

Dated 11th December 2015

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

- and -

DAVID JOHN MILLS, JANE MARGARET MILLS,
WESTLEY MARK DAVID MILLS and MARK JOHN MILLS

- and -

CHARLES DAVID EVANS

DEED OF PLANNING OBLIGATION
made under the provisions of
Section 106 Town and Country Planning Act 1990 (as amended)
relating to
Land to the north of the A40 road and east of Hunsdon Manor Weston under Penyard
Herefordshire

Herefordshire Council
Plough Lane Offices
Plough Lane
Hereford HR4 0LE.

THIS DEED dated *11th December 2015* is made BETWEEN:-

1. THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL of Plough Lane Offices, Plough Lane, Hereford HR4 0LE ("the Council")
2. DAVID JOHN MILLS, JANE MARGARET MILLS, WESTLEY MARK DAVID MILLS and MARK JOHN MILLS of Dunns, Weston under Penyard, Ross on Wye, Herefordshire HR9 7PE ("the Owner")
3. CHARLES DAVID EVANS of Long Barn Canon Pyon Hereford HR4 8NN ("the Mortgagee")

WHEREAS:-

1. The Council is empowered by Section 106 of the Town and Country Planning Act 1990 (as amended) ("the Act") to enter into an agreement with any person interested in land in its area for the purpose of restricting or regulating the development or use of that land.
2. The Owner is the registered proprietor with title absolute of the land described in the First Schedule to this Deed ("the Land").
3. The Owner has by its agent submitted to the Council the application for planning permission described in the Second Schedule to this Deed ("the Application").
4. The Council acting by its planning committee has resolved to delegate authority to its officers for the grant of the Permission (subject to conditions) and subject to the completion of this Deed for the purpose of restricting or regulating the development or use of the Land.
5. The Council is the local planning authority by whom the restrictions and obligations contained in this Deed are enforceable.
6. The Mortgagee is a mortgagee of the Land by virtue of a registered charge and an equitable charge dated 8 September 1997 made between the Owner and the Mortgagee.

THIS DEED is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers and enactments which may be relevant for the purposes of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Land and WITNESSES as follows:-

1(A). Construction of this Deed:

In this Deed the following words and expressions shall where the context so admits have the following meanings:-

The expressions "the Owner" "the Council" and "the Mortgagee" shall include their respective successors in title and assigns.

Words importing the singular meaning where the context so admits include the plural meaning and vice versa

Words of the masculine gender include the feminine and neuter genders and all references in this Deed to a person or persons shall include corporations and unincorporated associations and all other legal entities.

Where there are two or more persons included in the expression "the Owner" covenants expressed or implied to be made by the Owner shall be deemed to be made by such persons jointly and severally.

Words denoting an obligation on a party to do any act include an obligation to procure that it be done.

Words placing a party under a restriction include an obligation not to permit infringement of that restriction.

References to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force.

1(B). Definitions

For the purposes of this Deed the following expressions shall have the following meanings:

"Affordable Housing" means housing provided to eligible households whose needs are not met by the Open Market. Eligibility is determined with regard to local incomes and local house prices. Affordable Housing should remain at an affordable price for future eligible households or the subsidy recycled for alternative Affordable Housing provision. The descriptions of all types of Affordable Housing in Herefordshire are contained in the Technical Data.

"Affordable Housing Units" mean (unless otherwise agreed in writing by the Council) the thirteen residential units and ancillary areas comprised within the Development and intended for occupation as five units of Intermediate Housing and eight units of Social Rented Housing in locations to be approved by the Council pursuant to the approval of reserved matters.

"Commence Development" and "Commencement of Development" mean to commence the Development pursuant to the Permission by the carrying out of a Material Operation.

"Contributions" mean the Education Contribution; the Library Contribution; the Recycling Contribution; and the Transport Contribution.

"Development" shall mean the development of the Land disclosed by the Application.

"Education Contribution" means a financial contribution calculated as follows:

£1,212.00 (one thousand two hundred and twelve pounds) (including £89.00 (eighty nine pounds) for special educational needs) for each 2 or more bedroom Open Market Unit being a flat or apartment; and

£2,174.00 (two thousand one hundred and seventy four pounds) (including £138.00 (one hundred and thirty eight pounds) for special education needs) for each 2 or 3 bedroom Open Market Unit being a house; and

£4,336.00 (four thousand three hundred and thirty six pounds) (including £247.00 (two hundred and forty seven pounds) for special educational needs) for each 4 or more bedroom Open Market Unit being a house

all index-linked in accordance with clause 3.11 of this Deed to provide the Education Facilities required as a consequence of the Development.

"Education Facilities" mean education improvements at John Kyrle High School by the internal extension of two first floor rooms to create additional teaching spaces and improved provision for special education needs through an external extension to create a physiotherapy room.

