

DATED

27 November

2012

**PLANNING OBLIGATION BY WAY OF DEED OF UNILATERAL UNDERTAKING UNDER
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990 RELATING TO LAND
KNOWN AS LAND ADJACENT TO BUTTS ROAD OTTERY ST MARY**

By

REDROW HOMES LIMITED

To:

DEVON COUNTY COUNCIL

and

EAST DEVON DISTRICT COUNCIL

THIS DEED is dated

27 November

2012

and is made by

REDROW HOMES LIMITED (Company Number: 1990710) of Redrow House, St Davids Park, Flintshire, CH5 3RX (**Owner**);

To:

DEVON COUNTY COUNCIL of County Hall, Topsham Road, Exeter, EX2 4QD (**County Council**); and

EAST DEVON DISTRICT COUNCIL of Knowle, Sidmouth, Devon, EX10 8HL (**District Council**)

BACKGROUND

- (A) The District Council is the district planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated and the County Council is the county planning authority, the Education Authority and the Highway Authority for the area in which the Property is situated.
- (B) The Owner owns the freehold of the Property.
- (C) The Developer's agent made the Planning Application which was refused on 27 April 2012 and which has been appealed under reference number APP/U110/A/12/2180060/NWF.
- (D) The Owner submits this Deed of Unilateral Undertaking to be considered at the appeal inquiry.

DEFINED TERMS

1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in this deed:

Affordable Dwellings: means 40% of the total number of Dwellings (of which 5% of the total of Affordable Dwellings are required to be suitable for disabled use) to be constructed on the Property as part of the Development which (by way of example only) on the assumption that 130 Dwellings are to be constructed on the Development would generate 52 Affordable Dwellings of the following types and tenures including all parking spaces and residential curtilages associated with such Affordable Dwellings:

	Social Rented	Affordable Rented	Shared Ownership	Total number of units
1 Bed	3	3	0	6
2 Bed	6	8	9	23
3 Bed	6	7	7	20
4 Bed	3	0	0	3
% of total	35%	35%	30%	52

with any adjustment to the total number of Dwellings to be provided on the Development to be adjusted on a pro rata tenure and dwelling type to that set out in the table set out above and reference **Affordable Dwelling** shall refer to any such dwelling in the singular

Affordable Rented Units: means homes available at a rent level of up to 80% of local market rent to include the service charge (where applicable) to be agreed in writing with the local authority

Base Rate: the base rate from time to time of Barclays Bank plc

Chargee: any mortgagee or chargee of the Registered Provider or of an Affordable Dwelling following any transfer or grant of a lease of an Affordable Dwelling by the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

Chargee's Duty: the tasks and duties set out in clause 4(d) of this deed

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose the following operations: demolition works; site clearance; site preparation including earth works, any tree or hedge clearance, ground investigations; site survey works; remedial works in respect of any contamination or other adverse ground conditions, temporary access construction works; archaeological investigation; and erection of fences and hoardings around the Property

Common Housing Register: in the case of Social Rented Units and Affordable Rented Units the register or list of applicants maintained by Devon Home Choice and in the case of Shared Ownership Units the register or list of applicants maintained by the Regional Homebuy Agent

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property described in the Planning Application.

Dwelling: individual residential dwellings permitted to be built on the Property and reference **Dwellings** shall refer to any such dwelling in the plural

Education Contribution means the sum of Three Hundred and Fifty Five Thousand Six Hundred and Ninety Nine Pounds (£355,699) as an off-site financial contribution towards additional secondary school facilities at The Kings School, Ottery St Mary

Eligible Person: means a person who is in housing need and unable to secure accommodation suitable for their needs in the open housing market within the District and who is registered on the Common Housing Register and who additionally satisfies one or more of the following criteria namely:

- (1) he is ordinarily resident in the District or
- (2) he is employed or has secured employment in the District or
- (3) he has been resident in the District for periods totalling at least 2 of the last 5 years or
- (4) he has a close family association with the District in that his mother father son daughter or sibling has been ordinarily resident in the District for a continuous period of five years immediately prior to the Affordable Dwelling in question being offered to them and where a caring dependency relationship can be demonstrated *by LH*.

