

**BETWEEN**

STROUD DISTRICT COUNCIL (1)

- and -

*[Developer]* (2)

- and -

*[Owner]* (3)

**DEED**

Planning Obligation  
Deed of Agreement  
Section 106 of the Town and Country Planning Act 1990  
relating to land at  
*[site address]*

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**DATE**

**2010**

**PARTIES**

- (1) **STROUD DISTRICT COUNCIL** of Council Offices, Ebley Mill, Westward Road, Stroud, Gloucestershire GL5 4UB (“the Council”)
- (2) ..... (company number 02582221) whose registered office is situate at ..... (“the Developer”)
- (3) ..... of ..... (“the Owner”)

**INTRODUCTION**

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated
- 2 The Owner is the registered proprietor of the Site with title absolute registered at the Land Registry under title number [.....]
- 3 The Developer has an interest in the application land by virtue of a contract with the Owner dated [.....]
- 4 The Developer has submitted an application for planning permission dated [.....] reference [.....] for the development of the Land.
- 5 The parties have agreed to enter into this Agreement pursuant to section 106 of the Act.
- 6 Each obligation undertaken in this Agreement by the Owner and/or the Developer is a planning obligation for the purposes of Section 106 of the Act.

**OPERATIVE PART**

**1 DEFINITIONS**

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

“Act”	Means the Town and Country Planning Act 1990 (as amended)
“Affordable Housing”	<p>Means affordable housing that meets the requirements of Planning Policy Statement 3 (2006) including social rented and intermediate affordable housing provided to specified eligible Persons in Housing Need and:</p> <ul style="list-style-type: none"> <li data-bbox="730 667 1444 994">i. meeting the needs of eligible Persons in Housing Need including availability at a cost low enough for them to afford determined with regard to local incomes and local house prices; and</li> <li data-bbox="730 1037 1444 1435">ii. providing for the affordable housing to remain at an affordable price for future eligible Persons in Housing Need or for the subsidy to be recycled for alternative affordable housing provision within the District of Stroud</li> </ul>
“Affordable Housing Unit(s)”	Means those dwellings (including a house flat or maisonette) constructed pursuant to the Planning Permission as Affordable Housing on the Site together with (where appropriate) their attendant curtilages to be provided in accordance with the Affordable Housing Matrix

“Affordable Housing Matrix”	Means the types of Affordable Housing Units set out in the Third Schedule or otherwise as agreed with the Council in writing
“Affordable Housing Mix”	Means the affordable housing accommodation consisting of a tenure mix of [.....%] Social Rented Housing and [.....%] Shared Ownership Housing or such other mix as may be agreed in writing by the Council
“Application”	Means the application for planning permission dated [.....] submitted to the Council for the Development and allocated reference number [S.....] more particularly set out in the Second Schedule
"Approval"	means approval in writing by the Council's proper officer which approval shall not be unreasonably withheld or delayed and the word "Approved" shall be construed accordingly.
“Commencement of Development”	Means the date on which any material operation (as defined in Section 56 of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance demolition work archaeological investigations for the purpose of assessing

ground conditions remedial work in respect of any contamination or other adverse ground conditions erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commence" "Commenced" and "Commence the Development" shall be construed accordingly.

"Commutated Sum"

means the fifteen years' upkeep and maintenance costs of the on-site Open Space in the sum of [£.....] per hectare per year equating to [.....pounds (£.....)] in total

"Completed"

Means the point at which any Affordable Housing Unit or Open Market Dwelling is practically complete save for minor snagging items such that it is reasonably fit for occupation or use and the words "Completion" and "Complete" shall be construed accordingly (and for the avoidance of doubt Completion shall not be achieved unless all the services are connected and operating and the Dwellings are accessible by both vehicles and pedestrians and they are ready for occupation)

"Development"

Means the Development of the Site in accordance with the Planning Permission

"Dwelling"	Means an Affordable Housing Unit or an Open Market Dwelling
"First Occupation"	Means the date on which a Completed Affordable Housing Unit or Open Market Dwelling is first Occupied
"Index"	Means the All Items Index of Retail Prices issued by the Office for National Statistics provided that during any period where no such index exists the index that replaces the same
"Interest"	Means 5% per annum over the NatWest Bank plc base rate from time to time in force
"Landscaping Scheme"	Means a scheme containing details of the phasing of the construction of the Open Space
"Management Plan"	The management and maintenance plan for the Open Space (including details of the insurance thereof)
"Occupation" and "Occupied"	Means occupation or use for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
"Open Market Dwelling"	means any Dwelling other than an Affordable Housing Unit