"Herefordshire Allocations Policy" shall mean the Council's Policy for the allocation of Affordable Housing in the administrative area of the Council which under the Housing Act 1996 as amended by the Homelessness Act 2002 and the Localism Act 2011 the Council has a duty to provide.

"Herefordshire Local Housing Allowance" means the arrangements in effect now or at any time in the future to calculate housing benefit for people who rent from a private landlord.

"Home Point" means the agency or body (or any successor agency or body) that on behalf of the Council holds the common housing register and operates a choice based lettings system (or any subsequent lettings system) through which Affordable Housing in the administrative area of the Council is advertised.

"Intermediate Housing" means homes for purchase and rent provided at a cost above levels for Social Rented Housing but below Open Market levels subject to the criteria in the Affordable Housing definition above. For the purposes of this Deed this means housing provided by way of Intermediate Rent and/or Shared Ownership

"Intermediate Rent" means rent above the level charged for Social Rented Housing but below Open Market rents. In Herefordshire the Intermediate Rent is set at a maximum of 100% of the Herefordshire Local Housing Allowance" and "Intermediate Rent Unit" means any Affordable Housing Unit designated for Intermediate Rent.

"Library Contribution" means a financial contribution calculated as follows:

£120.00 (one hundred and twenty pounds) for each 1 bedroom Open Market Unit; and

£146.00 (one hundred and forty six pounds) for each 2 bedroom Open Market Unit; and

£198.00 (one hundred and ninety eight pounds) for each 3 bedroom Open Market Unit; and

£241.00 (two hundred and forty one pounds) for each 4 or more bedroom Open Market Unit

all index-linked in accordance with paragraph 3.11 of this Deed to improve the Library Facilities.

"Library Facilities" mean existing library services in Ross on Wye.

"Management Company" means the body that is nominated or established by the Owner in accordance with the Management Company Plan for the acquisition and long term management and maintenance of the Open Space Facilities in accordance with the provisions of the Third Schedule (Part 3) such body to be approved by the Council (such approval not to be unreasonably withheld or delayed).

"Management Company Plan" means (unless otherwise agreed with the Council in writing) a written scheme demonstrating the way in which the Management Company is or will be set up and maintained in order to fulfil its ongoing obligations and functions in relation to the Open Space Facilities as set out in the Third Schedule (Part 3) including: (a) its objects (to be reflected in the memorandum and articles of association) (b) governance of the Management Company including how it is or will be incorporated; how key appointments will be made and renewed; how shares in the Management Company will be issued and to whom and when; how professional appointments will be made and funded including the company secretary; how and when meetings will be convened; how monies will be paid into it by way of service charges pursuant to the terms of this Deed and details of how sufficient funds will be maintained for any emergency or replacement works to the Open Space Facilities; how assets of the Management Company will be safeguarded for use only for the purpose of the management and maintenance of the Open Space Facilities in perpetuity and for no other purpose.

"Material Operation" has the meaning given by Section 56 (4) of the Act.

"Occupy" "Occupied" and "Occupation" means the first occupation of the Development for residential purposes but excluding occupation for the purposes of construction and fitting out and or marketing and or security.

"Open Market" means the open market for the sale or letting of housing by a person or body other than (a) a local housing authority (b) a Registered Provider or (c) any other person or body offering housing accommodation to the public at less than the prevailing market sale/rent price.

"Open Market Units" mean those residential units in the Development that are not Affordable Housing Units and which are intended for sale or letting on the Open Market and 'Open Market Unit' shall mean any one of such units.

"Open Space Facilities" mean (a) the designated open space and amenity area within that part of the Development more particularly delineated in green on Plan 2 including the area of children's play more particularly delineated in blue on Plan 2 of which 0.02 of a hectare shall be for formal children's play and (b) all other areas of open space and amenity areas within the Development as identified and approved pursuant to a reserved matters application and (c) all or part of a sustainable urban drainage system serving the Development.

