

APPENDIX C

SECTION 106 AGREEMENT TEMPLATE

THIS DOCUMENT IS A SUGGESTED PRECEDENT AND DOES NOT COMPRISE LEGAL ADVICE. IT SHOULD NOT BE RELIED UPON AS COMPRISING LEGAL ADVICE. THE CONTENTS MAY BE ALTERED BY TORFAEN COUNTY BOROUGH COUNCIL AT ANY TIME. INDEPENDENT LEGAL ADVICE SHOULD BE SOUGHT BEFORE COMMENCING NEGOTIATIONS IN RELATION TO THIS DOCUMENT.

DATED:

201

TORFAEN COUNTY BOROUGH COUNCIL

and

PLANNING OBLIGATION BY DEED OF AGREEMENT

pursuant to Section 106 of the Town and Country Planning Act 1990 and other enabling powers
relating to

CHIEF LEGAL OFFICER AND MONITORING OFFICER

CIVIC CENTRE

PONTYPOOL

TORFAEN

NP4 6YB

(REF:)

THIS AGREEMENT is made the _____ day of _____ 20__

BETWEEN

- (1) The **TORFAEN COUNTY BOROUGH COUNCIL** of Civic Centre Pontypool NP4 6YB (“the Council”)
- (2) ** (CRN: **) whose registered office is *** (“the Developer”)
- (3) ** (CRN: **) whose registered office is *** (“the Owner”)
- (4) ** (CRN: **) whose registered office is *** (“the Mortgagee”)

WHEREAS

- (A) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) for the area in which the Site is situated
- (B) The Owner is the freehold owner of the Site registered at the Land Registry under title number(s) [_____]
- (C) The Mortgagee has a charge over the Site registered at the Land Registry dated the [_____]
- (D) The Developer has an interest in the Site by way of [_____] dated [_____]
- (E) On the [_____] day of [_____] the Council received the Planning Application (Ref: [_____]) for permission to develop the Site
- (F) The parties have agreed in contemplation of the issue of the Planning Permission that the Site will be bound by the obligations contained in this Agreement
- (G) On the [_____] the Council resolved to grant the Planning Permission subject to this Agreement which is made pursuant to Section 111 of the Local Government Act 1972 and Section 106 of the Act and all other enabling powers
- (H) The parties agree that the obligations in this Agreement are:-
 - (a) _____ necessary to make the Development acceptable in planning terms;
 - (b) _____ directly related to the Development; and
 - (c) _____ fairly and reasonably related in scale and kind to the Development

1. DEFINITIONS

1.1 For the purposes of this Deed (including the recitals) unless the context otherwise requires the following expressions shall have the following meanings:

"the Act"	means the Town and Country Planning Act 1990 as amended
"Commencement of Development"	means the carrying out of a material operation as defined in Section 56(4) of the Act PROVIDED THAT for the purposes of this Agreement operations in connection with site surveys, ground investigations, demolition, archaeological investigations, investigations for assessing the existence degree or nature of any contamination and the erection by means of enclosure for the purposes of site security and / or the display of advertisements shall not of themselves constitute material operations and "Commence Development" shall have a corresponding meaning
"the Development"	means the development of [insert description] permitted by and in accordance with the Planning Permission
"Dwellings"	means the units provided in accordance with the Planning Permission
"Interest"	means 4% above the base lending rate of the bank used by the Council at the time the calculation is made
"Occupation" and "Occupied"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
"the Planning Application"	means the application for Planning Permission dated [] and submitted by [] to the Council and bearing the statutory register number [] for outline / full / planning permission
"the Planning Permission"	means the outline / full planning permission subject to conditions granted by the Council pursuant to its powers under the Act in respect of the Planning Application and annexed to this Agreement at the First Schedule in draft form only and any subsequent approval given to an application under the Act varying or modifying the Planning Permission
"Practical Completion"	means completed so that the works can be used for the purpose

and operated in the manner for which they were designed and fitted out so that they are available for occupation or use

“RPI” means the Index of Retail Prices published by the Office of National Statistics or its successor body to reflect changes in the cost of living in the United Kingdom PROVIDED THAT if the Retail Price Index is no longer published or if the basis of that Index is changed between the date of this Agreement and the date on which any payment under this Agreement that is subject to the Index is made then any replacement for the Retail Price Index shall apply or such adjustments shall be made in the Retail Price Index as shall be specified by its publishing body

