

5. WBB is willing to give an undertaking to perform the obligations set out in this Deed
6. WBB considers that the restrictions and obligations contained in this Deed serve planning purposes and are material to the Application and are relevant considerations to Planning Permission being granted and include:

- (a) the provision of Affordable Housing
- (b) the provision of public open space
- (c) the provision of equipped play areas and payment of a commuted sum towards the maintenance thereof
- (d) the payment of a contribution towards the Transportation Measures and Safe Routes to Schools Scheme
- (e) the payment of a sum towards educational facilities
- (f) the payment of a sum towards the provision of community facilities
- (g) the payment of a sum where rugby club facilities are not provided

NOW THIS DEED WITNESSETH as follows:-

1. Definitions

- 1.1 For the purposes of this Deed the following definitions and meanings shall be deemed to apply:-

“the 1990 Act” means the Town and Country Planning Act 1990 including any amendment modification or re-enactment of it for the time being in force

“Affordable Housing” means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market

“Affordable Housing Units” means that part of the Development comprising 4 houses suitable for rent and 15 houses to be disposed of by way of a low cost home ownership lease (otherwise known as shared ownership) for Affordable Housing and provided with all services including but without prejudice to the generality thereof

mains water supply main foul and surface water drainage electricity gas telecommunications and together with a highway designed and to be constructed to an adoptable standard all up to the boundary of such land

“Application” means the Planning Application reference number 05/03536/MAJ for residential development and associated works (outline) in respect of the Application Site in accordance with the plans specifications and other particulars which accompanied the Application

“Application Site” means the land for the purposes of identification only edged red on Drawing No. / Plan No. NPA-10009-JM-SC-03 annexed hereto being all the land the subject of the Application and known as land at White Hill Cross Newton Abbot

“Approved Dwellings” means the Dwellings approved pursuant to reserved matters applications for the siting of Dwellings consequent upon the Planning Permission

“Chargee” means any mortgagee or chargee of the Registered Social Landlord or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

“Chargee’s Duty” means the tasks and duties set out in paragraph 4 to the First Schedule

“Community Facilities Contribution” means the sum produced by multiplying the number of Approved Dwellings by £592.00 Indexed from the date of Planning Permission

“Development” means the development of the Application Site pursuant to the Planning Permission

“Dwelling” means a unit of residential accommodation

“Educational Contribution” means the sum produced by multiplying each Approved Dwelling which contains two bedrooms or more by £694.50 Indexed from the date of Planning Permission

“Hospital Section 106 Agreement” means the Section 106 Agreement dated 18 November 2004 and made between the County Council (1) the District Council (2) WBB (3) Teignbridge Primary Care Trust (4) and South Devon Healthcare NHS Trust (5) relating to land at Jetty Marsh Newton Abbot

“Implementation of the Planning Permission” means the date on which Development shall be taken to be begun for the purposes of Section 56 of the 1990 Act being the earliest date on which any material operation (as defined in that Section) comprised in the Development begins to be carried out but for the avoidance of doubt any site preparation and investigation works will not be considered to be Implementation of the Planning Permission

“Indexed or Indexation” means in relation to any payment made or due to be made pursuant to any provision of this Deed that sum as increased or decreased as the case may be in accordance with the rate of the rise or fall of the Index of Retail Prices compiled by the Office for National Statistics (or if such Index of Retail Prices ceases to exist, an index which is reasonably comparable to such) from the date of Planning Permission until the date of payment and Indexation shall be construed accordingly

“Market Housing Units” means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing

“Minimum Bus Service” means as defined in the Hospital Section 106 Agreement

“Occupation” means beneficial occupation by an individual company partnership or undertaking for the purposes of which the relevant part of the Development to be occupied is intended but shall not include daytime occupation by workmen involved

in the construction of the Development or the use of finished buildings for sales purposes or for use as temporary offices or for the storage of plant and materials and

“occupy” and “occupied” shall mutatis mutandis be construed accordingly

“Planning Permission” means a planning permission granted pursuant to the Application

“Practical Completion” means issue of a certificate of practical completion by WBB’s architect or in the event that the Development is constructed by a party other than WBB the issue of a certificate of practical completion by that other party’s architect

“Protected Tenant” means any tenant who:

- (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 Housing Unit
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
- (c) has been granted a shared ownership lease by a Registered Social Landlord (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Social Landlord) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Social Landlord all the remaining shares so that the tenant owns the entire Affordable Housing Unit

“Registered Social Landlord” means Sanctuary Housing Association or a registered social landlord as defined in Part 1 of the Housing Act 1996 who is registered with the Housing Corporation pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act and who is approved by the Council