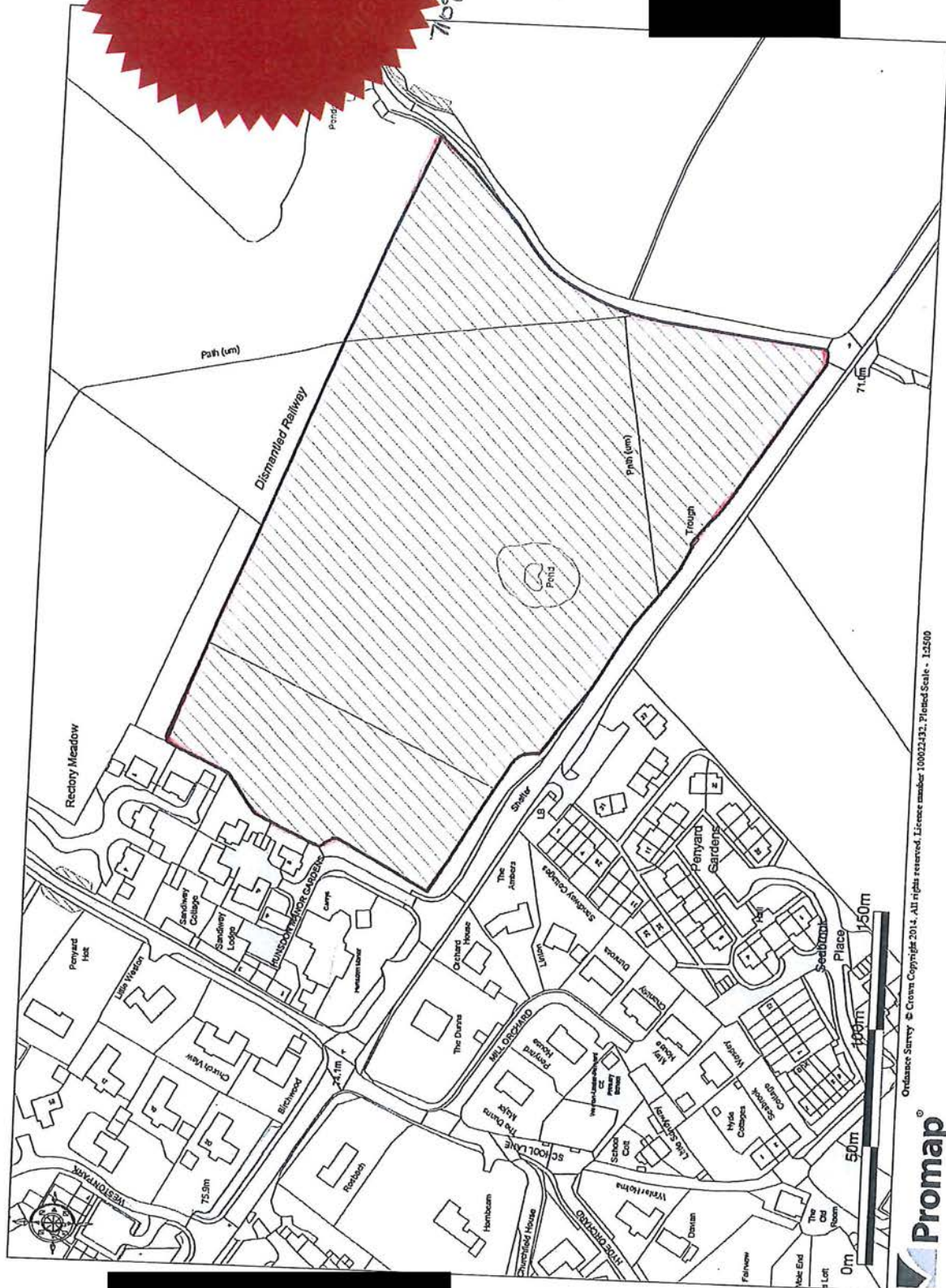
"Permission" means the planning permission subject to conditions to be granted by the Council permitting the Development pursuant to the Application

"Plan 1 and Plan 2" mean the plans so numbered and attached to this deed.

"Protected Area" means such parts of the Land has have been designated by the Secretary of State pursuant to S300-302 of the Housing and Regeneration Act 2008 Act and statutory instrument 2098 of 2009 as Protected Areas,

Authorised officer

PLAN 1



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PLAN 2

PROVIDE NEW STRUCTURE
PLANTING ADJACENT TO
RETAINED TREES & HEDGE
EXISTING BOUNDARY PLANTING

NEW HIGHWAYS
ACCESS IN ACCORDANCE
ENGINEERS-DETAILED
DESIGNS & TO THE
SATISFACTION OF THE LOCAL
AUTHORITY HIGHWAY ENGINEER
RENEW FRONTAGE HEDGE
WHERE REMOVED, SET BEHIND
VISIBILITY SPLAYS.

Authorised officer

"Recycling Contribution" means a financial contribution calculated as follows: £80.00 (eighty pounds) per dwelling within the Development index-linked in accordance with clause 3.11 of this Deed towards the Recycling Facilities.

"Recycling Facilities" mean new or enhanced recycling and waste management facilities for the Development.

"Registered Provider" means a registered provider of Affordable Housing under Part 2 of the Housing and Regeneration Act 2008 being a preferred development partner listed (or intended for listing) in the Council's 'provision of affordable housing technical data' which supports the supplementary planning document Planning Obligations April 2008 (or any subsequent or updated document), or any such other Registered Provider as may previously be agreed with the Council in writing such agreement not to be unreasonably withheld or delayed.