Index Linked: increased in accordance with the following formula:

$$Y = C \times B$$

—
A

Where:

A is the value of the (i) BCIS All in Tender Price for the Education Contribution ("BCIS" index) and (ii) All In Retail Price Index ("the RPI Index") for all other contributions compiled and published by the relevant Government Department last published before the date hereof;

B is the value of the BCIS or RPI Index (as the case may be) last published before the contribution is given or paid;

C is the amount of the contribution specified in this agreement;

Y is the amount of the contribution to be given or paid

Occupied means occupation of any Dwelling for the purposes permitted by the Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and reference to **Occupation** and **Occupancy** shall be construed accordingly

Open Market Unit: means a dwelling to be constructed on the Property other than the Affordable Dwellings and reference to **Open Market Units** shall refer to any such unit in the plural

Plan: the plan attached to this deed

Property: the freehold land known as land adjacent to Butts Road, Ottery St Mary shown edged red on the Plan and registered at the Land Registry with absolute title under title number DN602399.

Provided means in the context of the provision of Affordable Dwellings on the Property substantial completion of the Affordable Dwellings fitted out so that they are immediately available for residential occupation or the transfer of the Affordable Dwelling to a Registered Provider in accordance with the terms of a Sale Contract

Planning Application: an application for planning permission for residential development registered by the District Council under reference number 12/0277/MOUT.

Planning Permission: planning permission to be granted by the Inspector on determination of the appeal in respect of the Planning Application

Playing Field Contribution: means the sum of Two Hundred and Thirty Thousand Four Hundred and Four Pounds Sixty Five Pence (£230,404.65) as an off-site contribution towards the improvement of existing recreational playing pitches in the vicinity of the Development at Ottery Football Club

Registered Provider: means a registered provider of social housing as defined in Section 80 of the Housing and Regeneration Act 2008 and registered as a non-profit organisation in accordance with Section 115 (1) (a) of that Act as selected by the Owner

Sale Contract: means a contract for the sale and purchase of the Affordable Dwellings and the land on which they are to be built entered into between the Owner and a Registered Provider.

Shared Ownership Lease: means a long shared ownership lease (as defined in section 622 of the Housing Act 1985 or successor provision) with a Registered Provider substantially in accordance with the Homes and Communities Agency (or successor body) Model as at the date of any such lease

Shared Ownership Units: means those Affordable Dwellings to be let by way of Shared Ownership Lease and the expression **Shared Ownership Unit** shall be construed accordingly

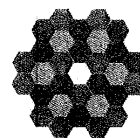
Social Rented Units: means housing available to rent on an assured tenancy or assured shorthold tenancy at a rent level no more than the Homes and Communities Agency guideline target rents recommended for the area and the type of accommodation (as may be set from time to time through the national rent regime) and the expression **Social Rented Unit** shall be construed accordingly

Sustainable Travel Voucher: means a voucher to be provided by the Owner which shall entitles the holder to redeem the voucher on application against the cost of using sustainable travel modes (such as the cost of bus travel in the vicinity of the Property or the cost of bicycles or cycling equipment) of £250 per household in respect of public transport and/or cycle provision

