

DATED

1st July

2008

(1) JOHN ROBERT LACY and WALTER RICE

(2) MIDAS HOMES LIMITED

PLANNING OBLIGATION BY DEED

UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

relating to Affordable Housing at

Land at Milbury Farm Exminster Devon

Clarke Willmott
Blackbrook Gate
Blackbrook Park Avenue
Taunton
TA1 2PG

WE CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL
Clarke Willmott 17/10/08
CLARKE WILLMOTT SOLICITORS
BLACKBROOK GATE
BLACKBROOK PARK AVENUE
TAUNTON TA1 2PG

THIS DEED is made on
BETWEEN:-

1st July

2008

- (1) **JOHN ROBERT LACY** of Poplar Farm Cowgrove Wimborne Dorset and **GORDON WALTER RICE** of The Mede Rockbeare Exeter Devon ("the Owner"); and
- (2) **MIDAS HOMES LIMITED** (Co Regn No 2714200) whose registered office is at Cowley Business Park Cowley Uxbridge Middlesex UB8 2AL ("the Developer")

WHEREAS:-

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated
- (B) The Owner is the freehold owner of the Site whose title is registered at HM Land Registry with title number DN344173
- (C) The Developer has an interest in the Site by virtue of an agreement dated 22 May 2003 made between the Owner and the Developer
- (D) The Owner and the Developer submitted the Application to the Council on 23 October 2007
- (E) The Council refused the Application on 10 January 2008 and the Owner and the Developer submitted an appeal against the refusal also on 10 January 2008 which was accorded reference number APP/P1133/A/08/2063604 by the Planning Inspectorate
- (F) The Owner and Developer enter into this Deed in order to secure the delivery of Affordable Housing on the Site

IT IS AGREED as follows:-

1 INTERPRETATION

In this Deed:-

"Act"	means the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	means housing provided within the Site with or without public subsidy for people who are unable to meet their housing needs in the local housing market because of the relationship between housing costs and income
"Affordable Housing Tenure Plan"	means the plan and details to be submitted by the Owner and approved by the Council of the Affordable Units showing their layout and location and which Affordable Units shall be Rented Units and which shall be Shared Ownership Units together with any amendments thereto subsequently submitted by the Owner and approved in writing by the Council

"Affordable Units"	Shall mean 35% of the total number of Dwellings in the Development which shall be for use as Affordable Housing and Affordable Unit shall mean each of the dwellings comprised in the Affordable Units
"Application"	means the application for outline planning permission dated 23 October 2007 submitted to the Council for the Development and allocated reference number 07/04708/MAJ
"Approved Affordable Housing Provider"	means Devon and Cornwall Housing Association whose registered office is at Paris Street Exeter EX1 2JZ
"Commencement of Development"	means 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 or remediation work in respect of any contamination mines or mine workings 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
"Council"	means Teignbridge District Council of Forde House Brunel Road Newton Abbot Devon
"Development"	means the development of the Site as permitted by the Planning Permission
"District"	means the administrative area of the Council
"Dwelling"	means a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and includes both the Affordable Units and the Open Market Dwellings
"Grant"	means social housing grant from the Housing Corporation under the National Affordable Housing Programme or replacement Programme

"Grant-Funded Affordable Units"	means those Affordable Units in respect of which the Approved Affordable Housing Provider has received Grant or received a binding assurance from the Housing Corporation that it will receive Grant (details of which are supplied to the Council under Schedule 1 paragraph 1.1)
"Housing Corporation"	means the body known as the Housing Corporation of 149 Tottenham Court Road London W1T 7BN or any successor organisation or body which provides capital funding to affordable housing providers
"Northern Parishes"	means the parishes in the northern part of the District namely Ashcombe, Ashton, Doddiscombsleigh, Dunchideock, Dunsford, Exminster, Holcombe Burnell, Ide, Kenn, Kenton, Mamhead, Powderham, Shillingford St George, Starcross, Tedburn St Mary, Whitestone
"Occupation" and "Occupied"	means occupation 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 Dwellings"	means those Dwellings which are not Affordable Units
"Open Market Value"	means the price that a willing purchaser would be willing to pay on the open market for the Dwelling if this Undertaking had not been completed
"Plan"	means the plan attached to this Deed
"Planning Permission"	means the planning permission granted pursuant to the Application whether granted on Appeal or otherwise
"Protected Tenant"	means any tenant who: <ul style="list-style-type: none"> (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Unit; or (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Unit; or (c) has been granted a lease of a Shared Ownership Unit and has subsequently purchased from the

