

THIS DEED is made the 22nd day of August 2007

BY:

- (1) **MONARCH HOUSES LIMITED** registered office The Mill, Kingsteignton Road, Newton Abbot, Devon TQ12 2QA ("the Owner")
- (2) **HSBC BANK PLC** of Sheffield Security Processing Centre, PO Box 3924 Sheffield S19BD ("the Lender")

WHEREAS: *****

- (1) The Owner is the registered proprietor registered at HM Land Registry under title numbers DN504243 and DN275386 of the Site subject to a registered charge dated 27th Feb 2007 in favour of the Lender securing, on a continuing nature basis, the debts and liabilities more particularly mentioned therein.
- (2) The Owner has submitted the Planning Application to the District Council for the Development of the Site and is willing to enter into the planning obligations in this deed in respect of the Site

NOW THIS DEED WITNESSES as follows:

1. INTERPRETATION

1.1 In this Deed (including the recitals) unless the context otherwise requires:

"Act"	shall mean the Town and Country Planning Act 1990 as amended;
"Affordable Dwellings"	shall mean parts of the Development comprising 14 residential units of the type and size set out in clause 3.1 below
"Affordable Housing"	shall mean subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market;
"District Council"	shall mean Teignbridge District Council
"Development"	shall mean the development authorised by the Planning Permission;
"Implementation of the Planning Permission"	shall mean the carrying out of a material operation as operation as defined in Section 56(4) of the Act pursuant to the Planning Permission and "implement" and "implemented" shall be construed accordingly;
"Planning Application"	shall mean the application (no 06/07840/MAJ)

by the Owner to the District Council for detailed planning permission to construct 58 dwelling houses including affordable units and associated works and proceeding under appeal no APP/P0033/A/07/2042101/NWF

- “Planning Permission”** shall mean the permission which may be granted by the District Council or on appeal pursuant to the Planning Application and any subsequent approvals given in respect of any matter covered by any condition to any such permission or to an application under the Act varying or modifying such permission;
- “Public Art Contribution”** means a financial contribution of five thousand pounds (£5,000) towards the provision of public art such provision to be entirely at the discretion of the Council in terms of size nature artistic influence and geographical location within the Parish of Dawlish
- “Registered Social Landlord”** shall mean a housing association registered with The Housing Corporation under Chapter 1 of the Housing Act 1996, a charitable trust or such other similar organisation approved by the District Council and ‘RSL’ shall be construed accordingly
- “Site”** shall mean the land situate at and known as the former Treston House and Treston Court as the same is shown edged red on the plan annexed hereto
- “Traffic Calming Contribution”** means the contribution of ten thousand pounds (£10,000) to be paid to the Council to procure the provision of the Traffic Calming Improvements
- “Traffic Calming Improvements”** means such traffic calming measures as the District Council and/or the relevant Highways Authority shall reasonable determine as appropriate to reflect traffic movements in and along Newlands generated by Implementation of the Planning Permission
- “Transport Contribution”** means the contribution of fifteen thousand pounds (£15,000) to be paid to the Council to provide or procure the provision of the Transport Facilities
- “Transport Facilities”** means such improvements to public transport facilities and air quality within the district of the District Council as the District Council and/or the relevant Highways Authority may reasonably determine as appropriate

“Percentage”

means the increase in the percentage rise in the Index of Retail Prices when the last published index figure before the date of payment is compared with the last published index figure before the date of this agreement but if the basis for calculation of the Index of Retail Prices has changed and any method of calculation between the new and the old figures is officially published that method shall be used for the purpose of comparison under this provision.

“Open Space Contribution”

means the sum of one hundred and eleven thousand nine hundred and thirty three pounds and nine pence (£111,933.09) increased by the Percentage towards the provision of improvements to existing or the provision of additional offsite public play areas.