“Safe Routes To Schools Scheme” means those works necessary to encourage more environmentally sustainable travel to school including but not limited to the design provision and construction of traffic calming measures including speed restrictions and speed reduction measures parking restrictions signage road markings pedestrian/zebra/pelican crossings and other improved crossing points improvements to footpaths and cycleways or such other works as may be required and approved in writing by the County Council

“Supported Bus Journeys” means as defined in the Hospital Section 106 Agreement

“Transportation Contribution” means the sum of sixty six thousand six hundred pounds (£66,600) payable to the County Council in accordance with the Fourth Schedule for use by the County Council in connection with the Safe Routes To School Scheme and Transportation Measures as set out in the Fourth Schedule

“Transportation Measures” means matters relating to the existing public highway network including (but not limited to) the design provision and construction of traffic calming measures including speed restrictions and speed reduction measures parking restrictions signage road markings pedestrian/zebra/pelican crossings and other improved crossing points improvements to footpaths and cycleways and minor junction and carriageway improvements

“Travel Information Pack” means an information pack comprising details of public transport facilities cycle routes and footpaths within Newton Abbot such details to be approved in writing by the County Council in accordance with the provisions of the Fourth Schedule

“Value” means the amount which the Affordable Housing Units would realise if sold for Affordable Housing

2. Deed

This Deed is made pursuant to Section 106 of the 1990 Act to the intent that it shall bind WBB and its successors in title and assignees and any persons claiming under or through it and further the obligations terms covenants and conditions contained in this Deed on the part of WBB

- (i) are entered into pursuant to the provisions of Section 106 of the 1990 Act and
- (ii) are planning obligations for the purposes of Section 106 of the 1990 Act and
- (iii) are entered into with the intent to bind WBB's interest in the Application Site and each and every part thereof into whosoever hands the same may come and
- (iv) are enforceable by the Council and the County Council as local planning authorities or in relation to those matters so specified in the Schedules to this Deed and
- (v) are executed by WBB as a deed

3. The Planning Obligations

WBB covenants with the Council and the County Council that it shall in full accordance therewith observe and perform the obligations (on its part to be observed and performed) contained in all the Schedules to this Deed

4. Ancillary Provisions

IT IS HEREBY AGREED AND DECLARED THAT

- (i) No compensation shall be payable by the Council or the County Council to WBB or its successors in title arising from the terms of this Deed
- (ii) Representatives of the Council and the County Council may subject to complying with applicable health and safety measures enter upon the Application Site at any reasonable time to ensure that the terms of this Deed and the Planning Permission are or have been complied with

- (iii) Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders and words denoting persons shall include bodies corporate and vice versa
- (iv) Any references to an enactment regulations or order include references to any statutory modification or re-enactment thereof for the time being in force
- (v) The headings in this Deed are for ease of reference only and shall not affect the construction or interpretation hereof
- (vi) In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under Section 73 of the Town and Country Planning Act 1990 in respect of the conditions in the Planning Permission (and for no other purpose whatsoever) references in this Deed to the Planning Permission shall be deemed to include any such subsequent planning permissions or approvals of reserved matters granted as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly
- (vii) Save where the context otherwise requires reference to any party to this Deed includes its successors in title but to the intent that no party shall be liable for any breach of this Deed occurring after the date on which it shall have parted with its interest in the Application Site or such part or parts thereof in respect of which the breach occurs except where the parting with its interest in the Application Site or any part thereof occurs in respect of the sale lease transfer or other disposition of an individual residential unit forming part of the Development
- (viii) This Deed does not create any right enforceable by any person who is not a party to it under the Contracts (Rights of Third Parties) Act 1999

5. Notices

NOTICE or document issued or served pursuant to this Deed shall be in writing and shall be served in the manner hereinafter appearing:-

- (i) On the Council by sending the same by the recorded delivery service addressed to the Head of Planning Services, Teignbridge District Council, Forde House, Brunel Road, Newton Abbot, Devon, TQ12 4XX or such other address as may from time to time be notified in writing to the other parties;
- (ii) On the County Council by sending the same by recorded delivery service addressed to the Director of Environment, Economy and Culture, Devon County Council, County Hall, Topsham Road, Exeter, EX2 4QW or such other address as may from time to time be notified in writing to the other parties;
- (iii) On WBB by sending it by the recorded delivery service to Brookside Hall, Congleton Road, Sandbach, Cheshire, CW11 4TF or such other address as may from time to time be notified in writing to the other parties

6. Commencement of Deed and Implementation of Planning Permission

The covenants restrictions and obligations in this Deed shall only come into effect on the Implementation of the Planning Permission unless otherwise specifically indicated in this Deed

