

Date 8th March 2011

- (1) BRYANT HOMES CENTRAL LIMITED
- and
- (2) MANX INDUSTRIAL TRUST LIMITED
- and
- (3) STRATFORD ON AVON DISTRICT COUNCIL
- and
- (4) WARWICKSHIRE COUNTY COUNCIL

DEED OF AGREEMENT

under Section 106 of the Town and Country Planning Act 1990
relating to the development of land at
Kipling Road, Stratford-upon-Avon
Warwickshire

Stratford on Avon District Council

Elizabeth House
Church Street
Stratford-upon-Avon
Warwickshire
CV37 6HX

Web site www.stratford.gov.uk
Ref: Clarke Willmott/RXW/353386.19

THIS DEED is made this

8TH March day of

2011

2010

BETWEEN

- (1) **BRYANT HOMES CENTRAL LIMITED** (Company Number 541755) whose registered office is at 80 New Bond Street, London W1S 1SB ("the Owner") and
- (2) **MANX INDUSTRIAL TRUST LIMITED** of St Georges Street, Douglas, Isle of Man ("the Mortgagee") and
- (3) **STRATFORD ON AVON DISTRICT COUNCIL** of Elizabeth House Church Street Stratford-upon-Avon Warwickshire CV37 6HX ("the District Council") and
- (4) **WARWICKSHIRE COUNTY COUNCIL** of The Shire Hall Warwick CV34 4RR ("the County Council")

WHEREAS :

- 1 The Owner is the freehold owner of land situated at Kipling Road, Stratford upon Avon which is registered at HM Land Registry as part of Title Number WK401913 and shown edged red on the Site Plan.
- 2 Taylor Wimpey West Midlands on behalf of the Owner have submitted a planning application as hereinafter defined to the District Council for the development of the Site
- 3 The District Council is the Local Planning Authority for the purposes of Section 106 of the Act for the area in which the Site is situated
- 4 The County Council is the Education Authority Highway Authority and Local Planning Authority for the area in which the Site is situated
- 5 The Mortgagee is mortgagee of the Site under a legal charge dated 7 May 1993 made between the Owner and the Mortgagee
- 6 By notice of refusal dated 30 April 2010 the District Council refused the Application for the reasons set out in the notice and the Owner has made the Planning Appeal
- 7 The parties have agreed to enter this Agreement which will take effect should the Secretary of State grant the Planning Permission

NOW THIS DEED WITNESSES AS FOLLOWS:

1 Definitions

In this Deed the following words and expressions shall unless the context otherwise requires have the precise meaning set out below:

"Act"	the Town and Country Planning Act 1990 (as amended)
"Air Quality Improvement Contribution"	the payment of the sum of ONE HUNDRED POUNDS (£100.00) per Dwelling to be constructed as part of the Development to be paid to the District Council for the purposes set out in Schedule 2
"Anticipated Resident"	<p>the number of anticipated residents of the Development shall be assessed and calculated at the Reserved Matters Approval stage when the exact number and size of all Dwellings is fixed. The number shall be calculated based as follows:</p> <p>One bedroom Dwellings = 1 resident</p> <p>Two bedroom Dwellings = 2 residents</p> <p>Three bedroom Dwellings= 2.6 residents</p> <p>Four Bedroom or larger Dwellings = 3.1 residents</p> <p>where the final figure shall be rounded up to the nearest whole number and in the event of dispute the matter shall be referred under clause 13</p>
"Application"	an application for outline planning permission submitted to the District Council for the Development validated on 5 January 2010 and which has been allocated reference number 10/00016/OUT including any amendment thereto
"Baxter Index"	means The Department of Transport Local Government and the Regions Monthly Bulletin of Indices - Civil Engineering Formula 1990 Series to be weighed in the proportions Labour and Supervision 25% Plant And Road Vehicles 25% Aggregate 30% and Coated Macadam and Bitumen Products 20% or such other Index as the County Council may in writing approve
"Certificate of Completion"	A certificate issued by the District Council which shall be conclusive evidence that the POS and Meadow Land (as applicable) have been laid out in conformity with this Deed to the reasonable

"Commencement of Development"	satisfaction of the District Council and the issue of a Certificate of Completion shall commence the Maintenance Period in respect of the POS or Meadow Land (as applicable)
"Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly
"Dwellings"	the development of the Site for the purposes of the erection of up to 112 dwellings (Class C3) public open space incorporating community woodland, balancing pond and associated earthworks to facilitate surface water drainage, landscaping, car parking and other ancillary works to be carried out pursuant to the Planning Permission
"Education Contributions"	All residential dwellings to be constructed on the Site as part of the Development pursuant to the Planning Permission including Affordable Housing Units and "Dwelling" shall be construed accordingly
"Early Years Education Contribution"	Collectively the Early Years Education Contribution and the Primary Education Contribution Secondary Education Contribution and the Post 16 Education Contribution the payment of the sum of calculated in accordance with Paragraph 5 of Part 4 of Schedule 3 subject to Indexation and payable in accordance with Schedule 3

"Feasibility Contribution"	The payment of the sum of FIFTEEN THOUSAND POUNDS (£15,000) subject to Indexation and payable in accordance with Schedule 3
"Final Certificate"	A certificate to be issued by the District Council which shall be conclusive evidence that the POS and Meadow Land (as applicable) have been properly maintained during the Maintenance Period
"Footpath Contribution"	The payment of the sum of FIVE THOUSAND POUNDS (£5,000) subject to Indexation and payable in accordance with Schedule 3
"Head of Environment and Planning"	Shall mean the District Council's Head of Environment and Planning or such other officer as may be appointed to exercise his functions
"Incidental Open Space"	Any area of POS or Meadow Land or the land immediately surrounding such POS or Meadow Land and which would not otherwise form part of a garden of a Dwelling save for the provisions of paragraph 7 of Part 1 of Schedule 4
"Index"	the index calculated in accordance with Schedule 8
"Library Contribution"	the payment subject to Indexation of seventy two pounds (£72) per Anticipated Resident and payable in accordance with Schedule 3
"Maintenance Period"	A period of 12 months commencing with the issue of the Certificate of Completion and ending with the issue of the Final Certificate provided that if the District Council is not able to issue a Final Certificate due to a defect in the POS or Meadow Land (as applicable) the Maintenance Period shall be extended until the Final Certificate is issued in relation to the POS or Meadow Land (as applicable)
"Maintenance Scheme"	a scheme for the maintenance of the areas of POS the Incidental Open Space and the Meadow Land which shall be prepared by the Owner and include those matters detailed at Schedule 7

"Management Company"

Means a company owned or formed by the Owner to operate and maintain any or all of the following:

- a) POS; and
- b) the Meadow Land; and
- c) Incidental Open Space identified by the Owner

which company shall be created in accordance with the details submitted as part of the Maintenance Scheme as provided for in Part 2 of Schedule 4

"Meadow Land"

The area of open space to be used for meadow and woodland shown for illustrative purposes only hatched green on Meadow Land Plan attached to this Agreement being approximately 2.64 hectares in size and which lies to the south and west of the Site the exact position size and boundaries to be finalised as part of the first Reserved Matters Submission to be submitted by the Owner in relation to the Development.