"Open Market Value"	means the open market value of all or any of the Affordable Housing Units having regard to all relevant circumstances on the assumptions that; <ul style="list-style-type: none"> <li>i. the Affordable Housing Units are provided for private open market sale on a private residential estate with vacant possession; and</li> <li>ii. that no restrictions relating to Affordable Housing apply thereto</li> </ul>
"Open Space"	Means the public open space to be provided on the Site as shown on Drawing Number [.....] attached
"Off-site Open Space Contribution"	Means the sum of [.....pounds (£.....)] towards the provision of off-site public open space facilities for youths and adults
"Person in Housing Need"	Means a person whose housing needs are not met by the market and is unable to compete in the local housing market as a result of the relationship between his or her income level and the rents or prices of such housing
"Plan"	Means the plan attached hereto

"Planning Permission"	Means the planning permission granted pursuant to the Application
"Registered Social Landlord"	Means a Registered Social Landlord as defined in Part 1 of the Housing Act 1996 who is registered with the Tenant Services Authority (or any successor body thereto) pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act or other body nominated by the Council and registered with the Tenant Services Authority (or any successor body thereto) or such other body approved and nominated by the Council or such other body nominated by the Owner and approved by the Council and the expression "RSL" shall be construed accordingly
"Shared Ownership Housing Units"	Means those Affordable Housing Units to be let by way of Shared Ownership Lease to a Shared Ownership Occupier
"Shared Ownership Lease"	Means a long shared ownership lease (as defined in Section 622 of the Housing Act 1985) with a Registered Social Landlord in accordance with the Tenant Services Authority Model as at the date of any such lease

“Shared Ownership Occupier”	Means a Person in Housing Need who is part renting and part purchasing an Affordable Housing Unit at the time of his First Occupation under a Shared Ownership Lease
“Site”	Means the land against which this Agreement may be enforced as shown edged red on the Plan
“Social Rented Housing Units”	Means those Affordable Housing Units to be rented housing for Tenants and owned and managed by a Registered Social Landlord
“Tenant”	Means a Person in Housing Need who is renting an Affordable Housing Unit at the time of his First Occupation under an assured tenancy agreement with a Registered Social Landlord
“Transfer”	Means a transfer executed by the transferor and delivered to the transferee unconditionally released for completion and “Transferred” shall be interpreted accordingly

## **2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Agreement reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeably in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it
- 2.6 References to any party to this Agreement shall include the successors in title to that party and any person deriving title through or under that party and in the case of the Council the successors to its statutory functions
- 2.7 Any covenant not to act includes an obligation not to allow permit or suffer that act or thing to be done by another person and any covenant to do any act or thing includes an obligation to procure the doing of that act or thing by any other person.
- 2.8 The provisions of this Agreement shall not be binding upon any owner-occupier or tenant of an Open Market Dwelling or Tenant or Shared Ownership Occupier of an Affordable Housing Unit

### **3 LEGAL BASIS**

- 3.1 This Agreement is made pursuant to Section 106 of the Act and to the extent that they fall within the terms of Section 106 of the Act the obligations contained in this

Agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council and all other obligations under this Agreement that are not enforceable as planning obligations shall take effect as personal covenants pursuant to Section 111 of the Local Government Act 1972 Sections 8 and 9 of the Housing Act 1985 Section 2 of the Local Government Act 2000 and all other enabling powers

3.2 The Council is the local planning authority having the power to enforce the planning obligations contained in this Agreement

#### **4 CONDITIONALITY**

4.1 This Agreement is conditional upon Commencement of Development **SAVE FOR** the provisions of:

- (a) Clause 9 (consent to registration) which shall come into effect upon the grant of the Planning Permission; and
- (b) Clause 7.1 (legal costs), Clause 7.2 (monitoring fee) Clause 16 (jurisdiction) Clause 17 (delivery) Clause 18 (warranty) which shall come into effect immediately upon completion of this Agreement.

4.2 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner and the Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development.

4.3 This Agreement shall cease to have effect in the event that the grant of the Planning Permission is not conditional upon the Owner entering into this Agreement.

**5 THE OWNER AND THE DEVELOPER'S COVENANTS**

The Owner and the Developer covenant with the Council as set out in the Fourth Schedule

**6 THE COUNCIL'S COVENANTS**

The Council covenants with the Owner and/or the Developer as set out in the Fifth Schedule

**7 MISCELLANEOUS**

7.1 The Developer shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation preparation and execution of this Agreement in the sum of [ ..... pounds (£.....)]