7. Releases

- 7.1 Apart from the obligations contained in the First Schedule the obligations on the part of WBB contained in this Deed shall not be enforceable against individual purchasers of residential units forming part of the Development
- 7.2 The obligations contained in this Deed shall not be enforceable against statutory undertakers in relation to any parts of the Application Site acquired by them for electricity sub-stations gas governor stations sewers or similar installations public highways and public open spaces

7.3 This Deed will cease to have effect if the Planning Permission is quashed or revoked without the consent of WBB

8. Approvals and Certification

8.1 Where approval is required pursuant to this Deed such approval is not to be unreasonably withheld or delayed

8.2 Where anything in this Deed has to be done to the satisfaction of the Council or the County Council it must be done to the reasonable satisfaction of the Council or the County Council

8.3 Where anything in this Deed has to be certified by the Council or the County Council such certification must not be unreasonably withheld or delayed

9. Conditions Precedent

The obligations set out in this Deed are given subject to the proviso that if all or any part of any payments made to the Council or the County Council pursuant to the provisions of this Deed are either not used or are not used in their entirety for the purpose for which they are designated in this Deed then such payments or part thereof insofar as they have not been used for their designated purpose within five years (or ten years in relation to the Educational Contribution) from the date of payment or such longer or shorter period as is stipulated in the individual Schedules to this Deed shall be returned to the party who made the payment together with interest thereon at the rate of Barclays Bank plc base lending rate

10. Notification

WBB hereby covenants to use reasonable endeavours to notify the Council and the County Council as soon as reasonably possible and in any event within 5 working days of:-

10.1 the Implementation of the Planning Permission; and

10.2 the occupation of fifty percent (50%) of the Approved Dwellings on the Application Site; and

10.3 the occupation of seventy five per cent (75%) of the Approved Dwellings on the Application Site; and

10.4 the occupation of ninety five per cent (95%) of the Approved Dwellings on the Application Site

11. Indexation

All sums payable by WBB hereunder either to the County Council or the Council are subject to Indexation

IN WITNESS WHEREOF with the intention of declaring this instrument as its Deed WBB has executed this Deed

FIRST SCHEDULE

Planning obligations in respect of Affordable Housing

WBB hereby covenants with the Council that:-

1. No more than 75% of Market Housing Units shall be occupied until 75% of the Affordable Housing Units have been constructed in accordance with the Planning Permission (and any detailed Permission granted in pursuance of it) and made ready for residential occupation and written notification of such has been received by the Council
2. From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
 - (a) any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
 - (b) any Chargee provided that the Chargee shall have first complied with the Chargee's Duty
 - (c) any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor
3. No more than 90% of the Market Housing Units shall be occupied until:
 - (a) the Affordable Housing Units have been transferred to the Registered Social Landlord for Value on terms that accord (if in fact Housing Corporation funding is available) with relevant Housing Corporation funding requirements current at the date of construction of the Affordable Housing Units; and
 - (b) the construction of the Affordable Housing pursuant to the First Schedule of a unilateral undertaking dated ~~26 October 2006~~ given by WBB to the Council and the County Council in relation to planning application reference number 05/03538/MAJ has been substantially commenced and in progress
4. The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than 3 months' prior notice to the Council of its intention to dispose and:
 - (a) in the event that the Council responds within 2 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer

- (b) if the Council does not serve its response to the notice served under paragraph 4(a) within the 2 months then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule
- (c) if the Council or any other person cannot within 3 months of the date of service of its response under paragraph 4(a) secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 4(a) the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

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

SECOND SCHEDULE

Planning obligations in respect of public open space

- I. WBB shall no later than the date of occupation of 75% of the Dwellings on the Application Site manage the area of land shown (for the purposes of identification only) edged pink on the plan annexed hereto (entitled "WBB Minerals Limited West Golds Area 1/2500") for the purposes of public open space pursuant to a management plan to be agreed between WBB and the Council prior to such date (both parties acting reasonably) unless and until it is transferred to the Council

THIRD SCHEDULE

Planning obligations in respect of play areas and public open space on the Application Site

1. WBB hereby covenants with the Council:-
 - 1.1 prior to the Implementation of the Planning Permission it shall submit to the Council for its approval in writing a scheme for the provision and equipping of play areas for children and young people and the provision and laying out of relevant public open space on the Application Site and no Dwelling shall be occupied on the Application Site unless and until the Council has approved the scheme
 - 1.2 the play areas shall be practically completed and equipped and the relevant public open space laid out in accordance with the approved scheme before the occupation of 85% of the dwellings on the land the subject of planning application reference number 05/03538/MAJ for residential development
 - 1.3 no more than 50% of the Dwellings on the Application Site shall be occupied until the play areas have been practically completed and equipped and the relevant public open space laid out in accordance with the approved scheme
 - 1.4 to maintain the Play Area and relevant public open space referred to in 1.1 above in good condition and keep them available for public use unless and until they are transferred to the Council
 - 1.5 to transfer the play areas to the Council for the price of one pound (£1.00) within 28 days of being called upon by the Council to do so
 - 1.6 On the date of the transfer of the play areas to pay to the Council or its nominee as the case may be a reasonable sum for the purpose of ongoing maintenance repair and safety audit of the play areas