	Registered Social Landlord all the remaining equity so that the tenant owns the entire Shared Ownership Unit
"Rented Units"	means the Affordable Units which are to be disposed of by way of tenancy granted by an Approved Affordable Housing Provider to tenants who (at the time the tenancy is granted) cannot afford to rent or buy housing sufficient for their needs on the open market
"Shared Ownership Units"	means the Affordable Units which are to be disposed of by way of a shared ownership lease (or such other shared equity arrangement as may be approved by the Council (such approval not to be unreasonably withheld or delayed)) granted by an Approved Affordable Housing Provider to purchasers who (at the time of their acquisition of the relevant Affordable Unit) cannot afford to rent or buy housing sufficient for their needs on the open market
"Site"	means the land against which this Deed may be enforced known as Milbury Farm, Exminster and shown for illustration purposes edged red on the Plan
"Strong Local Connection"	means a strong local connection to the relevant area and in determining whether someone has a strong local connection the Approved Affordable Housing Provider shall consider: <ol style="list-style-type: none"> 1.1 family associations of such person or persons to people resident in the relevant area 1.2 any periods of ordinary residence of such person or persons in the relevant area not immediately before the date upon which any Affordable Unit becomes vacant and/or; 1.3 whether such person or persons has permanent employment in the relevant area

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Deed
- 2.2 Wording 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 Deed shall include the successors in title to that party and to any person deriving title through or under that party

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the Act section 111 of the Local Government Act 1972 and section 2 of the Local Government Act 2000
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

4 CONDITIONALITY

This Deed is conditional upon:-

- 4.1 the grant of the Planning Permission; and
- 4.2 the Commencement of Development

5 THE OWNER'S COVENANTS

The Owner covenants with the Council as set out in Schedule 1

6 THE DEVELOPER'S CONSENT

The Developer **HEREBY CONSENTS** to the Owner entering into this Deed and to the Site being bound by the obligations contained herein **PROVIDED THAT** the Developer shall only

be liable for any breach of this Deed once it has acquired the Owner's interest in the Site and that the Developer shall not be liable for any pre-existing breach

7 MISCELLANEOUS

- 7.1 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.2 This Deed 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) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 7.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or the relevant part thereof but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 7.4 This Deed shall not be enforceable against owner-occupiers or leaseholders or tenants of individual Open Market Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them
- 7.5 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) granted (whether or not on appeal) after the date of this Deed

8 VAT

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

9 JURISDICTION

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

10 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated

EXECUTED AS A DEED by the parties on the date which first appears in this Deed

Schedule 1

The Owner's covenants with the Council

1 Affordable Housing

- 1.1 Prior to the Commencement of Development of the Affordable Units to provide to the Council a written notice stating whether or not or to what extent the Affordable Units shall be Grant-Funded Affordable Units
- 1.2 Prior to giving notice under paragraph 1.1 of this Schedule to produce to the Council written confirmation that a properly completed application for Grant has been submitted by the Approved Affordable Housing Provider to the Housing Corporation and evidence of the Housing Corporation's decision whether or not to pay Grant in respect of the Affordable Housing
- 1.3 If Grant-Funded Affordable Units are identified under paragraph 1.1 of this Schedule then the mix of tenures of the Grant-Funded Affordable Units (as set out in the Affordable Housing Tenure Plan) shall be 70% Rented Units and 30% Shared Ownership Units PROVIDED THAT if the percentage breakdown does not result in a whole number then the number of Rented Units and/or Shared Ownership Units within the total of Grant-Funded Affordable Units shall be rounded to the nearest whole number
- 1.4 If Affordable Units which are not Grant-Funded Affordable Units are identified under paragraph 1.1 of this Schedule then the mix of tenures of the said Affordable Units which are not Grant-Funded Affordable Units (as set out in the Affordable Housing Tenure Plan) shall be 50% Rented Units and 50% Shared Ownership Units PROVIDED THAT if the percentage breakdown does not result in a whole number then the number of Rented Units and/or Shared Ownership Units within the total of Grant Affordable Housing Units shall be rounded to the nearest whole number
- 1.5 Not to Commence Development of the Affordable Units until the Council has approved the Affordable Housing Tenure Plan (such approval not to be unreasonably withheld or delayed where the provisions of paragraphs 1.3, 1.4 and 1.6 of this Schedule are complied with) which shall thereafter be annexed to this Undertaking and shall be interpreted as having formed part of this Undertaking from the date hereof
- 1.6 The mix of unit sizes shall be submitted to and approved by the Council as part of the Affordable Housing Tenure Plan and the mix of unit sizes shall be broadly representative of the affordable housing need relating to the settlement of Exminster
- 1.7 The Development shall be carried out in accordance with the approved Affordable Housing Tenure Plan
- 1.8 No more than 50% of the Open Market Dwellings shall be Occupied until at least 50% of the Affordable Units have been transferred to the Approved Affordable Housing