"Shared Ownership" means ownership under the terms of a lease by which a lessee may (subject to the restriction in clause 1.9 of the Third Schedule to this Deed) acquire a share or shares of the equity in an Affordable Housing Unit from the Registered Provider who retains the remainder and may charge a rent and

"Shared Ownership Unit" means any Affordable Housing Unit designated for Shared Ownership.

"Social Rented Housing" means housing owned by local authorities or Registered Providers for which guideline target rents are determined through the national rent regime and may also be owned by other persons and provided under equivalent rental arrangements to the above as agreed with the local authority or with the Homes and Communities Agency (or any successor agency or body) and "Social Rented Unit" means any Affordable Housing Unit designated for Social Rented Housing.

"Technical Data" means the data updated annually by the Council entitled 'Provision of Affordable Housing Technical Data to Support the SPD – Planning Obligations April 2008' (or any technical data published by the Council in support of any replacement planning policy document).

"Transport Contribution" means a financial contribution calculated as follows:

£1,966.00 (one thousand nine hundred and sixty six pounds) for each 2 bedroom Open Market Unit; and

£2,949.00 (two thousand nine hundred and forty nine pounds) for each 3 bedroom Open Market Unit; and

£ 3,932.00 (three thousand nine hundred and thirty two pounds) for each 4 or more bedroom Open Market Unit

all index-linked in accordance with clause 3.11 of this Deed to provide the Transport Facilities.

"Transport Facilities" mean any or all of the following sustainable transport infrastructure:

improvements to the highway network in Weston under Penyard to facilitate pedestrian/cycle access to the village amenities; and

the provision of gateway features at either end of the village to enhance the entrance to the village this would be in connection with the red surfacing and roundels that are required as part of an agreement under S278 of the Highways Act 1980

2. Covenant

- 2.1 The Owner for the purposes of Section 106 of the Act with the intention of binding the Land agrees and covenants with the Council to observe the restrictions and perform the obligations set out in the Third Schedule to this Deed.
- 2.2 The Council covenants with the Owner that the Council will comply with the obligations on its part set out in the Fourth Schedule to this Deed

3. Agreement and Declarations

IT IS HEREBY AGREED AND DECLARED that

- 3.1 The restrictions and obligations in the Third Schedule to this Deed are planning obligations enforceable by the Council in accordance with the provisions of Section 106(3) of the Act against the Owner and his successors in title to the Land.
- 3.2 With the exception of this clause 3.2 and clauses 4, 5, 6, 7, 9 and 13, delivery and any other relevant clauses of this Deed which have effect on the date of this Deed none of the terms or provisions of this Deed will have operative effect unless and until the later of the following to occur;
- 3.2.1 the date that the Permission is issued by the Council.
- 3.2.2 the date upon which Commencement of Development has occurred
- 3.3 If the Permission shall expire before Commencement of Development or shall at any time be revoked or is quashed this Deed shall forthwith determine and cease to have effect insofar only as it has not already been complied with and without prejudice to the validity of anything done or payments or contributions made or expended whilst this Deed is in force.
- 3.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed.
- 3.5 If any provision or part provision of this Deed shall be held by any court or competent authority to be invalid illegal or unenforceable the validity legality or enforceability of the remaining provisions shall not in any way be deemed to be affected or impaired.
- 3.6 The Owner and the Mortgagee shall not be entitled to any costs or compensation whatsoever from the Council arising from the agreement restrictions and obligations contained in this Deed.
- 3.7 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Party) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from such act.

- 3.8 No person shall be liable for a breach of a covenant contained in this Deed after parting with all interest in the Land or the part of the Land in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 3.9 The restrictions and obligations in this the Third Schedule to this Deed shall not be enforceable against owner occupiers of the Open Market Units nor their mortgagees or chargees nor against those deriving title from any of them;
- 3.10 The obligations contained in Part 1 and Part 3 of the Third Schedule to this Deed shall not apply to or be enforceable against any Registered Provider or their mortgagees or chargees with a legal interest in the Affordable Housing Units nor against the occupiers thereof nor their mortgagees or chargees of the Affordable Housing Units
- 3.11 The Contributions payable in accordance with the obligations contained in clause 1 of the Third Schedule (Part 1) to this Deed shall be uplifted by reference to:
- 3.11.1 any increase in the BCIS tender price index published by the Royal Institute of Chartered Surveyors occurring between the date of its publication prior to the date of this Deed and the date that such sum is actually paid to the Council; or
- 3.11.2 an equivalent index that the Council may at their discretion (acting reasonably) select in the event that the BCIS tender price index shall cease to be published before such sums are paid.
- 3.12 If after the date of this Agreement the Owner becomes liable to pay a CIL Contribution and:-
- 3.12.1 a Contribution (or part thereof) has already been paid in respect of infrastructure towards which the CIL Contribution could be applied then the Council shall repay the Contribution (or part thereof) to the person who paid the Contribution; and/or
- 3.12.2 the Owner has not yet paid a Contribution (or part thereof) in respect of infrastructure towards which the CIL Contribution could be applied then the obligation to pay such unpaid Contribution (or part thereof) shall cease and determine absolutely.
- 3.13 The headings in this Deed are for convenience only and shall not be taken into account in the construction and interpretation thereof.

