedule of principal materials used in groundworks, frame and envelope and fittings;
6. Suppliers of specific product information for kitchens bathrooms windows doors decoration and floors;
7. Guarantees and instruction booklets for White Goods;
8. Meter readings and serial numbers for service meters;
9. Certified copy Section 38 Agreement and Section 104 Agreement (or technical plans if not yet completed) of if not available, a retention of £450 per relevant Unit will be held by the Buyer's Solicitor in respect of each such agreement which is not completed;
10. **Postal addresses:**
11. **3 sets of keys including window keys:**
12. Evidence of the discharge of all pre-commencement and pre-occupation planning conditions to the extent that these apply to the relevant Unit or, in the absence of evidence of discharge, a written statement from the Seller that they have carried out

all works required to discharge those pre-commencement and pre-occupation planning conditions to the extent that they relate to and affect the Unit in question;

13. Evidence of the discharge of such obligations in the Section 106 Agreement as are required to be satisfied prior to pre-occupation of the Property to the extent that these apply to the relevant Unit or, if no evidence is available from the Council, a written statement from the Seller that they have made such payments; and
- 13.1. Following Stage Completion of the [Fourth] Stage of the final Unit, a Health and Safety file for all Units.

Draft

**Annexure 3 – Transfer**

[DN: Draft transfer to be prepared for each site based on title and scheme requirements]

Draft