

SCHEDULE 7

Affordable Housing

1 Overall Provision

1.1 In accordance within the provisions of this Schedule 7 the Owners shall procure that a minimum of 16.36% of the Dwellings in the Development shall be Provided on the Application Site as Affordable Dwellings in accordance with the following:

- (a) The Site Wide Affordable Housing Delivery Plan;
- (b) the relevant Phase Specific Affordable Housing Delivery Plan; and
- (c) the further provisions of this Schedule 7;

or any amendment to them as may be agreed with the Borough Council save that it is agreed there shall be no Affordable Dwellings within the first 193 Dwellings to be erected on the application Site and approved in detail at the date of the grant of the Planning Permission and located in areas B and D shown on Plan 4 at Schedule 10.

Affordable Housing Mix

1.2 The Owners shall not submit any Reserved Matters Application that makes provision for Dwellings until the Site Wide Affordable Housing Delivery Plan has been submitted to and approved by the Borough Council in writing.

2 Detailed Provision

2.1 The specific locations of the Affordable Dwellings shall be established by Reserved Matters Approvals.

2.2 Each Reserved Matters Application that incorporates any Affordable Dwellings shall be accompanied by:

- (a) a Phase Specific Affordable Housing Delivery Plan for that Phase or Development Parcel to be approved in writing by the Borough Council as part of the Reserved Matters Application; and
- (b) written confirmation of how that Reserved Matters Application contributes to the delivery of the Site Wide Affordable Housing Delivery Plan and any relevant Phase Specific Affordable Housing Delivery Plan.

2.3 The Affordable Dwellings across any Phase or Development Parcel shall:

- (a) comply and be Provided in accordance with the relevant approved Phase Specific Affordable Housing Delivery Plan;
- (b) unless otherwise agreed with the Borough Council be Tenure Blind;
- (c) unless otherwise agreed by the Borough Council by approval of a relevant Phase Specific Affordable Housing Delivery Plan or by separate agreement in writing, be in clusters of no more than 10 Dwellings and shall not be contiguous with each other either within

the Development Parcel or Phase or any adjoining Development Parcel or Phase; and

- (d) unless otherwise agreed by the Borough Council in writing not result in less than 16.36% of the total Dwellings comprised in a Phase being identified as Affordable Dwellings (for the avoidance of doubt this is subject always to paragraph 2.2 and the remaining provisions of this Schedule 7);
- (e) unless otherwise agreed by the Borough Council the tenure of the Affordable Dwellings shall be in accordance with the Affordable Housing Tenure Mix
- (f) unless otherwise agreed by the Borough Council the mix of Affordable Dwellings shall be in accordance with the following Affordable Housing Size/Type Mix.

Affordable Housing Size/Mix								
Type	Affordable rent		Intermediate		Discounted Market		Total	
	Number	% (of total AH)	Number	% (of total AH)	Number	% (of total AH)	Number	% (of total AH)
1 bed 2-person Flat	12	4	-	-	10	3	22	7
2 bed 4-person House	79	24	42	13	30	10	151	47
2 bed 4-person Bungalow	18	6	-	-	9	3	27	9
3 bed 5-person House	36	11	38	12	27	8	101	31
3 bed 5-person Bungalow	3	1	-	-	-	-	3	1
4 bed 7-person House	12	4	-	-	3	1	15	5
Total	160	50	80	25	79	25	319	100

2.4 The following paragraphs 3 and 4 shall apply to those Affordable Dwellings which comprise Affordable Rent Dwellings and Intermediate Dwellings.

2.5 The provisions of paragraph 5 shall apply to those Affordable Dwellings which comprise Discounted Market Units.

3 Restrictions on Occupation

3.1 The Owners shall not Occupy:

- (a) more than 40% of the Market Dwellings in a Phase or 40% of the Market Dwellings in a Development Parcel until 40% of the Affordable Dwellings in that Phase or that Development Parcel (as applicable) have been Provided; and
- (b) more than 60% of the Market Dwellings in a Phase or 60% of the Market Dwellings in a Development Parcel until 60% of the Affordable Dwellings in that Phase or that Development Parcel (as applicable) have been Provided; and
- (c) more than 80% of the Market Dwellings in a Phase or Development Parcel until all the Affordable Dwellings in that Phase or Development Parcel have been Provided

