

THIS DEED OF DISCHARGE AND AGREEMENT is made the 22 day of June two thousand and ten BETWEEN:

- (1) TEIGNBRIDGE DISTRICT COUNCIL of Forde House Brunel Road Newton Abbot Devon ("the Council")
- (2) DEVON COUNTY COUNCIL of County Hall, Topsham Road, Exeter, Devon, EX2 4QD ("the County Council")
- (3) MIDAS HOMES LIMITED (Co Regn No 2714200) whose registered office is at Cowley Business Park Cowley Uxbridge Middlesex UB8 2AL ("the Owner")
- (4) HSBC BANK LIMITED (Co Reg No 14259) of Canada Square, London, E14 5HQ ("the Bank")

WHEREAS:-

- 1 The Owner is the owner of the Land subject to a legal charge in favour of the Bank dated 29 June 2007
- 2 The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situate
- 3 The County Council is the Education Authority and the Highway Authority and also a Local Planning Authority for the purposes of the Act for the area within which the Land is situate
- 4 The parties have agreed to enter into this Deed in order to discharge all previous s.106 Agreements which apply to the Land and to secure the planning obligations contained herein

NOW THIS DEED WITNESSETH as follows:-

- 1 This Agreement is a planning obligation for the purposes of Section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and any subsequent legislation) and all other enabling powers
- 2 In this Agreement unless the context otherwise requires:-
 - 2.1 "Act" means Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and any subsequent legislation)
 - 2.2 "Affordable Dwelling" means each Dwelling to be disposed of either as an Intermediate Dwelling or a Rental Dwelling
 - 2.3 "Affordable Housing" means social rented and intermediate housing provided to specified eligible households whose needs are not met by the market and which housing meets the needs of eligible households and which shall (subject to the provisions of this Agreement) remain at an affordable price for further eligible households
 - 2.4 "Affordable Housing Scheme" means a scheme for the provision of Affordable Housing which secures the provision by a Registered Social Landlord of a number of

Affordable Dwellings as determined in accordance with Schedule 1 such scheme to identify:

- 2.4.1 The specification location layout and phasing of construction of the Affordable Dwellings
- 2.4.2 The mix of house types and anticipated tenure of the Affordable Dwellings
- 2.4.3 The identity of the Registered Social Landlord
- 2.5 **"Bus Service Contribution"** means a financial contribution of £100,000 (one hundred thousand pounds) (Index Linked) payable as a contribution towards the cost to the County Council of providing or enhancing bus services which serve the Development
- 2.6 **"Commencement of Development"** means the carrying out on the Land of any material operation pursuant to the Permission (material operation having the meaning ascribed to it under section 56(4) of the Act provided that the Development shall not be deemed to have commenced by the carrying out of any 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, pegging out or marking out operations, construction of the site access, ecological translocation works, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, survey, sampling, inspections or archaeological works or work involving soil investigations or the erection of any boundary fences or hoardings as a preliminary to the commencement of the Development)
- 2.7 **"Cycle Way"** means a cycleway to be provided by the County Council which shall run from Ogwell Cross via Bakers Park to Margaret Road residential estate
- 2.8 **"Cycle Way Contribution"** means a financial contribution of £90,000 (ninety thousand pounds) (Index Linked) payable as a contribution towards the cost to the County Council of providing the Cycle Way
- 2.9 **"Cycle Voucher"** means a voucher to the value of £50 which shall be redeemable within 6 months of the date of issue by the holder against the cost of purchasing bicycles or cycling accessories
- 2.10 **"District"** means the electoral area of Teignbridge District Council
- 2.11 **"Development"** means the development permitted pursuant to the Permission
- 2.12 **"Dwelling"** shall mean each of the dwellings to be constructed on the Land pursuant to the Permission
- 2.13 **"Education Contribution"** means a financial contribution of £694.50 (six hundred and ninety four pounds and fifty pence) (Index Linked) per Dwelling having two or more bedrooms payable as a contribution towards the cost to the County Council of providing or enhancing educational facilities within the catchment area of the Land

the Owner will again act in accordance with the obligations in this Agreement relating to the disposal of Intermediate Dwellings;

- 10.2 Notwithstanding the provisions of clause 11.1 if for a further period of 30 days the mortgagee or receiver has been unable to sell the Intermediate Dwelling to a Registered Social Landlord the mortgagee or receiver may sell the Intermediate Dwelling free from any restrictions
- 10.3 Nothing in this Agreement shall require any person listed in clauses 11.1.1 to 11.1.3 inclusive to act contrary to its duties pursuant to its charge or mortgage

IN WITNESS whereof the Owner and the Bank set their hands and the Council and the County Council have caused their Common Seals to be hereunto affixed the day and year first before written

Schedule 1

1 Affordable Dwellings General Provisions

The Owner hereby covenants with the Council:

- 1.1 The Development (taken as a whole) shall deliver no less than 25% of the Dwellings as Affordable Dwellings
- 1.2 Subject to paragraph 1.3 below 25% of the Dwellings in Phase 1 shall be delivered as Affordable Dwellings of which 30% shall be Intermediate Dwellings and 70% shall be Rental Dwellings
- 1.3 In the event that the Affordable Dwellings comprised in Phase 1 have not been completed and made ready for occupation within 24 months of the date hereof the Viability of Phase 1 shall be re-assessed and the number of the Dwellings comprised in Phase 1 to be delivered as Affordable Dwellings shall be agreed between the Owners and the Council in accordance with Schedule 2
- 1.4 At any time prior to the Commencement of Development of either Phase 2 or Phase 3 (but not more than 8 months before the anticipated Commencement of the relevant Phase) the Owners shall commission and thereafter provide the Council with a Viability Appraisal and agree the number of the Dwellings comprised in the relevant Phase to be delivered as Affordable Dwellings with the Council in accordance with Schedule 2 PROVIDED THAT nothing contained herein shall require the Owner to provide more than 40% of the Dwellings in any Phase as Affordable Dwellings
- 1.5 In the event that the Affordable Dwellings comprised in Phase 1 Phase 2 or Phase 3 are delivered in accordance with paragraphs 1.3 or 1.4 above (respectively) the tenure mix (which shall be subject to a minimum of 50% of the Affordable Dwellings to be delivered as Rental Dwellings) of the Affordable Dwellings shall be agreed between the Owner and the Council (such agreement not to be unreasonably withheld or delayed) PROVIDED THAT the Council shall not require a tenure mix which results in the Development not being Viable

- 1.6 In each Phase:
- 1.6.1 no more than 50% of the Open Market Dwellings in the relevant Phase shall be occupied prior to the completion and transfer to a Registered Social Landlord of 50% of the Affordable Dwellings comprised in the relevant Phase
 - 1.6.2 no more than 80% of the Open Market Dwellings in the relevant Phase shall be occupied prior to the completion and transfer to a Registered Social Landlord of all of the Affordable Dwellings in comprised in the relevant Phase
- 2 The Affordable Dwellings shall at all times be occupied as the sole private residences of the occupiers and shall not be used as a second home or holiday home
- 3 Prior to the Commencement of Development of Phase 1 Phase 2 and/or Phase 3 the Owner shall submit an Affordable Housing Scheme relating to the relevant Phase to the Council
- 4 Once the approval of the Council to the Affordable Housing Scheme in respect of a Phase has been received (such approval not to be unreasonably withheld or delayed) the Owner shall use reasonable endeavours to sell the Affordable Dwellings comprised in the relevant Phase to a Registered Social Landlord
- 5 Following the sale of the Affordable Dwellings to a Registered Social Landlord the Registered Social Landlord (as successor in title to the Owner) shall allocate each Affordable Dwelling to a person who is considered by the Registered Social Landlord to be in need of such accommodation and who in the opinion of the Registered Social Landlord 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 immediately prior to such allocation has a Strong Local Connection with the Parish of Ogwell
- 6 If the Registered Social Landlord is unable to allocate any of the Affordable Dwellings in the manner referred to in paragraph 5 above then the Registered Social Landlord shall allocate any such Affordable Dwelling to a person who is considered by the Registered Social Landlord to be in need of such accommodation and who in the opinion of the Registered Social Landlord 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 immediately prior to such allocation has a Strong Local Connection with the District
- 7 If the Registered Social Landlord is unable to allocate any of the Affordable Dwellings in the manner referred to in paragraph 5 or 6 above then the Registered Social Landlord shall allocate any such Affordable Dwelling to any other person who is considered by the Registered Social Landlord to be in need of such accommodation and who in the opinion of the Registered Social Landlord 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
- 8 Upon any disposal by the Registered Social Landlord of the freehold reversion of any Intermediate Dwelling there shall be included in the transfer a covenant on the part of the

- 2 This Supplemental Agreement is made under the provisions of S106(1)(a) of the Act and Section 111 of the Local Government Act 1972

Operative Clauses

- 3 It is hereby agreed that the Principal Agreement shall be amended as follows:

- 3.1 Clause 10 of the Principal Agreement shall be construed as if it had been deleted and replaced with the following:

"10 The provisions of this Agreement shall not be enforceable against:

10.1 any mortgagee or chargee of the Affordable Dwellings 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 Dwellings freed from the said provisions and on the basis that any person deriving title through or under such mortgagee chargee or receiver shall not be bound by the said provisions subject to such mortgagee or chargee having previously complied with the provisions of clause 11; nor

10.2 to any tenant of any Rental Dwelling who exercises any right to acquire his or her Dwelling (or any interest in it) or acquires the Rental Dwelling pursuant to any voluntary sales policy of his or her landlord and nor to any person deriving title through or under such tenant; nor

10.3 to any person holding an Intermediate Dwelling in the event that such person acquires a 100% leasehold or the freehold interest in the relevant Dwelling and nor to any person deriving title through or under such person.

- 11 *A mortgagee or chargee of the Affordable Dwellings shall prior to seeking to dispose of the Affordable Dwellings pursuant to any default under the terms of its mortgage or charge give not less than two months' prior notice ("Chargee's Notice") to the Council of its intention to dispose and;*

11.1 Any such mortgagee or receiver appointed by it shall offer the said Affordable Dwelling(s) for sale on reasonable terms to a Registered Social Landlord nominated by the Council for a period of not less than 30 days from the date of the Chargee's Notice, after which time the mortgagee may dispose of the Affordable Dwelling(s) to any Registered Social Landlord PROVIDED THAT at the time of any subsequent disposal the Owner will again act in accordance with the obligations in this Agreement relating to the disposal of the relevant type of Affordable Dwelling(s);

11.2 Notwithstanding the provisions of clause 11.1 if for a further period of 30 days the mortgagee or receiver has been unable to sell the