"Meadow Land Plan"

The plan attached to this Deed entitled "Meadow Land Plan"

"Methodology"

means the Supplementary Planning Guidance adopted by the District Council on 14 July 2006 and subsequently re-adopted as a supplementary planning document in April 2007 and more particularly set out therein and in the accompanying report

"Off Site Open Space Contribution"

the payment of the sum of **SIXTY THOUSAND POUNDS (£60,000)** in respect of the provision and/or improvement of off-site open space along with the maintenance of such off-site open space where it has been provided or improved by payments under this Agreement such payment is made in lieu of the provision of open space within the Development to be paid to the District Council for the purposes set out in Schedule 2

"Open Market Dwelling"

a dwelling to be erected on the Site other than an Affordable Housing Unit constructed pursuant to the Planning Permission

"Planning Appeal"	a planning appeal submitted by the Owner under section 78(1) of the 1990 Act in respect of the District Council's refusal of the Application which has been given the reference
"Planning Permission"	the outline planning permission to be granted pursuant to the Application
"POS"	An equipped area for play for children of early school age to be incorporated in the Development in a location to be agreed between the Owner and the District Council which shall be not less than 500 square metres in size
"POS Specification"	The details identifying the location design specification and landscaping, including any equipment for the POS.
"Post-16 Education Contribution"	the payment of the sum calculated in accordance with paragraph 5 of Part 4 of Schedule 3 subject to Indexation and payable in accordance with Schedule 3
"Primary Education Contribution"	the payment of the sum calculated in accordance with paragraph 5 of Part 4 of Schedule 3 subject to Indexation and payable in accordance with Schedule 3
"Relevant Dwelling"	Any Dwelling(s) with two or more bedrooms, excluding those two bedroom Dwellings that have been designed specifically for use by the elderly
"Reserved Matters Consent"	Any consent issued by the District Council to a Reserved Matters Submission
"Reserved Matters Submission"	Any reserved matters submission made pursuant to the Planning Permission
"Secondary Education Contribution"	the payment of the sum calculated in accordance with paragraph 5 of Part 4 of Schedule 3 subject to Indexation and payable in accordance with Schedule 3
"Site"	the land against which this Deed may be enforced as shown edged red on the Site Plan

"Site Plan"	the plan attached to this Deed entitled "Site Plan"
"Sustainable Travel Packs Contribution"	the payment of the sum of FIFTY POUNDS (£50.00) per Dwelling to be constructed as part of the Development to be paid to the County Council for the purposes set out in Schedule 3
"Traffic Markings Contribution"	The payment of the sum of THREE THOUSAND POUNDS (£3,000) subject to Indexation and payable in accordance with Schedule 3
"Transport Contribution"	the payment of the sum per Dwelling to be constructed as part of the Development calculated as follows: Number of Dwellings x 5.5 x £224 to be paid to the County Council for in accordance with in Schedule 3

2 Interpretation

- 2.1 The expressions "the Owner" "the Mortgagee" "the District Council" and "the County Council" shall include their respective successors in title and assigns and/or any successor body
- 2.2 Where appropriate the singular includes the plural and vice versa. Words importing one gender include all other genders
- 2.3 Unless otherwise stated all references to clause numbers schedules and paragraph numbers of schedules are references to the clauses schedules and paragraphs of schedules contained within this Undertaking
- 2.4 References to statutory provisions shall be construed as references to those provisions as may hereafter be amended or re-enacted
- 2.5 The obligations herein relate to the Site and each and every part thereof
- 2.6 Any matter that requires the consent or approval of any party hereunder shall be subject to a proviso that such consent or approval may not be unreasonably withheld or delayed.
- 2.7 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.8 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing

2.9 Where more than one person is obliged to observe or perform an obligation contained in this Undertaking, the obligation may be enforced against all such persons jointly or against each of them individually.

2.10 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Undertaking shall be unaffected.

3 Liability of the Owner for the Covenants herein

The covenants and obligations on the part of the Owner herein

3.1 shall only bind the Owner in respect of such part or parts of the Site vested in it and it shall not be liable for the breach of any covenant or obligation by any other party; and

3.2 shall not be such as to render the Owner liable for any breach which may occur in relation to the Site after it shall have parted with all their respective interest therein save and unless such breach occurred during their ownership of the Site

3.3 Insofar as this Agreement contains an obligation or obligations which an inspector states in his decision letter pursuant to the Planning Appeal is immaterial to the grant of the Planning Permission and that no weight has been given to the same in reaching his decision then the Owner shall not be obliged to comply with the terms of that obligation notwithstanding that the remaining obligations are expressly stated by an inspector to be required shall be complied with in full and the validity of this Agreement shall not be called into question so far as it relates to those remaining obligations.

4 Enabling Powers

The covenants and obligations on the part of the Owner herein

4.1 shall only bind the Owner in respect of such part or parts of the Site vested in it and it shall not be liable for the breach of any covenant or obligation by any other party; and

4.2 shall not be such as to render the Owner liable for any breach which may occur in relation to the Site after it shall have parted with all their respective interest therein save and unless such breach occurred during their ownership of the Site

4.3 Insofar as this Agreement contains an obligation or obligations which the Inspector or the Secretary of State states in his decision letter is immaterial to the grant of the Planning Permission and that no weight has been given to the same in reaching his decision then the Owner shall not be obliged to comply with the terms of that obligation notwithstanding that the remaining obligations are expressly

stated by the Inspector or Secretary of State to be required shall be complied with in full and the validity of this Agreement shall not be called into question so far as it relates to those remaining obligations.

5 Enabling Powers

- 5.1** This Deed is made pursuant to the provisions of Section 106 of the Act and shall constitute and shall be deemed to contain planning obligations for the purposes of Section 106 of the Act and in the event of a breach it shall be enforceable by the District Council and County Council as local planning authorities pursuant to all powers enabling and all enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained and shall bind the then Owner's respective interest in the Site
- 5.2** Without generality to clause 4.1 this Deed is further made pursuant to Sections 111 120 and 139 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 insofar as the same may be relevant to the enforcement of the obligations contained herein
- 5.3** Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.

6 Conditions Precedent

- 6.1** This Deed is conditional and shall only have effect upon:
 - 6.1.1** the grant of Planning Permission;
 - 6.1.2** the Commencement of the Developmentsave for the provisions of this clauses 5, 14, 15, 17, 20, 21, 24 and 26 which shall come into effect immediately upon completion of this Deed
- 6.2** For the avoidance of doubt this Deed is entered into on the understanding that in the event of the Planning Permission being quashed as a result of any legal proceedings or pursuant to Section 97 of the Act or expires before the Commencement of Development or for any other reason then this Deed shall absolutely determine and shall become null and void

7 Payment of Monies

- 6.1** The obligations herein contained to pay monies to the District Council or County Council shall be enforceable against the party having a freehold interest in the Site or that part of the Site to which the payment relates at the date on which the obligation

arises and any obligation to repay monies shall be construed as referring to a repayment to the party or parties who paid the monies in the first instance

- 6.2 All contributions payable to the Council or County Council shall be increased by the changes if any in the Index in accordance with the provisions of Schedule 8 hereto. For the avoidance of doubt, in the case of a decrease in the Index the change in the Index shall be deemed to be nil.