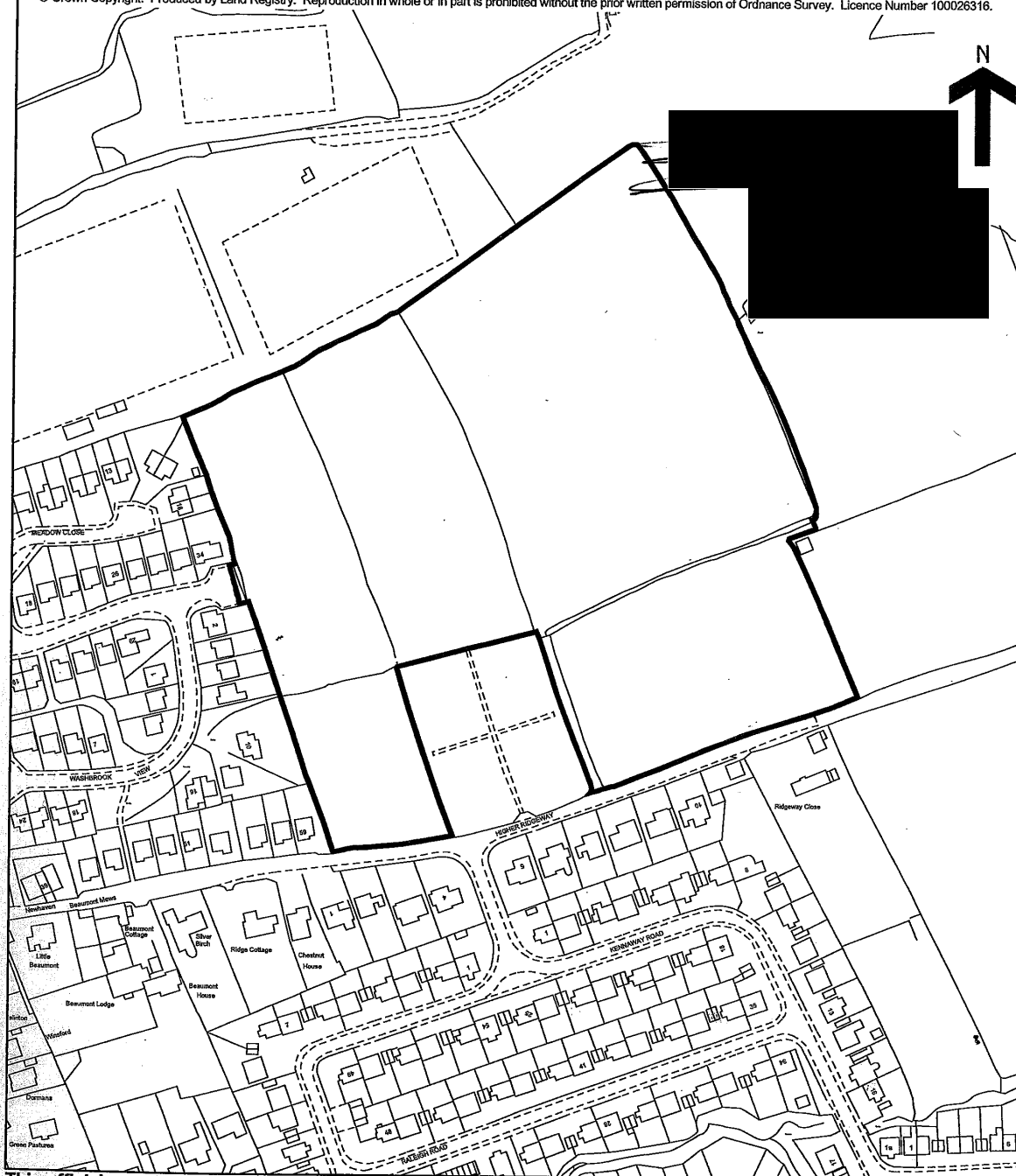
TCPA 1990: Town and Country Planning Act 1990

Land Registry
Official copy of
title plan

Title number **DN602399**
Ordnance Survey map reference **SY1095NW**
Scale **1:2500**
Administrative area **Devon: East Devon**



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This official copy issued on 5 November 2010 shows the state of this title plan on 5 November 2010 at 08:59:09. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.
This title is dealt with by Land Registry, Plymouth Office.

Travel Pack: means a package of travel information produced and to be provided to the residents of the Development by the Owner aimed at encouraging residents of the Development to use sustainable modes of transport (including a location plan of bus stops near to the Property, a bus timetable and bus route plan, cycle route map and any other information which the County Council or the Owner considers appropriate towards promoting sustainable transport objectives)

Travel Plan: means a travel plan to be submitted to the County Council for approval pursuant to the provisions of this Deed (on the basis that such approval of the County Council is not to be unreasonably withheld or delayed) and prepared in accordance with the Transport Assessment submitted to the County Council prior to the date of this Agreement prepared by FMW Consultancy dated January 2012

Welcome Pack means a welcome pack for new residents containing a Travel Pack a Sustainable Travel Voucher and any other information, which the Owner or the District Council or County Council consider appropriate towards promoting sustainable transport objectives

Working Day: a day other than a Saturday, Sunday or public holiday in England

- 1.1 Clause headings shall not affect the interpretation of this deed.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the County Council and the District Council the successors to their respective statutory functions provided that this shall not apply to a residential tenant of or a bona fide purchaser for value of an individual dwelling on the Property.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force at the date of this deed.
- 1.8 A reference to a statute or statutory provision shall include any subordinate legislation made as at the date of this deed under that statute or statutory provision.
- 1.9 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.10 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

- 1.11 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and all other enabling powers and enactments which may be relevant for the purposes of giving validity to facilitate the enforcement.
- 2.2 The obligations contained in clause 3 and 4 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 This deed shall come into effect on the date of Commencement of Development
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the County Council in accordance with section 106 of the TCPA 1990.
- 2.5 The obligations contained in clause 4 of this deed are enforceable by the District Council in accordance with section 106 of the TCPA 1990.