4. Reservations

For the avoidance of doubt nothing in this Deed shall prevent the Council from exercising any of its statutory powers or functions in relation to the development of the Land.

5. Local Land Charge Provisions

- 5.1 this Deed is a local land charge and shall be registered by the Council as such.
- 5.2 on the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge;

- 5.3 following the performance and full satisfaction of all the terms of this Agreement or if this deed is determined pursuant to clause 3.3 the Council will on the written request of the Owner record such performance or determination in the Local Land Charges Register in respect of this deed.

6. Costs

- 6.1 On or before the date of this Deed the Owner shall pay to the Council its reasonable and proper costs in the preparation and completion of this Deed and
- 6.2 Before Commencement of Development and a fee equivalent to two percent (2%) of the total amount of the contribution towards the cost to the Council of monitoring the obligations in this Deed and it is acknowledged that payment of this monitoring fee is not a reason for granting the Permission nor shall it be construed as such.

7. Notices and Notice of Commencement of Development

- 7.1 A notice under this Deed is valid only if it is given by hand sent by recorded delivery or document exchange or sent by fax provided that a confirmatory copy is given by hand or sent by recorded delivery or document exchange on the same day and it is served at the address shown in this Deed for the receiving party or at any address specified in a notice given by that party to the other parties.
- 7.2 A notice sent to the Council:
- 7.2.1 in relation to any matters arising from the Third Schedule (Part 2) [and (Part 3)] of this Deed shall be addressed to the Commissioning Officer Adults Wellbeing Directorate (Commissioning Adults' Well-Being & Independent Living Service Herefordshire Council PO Box 4, Plough Lane, Hereford HR4 0XH ; or
- 7.2.2 in relation to any matters arising from all other obligations in this Deed shall be addressed to the 'Planning Obligations Manager,' Development Management Team, Herefordshire Council, Blue School House, Blue School Street, Hereford HR1 2ZB quoting reference P143842/0
- 7.3 A notice:
- 7.3.1 sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post or on the third working day after posting if sent by second class post;
- 7.3.2 sent through a document exchange is to be treated as served on the first working day after the day on which it would normally be available for collection by the recipient;
- 7.3.3 sent by fax is to be treated as served on the day on which it is successfully sent or the next working day where the fax is sent successfully after 1600 hours or on a day that is not a working day whenever and whether or not the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail or the document exchange undelivered
- 7.4 The Council's Planning Obligations Manager shall be given 14 days prior notice of Commencement of Development.

8. Waiver

No waiver (whether express or implied other than made by deed) by the Council of any breach or default by the Owner in performing or observing any of the obligations or other terms of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the obligations or other terms of this Deed or from acting upon any subsequent breach or default by the Owner.

9. Arbitration

In the event of any dispute or difference arising out of this Deed between the parties (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Deed) which is not resolved within 14 days such dispute or difference shall at the request of any party be referred for arbitration under the Arbitration Act 1996 to a sole arbitrator to be agreed between the parties or in the absence of agreement within fourteen days after any party has given to the other(s) a written request to concur in the appointment of an arbitrator to be appointed at the request of any party by the President or Vice President of the Chartered Institute of Arbitrators and in these respects these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996.

10. Warranty as to title

The Owner warrants to the Council that the title details referred to in recital 2 and the First Schedule are complete and accurate in every respect and that no person other than the Owner and the Mortgagee have any legal or equitable interest in the Land.

11. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

12. Interest

If any payment due under the terms of this Deed is paid late interest calculated at the rate of 4% per annum above the National Westminster Bank Plc base rate from time to time will be payable from the date payment is due to the date payment is made.

13. Jurisdiction

This Deed is governed by and in accordance with the law of England.

14. Mortgagee's Consent and Acknowledgement

The Mortgagee consents to the execution of this deed and acknowledges that the Land shall be bound by the restrictions and obligations contained in this deed and that the security of the charge over the Land referred to in recital 6 takes effect subject to this deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

IN WITNESS of which this instrument has been duly executed as a deed by the parties and delivered on the date set out above

FIRST SCHEDULE

(the Land)

The freehold land to the north of the A40 road and to the east of Hunsdon Manor Weston under Penyard registered under title number HW182086 and shown edged red on Plan 1.

SECOND SCHEDULE

(the Application)

An application for planning permission for "37 dwellings with all matters reserved except for access on land to the north of the A40 road and east of Hunsdon Manor, Weston under Penyard" made under the Council's reference P143842/0 and validated by the Council on 13th January 2015

THIRD SCHEDULE

(PART 1)

1. Contributions

The Owner covenants with the Council not to Occupy or cause or permit the Occupation of more than twelve (12) Open Market Units until the Contributions have been paid in full to the Council.