8 Liability of Individual Householders and Utility Companies

Save for the provisions of Schedule 1 which shall apply to all Affordable Housing Units the covenants contained in this Deed shall not be enforceable against individual purchasers or lessees of dwelling houses on the Site constructed pursuant to the Planning Permission nor shall any obligation be enforceable against utility companies in relation to any parts of the Site acquired by them for electricity sub-stations gas governor stations or pumping stations or any of the operational functions of such companies or against anyone whose only interest in the Site or any part of it is in the nature of the benefit of an easement or covenant

9 Mortgagee's Consent

- 9.1 The Mortgagee consents to the giving of the obligations on the part of the Owner
- 9.2 The Mortgagee acknowledges that the Site is bound by the restrictions and obligations contained in this Deed and that this Deed will be binding on its successors in title and agrees to be bound by them in the event that it becomes a mortgagee in possession but that its liability will cease once it has parted with its interest in the Site (without prejudice to its liability for any subsisting breach of covenant prior to parting with such interest)

10 Monitoring

- 10.1 The Owner hereby agrees to notify the District Council (by the S.106 Monitoring Officer or in the absence of such the Planning Manager) and the County Council (by the County Council's Development Group Manager at PO Box 43 at the address of the County Council aforesaid) of the Commencement of Development within 7days of the occurrence of the same PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent the Commencement of Development or the operation of this Deed
- 10.2 The Owner hereby agrees to notify the District Council (by the S.106 Monitoring Officer or in the absence of such the Planning Manager) and where appropriate the County Council (by the County Council's Development Group Manager at PO Box 43 at the address of the County Council aforesaid) of the reaching of any of the occupation or completion thresholds relating to Open Market Dwellings

contained in this Deed such notification to be given within 7 days of the reaching of such threshold

11 Owner's Covenants

- 11.1** The Owner **COVENANTS** with the District Council to fully perform and observe the covenants set out in Schedules 1, 2, 4 and 7
- 11.2** The Owner **COVENANTS** with the County Council to fully perform and observe the covenants set out in Schedules 3 and 7
- 11.3** The Owner covenants with the District Council and County Council that:
 - 11.3.1** it owns the freehold interest in the Site; and
 - 11.3.2** that apart from the Mortgagee and the Owner there are no other persons companies or entities that have an interest whether legal or equitable in the Site which are not otherwise a party to this Agreement; and
 - 11.3.3** that there are no occupiers or tenants whether under formal or informal arrangements in occupation of the Site apart from those parties to the Site.
- 11.4** The Owner covenants with the Mortgagee to indemnify the Mortgagee against all actions claims demands and losses arising in any way out of this Agreement

12 The District Council's Covenants with the Owner

The District Council **COVENANTS** with the Owner to fully perform and observe the covenants set out in Schedule 5

13 The County Council's Covenants with the Owner

The County Council **COVENANTS** with the Owner to fully perform and observe the covenants set out in Schedule 6

14 Resolution of Disputes

- 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 Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of agreement) by and on behalf of the President for the time being of the professional body chiefly concerned in England with such matters as may be in dispute 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 in equal shares

- 14.2** In the absence of agreement between the parties to the dispute or difference as to the suitability of the person to be appointed pursuant to clause 14.1 or as to the appropriateness of the professional body then such question may be referred by any party to a Solicitor appointed by or on behalf of the President for the time being of the Law Society of England Wales and such Solicitor shall act as an expert and his decision as to the professional qualifications of such person or appropriateness of the 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 in equal shares

15 Notices

- 15.1** Any notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first class post Recorded Delivery post telex or facsimile transmission
- 15.2** The address for service of any such notice consent or approval as aforesaid shall be on all of the parties at the addresses aforesaid or such other address for service as shall have been previously notified in writing by the parties to all the other parties to this Deed save that payments of any monies to the District Council shall be addressed specifically for the attention of the S106 Monitoring Officer of the District Council and detailing the obligations to which the payment relates and payments of any monies to the County Council shall be addressed for the attention of Capital and Property Project Officer, CYP & F, Assistant Financial Services Manager, Adult Health and Community Services and the Manager of the Development Group (E&E) at the address of the County Council aforesaid and shall detail the obligations to which the payment relates
- 15.3** A notice consent or approval under this Deed shall be deemed to have been served as follows:
- 15.3.1** if personally delivered at the time of delivery
- 15.3.2** at the expiration of forty eight hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom
- 15.3.3** if sent by facsimile transmission at the time of successful transmission
- 15.4** In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a

prepaid first class or Recorded Delivery envelope (if appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be

16 Registration of the Deed

This Deed shall be registered as a Local Land Charge in the Register of Local Land Charges maintained by the District Council

17 Waiver

No waiver (whether expressed or implied) by the District Council (or the County Council or Owner) of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council (or the County Council or Owner) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

18 Change In Ownership

Save for any individual dwelling erected on the Site and any disposal to a utility company the Owner agrees with the District Council and County Council to give the District Council and County Council (by the County Council's Development Group Manager at PO Box 43 at the address of the County Council aforesaid) immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been completed and/or satisfied such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

19 Interest

If any payment due to the District Council or the County Council under this Deed is paid late, interest will be payable from the date payment is due to the date of payment at the rate of 2% above the Bank of England base lending rate prevailing at the time save that on the contributions payable to the County Council the interest rate will be 4% above the Bank of England base lending rate prevailing at the time

20 VAT

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

21 Jurisdiction

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

22 Variation of Deed

No variation or amendment to this Deed (other than any variation to the Planning Permission which is approved pursuant to a planning permission by the District Council or on appeal) shall be valid unless in writing and signed as a Deed by or on behalf of all the parties referred to in this Deed save where such party no longer has any interest in the Site which is the subject of the variation in which case the variation shall be signed by the Owner for the time being of the Site but not any purchaser of an individual dwelling nor by any statutory undertaker who acquires an interest in the Site for operational purposes

23 Certificate of Satisfaction

Any party to this Deed may make application to the District Council and /or County Council for written confirmation to the effect that any of the provisions of this Deed have been completed and/or satisfied

24 Application of Deed

Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission referred to herein) granted or deemed to be granted by any order or where granted expressly by the District Council or on appeal

25 Legal Costs

25.1 The Owner shall pay to the District Council and County Council on completion of this Deed the reasonable legal costs of the District Council and County Council incurred in the negotiation preparation and execution of the Deed

25.2 The Owner shall pay to the District Council and County Council any reasonable legal costs incurred after the date hereof in respect of any steps taken to enforce the terms of this Deed

26 Monitoring and Supervision Fees

Prior to the Commencement of Development the Owner shall pay to the District Council the sum of £2600.00 (Two Thousand Six Hundred Pounds) which sum shall be used by the District Council for the purpose of monitoring and supervising compliance with the obligations contained within this Deed

27 Contracts (Rights of Third Parties) Act 1999

The provision of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Deed

IN WITNESS whereof this Deed has been duly executed as a Deed the day and year first above written

SCHEDULE 1
AFFORDABLE HOUSING

1 Part 1: Definitions

In this Schedule the following words and expressions shall unless the context requires otherwise have the meaning set out below:

“Accredited Body”

means any body accredited by the Regulator of Social Housing under any scheme operated under Part 2 of the Housing and Regeneration Act 2008 for the accreditation of persons who provide services in connection with the management of social housing.

“Affordable Housing”

Means all the homes subject to the provisions of this Schedule 1 being Affordable Housing Units and which are to be provided to eligible households whose needs are not met by the private sector market and “Affordable Housing Unit” shall be construed accordingly.