3.2 From the date of Completion all the Affordable Dwellings shall not be used or Occupied other than as Affordable Dwellings in accordance with the Site Wide Affordable Housing Delivery Plan and relevant Phase Specific Affordable Housing Delivery Plan (including for the approved tenure for which they are provided unless otherwise agreed by the Borough Council) PROVIDED ALWAYS THAT such restrictions shall not be binding or enforceable against the following:

- (a) any mortgagees of a Registered Provider exercising a power of sale or any receiver appointed by such mortgagees;
- (b) a person who is a successor in title to or derives title through or under any mortgagees referred to in paragraph 3.2(a) of this Schedule or the Registered Provider at the direction or requirement of any such mortgagees or receiver appointed by such mortgagees;
- (c) any mortgagees exercising a power of sale of a residential tenant or person to whom a Registered Provider grants a Shared Ownership Lease or transfer or any receiver appointed by such mortgagees;
- (d) a person who is a successor in title to or derives title through or under or at the direction or requirement of any such mortgagees referred to in paragraph 3.2(c) or receiver appointed by any such mortgagee;
- (e) any tenant and successor who has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling;
- (f) any tenant and successor who has exercised any statutory right to buy or any equivalent contractual or statutory right (but excluding any voluntary right to buy) in respect of a particular Affordable Dwelling; and
- (g) any tenant who has progressed to ownership of 100% of the equity of a Shared Ownership Dwelling pursuant to a Shared Ownership Lease; and
- (h) any person deriving title through or under any of the persons specified in (a) to (g) above

PROVIDED THAT IN the case of sub-paragraphs (a), (b), (c) and (d) above the following requirements must have been satisfied:

- (i) for the period of 3 months or such lesser period as may be agreed in writing by the Borough Council to facilitate the delivery of the Affordable Dwellings such mortgagee, chargee, receiver or manager has used Reasonable Endeavours to secure the continued availability of the Affordable Dwelling in question through the involvement of a Registered Provider pursuant to the provisions of the Housing Act 1996 but if after the expiry of the aforesaid period of 3 months or such lesser period as may be agreed in writing by the Borough Council to facilitate the delivery of the Affordable Dwellings it has been unsuccessful the mortgagee, charge, receiver or manager or Registered Provider may apply to the Borough Council for itself and its successors in title to be released from the terms of this Deed and shall provide to the Borough Council such evidence as they may reasonably require to satisfy the Borough Council that all reasonable attempts to secure the continued provision of the Affordable Dwellings as Affordable Housing have been carried out such evidence to include details of any communications with Homes England and guidance received, a list of which other Registered Providers have been approached, details of any terms or conditions which have been applied and the consideration requested; and
- (ii) without prejudice to the generality of the above, such mortgagee, chargee, receiver or manager shall in writing give the Borough Council and the Registered Provider (as appropriate) at least 12 weeks, or such lesser period as may be agreed in writing by the Borough Council to facilitate the delivery of the Affordable Dwellings, prior notice of its intention to exercise any power of sale in respect of any Affordable Dwellings and to provide the Borough Council or the Registered Provider the opportunity to complete a transfer of the Affordable Dwellings in question in order to ensure that they continue to be used for the purposes of Affordable Housing;

AND FURTHER PROVIDED THAT in the case of sub-paragraphs (e), (f) and (g) above the Owners and any relevant Registered Provider shall, unless the legislation otherwise requires, use or procure the use of the net proceeds of sale as defined in section 24(3) of the Housing Act 1996 (and any amendment, re-enactment or successor provision) and notify the Borough Council of any such sale and the net proceeds of that sale and to fund the provision of further Affordable Housing within the district of the Borough Council unless other agreed in writing by the Borough Council.

- 3.3 The Affordable Dwellings shall only be Occupied by Qualifying Persons and;
- (a) the Affordable Rent Dwellings shall be allocated in accordance with the Housing Allocations Scheme;
 - (b) the Intermediate Dwellings shall be allocated in accordance with the HomeBuy Agents criteria.