7.2 The Developer shall pay to the Council on completion of this Agreement the reasonable costs of the Council incurred in monitoring compliance with the obligations on the part of the Owner and Developer contained in this Agreement in the sum of [ ..... pounds (£.....)]

7.3 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement or their successors in title even if the terms are expressed to be for their benefit and nor shall any such third party have a right of veto over any future variations of this Agreement

7.4 Where the agreement approval consent or expression of satisfaction is required by the Owner and/or the Developer from the Council under the terms of this Agreement such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent,

approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning for the time being thereof and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party

- 7.5 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall as soon as practicable thereafter effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement
- 7.6 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect or impair the validity legality or enforceability of the remaining provisions of this Agreement
- 7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site or in the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 7.9 Upon the satisfaction of any obligation under this Agreement the Council shall forthwith upon the receipt of a written demand for such provide the Owner and/or the Developer with written confirmation of the satisfaction of that obligation.
- 7.10 This Agreement constitutes the entire agreement between the parties in respect of the Planning Permission.

- 7.11 This Agreement supersedes and replaces all previous negotiations between the parties whether oral or written.
- 7.12 None of the parties has relied on any express or implied statement warranty representation or undertaking given by or on behalf of another and no collateral agreement exists between the parties.
- 7.13 Nothing herein contained excludes the liability of any of the parties in relation to fraud.

**8 WAIVER**

It is hereby agreed by the parties hereto that failure by the Council at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owner and/or the Developer of any of the conditions covenants agreements or obligations of this Agreement or any failure or delay by the Council to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of this Agreement or any part thereof or the right of the Council to enforce any provision and any variation of this Agreement agreed between the Owner and/or the Developer and the Council shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendments or amendments agreed

**9 CONSENT TO REGISTRATION**

The Owner hereby consents to the registration of this Agreement as a local land charge [and an agreed notice against title number [.....]] upon (but not before) the grant of the Planning Permission

**10 SDLT**

Entry into this Agreement does not constitute a transaction for a chargeable consideration for which stamp duty land tax is required and thus the Council hereby certifies that a land transaction return is not applicable in accordance with Section 79(3) of the Finance Act 2003

**11 CHANGE IN OWNERSHIP**

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site (save for any transfer in respect of an Affordable Housing Unit or an Open Market Dwelling) 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.

**12 INDEXATION**

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable ("Indexation")

**13 INTEREST**

If any payment due to the Council under this Agreement is paid late Interest calculated on a daily basis and compounded quarterly will be payable from the date payment is due under the terms of this Agreement to the date of payment

**14 NOTICES**

Any notice to the Owner and/or the Developer under this Agreement shall be in writing signed by the Head of Legal Services for the time being of the Council unless otherwise herein provided and shall be deemed to be sufficiently served in the case of the Owner or the Developer if sent to it by registered or recorded

delivery post addressed to the Planning Manager at the address stated at the beginning of this Agreement and any notice to the Council under this Agreement shall be in writing and shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the Council addressed to the Interim Head of Legal Services at the address stated at the beginning of this Agreement

**15 VAT**

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

**16 JURISDICTION**

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

**17 DELIVERY**

Subject to Clause 4 the provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated

**18 WARRANTY**

The Owner hereby warrants to the Council that they have not leased mortgaged charges or otherwise created any interest in the Land at the date of this Agreement other than the interest specified in Recital (3) of this Agreement

## FIRST SCHEDULE

### Details of the Owner's Title and description of the Site

All that freehold land at ..... Gloucestershire as is shown edged in red on the Plan and registered at the Land Registry under title number [.....]

## SECOND SCHEDULE

### The Application

Planning Application reference [S.....] dated [.....] for the construction of a [.....*details of application*.....]

## THIRD SCHEDULE

### Affordable Housing Matrix

#### 1. MATRIX

##### Social Rented Housing

[No] x 1 bedroomed apartment	Plots	m <sup>2</sup>
[No] x 2 bedroomed houses	Plots	m <sup>2</sup>
[No] x 3 bedroomed houses	Plots	m <sup>2</sup>
[No] x 4 bedroomed houses	Plots	m <sup>2</sup>

**Total number** [...] = [...] % of Affordable Housing provision

##### Shared Ownership Housing

[No] x 2 bedroomed houses	Plots	m <sup>2</sup>
[No] x 3 bedroomed houses	Plots	m <sup>2</sup>

