

**NORTHAMPTON BOROUGH COUNCIL**

And

**COUNTY DEVELOPMENTS (NORTHAMPTON) LIMITED**

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**SUPPLEMENTAL AGREEMENT**

**Relating to**

**LAND at SIXFIELDS NORTHAMPTON**

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This Agreement is dated

11<sup>th</sup> April

2014

## **PARTIES**

- (1) NORTHAMPTON BOROUGH COUNCIL of The Guildhall St Giles Square Northampton NN1 1DE (**Seller**)
- (2) COUNTY DEVELOPMENTS (NORTHAMPTON) LIMITED incorporated and registered in England and Wales with company number 0859683 whose registered office is at 156 High Street Bushey Hertfordshire WD23 3HF (**Buyer**)
- (3) THE NORTHAMPTON TOWN FOOTBALL CLUB LIMITED with company number 00183917 whose registered office is at Sixfields Upton Way Northampton NN5 5QA(**NTFC**)

## **BACKGROUND**

- (A) This Agreement is supplemental and collateral to the Contract
- (B) The Seller the Buyer and NTFC have agreed to vary the Contract on the terms set out in this Agreement

## **AGREED TERMS**

### **1. INTERPRETATION**

#### **1.1 The definitions in this clause apply in this agreement**

**Contract:** a contract for the sale of freehold land with vacant possession conditional on planning permission dated 13 September 2013 and made between (1) the Seller (2) the Buyer and (3) NTFC

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

#### **1.2 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them**

#### **1.3 A **person** includes a corporate or unincorporated body**

#### **1.4 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it**

#### **1.5 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause of, or Schedule to, this Agreement and a reference in a Schedule to a paragraph is to a paragraph of that Schedule**

#### **1.6 Clause, Schedule and paragraph headings do not affect the interpretation of this Agreement**

1.7 Except to the extent that they are inconsistent with the definitions and interpretations in clause 1 of this Agreement, the Definitions in the Contract shall apply to this Agreement

**2. VARIATIONS OF THE CONTRACT**

**2.1 Variations made**

From and including the date of this Agreement, the Contract shall be read and construed as varied by the provisions set out in the Schedule

**2.2 Contract remains in force**

The Contract shall remain fully effective as varied by this Agreement and the terms of the Contract shall have effect as though the provisions contained in this Agreement had been originally contained in the Contract

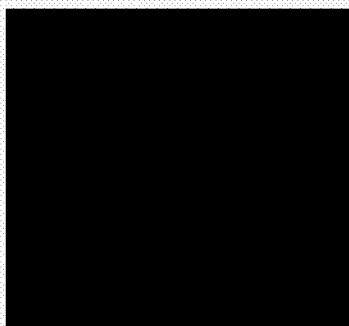
**3. GOVERNING LAW**

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

**4. CONTRACTUAL RIGHTS OF THIRD PARTIES**

No term of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party but this does not affect any right or remedy of a third party which exists or is available apart from under that Act

Signed by an authorised signatory  
on behalf of NORTHAMPTON  
BOROUGH COUNCIL



Signed by for and on behalf of COUNTY  
DEVELOPMENTS  
(NORTHAMPTON) LIMITED



Signed by for and on behalf of THE  
NORTHAMPTON TOWN  
FOOTBALL CLUB LIMITED



## SCHEDULE

### Variations to the Contract

#### 1. VARIATION OF EXISTING CLAUSES

##### 1.1 Clause 1.1 "Interpretation" of the Contract shall be varied as follows:

**Certificate of Practical Completion:** means a the issue of a certificate by the contract administrator appointed by the Buyer in respect of the practical completion of the Development or part thereof in accordance with a generally recognised form of construction contract entered into between the Buyer and a building contractor appointed on an arm's length basis or in the absence of such a construction contract or arm's length appointment the issue of a certificate by the Seller's professionally qualified surveyor (acting reasonably) that the Development or part of it is substantially complete and capable of occupation for the purpose(s) for which it was constructed.