3. COVENANTS WITH THE COUNTY COUNCIL

The Owner covenants with the County Council:

- (a) (i) to pay the first 50% of the Educational Contribution to the County Council on or before 50% of the total number of Dwellings have been Occupied and
- (ii) to pay the second 50% of the Educational Contribution to the County Council on or before 75% of the total number of Dwellings have been Occupied
- (b) (i) to give at least ten Working Days written notice to the County Council as soon as 50% Occupancy is reached in accordance with 3(a)(i) and
- (ii) to give at least ten Working Days written notice to the County Council as soon as 75% Occupancy is reached in accordance with 3(a)(ii) and
- (c) Prior to the Commencement of Development the Owner is to submit to and obtain the written approval of the County Council to the Travel Pack and the Welcome Pack which shall be provided to the first occupant(s) of each Dwelling and once written consent from the County Council is received to produce the Travel Pack and Welcome Pack which shall be provided to the first occupant(s) of each Dwelling
- (d) The Owner is to provide a Welcome Pack for each Dwelling prior to the first Occupation of any Dwelling

- (e) Prior to the Commencement of Development the Owner is to submit to and obtain the written approval of the County Council to the Travel Plan
- (f) Following the approval by the County Council of the Travel Plan to implement and monitor and review the recommendations of the Travel Plan

4. **COVENANTS WITH THE DISTRICT COUNCIL**

The Owner covenants with the District Council:

- (a) to pay 50% of the Playing Field Contribution to the District Council on or before the first 50% of the total number of Dwellings have been occupied by a residential tenant or owner, and the remaining 50% on or before the first 75% of the total number of Dwellings have been occupied by a residential tenant or owner
- (b) to give at least ten Working Days written notice to the District Council as soon as 50% and 75% occupancy is reached in accordance with 4(a).
- (c)
 - (i) to construct the Affordable Dwellings in accordance with the code for sustainable homes level 3 and the Homes and Communities Agency build and quality design standards and thereafter to transfer the completed Affordable Dwellings to a Registered Provider which will enter into a Nomination Agreement with the District Council
 - (ii) subject to the clauses below the Owner and/or a Registered Provider shall not at any time permit the Affordable Dwellings to be occupied other than as Affordable Dwellings by an Eligible Person and their dependents
 - (iii) to have Provided 50% of the Affordable Dwellings prior to completion of 50% of the Open Market Units and to have Provided all the Affordable Dwellings prior to completion of 90% of the Open Market Units
 - (iv) to give 3 months written notice to the District Council of the date when the Affordable Dwellings (or any of them) shall be available for Occupation
 - (v) to ensure that the Affordable Dwellings will remain as such in perpetuity subject to the provisions of clause 4(d) below.
 - (vi) to ensure that all the Affordable Dwellings together with their respective curtilages will abut a publicly adopted highway or roads and footways the subject of a bonded road making agreement under Section 38 of the Highways Act 1980 (or enjoy ready and free access thereto via an intervening private drive) and have ready and free access to all usual domestic services needed for residential occupation of such Affordable Dwellings without a Registered Provider having to make any payment either to the Owner or any third party for any right of way or right to use such services or connect to them
- (d) The Chargee prior to seeking to dispose of any Affordable Dwelling(s) pursuant to any default under the terms of its mortgage or charge shall give

not less than 3 months prior notice in writing to the District Council of its intention to dispose and:

(i) In the event that the District Council responds within 3 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Dwelling(s) can be made in such a way as to safeguard them as Affordable Dwelling(s) then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer.

(ii) If the District Council or any other person cannot within 3 months of the date of service of its response under paragraph 4(d) (i) secure such transfer then provided that the Chargee shall have complied with its obligations under this clause 4(d) the Chargee shall be entitled to dispose of the Affordable Dwelling(s) as Open Market Unit(s) free of the restrictions set out in clause 4(c)

PROVIDED THAT at all times the rights and obligations in this clause 4(d) shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the District Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

(e) Where the Planning Permission is amended or modified with the result that the number of Dwellings is increased or reduced then the number of Affordable Dwellings to be provided under clause 4(c) shall be recalculated in accordance with the interpretation of Affordable Dwellings set out in Clause 1

(f) To provide landscaping and open space in accordance with the Schedule

5. INDEXATION OF CONTRIBUTION

5.1 All financial contributions payable to the County Council and the District Council respectively shall be Index Linked.

5.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as shall be agreed between the Parties.