FOURTH SCHEDULE

Planning obligations in respect of Transportation Measures, the Safe Routes To Schools

Scheme and other transportation matters

1. WBB hereby covenants with the County Council within 21 days of Implementation of the Planning Permission to pay the Transportation Contribution of which thirty thousand pounds (£30,000.00) is to be used as a contribution towards the Transportation Measures and thirty six thousand six hundred pounds (£36,600.00) is to be used as a contribution towards the Safe Routes To Schools Scheme subject to the proviso that the Transportation Contribution shall be held by the County Council in a separately identifiable account within the County Council's financial accounting system to which interest will be applied and the County Council shall apply the same together with any interest for the purposes specified in this paragraph 1 of this Schedule
2. Subject to the proviso that the County Council shall use reasonable endeavours within its adopted policies to secure contributions to the works and services procured by WBB in accordance with this paragraph from the developers of any land in the vicinity of the Application Site and if any such contribution is received by the County Council then save to the extent that it is required to undertake further works to alleviate the effect of that development the Transportation Contribution payable by WBB shall be reduced or rebated in proportion to reduce WBB's costs of procuring those works/services WBB covenants with the County Council that if the "Toucan Works" as defined in the Hospital Section 106 Agreement are not carried out or commenced in accordance with the Hospital Section 106 Agreement before 1st January 2008 then WBB will procure the carrying out of the "Toucan Works" in accordance with the Hospital Section 106 Agreement and hereby covenants with the

County Council to comply with the provisions of Schedule 2 of the Hospital Section 106 Agreement in connection with the "Toucan Works" as if those provisions were set out in full in this Agreement PROVIDED THAT the County Council has first used all reasonable endeavours to enforce the obligations under the Hospital Section 106 Agreement to procure the carrying out of the "Toucan Works" before enforcing WBB's obligation/covenant in this paragraph 2

3. Subject to the proviso that the County Council shall use reasonable endeavours within its adopted policies to secure contributions to the works and services procured by WBB in accordance with this paragraph from the developers of any land in the vicinity of the Application Site and if any such contribution is received then unless it is required to pay for an expansion or improvement to the Minimum Bus Service WBB's contribution to Supported Bus Journeys shall be reduced in proportion WBB covenants with the County Council that it will procure the Minimum Bus Service in accordance with the Hospital Section 106 Agreement within 8 weeks of the occupation of the 100th aggregate dwelling on the Application Site and the land the subject of a planning application reference number 05/03538/MAJ for residential development and associated works (outline) if such Minimum Bus Service has not already been (or will not be so within a further 4 weeks) provided in accordance with the Hospital Section 106 Agreement PROVIDED THAT the County Council has first used all reasonable endeavours to enforce the obligations under the Hospital Section 106 Agreement to provide the Minimum Bus Service before enforcing WBB's obligation/covenant in this paragraph 3 AND FURTHER PROVIDED THAT WBB's liability for the purposes of this paragraph 3 shall not exceed the total sum of £95,000.00 per annum subject to Indexation and shall cease on the day before the date that the hospital opens AND FURTHER PROVIDED THAT this provision will not

apply if the Minimum Bus Service has been or is about to be provided pursuant to paragraph 3 of the Fourth Schedule of the unilateral undertaking dated *26 October* *2006* given by WBB to the Council and the County Council in relation to planning application reference number 05/03538/MAJ

4. WBB shall provide each first occupier of each Dwelling with a travel voucher for subsidised travel by bus for the first three months after such first occupation (to a total value of £250 per Dwelling)
5. WBB shall provide each first occupier of each Dwelling with a cycle voucher entitling a discount of £50.00 towards the purchase of a bicycle and hereby covenants with the County Council not to occupy or allow to be occupied any Dwelling until details of the retail outlet with whom the said cycle voucher may be redeemed have been submitted to and approved by the County Council (subject to the proviso that the County Council's approval to the same cannot be unreasonably withheld or delayed)
6. WBB shall provide each first occupier of each Dwelling with a Travel Information Pack and hereby covenants with the County Council not to occupy or allow to be occupied any Dwelling until details of the contents of the Travel Information Pack have been submitted to and approved by the County Council (subject to the proviso that the County Council's approval to the same cannot be unreasonably withheld or delayed)