**Clawback Deed:** a deed made on ~~6/11~~ <sup>APR</sup> 2014 between (1) the Homes and Communities Agency and (2) Northampton Borough Council a draft of which is annexed hereto at Appendix ~~2~~ <sup>2</sup>

**Development:** the construction on the Property of up to 300 houses with an approximate total area of 300,000 square feet and retail units of a total maximum Net Internal Area of 150,000 square feet as defined in the RICS Code of Measuring Practice 6<sup>th</sup> Edition that may include a supermarket some neighbourhood shops and other retail units

**Guarantee:** an agreement to underwrite any financial liability to a third party lender or the Seller in the form annexed at Appendix 3

**Legal Charge:** the form of Legal Charge as annexed hereto at Appendix 4

**Long Stop Date:** 31 May 2015 or as provided in clause 9.1 (a) to (e)

**Payment Date:** 31 May 2020

**Plan 1:** the Plan marked Plan 1 annexed hereto in substitution for Plan 1 annexed to the Contract

**Planning Application:** an outline application with supportive details for Planning Permission

**Planning Permission:** planning permission for the Development

**Property:** the freehold property known as land on the south east side of Weedon Road Northampton being part of the land registered at HM Land Registry with title absolute under title number NN28137 and the freehold property known as Land at Sixfields Northampton being part of the land registered at HM Land Registry under Title Number NN246884 as shown edged red on Plan 1

**Relevant Period:** the period 21 years commencing on and including the date upon which the freehold interest in the Property is transferred to the Buyer

**Second Lease:** a lease of the land as shown edged red on Plan in the form of the lease annexed hereto at Appendix 25

- 1.2 At Clause 1.1 the definition of "Charge[s]" shall be deleted and there shall be added to the definition of "Lease" at Appendix 1.
- 1.3 At Clauses 18.1 and 18.3 the words "Charge[s]" shall be deleted and replaced with the word "charges"
- 1.4 At Clauses 8.3 and 8.4 the words "the Land" shall be deleted and replaced with the words "the Property"
- 1.5 At Clause 12.2 the figure of "£5,000,000.00" shall be deleted and replaced with the figure "£6,500,000.00"
- 1.6 At Clause 6.3 the word "three" shall be deleted and replaced with the word "six"
- 1.7 At Clause 9.1 the words and numbers "31<sup>st</sup> December 2014" shall be replaced with 31<sup>st</sup> May 2015"

## 2. REPLACEMENT OF EXISTING CLAUSES

CLAUSE 8.2 OF THE CONTRACT SHALL BE DELETED AND REPLACED BY THE FOLLOWING CLAUSE:

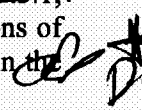
"IF REQUIRED BY THE BUYER THE SELLER WILL GRANT THE LEASE AND THE SECOND LEASE AND THE DEED OF ASSIGNMENT TO THE BUYER"

## 3. ADDITION OF NEW CLAUSES

3.1 The following shall be added to the Contract as new clauses:

"10.5 The Buyer will on the Completion Date if required by the Seller enter into

10.5.1 a deed of covenant with the Homes and Communities Agency ("the Agency") or to whom it shall direct so as to bind himself or themselves (jointly and severally in the case of a covenant by more than one person) and for the benefit of and so as to be enforceable by the Agency and its assigns in terms identical to this deed (including a covenant in identical terms to this covenant) such deed of covenant to be in the form approved by the Agency (such consent not to be unreasonably withheld or delayed) to the intent the provisions of

the Clawback Deed may be enforced directly against the Seller's successor or any subsequent successor or estate owner by the Agency or its successors in title and assigns PROVIDED THAT upon compliance with the foregoing provisions of this Clause 11.3.1, 10.5.1 the Seller shall cease to be liable for any breach or non-performance of the obligations of this deed which occurs after the date upon which it completes a Disposal (as defined in the Clawback Deed) of its interest in the Property. 