6. RELEASE AND ENFORCEABILITY

6.1 No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

6.2 This Deed shall not be enforceable against individual owners or occupiers of individual dwellings except in the case of clause 4(c) which shall be enforceable against owners and occupiers of Affordable Dwellings save as otherwise provided in clause 4(d)

7. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the County Council and the District Council.

8. INTEREST ON LATE PAYMENT

If the Education Contribution or the Playing Field Contribution as applicable have not been paid to the County Council and the District Council respectively prior to or on the date for payment required by this deed, the Owner shall pay interest on the sum payable for the period from the due date to and including the date of payment at the Default Interest Rate.

9. COSTS

- 9.1 The Owner shall pay to the County Council on the date of this deed the County Council's legal costs in connection with the preparation and completion of this deed in the sum of £350

10. OWNERSHIP

- 10.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.

- 10.2 Until the obligations in clause 3 and clause 4 have been complied with the Owner will give to the County Council and the District Council (as applicable) within ten Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

Provided that this clause 10.2 shall not apply in relation to a residential tenant of or a bona fide purchaser for value of a Dwelling on the Property.

11. NOTICES

- 11.1 Any notice or other communication required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address as set out below:

- (a) County Council: first before written for the attention of the Head of Planning transportation & Environment ;
- (b) District Council: Knowle, Sidmouth, EX10 8HL;
- (c) Owner: Redrow House, St Davids Park, Flintshire, CH5 3RX marked for the urgent attention of the Company Secretary;

or as otherwise specified by the relevant person by notice in writing to each other person.

- 11.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

12. THIRD PARTY RIGHTS

No person other than a party to this deed and their respective successors and permitted assigns shall have any rights to enforce any term of this deed.

13. SEVERANCE

13.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.

13.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, the parties shall amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

14. GOVERNING LAW

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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

THE SCHEDULE

Part 1

Landscaping and open space

Definitions

1. In this Schedule and where used elsewhere in this deed the following definitions apply:

'Approved Management Company'	means the company approved under paragraph 3 of Part 2 of this Schedule
'Completion Certificate'	means the issue of a certificate by the Council following the inspection of works as mentioned in paragraph 6 below
'Council'	means the District Council
'Final Certificate'	means the issue of a further certificate by the Council following the inspection of works as mentioned in paragraph 6 below
'the Landscape Plan'	means a plan and specification for setting out the Open Space to be submitted to the Council for approval (on the basis that such approval is not to be unreasonably withheld or delayed) under paragraph 4 of Part 1 of this Schedule.
'Landscape Maintenance Period'	means a period of not less than twelve (12) months commencing on the date that the Council provide a Completion Certificate for the Open Space
'the Open Space'	comprises that part of the Property to be set aside as a locally equipped area of play for public recreation and amenity to include an activity zone of at least 400m ² with a 10m buffer strip and providing no less than five types of children's play equipment and to have a value of no less than £45,000.00 (to include fencing)

Specification and works to be approved

2. The Owner shall:
 - 2.1. within 28 days of the Commencement of Development submit to the Council for approval (which approval shall not be unreasonably withheld or delayed) detailed plans and specifications of the works to be carried out to establish the Open Space.
 - 2.2. accurately identify on the submitted plans the location and boundaries of the Open Space
 - 2.3. include with the submitted plans a planting schedule relating to the Open Space and a programme of works with a timetable within which such works are to be carried out as detailed below.

Specification requirements

3. The submission made for approval shall give full particulars of:
 - 3.1. any natural hedges or trees presently on the Property which are to be retained with proposals for the protection of those trees made vulnerable by reason of their proximity to works of construction and giving details of any proposed tree surgery or hedge laying
 - 3.2. all intended works of site preparation and the clearance of undergrowth preparatory to new planting
 - 3.3. the species, location and number of trees, shrubs, hedges and groundcover plants to be planted on the Open Space and identify those areas which are to be sown with seed or laid with turf, treated with an application of wood bark or other mulch
 - 3.4. the maintenance regime to be employed to ensure that a good grass sward is established
 - 3.5. the construction and position of all walls, fences, street furniture or other structures to be erected or placed on the boundary of or within the Open Space, such design to ensure that reasonably convenient public access may be had to the Open Space
 - 3.6. the type and extent of proposed hard surface treatments including areas where gravel or similar loose surfaces are to be laid
 - 3.7. the route and depth below finished surface level of all service apparatus whether public or private in character to be laid in, under or across any part of the Open Space

Restriction on commencement

4. The Owner shall not permit any Dwelling to be brought into Occupation until the Landscape Plan has been approved by the Council.