**Total number** [...] = [...] % of Affordable Housing provision

#### 2. AMENDMENTS TO THE AFFORDABLE HOUSING MATRIX

If the total number of Dwellings to be built on the Site increases above [...], the number of Affordable Housing Units shall be also increased to represent no less than [...] % of the total number of Dwellings and the Affordable Housing Matrix shall be amended accordingly by written agreement between the Council and the Developer and/or Owner

## **FOURTH SCHEDULE**

### **The Owner and the Developer's Covenants with the Council**

#### **1. AFFORDABLE HOUSING**

##### **1.1 General Provisions**

The Owner and the Developer covenant with the Council as follows in relation to the Affordable Housing provision on the Site:

1.1.1 To provide the Affordable Housing Units in accordance with the Affordable Housing Matrix

1.1.2 Not to Commence the Development until such time as the Owner and/or the Developer shall have prepared at its own expense and submitted to the Council:

1.1.2.1 details of the level of servicing of the Affordable Housing Units to be constructed in accordance with the Affordable Housing Matrix having regard where appropriate to the Homes and Communities Agency's Design and Quality Standards or equivalent Standards current at the time;

1.1.2.2 a programme and timetable for the provision of the Affordable Housing Units

1.1.3 Not to Commence the Development until the Council has approved in writing the details required pursuant to Paragraph 1.1.2 hereof and thereafter the Owner and/or the Developer shall secure at its own expense all necessary consents and approvals (including building regulations and planning permissions) in respect of such approved details

- 1.1.4 Not to permit or allow First Occupation of the first Open Market Dwelling unless and until it shall have entered into a binding unconditional contract with a Registered Social Landlord (which has first been approved in writing by the Council) for the Transfer of the Affordable Housing Units on the terms and conditions specified in Paragraph 1.2 hereof and for the construction of the Affordable Housing Units in accordance with the details approved pursuant to Paragraph 1.1.2
- 1.1.5 Not to Occupy nor cause nor permit the Occupation of more than [75%] of the Open Market Dwellings until the Owner and/or the Developer has:
  - 1.1.5.1 Completed all the Affordable Housing Units to the reasonable satisfaction of the Registered Social Landlord ;
  - 1.1.5.2 Transferred the freehold of all the Affordable Housing Units to one or more Registered Social Landlords on the terms and conditions specified in Paragraph 1.2 below;
  - 1.1.5.3 provided a certified copy of the said Transfer(s) of the Affordable Housing Units to the Council.
- 1.1.6 Prior to Commencement of the Development to confirm to the Council in writing that an unconditional contract has been entered into between the Owner and/or the Developer and the approved Registered Social Landlord for the construction and Transfer of the Affordable Housing Units
- 1.1.7 To construct and Complete the Affordable Housing Units (and all associated works including all services roads and paths) in accordance with the details approved by the Council pursuant to Paragraph 1.1.2 hereof and to the reasonable satisfaction of the Council

- 1.1.8 To provide pedestrian and vehicular access foul and surface water sewers and water gas electricity and telecommunication service systems for the Affordable Housing Units constructed and laid as part of the Development to a standard that each may be adopted and maintained at the public's or a statutory undertaker's expense linking in each case to the remainder of the roads and/or sewers and/or pipes and/or cables and/or other apparatus built laid or constructed on the remainder of the Site
- 1.1.9 Subject to paragraphs 1.1.12. and 1.1.13 not to dispose of any Affordable Housing Units other than by way of a Transfer to the approved Registered Social Landlord for the purposes of providing accommodation for Shared Ownership Occupiers and/or Tenants
- 1.1.10 Subject to paragraphs 1.1.12 and 1.1.13 not to occupy or allow the occupation of any Social Rented Housing Unit other than by a Tenant and a Person in Housing Need or a family of whom at least one member is a Tenant and a Person in Housing Need at the date of First Occupation at an affordable rental level (in accordance with the target rent levels published from time to time by Tenant Services Authority or any successor body thereto) as a socially rented property so as to ensure that the Social Rented Housing Unit remains as such in perpetuity but for the avoidance of doubt this provision shall not apply to any disposal by a Registered Social Landlord
- 1.1.11 Subject to paragraph 1.1.13 not to occupy or allow the occupation of any Shared Ownership Housing Units other than as a sole residence by a person who is a Shared Ownership Occupier and a Person in Housing Need or a family of whom at least one member is a Shared Ownership

Occupier and a Person in Housing Need at the date of First Occupation under a long shared ownership lease (as defined in Section 622 of the Housing Act 1985) in accordance with the Model published by the Tenant Services Authority (or any successor body thereto) as at the date of any such lease