“Affordable Housing Unit”

Means either a Social Rented Unit or an Intermediate Unit

“Civil Partner”

Means a person enjoying equivalent rights to that of a wife or husband as regards assignment or succession under the provisions of the Civil Partnership Act 2004.

“Contract”

Means a binding contract for the construction and/or sale of the Affordable Housing Units comprised within the Development by the Owner (or any successor in title to the Owner) to the Qualifying Developing Body.

“Dwelling”

Means any dwelling erected on the Site regardless of tenure

“Head of Service”

Means the District Council's Head of Revenues and Housing, or any person appointed to exercise his/her functions or authorised to act on his/her behalf.

“Intermediate Unit”

Means a home sold under a shared ownership lease (part rent, part buy or such other tenure as agreed with the District Council) by a Qualifying Developing Body where such lease is in accordance with a form of a model lease approved or published by the Regulator of Social Housing for the purposes of Part 2 of the Housing and Regeneration Act 2008 or in default of such approval or publication in accordance with a form of a lease approved by the District Council's Head of Service

"Local Connection"

A Qualifying Person will benefit from a **Local Connection** if they satisfy any one or more of the following criteria:

In the first instance:

- They were born in the Stratford on Avon parish.
- Currently live in the Stratford on Avon parish concerned and have done so for at least the past 12 months.
- Used to live in the Stratford on Avon parish concerned for not less than three years, but was forced to move away because of the lack of affordable housing.
- Currently work in the Stratford on Avon parish concerned and have done so for at least the past 12 months.
- Currently has a close family member (mother, father, brother, sister, son, daughter) living in the Stratford on Avon parish concerned and who have done so for not less than three years.

In the second instance:

- Satisfies any one or more of the criteria above but in respect of any named adjoining parishes namely (i) Aldminster (ii) Atherstone-on-Stour (iii) Clifford Chambers and Milcote (iv) Hampton Lucy (v) Loxley and (vi) Old Stratford and Drayton.

In the final instance:

- Satisfies any one or more of the criteria above but in respect of any other parish in Stratford-on-Avon District.

"Local Allocations Scheme"

Means a scheme devised with a view to the development and maintenance of a balanced community. It will specify the arrangements and eligibility criteria for the nomination and allocation by the District Council and the Qualifying Developing Body respectively of tenants or purchasers of any Affordable Housing Unit.

"Nominations Procedure"

Means such arrangements and procedures as may from time to time be operated by the District Council and any Qualifying Developing Body or Accredited Body as the case may be

with respect to the exercise by the District Council of its rights to the nomination of tenants or purchasers of any Affordable Housing Unit in accordance with the provisions of this Deed

“Open Market Unit”

Means a Dwelling to be erected on the Site and which will not be an Affordable Housing Unit

“Order of Preference”

Means:

In the first instance, a Qualifying Person satisfying any one or more of the criteria in the definition of Local Connection (a connection to Stratford on Avon)

In the second instance, a Qualifying Person satisfying any one or more of the criteria in the definition of Local Connection but in respect of a connection to named adjacent parishes namely (i) Aldminster (ii) Atherstone-on-Stour (iii) Clifford Chambers and Milcote (iv) Hampton Lucy (v) Loxley and (vi) Old Stratford and Drayton

In the final instance, a Qualifying Person satisfying any one or more of the criteria in the definition of Local Connection but in respect of a connection to any other parish in Stratford-on-Avon District.

“Qualifying Developing Body”

Means a body currently registered by the former Housing Corporation under Part 1 of the Housing Act 1996 or a Registered Provider of Social Housing registered under the provisions of Part 2 of the Housing and Regeneration Act 2008

“Qualifying Person”

In the case of a Social Rented Unit, means someone:

Whose name is included in the District Council's housing register (maintained under Part VI of the Housing Act 1996) and

- who is considered to have a housing need, and
- who is nominated by the District Council to a purchase or tenancy, and
- who benefits from a Local Connection.

Or

Who is legally entitled to succession to a tenancy from a **Qualifying Person**

Or

Who is legally entitled to assignment of a tenancy from a **Qualifying Person**

In the case of an Intermediate Unit means someone:

Whose name is included in the District Council's housing register (maintained under Part VI of the Housing Act 1996) and:

- who is considered to have a housing need, and
- who is nominated to a tenancy by the District Council, and
- who benefits from a Local Connection.

Or

Who is the wife, husband or Civil Partner of a **Qualifying Person**.

Or

Who is a resident dependent (such as a child) of a **Qualifying Person**.

“Registered Provider of Social Housing”

Means a body registered under Part 2 of the Housing and Regeneration Act 2008

“Social Rented Unit”

Means a home let at an affordable rent, that is to say a home let under a secure tenancy within the meaning of Part IV of the Housing Act 1985

“Specification”

Means plans and particulars required which taken together contain detailed proposals for the provision and management of the Affordable Housing within the Development, and in particular indicating

- Details of the Development to which the scheme relates
- The proposed identity of the Qualifying Developing Body to whom the Affordable Housing Units are to be transferred (if available and where the identity is not yet known such as shall be provided to the District Council for approval as soon as it is available and for the avoidance of doubt it is confirmed that this may be after the formal approval of the Specification)
- Arrangements for the local management of the completed Affordable Housing Units by a Qualifying Developing Body or an Accredited Body
- A schedule and plans containing details of the location, type, size and tenure of each Affordable Housing Unit on the Site including details of the gross internal floor area (in square meters) of each Affordable Housing Unit Dwelling and the total gross internal floor area of all Dwellings comprised within the Development
- Details of any other land on the Site (e.g. parking spaces) to be transferred to the Qualifying Developing Body in connection with the Affordable Housing
- The minimum standards to be achieved in the design, construction and layout of the Development, provided that such standards must always:

- Meet the former Housing Corporation's "Design and Quality Standards" or any substitute therefore which may be published from time to time insofar as is consistent with the Planning Permission
- Achieve a minimum Code Standard of Level 3 of the Code for Sustainable Homes or any substitute therefore which may be published from time to time.
- Ensure that not less than 50% of all Dwellings fully comply with the Joseph Rowntree Foundation's 'Lifetime Homes' standards or any substitute therefore which may be published from time to time .
- The intended timing of construction of both the Affordable Housing Units and Open Market Units and, where the Development is to be undertaken in phases the phasing timetable.
- The maximum total housing costs to tenants or purchasers of each Affordable Housing Unit on first occupation.

FOR THE AVOIDANCE OF DOUBT it is confirmed that the Specification is only required where such details have not been submitted and agreed with the District Council in writing prior to the issue of the Planning Permission

2 Part 2: Affordable Housing Approval

- 2.1** The Owner shall submit the Specification to the District Council's Head of Service no later than the date of submission of a Reserved Matters Application.
- 2.2** Unless otherwise agreed by the District Council the Specification shall include all the information specified within the definition of Specification.
- 2.3** The Specification shall ensure that a minimum of 35% of the total residential floor area of the Development shall comprise Affordable Housing Units and of which a minimum 75% of the total residential floor area of the Affordable Housing Units shall comprise Social Rented Units and a maximum of 25% shall comprise Intermediate Units PROVIDED THAT none of the Intermediate Units shall be permitted to be apartments or flats.
- 2.4** There shall be no Commencement of Development approved by the Planning Permission until such time as the Specification has been approved in writing by the District Council.
- 2.5** The District Council will endeavour within 3 calendar months of receipt of the Specification to give notice of approval or rejection of the Specification at the earliest possible opportunity (such approval not to be unreasonably withheld or delayed) and in the event of its rejection set out its reasons for rejection and specify the measures required to produce an acceptable scheme

- 2.6 In the event that the District Council reject the Specification the Owner may submit a revised Specification to the District Council for approval whereupon the District Council will again seek to issue its decision in respect of such Specification at the earliest possible opportunity on the same terms as in clause 2.4 above. In the event of a further rejection of the revised Specification the Owner may continue to make further submissions to the District Council in order to secure an approval to the Specification. In the alternative the Owner may seek to refer any dispute or disagreement to an independent expert in accordance with the provisions of clause 13 of this Deed save that it is agreed that the expert shall not have power to alter the number or proportion of Affordable Housing Units and/or the tenure mix specified in this Deed.