Execution of works

5. The Owner shall set out the Open Space so that:
- 5.1. it is cleared prepared and levelled in accordance with the approved Landscape Plan and so that all of the land is free from rubble, glass, debris, waste and any other potentially dangerous items or contaminants
 - 5.2. it is properly drained in accordance with the approved Landscape Plan so that no grassed area is subject to the ponding of surface water (unless otherwise agreed for the purpose of surface water attenuation) and that all hard surfaces drain to a publicly adopted surface water drainage system
 - 5.3. they have a well established and vigorous grass sward sown or laid in accordance with the approved Landscape Plan

Completion of works

6. The Owner shall carry out and complete the works detailed in the approved Landscape Plan in accordance with the planting schedule, the programme of works and the timetable which form part of that plan such works to be finished so as to enable the Council to inspect the works with a view to issuing a Completion Certificate by the end of the planting season prior to the Occupation of 75% of the Dwellings being constructed pursuant to the Development. A further inspection shall take place as soon as possible following the expiry of the Landscape Maintenance Period to enable the Council to inspect the works with a view to issuing a Final Certificate

Maintenance pending transfer

7. For the duration of the Landscape Maintenance Period in relation to the Open Space the Owner shall:
- 7.1. maintain in good order and condition all trees shrubs and other plants growing on that land, replacing any that have died or become seriously diseased or damaged
 - 7.2. regularly mow all grassed areas in accordance with good horticultural practice, re-seeding any areas that become worn or damaged and periodically apply surface dressings or fertiliser to maintain a healthy grass sward.
 - 7.3. repair, replace or service, as necessary, any hard or soft surfaces, street furniture, lighting columns, walls, fences and gates that have been damaged or removed from any part of that land
 - 7.4. paint, varnish or treat with timber preservative the surface of any street furniture, lighting columns, fences or gates within or forming the boundary of

any part of that land such as are usually so painted, varnished or treated and as often as shall be necessary to ensure their proper maintenance

Council's rights in default

8. In default of the Owner completing the works in accordance with the paragraphs 5 and 6 above or remedying any defect identified within one month of the Council giving notice of such default the Council shall have the right to enter on to the Property with all necessary workmen equipment and materials to remedy the defective or inadequate works and this provision shall constitute an irrevocable licence for the Council (and all persons authorised by them) to enter and remain on such parts of the Property as are reasonably necessary to carry out and perform the remedial works specified and the cost of all such works shall be a debt due and immediately payable by the Owner to the Council

Part 2
Long-term maintenance by a Management Company

Establishment of a Management Company

1. The Owner shall engage or establish a company for the purpose of undertaking the future management and maintenance of the Open Space financed through the imposition of an annual levy or charge on each of the Dwellings

The Approved Management Company

2. The Owner shall not later than the delivery of the plans and specifications to be submitted to the Council under paragraph 2.1 of Part 1 of this Schedule provide details of the Management Company such details to include financing of the company including initial funding and a plan for the maintenance and management of the Open Space for approval by the Council such approval not to be unreasonably withheld or delayed and may include a company the members of which comprise the owners for the time being of all the Dwellings erected on the Property

Company to be set up in good time

3. The Owner shall ensure that the process of engaging or establishing a company takes place not less than three months before the Open Space is complete and ready for transfer to the Approved Management Company and so that the Council has sufficient time to make reasonable enquiry of the company's financial standing and competence

Transfer of the Open Space

4. The Owner shall transfer the Open Space to the Approved Management Company within two months of the date on which the Council issues a Completion Certificate in respect of the Open Space Future Maintenance ¹⁴.

5. Immediately following a transfer of all or any part of the land comprising the Open Space under paragraph 4 of this Part 2 the maintenance and management obligations of the Owner under paragraph 8 of Part 1 of this Schedule shall be assumed by the Approved Management Company as transferee and all such obligations shall become entirely the responsibility of the Approved Management Company. Thereafter the Approved Management Company shall maintain and manage the Open Space in perpetuity in accordance with such details as may be approved by the Council from time to time

Restriction on use

6. Neither the whole nor any part of the Open Space shall be developed or used for any purpose other than for public recreation and amenity and the Owner and its successors shall not dispose of all or part of such land without imposing the same

restriction on the transferee nor will they place or attempt to place any restriction on the use or impose any charge (other than the charge or levy permitted under paragraph 2 of this Part 2) or do any other thing which would discourage the use of the Open Space by members of the public generally whether or not such persons are residents of the Dwellings.