(PART 2)

The Owner covenants with the Council that no dwellings erected or to be erected on the Land will be Occupied except in accordance with the following restrictions and obligations:

1. Affordable Housing

- 1.1 To construct or procure the construction of the Affordable Housing Units at no cost to the Council in accordance with the Permission.
- 1.2 Not to Occupy or cause or permit the Occupation of more than eighty percent (80%) of the Open Market Units on any part or parts of the Land until the Affordable Housing Units are ready and available for residential occupation and are accessible by vehicles and pedestrians and have been transferred (by freehold transfer with title absolute and full title guarantee) to a Registered Provider.
- 1.3 The transfer of the Affordable Housing Units to the Registered Provider shall include the following provisions:-

- 1.3.1 the grant to the acquiring Registered Provider of all rights of way access and passage of services and all other rights (including the right to use the Open Space Facilities) reasonably necessary for the beneficial enjoyment of the Affordable Housing Units.
- 1.3.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development.
- 1.4 Subject to paragraph 1.8 below the Affordable Housing Units must at all times be let or managed by a Registered Provider in accordance with the guidance issued from time to time by the Homes and Communities Agency (or any successor agency) with the intention that the Affordable Housing Units shall not be used for any purpose other than the provision of Affordable Housing in the tenures specified by this deed (unless otherwise agreed in writing by the Council) to persons who are:
 - 1.4.1 registered with Home Point at the time a Social Rented Unit or an Intermediate Rent Unit becomes available through Home Point for residential occupation; or
 - 1.4.2 is eligible for a Shared Ownership Unit under the Herefordshire Allocations Policy and the allocation policy of the landlord Registered Provider; and in either case
 - 1.4.3 satisfy the requirements of clause 1.5 below.
- 1.5 The Affordable Housing Units must be allocated in accordance with sub-clauses 1.4.1 and 1.4.2 above for occupation as a sole residence to a person or persons one of whom has:-
 - 1.5.1 a local connection with the parish of Weston under Penyard; or
 - 1.5.2 in the event of there being no person having a local connection to the parish of Weston under Penyard a person with a local connection to one of the following parishes: Upton Bishop; Walford; Linton; Lea and Hope Mansell; or
 - 1.5.3 in the event of there being no person with a local connection to a relevant parish referred to in sub-clauses 1.5.1 and 1.5.2 above any other person who has a local connection to the County of Herefordshire of a type described in sub-clauses 1.6.1 to 1.6.5 below and is eligible under the allocations policies of the Registered Provider if the Registered Provider can demonstrate to the Council that after 20 working days of any of the Affordable Housing Units becoming available for letting the Registered Provider having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-clauses 1.5.1 or 1.5.2 above.
- 1.6 For the purposes of sub-clauses 1.5.1 or 1.5.2 of this schedule 'local connection' means having a local connection to one of the parishes specified above or the County (if appropriate) because that person:
 - 1.6.1 is or in the past was normally resident there; or
 - 1.6.2 is employed there; or

- 1.6.3 has a family association there; or
 - 1.6.4 a proven need to give support to or receive support from family members;
or
 - 1.6.5 is subject special circumstances
- 1.7 For the purposes of clause 1.6 of this schedule
- 1.7.1 "normally resident" shall be established by having resided in one of the parishes specified in sub-clauses 1.5.1 or 1.5.2 of this schedule or the County (if appropriate) for 6 out of the last 12 months or 3 out of the last 5 years.
 - 1.7.2 "employed" shall mean in the employ of another (or has a formal offer of such employment) not being of a casual nature but shall not exclude part-time employment of 16 hours or more per week or self employment.
 - 1.7.3 "family association" shall mean where a person or a member of his household has parents, adult children, brothers or sisters currently residing in one of the parishes specified in sub-clauses 1.5.1 or 1.5.2 above or the County (if appropriate) and who have been resident for a period of at least 12 months and that person indicates a wish to be near them.
 - 1.7.4 "support" shall mean a proven need to provide or receive personal and physical care to enable a person or a family member to live independently in the community and includes people who are in need of such support but are not normally resident but have long standing links with the local community.
 - 1.7.5 "special circumstances" shall not normally apply but amount to circumstances which in the view of the Council may give rise to a local connection.
- 1.8 Notwithstanding anything to the contrary contained or referred to elsewhere in this deed Nothing in this deed shall be binding on nor enforceable against
- 1.8.1 any mortgagee or chargee of the Registered Provider of the land or any part thereof which exercises its power of sale appointment of a receiver or power of entry as mortgagee or chargee or its successors in title deriving title under such mortgagee or chargee shall not be bound by any of the restrictions provisions or obligations set out in this deed if the mortgagee or chargee shall have complied with its obligations pursuant to Sections 144 to 154 of the Housing and Regeneration Act 2008 and no proposals for the future ownership and management of the Land by a Registered Provider shall have been agreed by the mortgagee or chargee within the moratorium period determined in accordance with Sections 145 to 147 of the said Act and thereupon (for the avoidance of doubt) the covenants in this Third Schedule shall be deemed to be extinguished in respect of the Land or any relevant part thereof; or
 - 1.8.2 any mortgagee or chargee of a Shared Ownership Unit ("SO Unit") if such mortgagee or charge shall have complied with its obligations in the remainder of this paragraph 1.8.2 of this deed;