10.5.2 the Legal Charge with the Agency or to whom it shall direct such legal charge to be in the form annexed at Appendix 4 with such amendments as the parties may reasonably agree"

"12.7 In the event that the Buyer is offered funding by a third party on such terms that the funder requires a first legal charge ("the First Charge") over the Property then the Seller will agree to enter into a deed of priorities postponing its Legal Charge and under which the Seller will agree to the First Chargee having first priority for any amounts due to it under a first legal charge and in such form as the First Chargee shall reasonably require and the sum owing to the Seller under the Legal Charge will be reduced to Three Million Pounds (£3,000,000.00) and the Buyer will simultaneously procure the Guarantee in respect of any balance due under Clause 12 from a person of sufficient financial standing in the reasonable opinion of the Seller. In the event that the First Chargee will not enter into such deed of priorities then the Seller will release the Legal Charge upon the Buyer procuring the Guarantee in respect of any balance due under Clause 12 from a person of sufficient financial standing in the reasonable opinion of the Seller

"12.8 The Buyer hereby covenants with the Seller that if and when during the Relevant Period the Buyer transfers the freehold of the Property or part of it the Buyer shall procure the Buyer's successor shall execute and deliver to the Seller a deed of covenant in such form as the parties may reasonably agree to the intent that the provisions of this Clause 12 may be enforced directly against the Buyer's successors in title and assigns PROVIDED THAT upon compliance with the foregoing provisions of this Clause 12 the Buyer shall cease to be liable for any breach or non-performance of the obligations of this contract which occurs after the date upon which it completes a transfer of its interest in the Property"

"12.9.1 While the Buyer is the freehold owner of the Property and payment is due to be paid by the Buyer under Clause 3.2 of the Clawback Deed as a result of a Valuation Date arising under sub definition (a) in respect of all or part of the Property the Seller shall indemnify the Buyer against any cost claims or liabilities reasonably and properly incurred and shall repay to the Buyer or as directed by the Buyer to the Homes and Communities Agency all sums paid or due pursuant to Clause 4.3 of the Clawback Deed."

"12.9.2 within seven (7) days of issue of a Certificate of Practical Completion of all or any part of the Development for which any sums have been paid by the Seller to the Buyer or as otherwise directed under 12.9.1 the Buyer shall repay to the Seller all sums paid by the Seller together with (it being acknowledged by the Parties hereto that in order to comply with the obligation contained in Clause 12.9.1 the Seller may incur costs and interest in respect of monies borrowed for that purpose) any such reasonable costs and interest incurred by the Seller such interest to be capped at the Contract Rate shall be paid to the Seller on demand as such interest and costs are incurred by the Seller"



“12.10 The Buyer shall carry out all necessary remediation works required to ensure that risks from land contamination are minimised and that the Development can be carried out safely without unacceptable risks to human health and the environment having regard to Policy BN9 of the West Northamptonshire Joint Core Strategy and in full satisfaction of any conditions relating to remediation in any planning permissions for the Development by no later than the 11<sup>th</sup> April 2024 such remediation to include any physical microbiological or other recognised methodologies of completing works necessary to either reduce the negative impacts remove or eliminate levels of contamination of land on the Property or any part of it to reduce risks to human health and to the environment and or to comply with the requirements of any statutory or regulatory body”

