

THIS DEED is made the day of Two Thousand and Twenty
Six

B E T W E E N

(1) NEWPORT CITY COUNCIL of the Civic Centre, Newport, South Wales ("**the Council**")

(2) KIVEO PROPERTIES LTD (company registration number 13883331) of 01 Meadlake
Place, Thorpe Lea Road, Egham, TW20 8HE ("**the Owner**")

1 Definitions and Interpretation

1.1 In and for the purposes of this Deed the following words, phrases and expressions shall have the following meanings ascribed to them unless the context otherwise requires:-

1.1.1 "the Act" means the Town and Country Planning Act 1990

1.1.2 "BCIS" means the Building Cost Information Service All In Tender Price Index published by the Royal Institute of Chartered Surveyors or its successor body to reflect changes in the cost of living in the United Kingdom

1.1.3 "Commencement of Development" means the carrying out in relation to the Development of any material operation as defined by section 56(4) of the Act

1.1.4 "Commencement Date" means the date Development Commences

1.1.5 "the Development" means the carrying out of the development of the Land in accordance with the plans and particulars as described in the Planning Application.

1.1.6 "Index Linked" means linked to RPI or BCIS so that the relevant contributions due shall be uplifted or decreased in accordance with the difference between the relevant index last published immediately prior to the date of this Deed and the last index published prior to the date the financial sum is due

- 1.1.7** “the Land” means the land being 140 Caerleon Road, Newport, NP19 7FY and registered at the Land Registry under title number CYM107778 and shown edged red on the plan attached hereto
- 1.1.8** “Open Market Dwellings” means all those dwellings which are not Affordable Housing and are constructed as part of the Development intended for sale in the private housing market at open market value.
- 1.1.9** “the Planning Application” means the application submitted to the Council by the Owner’s agent for the proposed demolition of the existing garage and erection of two-storey extension at the rear together with the change of use from the former funeral directors (A1) to facilitate the creation of 5 flats for specialised supported housing with overnight accommodation for care provider and allocated planning application reference number 25/0425
- 1.1.10** “Planning Permission” means a planning permission granted pursuant to the Planning Application
- 1.1.11** “RPI” means the Retail Price Index or such similar index as may from time to time be published to replace such index published by the Office for National Statistics or its successor body
- 1.2** References to clauses and parts of schedules are (unless the context requires otherwise) to clauses schedules and parts of schedules (as appropriate) in this Deed
- 1.3** Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 1.4** References to statutes or to provisions of statutes shall include any statute or provision of any statute amending consolidating or replacing them for the time being in force

Recitals

- (A)** The Council is the Local Planning Authority for the purposes of this Deed for

the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable

- (B) The Owner is the owner in fee simple in possession of the Land which is registered at H M Land Registry in respect of the same under Title Number CYM107778.
- (C) The Council has resolved to grant planning permission ("the Planning Permission") for the Development subject to conditions and subject to the making of this Deed without which planning permission for the development would not have been granted.

N O W THIS DEED is made in pursuance of Section 106 of the Act and is a planning obligation for the purposes of that section and **WITNESSES** as follows:-

- 1. The Owner covenants with the Council to perform the obligations and observe the restrictions specified in the Schedules hereto
- 2. It is agreed and declared as follows:-
 - 2.1 The expressions "the Council" and "the Owner" shall include their successors in title and assigns
 - 2.2 No person shall be liable for breach of a covenant contained in this Deed after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
 - 2.3 For the purposes of this Deed Section 56 (2) of the Act shall determine the date upon which the Development is begun
 - 2.4 The obligations in this Deed (save for Clauses 2.6 of these recitals which shall come into effect on the date of completion of this Deed) shall come into effect upon the date the Planning Permission is granted