1.8.2.1 any mortgagee or chargee of a Shared Ownership Unit shall prior to seeking to dispose of any SO Unit pursuant to any default under the terms of the mortgage or charge give not less than 20 working days' prior notice to the Council and to the Registered Provider with an interest in the SO Unit of its intention to dispose and:

1.8.2.2 in the event that the Registered Provider responds within 10 working days from receipt of the notice indicating that arrangements for the transfer of the SO Unit can be made in such a way as to safeguard it as Affordable Housing then the mortgagee or chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer

1.8.2.3 if the Registered Provider does not serve its response to the notice served under clause 1.8.2.1 within the 10 working days then the mortgagee or chargee shall be entitled to dispose of the SO Unit free of all the restrictions set out in clause 1 of the Third Schedule which shall from the time of completion of the disposal cease to apply

1.8.2.4 if the mortgagee or chargee cannot within 20 working days of the date of service of the Registered Provider's response under clause 1.8.2.2 secure a binding contract for sale then provided that the mortgagee or chargee shall have complied with its obligations under clauses 1.8.2.2 the mortgagee or chargee shall be entitled to dispose of the SO Unit free of all the restrictions set out in clause 1 of the Third Schedule which shall from the time of completion of the disposal cease to apply

Provided That at all times the rights and obligations in this clause 1.8.2 shall not require the mortgagee or chargee to dispose of the SO Unit for any sum less than the monies outstanding pursuant to the mortgage or charge; or

1.8.3 any occupier of an Affordable Housing Unit who has exercised a statutory right (or contractual right whether by staircasing or otherwise) to buy or acquire the whole of the freehold estate in an Affordable Housing Unit nor any mortgagee of such occupier or their respective successors in title.

1.8.4. any individual owner occupier of an Open Market Unit nor any mortgagee of such occupier or their respective successors in title.

1.8.5 statutory undertakers or other utility suppliers with an interest in the Land only by virtue of the location of their structures or other apparatus on the Land (including electricity substations, poles stays gas governor stations and/or pumping stations) are specifically excluded from liability under this Deed

1.9 Where any of the Affordable Housing Units are located in a Protected Area and are made available for Shared Ownership housing the occupiers shall not (unless otherwise agreed in writing by the Council) be permitted to own more than 80% of the total equity value of such Affordable Housing Units Provided That this clause shall not apply if the Shared Ownership lease of any such unit is in a model form for the protection of Affordable Housing in rural areas published or approved by the Homes and Communities Agency (or a successor body) containing provisions that:

1.9.1 permit an occupier to acquire more than 80% of the total equity in such unit ; and

- 1.9.2 require the mandatory buy back of any such unit by the Registered Provider or its nominee in the event of an intended disposal by any such occupier.

And provided always that where there are alternative model forms of Shared Ownership lease for the protection of Affordable Housing in Protected Areas published or approved by the Homes and Communities Agency (or a successor body) then the form used shall be in the discretion of the Registered Provider which intends to grant the said Shared Ownership lease

(PART 3)

1. Open Space Facilities

- 1.1 Before Commencement of Development the Owner shall submit to the Council for approval (such approval not to be unreasonably withheld or delayed) arrangements in accordance with the Management Company Plan for the establishment of the Management Company; the freehold transfer of the Open Space Facilities to the Management Company and for the recovery by that Management Company of service charge contributions from the owners of the Open Market Units towards the upkeep and permanent maintenance of the Open Space Facilities.
- 1.2. No Open Market Unit shall be Occupied (unless otherwise agreed in writing by the Council) until the Owner has:-
 - 1.2.1 set up, constituted or otherwise incorporated the Management Company; and
 - 1.2.2 entered into a contract with the Management Company to transfer the Open Space Facilities to the Management Company in accordance with the provisions of this part Schedule.
- 1.3 The Owner shall not sell or otherwise dispose of any Open Market Unit without requiring the purchaser of that Open Market Unit and his successors in title to become a member of the Management Company and to enter into a covenant to contribute a service charge towards the costs of the Management Company discharging its functions towards the management of the Open Space Facilities together with provisions for recovery of those contributions in accordance with the arrangements approved pursuant to this part Schedule.
- 1.4. Prior to Occupation of the final Open Market Unit the Owner shall transfer the freehold of the Open Space Facilities to the Management Company for a consideration of £1.00 (if demanded) Subject To:
 - 1.4.1 covenants by the Management Company to maintain the Open Space Facilities in perpetuity and to use the Open Space Facilities only as an area of open space for free public recreation and enjoyment; and
 - 1.4.2 in the event that the Council shall have confirmed its intention to adopt all or any part of a sustainable urban drainage system serving the Development (subject to the payment by the Owner to the Council of an appropriate 60 year commuted sum for the long term maintenance of the sustainable urban drainage system) the reservation of all necessary rights for the Council (such rights to apply only and as necessary if the Council does adopt all or part of the sustainable urban drainage system serving the Development) over the Open Space Facilities