Provider and have been constructed to practical completion and made available for Occupation

- 1.9 No more than 75% of the Open Market Dwellings shall be Occupied until all of the Affordable Units have been transferred to the Approved Affordable Housing Provider and have been constructed to practical completion and made available for Occupation
- 1.10 Not to cause or permit the Occupation of those Affordable Units which are designated as Rented Units on the Affordable Housing Tenure Plan otherwise than as Rented Units
- 1.11 Not to cause or permit the Occupation of those Affordable Units which are designated as Shared Ownership Units on the Affordable Housing Tenure Plan otherwise than as Shared Ownership Units
- 1.12 To comply with the occupancy requirements shown in Schedule 2
- ~~1.13 The provisions and restrictions contained or referred to in paragraphs 1.1 to 1.12 inclusive of this Schedule shall not apply to:~~
 - 1.13.1 A Protected Tenant; or
 - 1.13.2 Any mortgagee or chargee of the Affordable Units or any of them nor to any receiver appointed by any such mortgagee or chargee to the intent that any such mortgagee chargee or receiver may deal with or dispose of the Affordable Units or any of them freed from the said provisions and restrictions and on the basis that any person deriving title through or under such mortgagee chargee or receiver shall not be bound by the restrictions contained in this Schedule provided that-
 - (a) the mortgagee or receiver (as the case may be) first gives written notice to both the Council and the Approved Affordable Housing Provider that it is seeking a purchaser for the Affordable Unit concerned; and
 - (b) after a period of three months from the date of such notice the Council or the Approved Affordable Housing Provider has not exchanged contracts unconditionally with the mortgagee or receiver for the purchase of the Affordable Unit with a completion date no later than one month from exchange of contracts
- 1.14 The purchase price payable by the Council or the Approved Affordable Housing Provider in respect of an Affordable Unit purchased pursuant to subparagraphs 1.13.1(a) and (b) above shall be limited to the Open Market Value of the Affordable Unit concerned (subject to the provisions of this Deed) or, if higher, the amount required to redeem the outstanding borrowing (including interest accrued plus costs the mortgagee is entitled to recover under the terms of the mortgage) secured upon the Affordable Unit concerned

- 1.15 In the event that the Owner wishes to revise or amend the said Affordable Housing Tenure Plan or to amend which of the Dwellings are designated as the Affordable Units the Owner may do so only with the prior written approval of the Council (such approval not to be unreasonably withheld or delayed)

Schedule 2

Occupancy Requirements

- 1 The Approved Affordable Housing Provider shall upon completion of the transfer to it of the Affordable Units and at all times subsequently allocate each Affordable Unit to a person who is considered by the Approved Affordable Housing Provider to be in need of such accommodation and who in the opinion of the Approved Affordable Housing Provider is unable to afford other accommodation in the locality suitable to the needs of himself and his household because of the relationship between housing costs and income and who:-

1.1 has immediately prior to such allocation been resident within the parish of Exminster;
or

1.2 has a Strong Local Connection with the parish of Exminster

AND in seeking to allocate the Affordable Units under this sub-paragraph the Approved Affordable Housing Provider shall accord priority to those people who at the date of the allocation are either employed in Exminster or Exeter or who have a formal offer of full time employment within Exminster or Exeter

- 2 If the Approved Affordable Housing Provider is unable to allocate any of the Affordable Units in the manner referred to in paragraph 1 above then the Approved Affordable Housing Provider shall allocate any such Affordable Unit by applying the procedures contained in paragraph 1 above but in lieu of subparagraphs 1.1 and 1.2 there shall be substituted the following sub paragraphs:

2.1 has immediately prior to such allocation been resident within the District or has a Strong Local Connection with the District

2.2 AND is either employed in Exminster or Exeter or has a formal offer of full time employment within Exminster or Exeter