- 2.5** This Deed is a Local Land Charge and shall be registered as such
- 2.6** Upon completion of this Deed the Owner hereby agrees to pay a contribution towards the reasonable legal costs incurred by the Council in the preparation and completion of this Deed of £850
- 2.7** Prior to Commencement of Development the Owner will pay to the Council an administration fee calculated on the basis of 2% of the total financial contribution payable under this agreement or 20% of the Planning Application fee, whichever is the greater and subject to a minimum fee of £200.
- 2.8** Unless the right of enforcement is expressly provided it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999
- 2.9** The parties to this Deed may by agreement rescind or vary this Deed without the consent of a third party to whom the right of enforcement of any of its terms has been expressly provided
- 2.10** Without prejudice to the Council's rights to enforce any breaches of this Deed (including by way of injunction) if any sum due to the Council under this Deed is not paid on or before the date upon which it is due then in addition to such sum there shall be paid to the Council interest at two per cent (2%) per annum above the base rate for the time being of the National Westminster Bank Plc from the due date of payment until the actual date of payment
- 2.11** All sums payable by the Owner under the Schedule to this Deed shall be Index Linked in accordance with the terms of this Deed.

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

THE FIRST SCHEDULE

Part 1

1. **DEFINITIONS**

In this Schedule the following words and expressions have the following meaning:

“ACG” means the highest acceptable scheme costs as provided in the appropriate band in the Acceptable Cost Guidance produced by the Welsh Government as at the date that a binding contract is entered into between the Owners and the RSL

"Affordable Housing" means housing where there are mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers as defined in the Welsh Government's Technical Advice Note 2 or any successor document, the said housing being made available with neutral tenure to applicants through the Council's Common Housing Register.

“Affordable Housing Contribution” means a sum of money paid to the Council in lieu of the provision of Affordable Housing Units (as required by Part 2 of this Schedule) and to be used by the Council in the provision of Affordable Housing in the City of Newport

"the Affordable Housing Units" the units consisting of at least 20% of the housing units to be constructed pursuant to the Planning Permission the type and mix to be agreed with the Council prior to commencement of the Development.

"Open Market Dwellings"	all those dwellings except the Affordable Housing Units constructed as part of the Development intended for sale in the private housing market at open market value.
"Preferred RSL"	the RSL that is preferred for the scheme by the Council
"Alternative RSL"	an RSL which shall be different to the Preferred RSL to which the first offer is made pursuant to paragraph 2.4 below as shall be approved in writing by the Council acting reasonably.
"Registered Social Landlord (RSL)"	a social housing landlord registered with the Welsh Government as defined in the Housing Act 1996 or such other body as is capable of managing Affordable Housing and receiving grant from the Welsh Government and is zoned to operate in Newport.
"the SPG"	The Council's Supplementary Planning Guidance for Affordable Housing

Part 2. Affordable Housing

- 1.1 At least one month prior to commencing the Development the Owners shall notify the Council of the date when commencement will occur.
- 1.2 On 1st March every year the Owners shall inform the Council's Housing Department of the number of Affordable Housing Units that have been completed during the calendar year ending on that date
- 2.
- 2.1 The Owners shall prior to the commencement of the Development submit to the Council for its approval:

- 2.1.1 Details of the siting (including the extent of the proposed gardens or amenity land) design and materials in relation to the Affordable Housing Units at the same time as such details are submitted in relation to the Open Market Dwellings
- 2.1.2 Details of specifications, level of servicing and programme for the construction of the Affordable Housing Units in accordance with the Welsh Housing Quality Standards and Design Quality Requirements principles published by the Welsh Government
- 2.2 The Affordable Housing Units shall be constructed to at least the same specification and all internal and external fittings, finishes, kitchen and bathroom units and sanitary ware shall be of equivalent quality as those in the Open Market Dwellings
- 2.3 The Development shall not be commenced until such time as the details required by clause 2.1.1 and 2.1.2 above have been approved in writing by the Council such approval not to be unreasonably withheld or delayed.
- 2.4 No Open Market Dwellings shall be occupied until such time as the Owners (save to the extent it is the preferred RSL) have made an offer in writing to the Preferred RSL to build and transfer the Affordable Housing Units to the Preferred RSL in accordance with:
 - 2.4.1 the Planning Permission
 - 2.4.2 the details and specification approved pursuant to paragraph 2 above and
 - 2.4.3 Building Regulations and other statutory consents required and the Owners have provided evidence to the Council of this offer in writing.
- 2.5 The Owners shall (save to the extent it is the Preferred RSL) use reasonable endeavours to enter into a binding unconditional (save for the condition that the Beneficiary acquires the site and the RSL obtains necessary Welsh Government and Board approval or such other conditions as may be required by the RSL/Alternative RSL and approved by the Council) contract in accordance with Paragraph 2.4 above with the Preferred RSL but in the event that the Preferred RSL fails to enter into such a contract within three months from the date the draft contract is submitted to the Preferred RSL (or longer by agreement of the Owners and the Preferred RSL) then the Owners shall use reasonable endeavours to enter into a binding unconditional (save for the condition that the Beneficiary acquires the site and the Alternative RSL obtains

necessary Welsh Government and Board approval or such other conditions as may be required by the RSL/Alternative RSL and approved by the Council) contract in accordance with Paragraph 3 above with the Alternative RSL.