- 1.1.12 The Owner, the Developer and the Council agree and declare that the provisions of Paragraphs 1.1.1 to 1.1.11 inclusive of this Schedule shall not be binding upon a mortgagee in possession or chargee of a Registered Social Landlord nor upon a receiver appointed by a mortgagee in possession or chargee of a Registered Social Landlord to the intent that any such mortgagee or chargee exercising its security may dispose of its freehold or head long leasehold interest in the Affordable Housing Units subject to any subsisting leases and underleases but otherwise not in compliance with the terms of Paragraphs 1.1.1 to 1.1.11 inclusive of this Schedule

**PROVIDED THAT**

- 1.1.12.1 the mortgagee or chargee notifies the Council in writing that it is seeking a purchaser of its freehold interest or head long leasehold interest in the Affordable Housing Units; and
- 1.1.12.2 the mortgagee or chargee thereafter uses reasonable endeavours to sell and transfer its freehold in any Social Housing Rented Unit or its head long leasehold interest in any Shared Ownership Housing Unit to a Registered Social Landlord subject to the terms of this Agreement including the terms of this Paragraph at a price equal to its Open Market

Value; and

1.1.12.3 at least three (3) months have elapsed since the Council received the written notice referred to in Paragraph 1.1.12.1 above and a contract for the sale of the freehold in the Social Rented Housing Units and/or head long leasehold interest in the Shared Ownership Housing Unit has not been exchanged with a Registered Social Landlord despite the mortgagee's or chargee's reasonable endeavours

1.1.13 The provisions of this Agreement shall not bind:

1.1.13.1 a mortgagee of a Shared Ownership Housing Unit which realises its security by exercising a power of sale (PROVIDED THAT for a period of three calendar months prior to the said sale the said mortgagee has first used its reasonable endeavours to sell the Shared Ownership Housing Unit to a Person in Housing Need or such other prospective purchaser to which the Council has given prior approval);

1.1.13.2 individuals exercising their right to buy or staircasing to 100% of the equity of any the Affordable Housing Units

## **1.2 Terms and Conditions for the Transfer of the Affordable Housing Units**

The Owner and/or the Developer shall Transfer the Affordable Housing Units to the Registered Social Landlord on the following terms and conditions

### **1.2.1 Price**

The price to be payable on completion by the Registered Social Landlord for the Affordable Housing Units [at nil public subsidy]

### **1.2.2 Title**

The Owner and/or the Developer shall deduce a good and marketable title to the Affordable Housing Units free from any financial or other charge

### **1.2.3 Plan**

The Owner and/or the Developer shall provide four coloured plans showing the Affordable Housing Units for use in connection with the Transfer of the Affordable Housing Units

### **1.2.4 Covenant for Title**

The Owner and/or the Developer shall convey with full title guarantee

### **1.2.5 Matters subject to which Affordable Housing Units Sold**

The Affordable Housing Units shall be sold subject to and with the benefits of (as the case may be):

- 1.2.5.1 all matters registered as local land charges
- 1.2.5.2 all notices orders proposals or requirements affecting or relating to the Affordable Housing Units given or made by any government statutory undertaking or other public or local authority of which notice is given
- 1.2.5.3 all rights easements quasi-easements and privileges in the nature of light and air
- 1.2.5.4 drainage way and passage and other like rights used or enjoyed over the land and of which notice has been given

### **1.2.6 Rights to be Granted**

The Transfer of the Affordable Housing Units shall contain covenants by the Owner and/or the Developer (to bind the Owner and/or the Developer's successors in title to the Site) for the benefit of the Affordable Housing Units and each and every part thereof to the effect of securing all necessary rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the

Affordable Housing Units by the Registered Social Landlord (and its successors to each and every part thereof) over the Site (including over all the roads and paths on or to be constructed on the Site) together with rights to make full use of any and all services (subject to capacity) now and or to be laid in the Site PROVIDED THAT:

1.2.6.1 in exercising such rights the Registered Social Landlord shall take all reasonable steps to avoid causing any damage and shall make good in a prompt and efficient manner any that may be caused to the reasonable satisfaction of the Owner

1.2.6.2 the rights granted in this Paragraph shall cease and determine upon the adoption of the services or roads; and

1.2.6.3 the Owner and/or the Developer (and its successors in title) may alter the position of the roads and services within the Site provided that the exercise of the rights shall not be materially prejudiced by such alternations