for the use, repair, maintenance or replacement of all or any part of such sustainable urban drainage system (including attenuation basins or balancing ponds) in under or forming part of the Open Space Facilities subject to the Council making good any damage caused in the exercise of such rights to the reasonable satisfaction of the Owner.

- 1.5 The Owner shall not Occupy or permit Occupation of that final Open Market Unit until the Open Space Facilities have been transferred to the Management Company.
- 1.6 No more than 50% of the Open Market Units shall be Occupied until the Owner has laid out and equipped the Open Space Facilities (including those elements if any which will form part of a sustainable drainage system serving the Development) to the Council's satisfaction (such expression of satisfaction not to be unreasonably withheld or delayed) in accordance with a scheme of works; quality standards and a maintenance specification approved by the Council pursuant to a reserved matters application.
- 1.7 Until a transfer of the Open Space Facilities pursuant to this part Schedule the Owner shall at all times remain fully responsible for the repair, maintenance, safety and general upkeep of the Open Space Facilities consistent with its use as a public amenity and as a sustainable urban drainage system serving the Development.

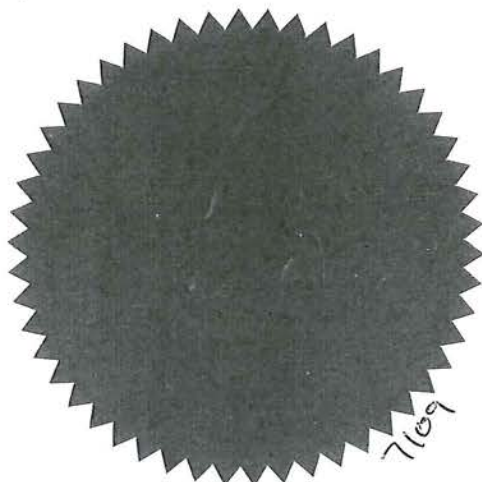
FOURTH SCHEDULE

(Council's Covenants)

1. Upon receipt of the Contributions the Council will place the same in an interest bearing account.
2. The Council shall apply the Contributions towards the facilities referred to in this deed or to such other facilities that the Council and the Owner may agree in writing are appropriate as a result of the Development.
3. The Council agrees that if any part of the Contributions have not been expended or remains uncommitted following 5 years from the date of payment then such part of the Contributions as may remain unspent or uncommitted together with interest accrued as aforesaid on the balance shall be returned to the payer of the Contributions.
4. If so requested to provide the payer of the Contributions with such evidence as shall be reasonably requested to confirm the expenditure of the Contributions.

EXECUTED AS A DEED when
THE COMMON SEAL OF
THE COUNTY OF HEREFORDSHIRE
DISTRICT COUNCIL
was hereunto affixed BY ORDER

Authorised Officer



SIGNED AS A DEED by
DAVID JOHN MILLS
In the presence of:

Witness signature:

Witness Name (capitals): MELISSA DAY

Witness Address: 26 Cottons Meadow
HR2 9EW

SIGNED AS A DEED by
JANE MARGARET MILLS

In the presence of:

Witness signature:

Witness Name (capitals): MELISSA DAY

Witness Address: 26 Cottons Meadow
HR2 9EW

SIGNED AS A DEED by
WESTLEY MARK DAVID MILLS
In the presence of:

Witness signature:

Witness Name (capitals): MELISSA DAY

Witness Address: 26 Cottons Meadow
HR2 9EW

SIGNED AS A DEED by
MARK JOHN MILLS
In the presence of:

Witness signature:

Witness Name (capitals): MELISSA DAY

Witness Address: 26 Cottons Meadow
HR2 9EW

SIGNED AS A DEED by
CHARLES DAVID EVANS
In the presence of:

Witness signature:

Witness Name (capitals):

Witness Address:

X [REDACTED] X

[REDACTED]

X DAVID RB NOVELL X
X 44. BALDRE STREET X
X HEARND X
SOLICITOR