3 Part 3: Provision of Affordable Housing

- 3.1 No more than 25% of the Open Market Dwellings shall be occupied sold or otherwise disposed of until such time as the Owners have entered into the Contract
- 3.2 The provisions of paragraph 3.1 above shall not apply where the Owner is a Qualifying Developing Body and they propose to carry out the Development pursuant to the Planning Permission by building and retaining ownership of the Affordable Housing Units
- 3.3 The Owner shall not sell, lease or transfer more than 75% of the Open Market Units to be erected on the Site nor occupy or allow or cause or permit to be occupied the said number of Open Market Units prior to the completion and legal transfer to the Qualifying Body all of the Affordable Housing Units to be erected on the Site
- 3.4 The Contract shall include provisions as to the price to be paid by the Qualifying Developing Body for the Affordable Housing Units such price to be at a level no greater than a price agreed with the District Council or at a price agreed with the Qualifying Developing Body on the basis that the said Qualifying Developing Body can ensure delivery and management of the Affordable Housing Units for the purposes and on the tenure basis herein specified

4 Part 4: Occupancy of Affordable Housing Units

- 4.1 None of the Affordable Housing Units will be occupied unless and until such time as:
- 4.1.1 the Nominations Procedure has been followed; and .
- 4.1.2 the Owner shall have submitted for approval to the District Council a Local Allocations Scheme and the same has been approved in writing by the District Council's Head of Service.

- 4.2 The Affordable Housing Units shall not be occupied at any time otherwise than strictly in accordance with the provisions of this Schedule.
- 4.3 Occupancy of any of the Affordable Housing Units will be restricted at all times to a Qualifying Person who has a Local Connection
- 4.4 The Qualifying Developing Body shall ensure that the allocation of all Affordable Housing Units shall be made in accordance with the Nominations Procedure and having regard to the Local Allocations Scheme and Order of Preference
- 4.5 The District Council shall be entitled to nominate tenants for all the Social Rented Units to be erected on the Site whether in respect of first occupation of such a unit or any subsequent occupation. The District Council shall further be entitled to nominate the first purchaser of all Intermediate Units to be erected on the Site
- 4.6 The Qualifying Developing Body shall at all times manage the Affordable Housing Units strictly in accordance with their own internal rules together with any rules or regulatory practices set down by the Homes and Communities Agency or such other body responsible for overseeing the management of Affordable Housing and/or the regulation of any Qualifying Developing Body
- 4.7 Where any Affordable Housing Unit is to be managed by an Accredited Body and where such Accredited Body is not identified in the approved Specification such Accredited Body will submit to the District Council for its approval a scheme for the future management of the Affordable Housing Units under its control and shall only manage the said units in accordance with the agreed management scheme. The District Council may from time to time require the Accredited Body to update its management scheme and to obtain the Council's approval to such updates from time to time.
- 4.8 In the event that any Accredited Body shall lose its accreditation at any time and fails to regain it within a period of not more than six calendar months the Accredited Body shall immediately take steps to transfer to an alternative Accredited Body or a Registered Provider of Social Housing the responsibility for the management of the Affordable Housing Units within the Site. The transfer of responsibility for such Affordable Housing Units shall be on terms which are reasonable and appropriate in all the circumstances in order to ensure that the Affordable Housing Units can thereafter be provided in accordance with the terms and conditions set out in this Deed.
- 4.9 Where the Qualifying Developing Body ceases to have any interest in any Affordable Housing Unit as a result of staircasing to 100% of the equity in the said unit or outright sale for any other reason the provisions of this part of this schedule shall cease to have effect in respect of such a unit provided written notice of such disposal shall have been served on the District Council
- 4.10 The covenants contained in this Schedule shall not be binding on a mortgagee entitled to possession or a receiver appointed by a mortgagee or chargee or

successor in title) of any or all of the Affordable Housing Units (hereinafter called "the Mortgaged Properties") or a bona fide purchaser for value thereof from such a mortgagee entitled to possession or receiver or chargee (except in the case of a purchaser which is a Qualifying Developing Body or the successors in title of such purchaser) PROVIDED that the following procedure shall have been followed:

4.10.1 Any mortgagee or chargee (or receiver appointed by a mortgagee or chargee or successor in title) entitled to exercise a right of disposal in accordance with this paragraph shall first have served written notice on the District Council of its intention to commence proceedings to seek possession of the Mortgaged Properties or to otherwise seek to sell the Mortgaged Properties

4.10.2 The mortgagee or chargee entitled to possession (or receiver appointed by a mortgagee or chargee or successor in title) exercising any power of sale or leasing shall first have made reasonable endeavours over a period of two months from the date on which it obtained vacant possession to dispose of the Mortgaged Properties to an alternative Qualifying Developing Body on terms which are reasonable in all respects to enable the same to be used for the purposes specified in this obligation and for a consideration which is no more than the greater of (i) the open market value thereof subject to any leases or tenancies subsisting and subject to the provisions of this Schedule or (ii) a sum sufficient to redeem the mortgage interest and costs

4.10.3 At any time after obtaining vacant possession of the Mortgaged Properties and at the same time as the mortgagee or chargee (or receiver appointed by a mortgagee or chargee or successor in title) is attempting to dispose of the Mortgaged Properties in accordance with sub-paragraph 4.10.2 above he shall next have given notice in writing to the District Council offering to transfer the Mortgaged Properties to the District Council in circumstances where there is no Qualifying Developing Body wishing to purchase the Mortgaged Properties such transfer to the District Council shall be at a consideration representing either the open market value thereof at the date of the notice subject to any leases or tenancies subsisting and subject to the provisions of this Schedule and the amount of which consideration shall be either agreed between the District Council and the mortgagee or chargee and failing such agreement to be determined by a Member of the Royal Institution of Chartered Surveyors acting as an expert and not as an arbitrator to be appointed by joint agreement of the parties or in default of agreement on application by either party by the President for the time being of the Royal Institution of Chartered Surveyors (the costs of his appointment and acting to be met by the parties in equal shares) or a sum sufficient to redeem the mortgage interest and costs whichever shall be the greater

4.10.4 Where:

4.10.4.1 after the expiry of the two month period referred to in paragraph 4.10.2 no Qualifying Developing Body has agreed

to acquire the Mortgaged Properties or if they have agreed that they have failed to complete the transfer of the Mortgaged Properties within 6 weeks of such agreement and where the reasons for the delay are attributable to the act or default of the Qualifying Developing Body; and

4.10.4.1 The District Council has not agreed within two months of the notice given in accordance with paragraph 4.10.3 to acquire the Mortgaged Properties; or

4.10.4.2 where the District Council has agreed within two months of the notice referred to in paragraph 4.10.3 to purchase the Mortgaged Properties but where the District Council has failed to complete the transfer of the Mortgaged Properties within six weeks of the price having been agreed between the parties or determined by the said expert other than for reasons which are attributable to the act or default of the Mortgagee

4.10.4.3 Sixteen weeks have expired from the date of the notices in 4.10.2 and 4.10.3

SAVE THAT any mortgagee (or chargee or receiver appointed by a mortgagee or chargee or successor in title) shall act in good faith in seeking to secure a transfer of the Mortgaged Properties to an alternative Qualifying Developing Body or the District Council on terms specified in paragraphs 4.10.2 and 4.10.3 hereof before seeking to rely on this paragraph 4.10.4.