3.4 In relation to Occupation of the Affordable Dwellings:

- (a) Subject to paragraph 3.4(b) and paragraph 4.2 (a), the Affordable Dwellings shall be Occupied (and if let shall be managed) in accordance with the objectives of the Registered Provider and in accordance with the Borough Council's Housing Allocation Scheme;
- (b) any Registered Provider shall ensure that all Affordable Rent Dwellings are Occupied in accordance with the Borough Council's Housing Allocations Scheme and all Intermediate Dwellings are Occupied in accordance with the HomeBuy Agents criteria;
- (c) any service charge and any subsequent revision to the said service charge per Affordable Dwelling shall be set at a fair and reasonable proportion of the costs relating to the services provided to that Affordable Dwelling;
- (d) in the event that a tenant or other occupier of an Affordable Dwelling exercises the right to acquire under applicable legislation or in the case of a Shared Ownership Lease staircases up to 100% procure that any Registered Provider shall unless the legislation otherwise requires use or procure the use of the net proceeds of sale as defined in section 24(3) of the Housing Act 1996 (and any amendment, re-enactment or successor provision) to fund the provision of further Affordable housing and use reasonable endeavours to make such provision in the district of the Borough Council (unless otherwise approved by the Borough Council);
- (e) any Registered Provider shall provide the Borough Council with annual updates including details of properties sold together with funding received and expended;
- (f) any Registered Provider shall ensure that the Intermediate Affordable Housing is marketed through the HomeBuy Agent for the region.

3.5 No Affordable Dwelling shall be Occupied or shall be deemed to have been Provided in a particular Phase until such time as a roadway or roadways to base course and associated street lighting constructed where it is intended that the roadway is to be adopted as a highway maintainable at public expense to a standard suitable for adoption as highway maintainable at the public expense or where it is not intended that the roadway be adopted as a highway maintainable at public expense to a standard which the Borough Council reasonably considers acceptable has been constructed up to the Affordable Dwellings in the relevant Phase from the public highway and pipes wires cables and conduits have been laid to a point or points adjacent to the Affordable Dwellings for the supply of gas water electricity telephone and other utility services.

4 Transfer of the Affordable Dwellings

4.1 In relation to the transfer of the Affordable Dwellings the Owners shall;

- (a) procure that the first transfer of each Affordable Dwelling shall be free from financial encumbrances and any other encumbrances save as referred to in the further provisions of this paragraph 4.1;
- (b) procure that the transfer of each Affordable Dwelling shall be of a freehold estate and, as far as possible, with full title guarantee PROVIDED THAT the Owner may Transfer a Flat (being an Affordable Dwelling) by way of leasehold transfer with a minimum term of 125 years subject to the Owner first demonstrating to the Council's satisfaction (as confirmed in writing) that the Transfer relates to a Flat or Flat which are Affordable Dwellings within a block which will contain both Flats that are Affordable Dwellings and Flats that are Market Dwellings, that a Registered Provider is willing and able to accept such a transfer and that the leasehold estate shall be for a minimum of 125 years; procure that the transfer of each of the Affordable Dwellings shall contain:
 - (i) an exception and reservation of such easements and rights and privileges to the transferor or its successor in title and assigns as may reasonably be required for the satisfactory development or redevelopment of the Application Site;
 - (ii) a grant of such rights of access, easements, other rights and privileges to the transferee or its successor in title and assigns as may reasonably be required for the satisfactory use and development or redevelopment of the Affordable Dwellings and for the beneficial enjoyment of the Affordable Dwellings;
 - (iii) provide access and foul and surface water sewers, and water, gas, electricity and telecommunications service systems for each Affordable Dwelling linking in each case to the estate roads and service systems to be constructed and laid as part of the remainder of the Development and connected ultimately to highways and sewers maintainable at the public expense;
 - (iv) a covenant which is binding on the property by the transferee with the transferor and the Borough Council not to use the Affordable Dwellings for any purpose other than use for as an Affordable Dwelling in accordance with the terms of this Deed (such covenant to be subject always to the exclusions in paragraph 3.2 above) and on the disposal of the Affordable Dwelling (subject to the provisions of paragraph 3.2 where applicable) to obtain an identical covenant from the disponent.

4.2 In relation to Occupation of the Affordable Dwellings no Affordable Dwelling shall be Occupied unless:

- (a) the Registered Provider has entered into a Nomination Agreement with the Borough Council granting the Borough Council the ability to nominate Occupiers for 100% of all first lettings and 75% of all subsequent lettings of the Affordable Rent Dwellings;

- (b) in the event that a tenant or other occupier of an Affordable Dwelling exercises the right to acquire under applicable legislation in force at the relevant time or in the case of a Shared Ownership Lease staircases up to 100% procure that any Registered Provider shall unless the legislation otherwise requires use or procure the use of the net proceeds of sale as defined in section 24(3) of the Housing Act 1996 (and any amendment, re-enactment or successor provision) to fund the provision of further Affordable Housing and use reasonable endeavours to make such provision in the district of the Borough Council (unless otherwise approved by the Borough Council);