**1.2.7 Rights to be Reserved**

The Transfer of the Affordable Housing Units shall make provisions for reserving unto the Owner (and their successors in title to the Site) for the benefit of the remainder of the Site a right of support from the Affordable Housing Units and rights to enter the Affordable Housing Units for all purposes associated with the inspection maintenance and repair of any services existing therein together with rights to use the same PROVIDED THAT in exercising these rights the Owner and/or the Developer shall take reasonable steps to avoid causing any damage and shall make good in a prompt and efficient manner any that may be caused to the reasonable satisfaction of the Registered Social Landlord

**1.2.8 Covenants by the Registered Social Landlord**

To execute and deliver to the Council on the date of the Transfer a deed of covenant containing covenants on the part of the Registered Social Landlord in the following terms for the benefit of and enforceable by the Council:

- 1.2.8.1 To occupy and manage the Affordable Housing in accordance with the objects of the Registered Social Landlord and with such published housing waiting list and lettings and allocations policy as the Registered Social Landlord may from time to time adopt (the same having been first approved by the Council acting reasonably)
- 1.2.8.2 That upon taking ownership and possession of the Affordable Housing Units and at all times subsequently to allocate each Affordable Housing Unit to a Person in Housing Need
- 1.2.8.3 That upon taking ownership and possession of the Affordable Housing Units and at all times subsequently to advertise any vacant Social Rented Housing Unit(s) through the Gloucestershire Homeseeker Choice Based Lettings scheme and thereafter allocate any such Social Rented Housing Unit(s) to a person or persons on the Council's Housing Register who express an interest in occupying the said Social Rented Housing Unit(s) through bidding on the Council's 'Choice Based Letting' scheme SUBJECT TO the Registered Social Landlord having first agreed in writing with the Council the appropriate labelling for any advertised Social Rented Housing Unit to provide more information on who is eligible to express an interest in occupying the same
- 1.2.8.4 That upon taking ownership and possession of the Affordable Housing Units and at all times subsequently to dispose of any vacant Shared Ownership Housing Unit through the HomeBuy Agent(s) appointed from

time to time by the Homes and Community Agency for the District of Stroud

1.2.8.5 That the Registered Social Landlord shall use reasonable endeavours to reinvest any net capital receipts (for the avoidance of doubt the net capital receipt shall be the amount received by the RSL after deduction of all legal and other costs reasonably incurred in connection with the transaction that release the equity and any sums to be repaid to a grant or mortgage provider) from future release of equity in the Affordable Housing Units such reinvestment shall be in the provision of other affordable housing in the District of Stroud

PROVIDED ALWAYS THAT such covenants shall cease to apply to any part of the Affordable Housing where the Registered Social Landlord shall be required to dispose of any part pursuant to a right to buy claim under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable or shall be required to sell to a tenant with the benefit of voluntary purchase grant provided under Sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation) PROVIDED THAT the Registered Social Landlord shall reinvest any net capital receipts from such disposal in accordance with the requirements of Paragraph 1.2.8.5 above

**1.2.10 Incorporating Standard Conditions of Sale**

The Standard Conditions of Sale (Fourth Edition) shall apply to the Transfer insofar as the same are applicable to the sale by private treaty and are not otherwise inconsistent with the terms of this Agreement or excluded hereby

**2. PUBLIC OPEN SPACE**

The Owner and the Developer covenants with the District Council as follows:

- 2.1 To pay the Off-site Open Space Contribution to the Council as follows:
  - 2.1.1 [50%] prior to First Occupation of the [first Open Market Dwelling]; and
  - 2.1.2 [50%] prior to First Occupation of [50% of the Open Market Dwellings]
- 2.2 Prior to Commencement of Development to submit to the Council for Approval:
  - 2.2.1 details of the design and layout of the construction of the Open Space
  - 2.2.2 a Landscaping Scheme and
  - 2.2.2 a Management Plan
- 2.3 To construct the Open Space in accordance with the details Approved by the Council pursuant to Paragraph 2.2 above and to the reasonable satisfaction of the Council and to complete the said construction by no later than [the First Occupation of the first Dwelling]
- 2.4 Upon completion of the construction of the Open Space and upon the Council issuing written confirmation to the Owner and/or Developer that it has been constructed in accordance with the requirements of Paragraph 2.3 above to manage and maintain the Open Space to the reasonable satisfaction of the Council and in accordance with the Approved Management Plan for a period of twelve months (“the Maintenance Period”)
- 2.5 Not to use or allow the Open Space to be used for any other purpose other than as open space for the use and enjoyment of the public other than for

flood alleviation measures, the installation and use of pipes wires cables and conduits and the running of the services infrastructure through the service apparatus and the rights detailed in Paragraph 2.9.1 below