SCHEDULE 2

Payments of monies by the Owner to the District Council

Part 1

OFF-SITE OPEN SPACE CONTRIBUTION

- 1** Prior to the occupation of the 35th Dwelling the Owner will pay to the District Council the Off-Site Open Space Contribution
- 2** No more than 35 Dwellings shall be permitted to be occupied until the Off-Site Open Space Contribution has been paid to the District Council.
- 3** The Open Space Contribution is to be paid to the District Council for the provision and/or enhancement and/or improvement and maintenance of open space including recreation areas which might reasonably be used by the residents of the Dwellings which shall be prioritised as follows:
 - (a) the provision of a Multi Use Games Area at the Recreation Ground in Stratford Upon Avon
 - (b) upgrading of the existing equipment in the play area at the Recreation Ground in Stratford Upon Avon

Part 2

AIR QUALITY IMPROVEMENT CONTRIBUTION

- 4** The Owner shall pay to the District Council the Air Quality Improvement Contribution prior to the Commencement of Development
- 5** No Commencement of Development shall be permitted until the Air Quality Improvement Contribution has been paid to the District Council.
- 6** The Air Quality Improvement Contribution is to be paid to the District Council for the purpose of monitoring air quality in the Air Quality Management Area identified in Stratford upon Avon within which the Site is located and for devising and implementing initiatives for the improvement of air quality which may include the provision or improvement of monitoring facilities or such measures as the District Council may deem suitable for the general improvement of air quality as a result of new development in Stratford Upon Avon

SCHEDULE 3

Payments of monies by the Owner to the County Council

Part 1

LIBRARY CONTRIBUTION

- 1** Prior to the occupation of the 35th Dwelling the Owner shall pay to the County Council the Library Contribution
- 2** No more than 35 Dwellings shall be permitted to be occupied until the Library Contribution has been paid to the County Council.
- 3** The Library Contribution is to be paid to the County Council for the purpose of providing extending altering or improving library and information facilities including the provision of books and other media at the library which is closest to the Site to accommodate the increased number of residents using the library facilities as a result of the Development

Part 2

SUSTAINABLE TRAVEL PACKS

- 4** The Owner shall pay to the County Council the Sustainable Travel Pack Contribution within 7 days of Commencement of Development
- 5** The Sustainable Travel Pack Contribution is to be paid to the County Council for the provision of information packs for owners and occupiers of residential dwellings which include information on sustainable modes of transport and to help promote sustainable travel in the local area

Part 3

TRANSPORT CONTRIBUTION

- 6** Prior to occupation of any Dwelling on the Site the Owner shall pay the Transport Contribution to the County Council.
- 7** No Dwelling shall be occupied on the Site until the Transport Contribution has been paid to the County Council
- 8** The County Council covenants that it will use the Transport Contribution as funding for one or more of the list of transport infrastructure schemes set out in Appendix 2 of the Methodology as varied from time to time by resolution of the District Council or such other transport

measures affecting Stratford-Upon-Avon as may be agreed between the District Council and the County Council and for no other purpose and if not used for that purpose within 7 years of the date of payment the Transport Contribution will be repaid to the Owner together with the interest earned thereon

Part 4

EDUCATION CONTRIBUTION

- 9** Prior to occupation of the 35th Relevant Dwelling to be constructed as part of the Development the Owner will pay to the County Council the Education Contributions
- 10** The Education Contributions are to be paid to the County Council for the following purposes:
 - 10.1** To use the Early Years Education Contribution for the purpose of providing extending improving or altering facilities or services for pre-school aged children within the vicinity of the Site
 - 10.2** To use the Primary Education Contribution for the purpose of providing extending improving or altering facilities or services for primary age children within the vicinity of the Site
 - 10.3** To use the Secondary Education Contribution for the purpose of providing extending improving or altering facilities or services for children aged 11 to 16 within the vicinity of/and or serving the Site
 - 10.4** To use the Post-16 Education Contribution for the purpose of providing extending improving or altering facilities or services for post-16 aged children within the vicinity of and/or serving the Site
- 11** No more than 35 Relevant Dwellings shall be permitted to be occupied until the Education Contributions have been paid to the County Council.
- 12** The number of Relevant Dwellings shall not be increased from the date the Education Contributions are paid without making an adjustment and additional payment of the Education Contributions by increasing the amount of the Education Contributions to reflect the variation in factor N as set out in paragraph 5 of this Part 4 of this Schedule 2 PROVIDED FURTHER where any Education Contributions are to be revised the additional sums owing will be paid in accordance with paragraph 1 above save that where the Education Contributions are to be revised after the occupation of the first Relevant Dwelling the additional sums owing will be paid immediately upon the giving of the Reserved Matters Consent for the Relevant Dwellings giving rise to the obligation to pay the additional sums and FURTHER the Owner covenants to cease and prevent Development and any occupations of any such Relevant Dwellings until the additional sums in respect of those Relevant Dwellings have been paid to the County Council.
- 13** Calculation of the Education Contributions

13.1 The Early Years Education Contribution shall be calculated as follows:

$$N \times 2.4 \times 0.0104 \times 1 = E$$

E rounded up or down to the nearest whole number = P

P x EY = The Early Years Education Contribution

13.2 The Primary Education Contribution shall be calculated as follows:

$$N \times 2.4 \times 0.0104 \times 7 = E$$

E rounded up or down to the nearest whole number = P

P x PM = The Primary Education Contribution

13.3 The Secondary Education Contribution shall be calculated as follows:

$$N \times 2.4 \times 0.0104 \times 5 = E$$

E rounded up or down to the nearest whole number = P

P x SM = The Secondary Education Contribution

13.4 The Post-16 Education Contribution shall be calculated as follows:

$$N \times 2.4 \times 0.0104 \times 1.2 = E$$

E rounded up or down to the nearest whole number = P

P x VIM = The Post-16 Education Contribution

13.5 Definitions for the purposes of calculations in this paragraph 5:

N = the permitted number of "Relevant Dwellings" determined as a result of the Reserved Matters Approvals.