“the Site” means comprised in the Planning Application and shown edged red on the Site Plan

“Site Plan” means the plan annexed to this Agreement entitled Site Plan and initialled by or on behalf of the Parties for the purposes of identification

2. CONSTRUCTION OF THIS DEED

In this Agreement where the context allows:

- 2.1 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 2.2 Words in the singular meaning where the context so admits include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa
- 2.3 Any headings or side notes are for ease of reference only and shall not affect the construction of this Agreement
- 2.4 References to any party in this Agreement shall include (unless the context otherwise requires) successors in title of that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions
- 2.5 Where a party comprises more than one party any obligations of that party shall be joint and several under this Agreement

- 2.6 Any references to Parts Clauses Schedules paragraphs sub-paragraphs appendices and plans are (unless otherwise stated) references to the Parts Clauses Schedules paragraphs subparagraphs appendices and plans of this Agreement
- 2.7 Any reference to this Agreement shall include any schedules appendices and / or plans (if any) appended to or otherwise annexed to this Agreement
- 2.8 A reference in this Agreement to an Act of Parliament or to any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same
- 2.9 A term or expression defined in a Schedule shall bear the meaning ascribed to it in that Schedule if used elsewhere in the Agreement

3. LEGAL EFFECT

- 3.1 This Agreement is made pursuant to Section 106 of the Act Section 2 of the Local Government Act 2000 and Section 111 of the Local Government Act 1972 and all other powers enabling and enactments which may be relevant for the purpose of giving validity to this Agreement and facilitating the obligations contained in it with the intent to bind the Parties and any successors in title to each and every part of the Site and their respective interests in the Site
- 3.2 The Council is the local planning authority by which the obligations contained in this Agreement are intended to be enforceable

4. OBLIGATIONS AND COVENANTS

- 4.1 The [Owner and Developer] covenant with the Council to observe and perform the restrictions and obligations on their part in respect of the Site as set out in this Agreement and Schedules
- 4.2 The Council covenants with the [Owner and Developer] to observe and perform the obligations on its part as set out in this Agreement and Schedules
- 4.3 The Schedules referred to in sub clauses 4.1 and 4.2 are:
- 4.3.1 Schedule 1 containing restrictions and obligations relating to
- 4.3.2 Schedule 2 containing restrictions and obligations relating to
- 4.4 The Council has resolved and hereby covenants with the [Owner / Developer] to issue the Planning Permission within five working days of the date hereof in the form of the draft annexed hereto

5. MORTGAGEE'S CONSENT AND INDEMNITY

- 5.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site 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 Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner
- 5.2 The [Owner / Developer] covenants to indemnify the Mortgagee in respect of any liabilities actions demands proceedings costs and expenses arising directly or indirectly as a result of the Mortgagee having entered into this Agreement

6. EXERCISE OF POWERS OF THE COUNCIL

- 6.1 Nothing contained or implied in this Agreement shall prejudice or affect or fetter the rights powers duties and obligations of the Council in the exercise of its functions as a local authority and under all public and private statutes bylaws orders and regulations

7. NOTICES AND NOTIFICATION REQUIREMENTS

- 7.1 The [Owner and / or Developer] shall notify the Council in writing;
- 7.1.1 Seven days prior to the Commencement of Development of its intention to Commence Development and the Development shall not be Commenced unless and until notice has been given in accordance with this clause
- 7.1.2 Within seven days of any change in ownership (other than the transfer of individual Market Housing Units) of any of its interests in the Site occurring before all the obligations under this Agreement have been discharged such notice shall give details of the transferees full name and registered office (if a company) or usual address (if not) together with the area of the Site or the unit of occupation purchased by reference to a plan
- 7.2 Any notice or consent or approval required to be given under this Agreement shall (unless otherwise specified):-
- 7.2.1 In relation to the Council be given or served in accordance with Section 231 and 233 of the Local Government Act 1972
- 7.2.2 In relation to any other party shall be delivered personally or sent by ordinary post at the address given in this Agreement