5 Discounted for Sale Dwellings

"Discounted Market Sale Restriction" means the restriction to be entered in the Proprietorship Register at the Land Registry in relation to each Discounted for Sale Dwelling in the following terms (subject to any amendments thereto required by the Land Registry and agreed between the parties hereto):

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by the solicitor of the transferor or the transferee that the provisions of paragraph 5 of Schedule 7 to a Section 106 Agreement dated [] relating to land to the north of Birstall (Broadnook Garden Village) have been complied with"

"Discounted for Sale Dwelling" means a Dwelling to be sold to a person in Housing Need at 80% of the Market Value of that dwelling such restriction on the sale price of that Dwelling to be secured by a restrictive covenant on each transfer of such Dwelling in order to retain such discount in perpetuity.

"Housing Need" means a person who is in need of affordable housing as their principal place of residence and whose housing needs are not met by the market with priority being given on the sale of such Discounted for Sale Dwelling to any person living in or shown to have a strong local connection to the parishes of Rothley, Wanlip, Birstall or Thurstaston and Cropston ("the Parishes") and thereafter to such persons as live or have a strong local connection with the Borough of Charnwood.

- 5.1 The Owners (which for the purposes of this paragraph 5 means the Owner of a Phase or Development Parcel which is the subject of a Phase Specific Affordable Housing Delivery Plan) together with the owner of an individual Discounted for Sale Dwelling following the transfer to such owner may transfer a Discounted for Sale Dwelling to a person in Housing Need and in so doing will give priority to any person nominated to them by the Borough Council or a person with a local connection to the Parishes and then to the Borough of Charnwood and will seek to involve the local Homebuy agent (in so far as the Homebuy agent is able and willing at that time to perform this role) in identifying suitable persons who would be willing to acquire a Discounted for Sale Dwelling (subject always to paragraph 5.2 below)

- 5.2 All initial and subsequent transfers or dispositions of Discounted for Sale Dwellings will be on the following basis and for the avoidance of doubt the provisions of this paragraph 5.2 shall apply mutatis mutandis to any

proposed disposition (including leases) and reference to "transfer" shall be deemed to include "lease", reference to "sale price" to include rent and "Market Value" shall be deemed to include market rent.

- (a) the sale price and total consideration required for the transfer of each Discounted for Sale Dwellings shall be no more than 80% of the Market Value of the Dwelling;
- (b) prior to marketing and prior to any transfer or disposition of each Discounted for Sale Dwelling the Owners shall notify the Trust and the Borough Council of the proposed sale price or rent and provide reasonable evidence demonstrating the level of discount from Market Value or market rent (including at least two independent valuation reports), such sale price or rent to be approved by the Council (acting reasonably) prior to the transfer or lease of each Discounted for Sale Dwelling together with details as to how the proposed marketing will prioritise those with a local connection to the Parishes and then to the Borough of Charnwood;
- (c) the transferee or lessee must be a person in Housing Need and the Discounted for Sale Dwelling must be their principal place of residence;
- (d) prior to any transfer or lease of a Discounted for Sale Dwelling the owner of that Dwelling shall first give notice in writing to the Trust and the Borough Council of the proposed sale and invite the Council within 6 weeks of the date of that notice to nominate a person to whom the Discounted for Sale Dwelling should be transferred and if so nominated the owners shall use reasonable endeavours for a period of 2 months to secure a transfer to that person and where that person fails to complete the purchase the Owners will be free to dispose of such Discounted for Sale Dwelling to any person in Housing Need;
- (e) the Discounted for Sale Dwelling shall not be rented save at a rent which is no more than 80% of the market rent (including services charges) but shall not be sub-let by a tenant to whom the Discounted for Sale Dwelling is let under this provision
- (f) the transferee shall send to the Trust and the Borough Council (marked for the attention of the Housing Department) within 14 ~~(fourteen) days of completion of the transfer of each Discounted for Sale Dwelling or lease as appropriate a notice stating the total consideration (including sale price) and providing a copy of the transfer;~~
- (g) the Discounted Market Sale Restriction is entered on the register of title to the relevant Discounted for Sale Dwelling and arrangements are in place to ensure that the Discounted Market Sale Restriction shall be promptly registered and apply in relation to all subsequent dispositions;
- (h) a copy of the relevant restriction and the certificate referred to therein has been supplied to the Borough Council (marked for the

attention of the Housing Department) on each such disposition of a Discounted for Sale Unit.