2.4 = the average number of occupants per house as per the 2001 Census

0.0104 = the birth rate as per the 2001 Census

1 = the full time equivalent number of year groups in early years education

7 = the number of year groups in primary education

5 = the number of year groups in secondary education

1.2 = the full time equivalent number of year groups in post-16 education

E = the effective number of additional places

P = the rounded up or down (to the nearest whole number) number of additional places

EY = the DCSF Primary Pupil Place Cost Multiplier of £12,012 (twelve thousand and twelve pounds)

PM = the DCSF Primary Pupil Place Cost Multiplier of £12,012 (twelve thousand and twelve pounds)

SM =the DCSF Secondary Pupil Place Cost Multiplier of £18,100 (eighteen thousand one hundred pounds)

VIM = the DCSF Sixth Form Pupil Place Cost Multiplier of £19,629 (nineteen thousand six hundred and twenty nine pounds)

PART 5

FEASIBILITY CONTRIBUTION

- 14** Prior to Commencement of Development on the Site the Owner shall pay the Feasibility Contribution to the County Council.
- 15** No Commencement of Development shall be permitted on the Site until the Feasibility Contribution has been paid to the County Council
- 16** The County Council covenants that it will use the Feasibility Contribution towards the commissioning of a study relating to the impact of the increase of traffic passing through the roundabout at the point where the Shipston Road and Banbury Road meet and also crossing the Clopton Bridge.

PART 6

TRAFFIC MARKINGS CONTRIBUTION

- 17** Prior to Commencement of Development on the Site the Owner shall pay the Traffic Markings Contribution to the County Council.
- 18** No Commencement of Development shall be permitted on the Site until the Traffic Markings Contribution has been paid to the County Council
- 19** The County Council covenants that it will use the Traffic Markings Contribution towards the implementation and associated works to introduce Keep Clear road markings and yellow boxes restricting traffic movements at both the junction of the Banbury Road with Rushbrook Road and the junction of the Banbury Road with Bridgetown Road.

PART 7

FOOTPATH CONTRIBUTION

- 20** Prior to the occupation of the 1st Dwelling the Owner shall pay the Footpath Contribution to the County Council.
- 21** No Dwellings shall be permitted to be occupied until the Footpath Contribution has been paid to the County Council
- 22** The County Council covenants that it will use the Footpath Contribution towards upgrades and improvements to Public Footpath SB29 and any other public footpaths within 1.5 miles of the Site..

SCHEDULE 4

POS, MEADOW LAND AND INCIDENTAL OPEN SPACE

The Owner and the District Council covenant with each other as follows:

- 1** The Owner shall submit to the District Council in writing for approval as part of the Reserved Matters Submissions the POS Specification having regard to and in compliance with the District Council's adopted Supplementary Planning Guidance "Provision of Open Space" adopted March 2005 or such other planning policy or supplementary planning guidance that may be adopted to replace the same.
- 2** To submit as part of Reserved Matters Submissions a detailed scheme for the provision of the Meadow Land in accordance with the provisions of a condition of the Planning Permission and any subsequent conditions attached to any relevant Reserved Matters Consents to ensure that it is used and managed appropriately for ecological and landscape purposes only;
- 3** The Owner shall lay out and install the POS and Meadow Land to the satisfaction of the District Council and in accordance with:
 - 3.1.1** For the POS the approved POS Specification; and
 - 3.1.2** For the Meadow Land in accordance with the approved scheme referred to at paragraph 2 above.
- 4** Upon completion of any of the works necessitated by paragraph 3 above the District Council shall inspect the same and if reasonably satisfied shall issue to the Owner a Certificate of Completion provided that Certificates of Completion may be issued in relation to individual component parts of the POS and Meadow Land without the need to wait for all of the POS and Meadow Land to be completed
- 5** On expiration of the Maintenance Period the District Council shall at the request of the Owner cause the POS or Meadow Land to be inspected and either
 - 5.1** issue a Final Certificate if in its reasonable opinion the POS or Meadow Land have been laid out and maintained in accordance with the terms of this Deed specifically paragraph 3 above; or
 - 5.2** inform the Owner of such defects as the District Council may reasonably believe to exist and affording the Owner an opportunity to remedy such defects (and such process may be repeated until the District Council issues a Final Certificate)
- 6** The Owner shall:

6.1 maintain the POS and Meadow Land in accordance with the relevant approved specification or scheme referred to in paragraph 3 until such time as the POS and Meadow Land are transferred to the Management Company or the District Council pursuant to the Maintenance Scheme.; and

6.2 in the event of transfer of the POS and/or Meadow Land to the District Council the Owner shall pay to the District Council on the date of the transfer a commuted sum for maintenance of the POS and/or Meadow Land (whichever is the subject of the transfer(s)) the quantum of such commuted sum shall be agreed between the Owner and the District Council prior to the date of transfer based on the Maintenance Scheme; and

6.3 to allow unrestricted use and access (subject to any works that may require the POS and Meadow Land to be closed during such works to be carried out being of a reasonable time or any other unforeseen event that requires closure for a reasonable time) of the POS and Meadow Land for the general public at all times of the day and night .

7 POS

7.1 The Owner covenants with the District Council as follows:

7.1.1 The Owner shall lay out install and complete the POS prior to the occupation of the 56th Dwelling to the reasonable satisfaction of the District Council

7.1.2 Where the Maintenance Scheme approved pursuant to Part 2 of this Schedule specifies that the POS shall be transferred either to the District Council or the Management Company the transfer will take place within 28 days of the issue of the relevant Final Certificate in relation to the POS

8 Incidental Open Space

8.1 The Owner covenants with the District Council as follows:

8.1.1 The areas of Incidental Open Space shall either be maintained by the Owner or transferred in accordance with the provisions of the Maintenance Scheme approved pursuant to Part 2 of this Schedule to:

(a) the Management Company; or

(b) As part of the land comprising a Dwelling where a Dwelling is located adjacent to any area of Incidental Open Space.

PROVIDED THAT nothing shall prevent the Owner from choosing a variety of transferees referred to in this paragraph 8.1.1 for different parts of the Incidental Open Space PROVIDED FURTHER THAT the Owner shall maintain the area(s) of Incidental Open Space until such time as the relevant area(s) are transferred pursuant to the provisions of this paragraph 8.1.1.

8.1.2 The relevant transfer referred to in paragraph 8.1.1 above shall take place as follows:

- (a) In relation to transfers to the Management Company no later than occupation of 85% of the Dwellings provided that nothing shall prevent the Owner from transferring the Incidental Open Space to the Management Company in tranches;
- (b) In relation to transfers to plot purchasers of Dwellings located adjacent to any area of Incidental Open Space the area of Incidental Open Space shall form part of the property which is the subject of the transfer to the plot.

9 Meadow Land

9.1 The Owner covenants with the Council that where the Maintenance Scheme approved pursuant to Part 2 of this Schedule specifies that the Meadow Land shall be transferred either to the District Council or the Management Company then the transfer will take place within no later than occupation of 75% of the Dwellings.

10 Owner's Obligations to Transfer

10.1 The Owner shall transfer the POS and Meadow Land to the District Council or to the Management Company in accordance with the provisions of this Schedule 4 AND FOR THE AVOIDANCE OF DOUBT the Owner shall not be permitted to retain ownership of the said POS and Meadow Land (for the avoidance of doubt the District Council is not obliged in any event to take a transfer of the POS and the Meadow Land)

PART 2

MAINTENANCE SCHEME

11 The Owner shall prior to the first occupation of any Dwelling comprised in the Development submit to and have approved in writing by the Head of Environment and Planning the Maintenance Scheme, such approval to be given within 6 calendar months of request and deemed to be approved in the event of failure to respond within that timescale.