7.3 The address for service of any such notice consent or approval required shall be in the case of service upon the Council be the address appearing at the Head of this Agreement (c/o ...) and in the case of service upon the Owner and / or Developer at their address appearing at the head of this Agreement or such other address for service as shall have previously been notified by the Owner to the Council

8. INTEREST

8.1 If any payment made under this Deed is paid late Interest will be payable on the sum due from the date payment is due to the date of payment

9. REGISTRATION OF THIS AGREEMENT

9.1 The obligations of the [Owner and Developer] being Local Land Charges for the purposes of the Local Land Charges Act 1975 this Agreement shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council

9.2 Where in the opinion of the [Owner and Developer] the provisions of this Agreement have been completed and/or satisfied, the Owner or their successors in title at that time shall be entitled to make application to the Council for a certificate to the effect that the provisions of this Agreement have been completed and/or satisfied and upon the Council being satisfied that such obligations have been completed and/or satisfied the Council acting reasonably shall issue a certificate to such effect and forthwith remove this Agreement from the Register of Local Land Charges

10. MISCELLANEOUS

10.1 The covenants and obligations of the Owner / Developer under this Agreement are joint and several except for those to transfer land to the Council in which case they shall be those of such of the holder of the freehold of the relevant land

10.2 No person shall be liable for any breach of the planning obligations contained in this Agreement occurring after he has parted with all of his interest in the Site or the part in respect of which such breach occurs without prejudice to the Council's continuing ability to enforce this Agreement and the said planning obligations against the Site and any successor in title from time to time and also without prejudice to liability for any breach occurring prior to parting with such interest

10.3 This Deed shall not be enforceable against owner occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

- 10.4 If the Planning Permission expires within the meaning of Sections 91, 92 or 93 of the Act or is not implemented or is revoked quashed or otherwise withdrawn this Agreement shall cease to have effect
- 10.5 Any approval given by the Council under this Agreement or for the purposes of this Agreement shall not be nor be deemed to be approval for any other purpose whatsoever
- 10.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 10.7 No waiver (whether express or implied) by the Council in respect of any breach or default by the [Owner / Developer] in the performance or observation of the Planning Obligations in whole or in part shall constitute a continuing waiver or prevent the Council from enforcing any of the obligations or conditions contained in the Planning Obligations or acting upon any subsequent breach or default of the Planning Obligations by the [Owner / Developer]
- 10.8 Nothing contained or implied in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted by the Council or on appeal after the date of this Agreement
- 10.9 All works and / or acts required to be undertaken by any party under this Agreement or as incidental to this Agreement shall in all respects be at the cost of that party

11. COUNTERPARTS

- 11.1 This Agreement is executed in copies each of which shall be of equal validity for all purposes

12. CONTRACTS (THIRD PARTIES) ACT

- 12.1 Nothing in this Agreement shall confer any rights to third parties and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

13. COSTS

- 13.1 The [Owner / Developer] shall on completion of this Agreement pay to the Council legal costs ofPounds (£...) that the Council incurred in the preparation and execution of this Agreement

13.2 The [Owner / Developer] shall on completion of this Agreement pay to the Council administration and monitoring costs ofPounds (£...) that the Council will incur in monitoring compliance with this Agreement.

14. DISPUTE RESOLUTION (OTHER THAN MEANING OR CONSTRUCTION)

14.1 In the event of any dispute or difference arising between the Parties hereto touching or concerning any matter or thing arising out of this Agreement (other than a dispute or difference touching or concerning the meaning or construction of this Agreement) such dispute or difference shall be referred to some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body in the United Kingdom to such qualifications and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

14.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to sub-clause 14.1 hereof or as to the appropriate professional body within fourteen days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to sub-clause 14.1 hereof then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

15. JURISDICTION

15.1 This Agreement is governed by and interpreted in accordance with the laws of England and Wales

IN WITNESS whereof the Parties have executed this Agreement as a deed on the date appearing at the head of this Agreement

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

EXECUTED as a **DEED** by the)

affixing of the **COMMON SEAL**)

of the **COUNTY BOROUGH**)

COUNCIL OF THE COUNTY)

BOROUGH OF TORFAEN which)

is authenticated by:)

Authorised Signatory

EXECUTED as a **DEED** by)

affixing the Common Seal of)

In the presence of:

.....

Director

.....

Director / Secretary