1.2 Where the context allows:

- (a) Words importing the masculine gender include the feminine gender and vice versa.
- (b) Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.
- (c) Any headings or side notes are for ease of reference only and shall not affect the construction of this Deed.
- (d) References to any party in this Deed shall include successors in title of that party unless the context otherwise requires.
- (e) Where a party comprises more than one party any obligations of that party shall be joint and several under this Deed.
- (f) Any reference to a clause shall mean a clause of this Deed.
- (g) Any reference to this Deed shall include any schedules appendices and/or plans (if any) appended or otherwise annexed to this Deed.

- 1.3 A reference in this Deed to an Act of Parliament or to an order, regulation, statutory instrument or the like shall include a reference to any amendment or re-enactment of the same.

2. LEGAL EFFECT

- 2.1 This Deed is made pursuant to Section 106 of the Act and contains planning obligations for the purposes of Section 106 of the Act which are intended to bind the Owner and any successors in title to each and every part of the Site in the event that the Planning Permission is granted and there is Implementation of the Planning Permission.

- 2.2 The District Council is the Local Planning Authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are intended to be enforceable.

- 2.3 The Owner covenants with the District Council to observe and perform the restrictions and obligations in respect of the Site set out in this Deed
- 2.4 The Owner will notify the District Council in writing seven days prior to the Implementation of the Planning Permission and the Planning Permission shall not be implemented unless and until notice has been given in accordance with this clause and will notify the District Council in writing within 7 days of the first person entering into occupation of any part of the Development.
- 2.5 If the Planning Permission expires within the meaning of Sections 91, 92 or 93 of the Act, this Deed shall cease to have effect.
- 2.6 Nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted by the District Council, pursuant to an application to it before or after the date of this Deed, or on appeal.
- 2.7 Save in respect of liability for any prior breach of this Deed or any condition to the Planning Permission, the Owner shall be under no obligation, duty or liability whatsoever under the terms of this Deed or otherwise in respect of the Planning Permission as regards any part of the Site in respect of which it or they have parted with all their respective estate and interest.
- 2.8 The Lender consents to the Owner entering into this deed to the intent that the Planning Obligations shall be binding on the Site provided that the Lender shall only be liable for any breach of the Planning Obligations if it has itself caused the breach whilst mortgagee in possession. The Lender shall not be liable for any breach after it has discharged its security or has disposed of the Site by sale or otherwise.
- 2.9 The obligations and the liabilities of the Owner in this Deed shall only take effect on the Implementation of the Planning Permission.

3 Affordable Housing

- 3.1 The following Affordable Dwellings shall be constructed by the Owners in accordance with the Corporation's Scheme Development Standards:

Affordable Dwellings to be rented -

- 2 two-bedroom flats
- 4 one-bedroom flats
- 3 two bedroom houses

Affordable Dwellings to be let on Shared Ownership Leases -

- 3 three-bedroom houses
- 2 two-bedroom houses

- 3.2 Prior to occupation of more than 50% of the Dwellings other than the Affordable Dwellings to be constructed pursuant to the Permission the Owners shall transfer to a Registered Social Landlord the Affordable Dwellings on the Site on such terms and subject to existing encumbrances reservations and the imposition of such covenants as may be agreed between the Owners and the Registered Social Landlord with the intention that the Affordable Dwellings shall at all times be occupied and managed by and in accordance with the aims and objects of the Registered Social Landlord PROVIDED THAT after it shall have parted with any interest in the Affordable

Dwellings the Owners shall bear no liability for ensuring that this intention is achieved or that the Registered Social Landlord complies with the following obligations;

3.3 The Registered Social Landlord shall upon completion of the transfer of the Affordable Dwellings and at all times subsequently 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 and who:-

- i. has immediately prior to such allocation been resident within the town of Dawlish; or
- ii. has a strong local connection the town of Dawlish;

AND in seeking to allocate the Affordable Dwellings under this sub-paragraph the Registered Social Landlord shall (but without limiting its wider discretion in this regard) consider:-

- (a) family associations of such person or persons in the town of Dawlish;
- (b) any periods of ordinary residence of such person or persons in the town of Dawlish not immediately before the date upon which any Affordable Dwelling becomes vacant and/or;
- (c) whether such person or persons has to have permanent employment in the town of Dawlish;