- 5.3 For the avoidance of doubt the restrictions contained in paragraphs 5.1 and 5.2 shall not be binding on any mortgagee or chargee of an individual who has purchased a single Discounted for Sale Dwelling exercising a power of sale pursuant to their mortgage or charge.

6 Affordable Housing Contributions

- 6.1 Where in respect of either the first or the second Education Delivery Review carried out pursuant to paragraph 2 of Schedule 2 the Education Delivery Review Partners conclude that the Secondary School Contribution shall be reduced in relation to the second or third instalment (respectively) of such contributions and such reduction is confirmed and agreed by the County Council the amount of that reduction shall be paid by the Owners to the Borough Council solely for the purpose of funding additional Affordable Housing by the Borough Council whether by itself or through a provider of Affordable Housing within the Borough of Charnwood.
- 6.2 In the event that any of the other Contributions specified in this Deed are for whatever reason reduced or no longer required for the purposes herein specified then the parties hereto agree that any monies that represent such reduction or any sums that are no longer required will be paid to the Borough Council to make up the shortfall in on site Affordable Housing provision and used by the Borough Council solely for the purpose of funding additional Affordable Housing by the Borough Council whether by itself or through a provider of Affordable Housing within the Borough of Charnwood save that any sums to be paid to the Borough Council pursuant to paragraph 6.1 and this paragraph 6.2 shall not exceed the sums reasonably required to provide a total of 30% Affordable Housing as a percentage of the Dwellings on the Application Site to include the Affordable Dwellings provided on the Application Site

7 Viability Re-assessment

- 7.1 Not to Occupy more than 650 Dwellings nor more than 1300 Dwellings until a first and second Viability Re-assessment respectively has been submitted to and agreed with the Borough Council's Viability Advisor or, in the absence of agreement those matters in dispute have been determined pursuant to Clause 13 (Dispute Resolution).
- 7.2 The Viability Re-assessment shall be carried out by adopting the methodology summarised in Annex 1 of this Schedule.
- 7.3 The Owners and the Borough Council shall cooperate, act reasonably and promptly to seek to agree the Viability Re-assessment and the extent of any Surplus (if any) and the reasonable timing of the further payments in relation to the Surplus which shall be used for the purposes set out in paragraph 7.4 below.
- 7.4 In the event the Viability Reassessment (either as agreed by the Owners with the Council's Viability Advisor or as determined pursuant to Clause 13) confirms that the Development will generate a Surplus

and can viably make additional contributions to planning obligations then 50% of the Surplus shall be paid by the Owners to the Borough Council for the purpose of funding additional Affordable Housing by the Borough Council whether by itself or through a provider of Affordable Housing within the Borough of Charnwood subject to the total Surplus sum payable to the Borough Council not exceeding what is required to fund a total of 30% Affordable Housing as a percentage of the Dwellings on the Application Site and in accordance with the Affordable Housing Size/Type Mix and the Affordable Housing Tenure Mix to include the Affordable Dwellings provided on the Application Site and any redirection of funds pursuant to paragraph 6 above.

- 7.5 The timing of payments pursuant to paragraph 7.4 above shall be determined pursuant to the approved Viability Reassessment (unless otherwise agreed by the Owners and the Borough Council).

Annex 1

Summary of Viability Re-Assessment Methodology

The Viability Reassessment shall assess the Gross Development Value (GDV) of a completed development of market housing (having regard to the number of Dwellings approved at the reserved matters stage) and then deducted from this all costs and expenses associated with delivering the Development (including build costs, abnormals, work costs, marketing, rent free, other inducements, disposal fees, professional fees, section 106 costs, finance costs, infrastructure costs, planning costs, interest, contingency and a market acceptable developer's profit as at the date of the Viability Reassessment (being at least 20% of GDV) to leave a residual land value. This residual land value shall then be benchmarked (in accordance with standard market practice and guidance in place at the time of the Viability Reassessment) to determine whether the Development is financially viable and the extent to any Surplus (if any). In the event that there is a dispute over the appropriate Viability Reassessment methodology as at the date of the reassessment (including appropriate benchmarking methodology or the amount of the Surplus (then this may be referred for determination in accordance with Clause 13 (Dispute Resolution)).