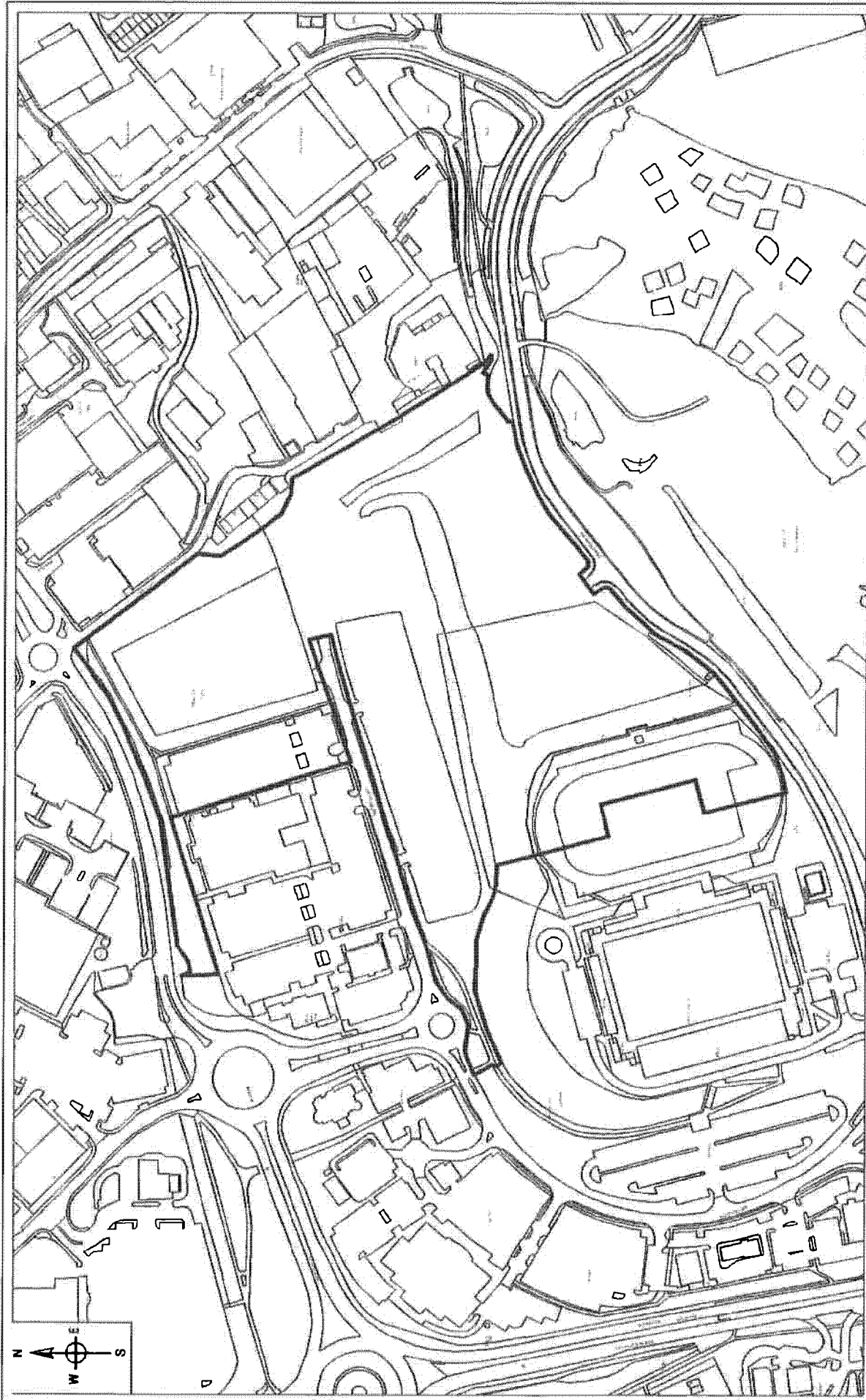
“12.11 If the Buyer fails to carry out all necessary remediation works as provided by clause 12.10 to the satisfaction of the Seller then the Buyer shall at the request of the Seller transfer all its legal and equitable interest in the Property to the Seller for the sum of one pound (£1.00) such legal transfer to take place ten (10) Working Days after written notice is served on the Buyer by the Seller to this effect”

“35 **REGISTRATION AGAINST TITLE**

The Buyer hereby consents to the entry upon the register of title to the Property a restriction in the following terms:-

“Before [insert the date 21 years from the date of transfer] no disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge not being a charge registered before the entry of this restriction is to be registered without a certificate signed by Northampton Borough Council of the Guildhall St Giles Street Northampton NN1 1DE or its conveyancer that the provisions of clause 12 of an agreement dated [DATE] made between (1) Northampton Borough Council (2) County Developments (Northampton) Limited and (3) Northampton Town Football Club Limited as amended by a supplemental agreement dated.....2014 made between the same Parties have been complied with or that they do not apply to the disposition.”

# APPENDIX I



Title

## Sixfields Plan 1 (Transfer)

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Drawn	Marie Johnson
Date	16th April 2014
Scale	1:2500
Proj	Assoc Management
Proj	ENS1071C



**NORTHAMPTON  
BOROUGH COUNCIL**