3.4 If the Registered Social Landlord is unable to allocate any of the Affordable Dwellings in the manner referred to in paragraph 3.3 above then the Registered Social Landlord shall allocate any such Affordable Dwelling by applying the procedures contained in paragraph 3.3 above but in lieu of the reference therein to the town of Dawlish there shall be substituted references to the adjoining parishes of , Cofton, Mamhead and Ashcombe and the town of Teignmouth

3.5 If the Registered Social Landlord is unable to allocate any of the Affordable Dwellings in the manner referred to in paragraphs 3.3 and 3.4 above then the Registered Social Landlord shall subject to the provisions of paragraphs 3.6 and 3.7 allocate any such Affordable Dwelling to a person or persons ("the nominee") nominated by the Service Lead for Housing for the time being of the District Council from the District Council's list of persons of priority housing need within its administrative area PROVIDED that the Registered Social Landlord shall have the right to reject an applicant if one of the following criteria is met :-

3.5.1 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)

3.5.2 The nominee is not a suitable tenant as defined within the criteria of the Registered Social Landlord's Allocations and Lettings Policy

- 3.5.3 In the case of an Affordable Dwelling 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 Registered Social Landlord has the right, whilst acting reasonably at all times, in respect of each nomination to reject the nominee by giving notice to the District Council and such notice shall state reasons for the rejection and the District Council shall have the right to nominate an alternative.

- 3.6 In the circumstances set out in paragraph 3.7, the Registered Social Landlord shall be released from the obligation under paragraph 3.5 of this Schedule and shall be entitled to allocate any vacant Affordable Dwelling to any person who is considered by the Registered Social Landlord to be in need of such accommodation and who is resident in the district of Teignbridge or has a strong local connection with the district of Teignbridge or failing that within the County of Devon.
- 3.7 The circumstances set out in this paragraph shall be the following:-

- 3.7.1 If no nomination is made by the Service Lead for Housing within two weeks of notification by the Registered Social Landlord of a vacancy;
- 3.7.2 If a nomination has been made by the Service Lead for Housing and the nominee has failed either:
- 3.7.3 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
- 3.7.4 in any other 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.

- 3.8. Upon any disposal by the Registered Social Landlord of the freehold reversion of any Affordable Dwelling 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 Registered Social Landlord that the said purchaser will not dispose of the said Affordable Dwelling (other than by way of mortgage) without first offering to convey the Affordable Dwelling to the Registered Social Landlord at open market value.
- 3.9 The planning obligations contained in paragraphs 3.8 – 3.9 of this Schedule shall not apply:
- 3.9.1 to 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 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
- 3.9.2 to any tenant of any rented dwelling comprised in the Affordable Dwellings who exercises any right to acquire his or her dwelling (or any interest in it) or acquires the said rented 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

3.9.3 to any person holding a Shared Ownership Lease of any dwelling comprised in the Affordable Dwellings from time to time in the event that such person exercises any right to staircase which may be included in such Shared Ownership Lease and such leaseholder acquires a 100% leasehold or freehold interest in the relevant dwelling and nor to any person deriving title through or under such leaseholder.

4.1 In this Clause

'Additional Affordable Dwellings' means 5 further Affordable Dwellings

'Grant' means a housing grant available to a Registered Social Landlord at the date of Implementation of the Planning Permission of not less than £500,000 for the purposes of enabling it to acquire the Additional Affordable Units at a total price of not less £500,000.