- 12** The Owner shall ensure that each area of POS, Meadow Land and Incidental Open Space are maintained in accordance with the Maintenance Scheme and the Maintenance Scheme is complied with to the reasonable satisfaction of the Head of Environment and Planning.
- 13** No occupation of any Dwelling shall be permitted until the District Council shall have approved or be deemed to have approved the Maintenance Scheme in writing.
- 14** The Owner shall implement the Maintenance Scheme in full and shall thereafter comply with the Maintenance Scheme in all respects.

SCHEDULE 5

DISTRICT COUNCIL'S COVENANTS WITH THE OWNER

Payment of Monies

- 1 The District Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the District Council shall agree
- 2 The District Council covenants with the Owner that upon the receipt of a written request from the Owner or whoever shall have paid the monies it will repay to the Owner such amount of any payment made to the District Council under this Deed which has not been expended in accordance with the provisions of this Deed within seven years of the date of receipt by the District Council of such payment together with any interest that has accrued thereon in the period from the date of receipt to the date of repayment SAVE THAT in relation to the Off-site Open Space Contribution there shall be no obligation on the District Council to repay monies for maintenance of the Off-Site Open Space where such is attributable to the maintenance of any open space / recreational areas or facilities that have been provided and/or enhanced and/or improved by expenditure of any part of the Off-Site Open Space Contribution
- 3 The District Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed for the purposes herein specified

SCHEDULE 6

COUNTY COUNCIL'S COVENANTS WITH THE OWNER

Payment of Monies

- 1** The County Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the County Council shall agree
- 2** The County Council covenants with the Owner that upon the receipt of a written request from the Owner or whoever shall have paid the monies it will repay to the Owner such amount of any payment made to the County Council under this Deed which has not been expended or has not been committed in accordance with the provisions of this Deed within seven years of the date of receipt by the County Council of such payment together with any interest that has accrued thereon in the period from the date of receipt to the date of repayment
- 3** The County Council shall upon request provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed for the purposes herein specified

SCHEDULE 7

Maintenance Scheme Provisions

A written scheme prepared by the Owner which shall include the following:

- a) who shall be responsible for maintaining the areas of POS and the Incidental Open Space and Meadow Land which may involve transfer of the liability to a management company of all or any parts of the aforementioned areas or in relation to the Meadow Land only a transfer to the District Council or to a management company ;
- b) frequency of maintenance;
- c) measures to replace any trees shrubs or turf which may die or become diseased following implementation of the Maintenance Scheme;
- d) standard of maintenance and repair to be achieved
- e) how the costs of the maintenance shall be funded and for the avoidance of doubt the following shall be addressed and incorporated:
 - (i) where a transfer is to be to the District Council it will be accompanied by a commuted sum for maintenance to be paid to the said District Council the quantum of which shall be agreed between the Owner and the Council. The sum shall be paid on the date of transfer to the District Council.
 - (ii) where a transfer is to be to a Management Company this shall include a payment to the Management Company by the Owner to fund the maintenance for a period of 7 years the amount of which shall be approved by the District Council the exact amount which shall be submitted to and approved by the District Council as part of the approval process for the Maintenance Scheme and which forward funding shall be paid no later than the date of the first transfer of any area to the Management Company
 - (iii) in addition to (ii) above where the transfer is to be to a Management Company a mechanism for recovery of maintenance costs from each of the future owners of the Dwellings shall be provided for
 - (iv) where a Management Company is to be created the Maintenance Scheme shall include full details of its memorandum and articles of association so that any profits are retained and applied to the maintenance of the areas. The Maintenance Scheme will set out a commitment to constitute the Management Company prior to occupation of the first Dwelling to ensure that the mechanism for recovery of the maintenance costs from future owners of the Dwellings can be achieved for all Dwellings

SCHEDULE 8

INDEXATION

1 In this Schedule:

1.1 "Index" means:

1.1.1 In respect of the Off-Site Open Space Contribution and the Air Quality Improvement Contribution the All Terms Retail Prices Index (Series Reference CHAW) published by the Office of National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substitution therefor) or such other index as may from time to time be published in substitution therefor or if for any reason the index shall be abolished there shall be substituted for the purposes of this Schedule such index of food price costs (including the altered All Items Retail Prices Index) as may from time to time be published by or under the authority of any Ministry or Department of her Majesty's Government and if no such index is published the parties thereto shall endeavour to agree such other index as shall most closely reflect changes in the costs of living; and

1.1.2 In the case of the Library Contribution the Education Contribution and the Sustainable Travel Pack Contribution the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the parties hereto shall agree or in default of agreement such index as shall be determined by the Arbitrator appointed by the President of the RICS of the purposes of this Agreement in all cases to ensure as nearly as possible that the sum of money involved shall fluctuate in accordance with the general level of the building industry costs

1.1.3 In the case of the Transport Contribution, the Feasibility Contribution, the Traffic markings Contribution and the Footpath Contribution the Baxter Index

1.2 "Base Index Date" means the date of the grant of planning permission except that for the Education Contribution it means the 4th quarter 2008

1.3 "Base Index Figure" means the figure published in respect of the Index immediately prior to the Base Index Date

1.4 "Final Index Date" means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the Off-Site Open Space Contribution the Library Contribution Education Contribution the Transport Contribution Feasibility Contribution, the Traffic Markings Contribution, the Footpath Contribution and Sustainable Travel Pack Contribution (collectively referred to as "the Contributions" in this Schedule) are paid

- 2 The Contributions shall be increased by such sum if any in pounds sterling as shall be equal to the sum calculated according to the following formula:

$$\text{Increased Sum} = \frac{A \times C}{B}$$

B

Where "A" equals the Contribution

"B" equals the Base Index Figure

"C" equals the Final Index Figure

- 3 If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made
- 4 If any substitution for the said All Items Retail Prices Index the Baxter Index or the BCIS Index or any index previously substituted therefor shall occur the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the All Items Retail Prices Index the Baxter Index or the BCIS Index or any index previously substituted therefor on the other hand

- EXECUTED as a DEED by BRYANT •
HOMES CENTRAL LIMITED acting by •
its Attorneys in the presence of •

- Witness Name *Robert White* •
- Witness Signature *RW* •
- Occupation *Leaves Road Manager* •
- Address *Pole View East Wombridge* •
- *Kington* •

Attorney

Attorney

- EXECUTED as a DEED by MANX •
INDUSTRIAL TRUST LIMITED acting •
by a director in the presence of: •

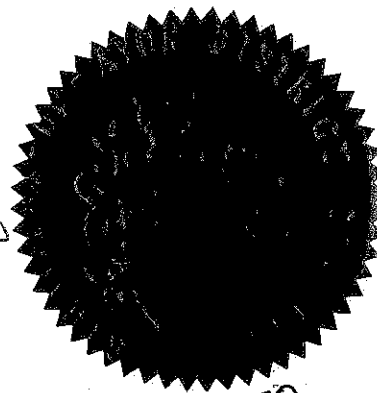
- Witness Name *LISA BLACKLEY* •
- Witness Signature *L Blackley* •
- Occupation *PERSONAL ASSISTANT* •
- Address *IFG INTERNATIONAL LIMITED* •
CASTLE MILL, DOUGLAS, ISLE OF MAN •

- EXECUTED as a DEED by affixing the •
COMMON SEAL of STRATFORD ON •
AVON DISTRICT COUNCIL in the •
presence of: •

Authorised Signatory

- EXECUTED as a DEED by affixing the •
COMMON SEAL of WARWICKSHIRE •
COUNTY COUNCIL in the presence of: •

Authorised Signatory



17970



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