- 3 If the Approved Affordable Housing Provider is unable to allocate any of the Affordable Units in the manner referred to in paragraph 1 or 2 above then the Approved Affordable Housing Provider shall allocate any such Affordable Unit by applying the procedures contained in paragraph 1 above but in lieu of subparagraphs 1.1 and 1.2 there shall be substituted the following sub paragraphs:

3.1 has immediately prior to such allocation been resident within the District; or

3.2 has a Strong Local Connection with the District

AND in seeking to allocate the Affordable Units under this paragraph the Approved Affordable Housing Provider shall accord priority to those people who at the date of the allocation are resident within or have a Strong Local Connection with the Northern Parishes

- 4 If the Approved Affordable Housing Provider is unable to allocate any of the Affordable Units in the manner referred to in paragraphs 1 to 3 inclusive above then the Approved Affordable Housing Provider shall subject to the provisions of paragraphs 5 and 6 allocate any such Affordable Unit to a person or persons ("the nominee") nominated by the Service Lead for Housing for the time being of the Council from the Council's list of persons of priority housing need within its administrative area PROVIDED THAT the Approved Affordable Housing Provider shall have the right to reject an applicant if one of the following criteria is met:-

- 4.1 The nominee has no housing need as defined within the criteria for preference within the Housing Act 1996 (as amended by the Homelessness Act 2002)
- 4.2 The nominee is not a suitable tenant as defined within the criteria of the Approved Affordable Housing Provider's Allocations and Lettings Policy
- 4.3 In the case of an Affordable Unit to be let on a Shared Ownership Lease the nominee does not have sufficient cash or income to purchase the required equity share

AND the Approved Affordable Housing Provider has the right whilst acting reasonably at all times, in respect of each nomination to reject the nominee by giving notice to the Council and such notice shall state reasons for the rejection and the Council shall have the right to nominate an alternative

- 5 In the circumstances set out in paragraph 6 the Approved Affordable Housing Provider shall be released from the obligation under paragraph 4 of this Schedule and shall be entitled to allocate any vacant Affordable Unit to any person who is considered by the Approved Affordable Housing Provider to be in need of such accommodation and who is resident in the District or has a Strong Local Connection with the District or failing that within the County of Devon

- 6 The circumstances set out in this paragraph shall be the following:-

- 6.1 If no nomination is made by the Service Lead for Housing within two weeks of notification by the Approved Affordable Housing Provider of a vacancy;
- 6.2 If a nomination has been made by the Service Lead for Housing and the nominee has failed either:
 - 6.2.1 If the dwelling is being made available on a Shared Ownership Lease to exchange contracts for the grant of the Shared Ownership Lease within a six week period or
 - 6.2.2 In any case to complete a tenancy agreement or lease within a seven day period;

AND it is agreed that in these circumstances the Service Lead for Housing may not make a second nomination

- 7 Upon any disposal by the Approved Affordable Housing Provider of the freehold reversion of any Affordable Unit in respect of which a Shared Ownership Lease has been granted there shall be included in the transfer a covenant on the part of the purchaser in favour of the Approved Affordable Housing Provider that the said purchaser will not dispose of the said Affordable Unit (other than by way of mortgage) without first offering to convey the Affordable Unit to the Approved Affordable Housing Provider at open market value
- 8 The planning obligations contained in paragraphs 1 to 7 of this Schedule shall not apply:
- 8.1 to any mortgagee or chargee of the Affordable Units or any of them nor to any receiver appointed by any such mortgagee or chargee to the intent that any such mortgagee chargee or receiver may deal with or dispose of any dwelling or dwellings comprising the Affordable Units freed from the said obligation and on the basis that any person deriving title through or under such mortgagee chargee or receiver shall not be bound by the said obligation; nor
- 8.2 a Protected Tenant

EXECUTED AS A DEED
by **JOHN ROBERT LACY**
in the presence of:-

Witness Name
Witness Occupation
Witness Address

Witness Signature
EXECUTED AS A DEED
by **GORDON WALTER RICE**
in the presence of:-

Witness Name
Witness Occupation
Witness Address

Witness Signature
EXECUTED AS A DEED
by
MIDAS HOMES LIMITED

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)
)
JULIE BESLEY
PERSONAL ASSISTANT
15-17 SOUTHERNHAM EAST
EXETER
Julie Besley

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JULIE BESLEY
PERSONAL ASSISTANT
15-17 SOUTHERNHAM EAST
EXETER
Julie Besley

Director

Director



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