4.2 The Company will

4.2.1 Not take any steps amounting to Implementation of the Planning Permission until the earlier of

4.2.1.1 The date that the Company has secured an offer from a Registered Social landlord as is provided for in clause 4.3 below and

4.2.1.2 three months from the date hereof

4.2.2 use all reasonable endeavours to procure within three months from the date hereof that a Registered Social Landlord :-

4.2.2.1 offers for the Affordable Housing on terms acceptable to the Company and

4.2.2.2 seeks a Grant so as to be able to offer for the Additional Affordable Housing at a price not less than the Grant

4.2.3 provide TDC with such evidence as TDC may reasonably require as to the steps taken by the Company to satisfy its obligation above including but not limited to :-

the identity of the Registered Social Landlord/s approached

the information provided to such Registered Social Landlord/s

any Grant Application made by such Registered Social Landlord/s

any offers made to the Company by such Registered Social Landlord/s

4.3 In the event of

4.3.1 A Registered Social Landlord securing a Grant and prior to Implementation of the Planning Permission offering for the Additional Affordable Units at a price not less than the Grant and for the Affordable Dwellings on reasonably acceptable terms and

- 4.3.2 Such Grant being valid for completion of the Additional Affordable Dwellings for a period of at least 12 months from Implementation of the Planning Permission.

then under the provisions of this Deed the Affordable Dwellings shall be deemed to include the Additional Affordable Dwellings and this Deed in all respects shall be so construed on the basis of the housing mix set out in 4.4 below but including the provisions of this Clause.

4.4 Rented

4x two bed houses
2x two bed flats
2x one bed flat

Shared Ownership

1x three bed house
2x two bed houses
8x two bed flats

- 4.5 In the event of no Registered Social Landlord offering as is envisaged by the provisions of Clause 4.3 above by the date mentioned in 4.2.1.2 above and the Company having complied with its obligations under clause 4.2.2 above then the provisions of this clause shall be deemed to be at an end and there shall be no obligation on the Part of the Company to provide the Additional Affordable Dwellings

5. In the event of the Owner failing to settle any account or accounts that may be properly and duly rendered to the Owner within thirty days of despatch to the Owner the sum due shall accrue interest at the Interest Rate

6. OPEN SPACE CONTRIBUTION

To pay the whole of the Open Space Contribution to the District Council prior to the occupation of the first dwelling on the Site provided that such payment shall only be used for the purpose required and if the Contribution or any part of it has not been expended or committed to be spent within ten years from the date of payment then such uncommitted balance shall be repaid to the person(s) or body from whom payment was received.

7. To pay the Public Art Contribution within 90 days of the Commencement of Development
8. To pay to the Council the Traffic Calming Contribution towards the provision of the Traffic Calming Improvements within 90 days of the Commencement of Development
9. To pay to the Council the Transport Contribution towards the provision of the Transport Facilities within 180 days of the Commencement of Development

10. MISCELLANEOUS

It is hereby declared by the Owner for the avoidance of doubt that:

- 10.1 Nothing herein contained or implied shall fetter the discretion of the District Council in the exercise of its functions as a Local Authority.
- 10.2 Any approval given by the District Council, Owner, Lender under this Deed or for the purposes of this Deed shall not be nor be deemed to be approval for any other purpose whatsoever.
- 10.3 All notices given or served or required to be given or served under this Deed shall:
 - 10.3.1 in relation to the District Council be given or served at the address provided in this Deed, and addressed to the Head of Development Services
 - 10.3.2 in relation to any other party be given or served by ordinary post addressed to the party at the address given in this Deed or at such other address as may have been previously notified in writing to the District Council for this purpose.
- 10.4 All works and/or acts required to be undertaken by any party under this Deed or as incidental to this Deed shall in all respects be at the cost of that party.
- 10.5 The obligations of the Owner being Local Land Charges for the purposes of the Local Land Charges Act 1975, the provisions of this Deed may be registered by the District Council as a local land charge on the local land charges register maintained by the District Council.
- 10.6 Nothing in this Deed shall confer any rights for the benefit of third parties, pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 10.7 To inform the District Council by notice in writing addressed to the Section 106 Compliance Officer, Development Services (quoting the allocated application reference number) and pay the District Council's administration charge of £1,500 within 14 days of the date when a material operation is carried out on the Site
- 10.8 To pay the District Council's reasonable legal fees for the preparation and completion of this Deed

IN WITNESS whereof the parties have executed this instrument as a deed the day and year first before written