### **Transfer of the Open Space**

- 2.6 Following the expiry of the Maintenance Period the Owner shall offer to transfer the ownership of the Open Space to the Council and on acceptance of the said offer shall complete the said Transfer of the Open Space within 28 days thereof in the form attached in the Sixth Schedule subject to the rights set out in Paragraph 2.9.1 below
- 2.7 In the event that the Council does not accept the offer to Transfer the Open Space in accordance with Paragraph 2.6 above the Owner shall manage and maintain or procure the management and maintenance of the Open Space in accordance with the Approved Management Plan
- 2.8 Prior to the expiry of the Maintenance Period the Owner and/or the Developer may at its absolute discretion offer to Transfer the Open Space Land (in accordance with the provisions in Paragraph 2.9 below) to the Council and in the event that the Council accepts such Transfer shall thereafter cease to manage and maintain the Open Space Land PROVIDED THAT the Owner and/or Developer shall pay an additional contribution to the Council towards the management and maintenance of the Open Space for the remainder of the Maintenance Period (such sum to be first calculated and reasonably agreed between the Owner and/or Developer and the Council)

## 2.9 **Transfer of the Open Space to the Council**

2.9.1 In the event the ownership of the Open Space is Transferred to the Council, pursuant to Paragraphs 2.6 or 2.8 above the Council shall take a Transfer of the Open Space for the sum of £1 (One Pound) PROVIDED THAT in the Transfer of the Open Space there will be reserved to the Owner and/or the Developer (and its successors in title to such rights) the following rights:

- (a) a right to lay pipes wires cables and conduits under the Open Space for the passage and running of electricity along such route or routes as the Owner (or its successors in title) may from time to time determine;
- (b) in the event that the pipes wires cables and conduits are already in place when the Transfer of the Open Space takes place then a right forever after to retain them;
- (c) a right of entry to the Open Space for the purposes of maintaining repairing replacing and renewing any pipes wires cables and conduits that are on the Open Space causing as little damage as possible and making good to the Council's reasonable satisfaction any damage caused;
- (d) a right to the passage of water soil gas electricity and telephone communications ("the Services Infrastructure") to and from any

adjoining land at the time of the Transfer of the Open Space in the ownership of the Owner through any sewers drains channels pipes water courses wires cables ducts flues conduits and other conducting media and associated equipment (“Service Apparatus”) which may be in the Open Space at the date of the Transfer of the Open Space or be laid in the Open Space within 80 years of the date of the Transfer of the Open Space (“the Perpetuity Period”) together with a right of entry at all times to the Open Space for the purpose of instructing repairing replacing relaying reinstalling and renewing the Service Apparatus;

- (e) the Transfer of the Open Space will also contain a restrictive covenant on the part of the Council that subject to the rights detailed in Paragraphs 2.9.1 (a) to (d) above the Open Space shall not at any time be used otherwise than as public open space.

2.9.2 Upon completion of the Transfer of the Open Space to the Council, the Owner shall pay to the Council:

- (a) all of the Council’s reasonable legal costs of and incidental to the preparation and completion of such Transfer; and
- (b) the Commuted Sum (together with any additional sum for Indexation)

### **3. Off-site Open Space Contribution**

3.1 The Owner and/or Developer shall not Commence the Development or allow or permit the Commencement of Development until the Owner and/or Developer has paid the Off-site Open Space Contribution to the Council (together with any additional sum for Indexation) as follows:

2.1.1 [50%] prior to [First Occupation of the first Open Market Dwelling]; and

2.1.2 [50%] prior to First Occupation of [50% of the Open Market Dwellings]

## **FIFTH SCHEDULE**

### **The Council's Covenants**

#### **1. Use of Contributions**

- 1.1 The Council hereby covenants with the Owner and the Developer to use all sums received from the Owner and/or the Developer under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other purposes for the benefit of the Development as the Owner the Developer and the Council shall agree in writing
- 1.2 The Council covenants to deposit all sums received from the Owner and/or Developer under the terms of this Agreement into an interest-bearing bank account until such sums are used for the purposes specified in this Agreement
- 1.3 The Council covenants with the Owner and the Developer to repay to the person who made such payment all or any part of any sum received under the terms of this Agreement together with any interest accrued if after the expiration of a period of [5 years] from the date on which they are paid to the Council all or any part of the said sums have not been spent in accordance with this Agreement

#### **2. Discharge of obligations**

- 2.1 At the written request of the Owner and/or the Developer the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed

**3. Discharge of registration**

- 3.1 The Council shall cancel the registration of this Agreement as a Local Land Charge [and the agreed notice on title number [.....]] which are referred to in Clause 9 above as soon as practicable following the happening of any of the events referred to in Clause 4.2 by which this Agreement ceases to have effect

## SIXTH SCHEDULE

### Transfer of Open Space Land/Play Area

HM LAND REGISTRY

Land Registration Acts 1925 – 2003

County and District: Gloucestershire - Stroud

Title Number: [insert number]

Property: [address]

Date:

#### Definitions

“the Transferor” means [ ] of [ ]

“the Transferee” means STROUD DISTRICT COUNCIL of Council Offices  
Ebley Mill Stroud Gloucestershire GL5 4UB

“the Property” means all that freehold property known as land situated at [ ]  
] Stroud shown edged red on the plan annexed

“the Permitted Use” means use as open space for the benefit of the public

“the Retained Land” means all that freehold property (except the Property) now or  
formerly vested in the Transferor under the title number above

“the Perpetuity Period” means eighty (80) years from the date hereof

“the Service Media” means all or any of the sewers drains channels pipes wires and cables or similar installations now or later constructed within the Property or the Retained Land

### **Transfer**

In consideration of the sum of £1.00 (one pound) and of the covenants and conditions herein and on the part of each party to be observed and performed the Transferor with full title guarantee HEREBY TRANSFERS the Property to the Transferee TOGETHER WITH the rights and easements set out or referred to in the First Schedule hereto but SUBJECT TO the exceptions and reservations set out or referred to in the Second Schedule hereto

The Property shall be transferred to the Transferee free from encumbrances other than those to which the Property is now subject and those to which the Property is subject by virtue of the provisions of this Transfer and all matters registered at HM Land Registry in the registers of the title of which the Property forms part and all matters registered as local land charges

The Transferee so as to bind the Property and any part of it covenants for the benefit of the Retained Land and the Transferor not to use the Property other than for the Permitted Use

With the object of affording to the Transferor full and sufficient indemnity but not further or otherwise the Transferee hereby covenants with the Transferor that the Transferee will at times hereafter observe and perform the covenants contained or referred to in the registers of the above title so far as the same relate to the Property and will indemnify and keep indemnified the Transferor and its effects

from and against all actions proceedings costs claims and demands in respect thereof

It is hereby agreed and declared as follows:

That except as expressly granted by this Transfer the Transferee shall not by virtue of this Transfer acquire or be entitled to any right of light or air or property or other easements or rights and nothing contained in or implied by this Transfer shall operate to impose any restriction which would prejudice the free use or enjoyment of any adjoining or neighbouring land of the Transferor for building or other purposes and any enjoyment of light or air had by the Transferee from or over any adjoining or neighbouring land now or within the Perpetuity Period belonging to the Transferor shall be deemed to be had by the consent of the Transferor

For the purposes of sections 3(1) and (2) of the Law of Property (Miscellaneous Provisions) Act 1994 (hereinafter called "the Act")

For the avoidance of doubt the knowledge of the Transferor is solely the knowledge of those persons comprising the directing mind and will of the Transferor and

The land is subject to all matters imposed and rights conferred by or under any enactment

Where the context so admits

- i. The expressions “the Transferor” and “the Transferee” shall be deemed to include the successors in title of the Transferor and the Transferee respectively
- ii. Words importing the masculine gender also import the female or neuter genders
- iii. Words importing the singular include the plural and vice versa
- iv. Where the Transferor and/or Transferee comprises more than one person all covenants shall be deemed to be joint and several

All rights of entry onto the Retained Land shall not extend to such parts that are built upon or which form part of the curtilage of a dwelling or intended curtilage of a dwelling

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written

Executed as a Deed by [Transferor]

Executed as a Deed by [Transferee]

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written

**The Common Seal** )  
of **STROUD DISTRICT COUNCIL** )  
was affixed in the presence of: )

Authorised Signatory:

**The Common Seal** )  
of )  
was affixed in the presence of: )

Authorised Signatory:

**Executed as a Deed by** )  
 )  
acting by: )

Authorised Signatory:

**Dated** \_\_\_\_\_ **2010**

**BETWEEN**

Stroud District Council (1)

- and -

*[Developer]* (2)

- and -

*[Owner]* (3)

**DEED**

Planning Obligation  
Deed of Agreement  
Section 106 of the Town and Country  
Planning Act 1990  
relating to land at  
Farmhill, Former Stroud Cricket  
Ground, Straford Road, Stroud