2.6 No more than 50% of Open Market Dwellings shall be occupied until such time as the Affordable Housing Units and amenity/garden land have been transferred to the PRSL or the Alternative RSL .

2.7. The Owners hereby undertake to the Council not to use the Affordable Housing Units, or permit the Affordable Housing Units to be used, for any purpose other than as Affordable Housing PROVIDED ALWAYS that:

2.7.1 The provisions of this Schedule shall not be binding upon any person or body holding a mortgage or charge upon the Property (or part thereof) nor upon a receiver (including an administrative receiver) or other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Property or any person deriving title from such mortgagee or chargee or Receiver who shall be entitled to sell or otherwise dispose of the Property (or part thereof) freed and discharged from the restrictions in this Deed and the Property (or part thereof) shall absolutely cease to be subject to the provisions of this Agreement.

2.7.2 this covenant shall not bind the owner of an Affordable Housing Unit who has staircased to 100% ownership, or the owner's mortgagee, a tenant who has exercised the rent to own scheme or equivalent scheme, or the tenant's mortgagee, or the successors in title to the owner, tenant or mortgagee, and the Affordable Housing Unit shall thereafter absolutely cease to be subject to the provisions of this Deed.

2.8.

The Owners covenant with the Council as follows:

The offer referred to a paragraph 2.4 above shall be made on the following basis:

2.8.1 with full title guarantee;

2.8.2 with vacant possession;

2.8.3 free of financial encumbrance;

- 2.8.4 with the benefit of all rights of access and passage of services as are reasonably necessary to service the Affordable Housing Units through on over and under the remainder of the site;
- 2.8.5 with such other terms as may be agreed between the parties thereto;
- 2.8.6 subject to each party bearing its own costs in relation to such transfer;
- 2.8.7 with a price of not more than 50% ACG;
- 2.8.8 the Standard Conditions of Sale (Fifth Edition) or any modification or subsequent re-issue thereof shall apply to the transfer in so far as the same are not inconsistent with the express terms of this Deed; and
- 2.8.9 subject to the Owners procuring the issue of an insurance certificate from NHBC (or other warranty provider approved by the Registered Social Landlord (RSL) in relation to the Affordable Housing Units.

Part 3 Affordable Housing Contribution

1. If prior to Commencement of Development the Owners approach the Council and provides sufficient evidence to satisfy the Council that exceptional circumstances exist which justify the payment of an Affordable Housing Contribution and such a Contribution is agreed then it shall be calculated in accordance with the provisions of the SPG and paid to the Council prior to occupation of no more than 50% of the dwellings comprised in the Development and Index Linked to RPI.

THE SECOND SCHEDULE

- 1 The provisions of this Second Schedule shall apply if the Owners decide that any of the dwellings comprised in the Development are to be sold or rented on the open market. The following paragraphs of this Schedule shall apply only to Open Market Dwellings and not to any dwellings forming part of Affordable Housing.
- 2 Prior to Commencement of the Development the Owners shall notify the Council in writing of the number and size of dwellings which are to be Open Market Dwellings.
- 3 If the Owners decide that any of the dwellings comprised in the Development are to be sold or rented on the open market, then prior to occupation of no more than 50% of the dwellings comprised in the Development the Owners will pay to the Council:
 - 3.1. a contribution towards the provision of education consisting of the total sum resulting from calculations made under the following formulae;
 - (a) the number of secondary school pupils projected to be generated from the Open Market Dwellings which is in excess of available capacity at St Julians High School (as assessed at the date of Commencement of the Development) multiplied by £29,741, plus
 - (b) the number of primary pupils projected to be generated from the Open Market Dwellings which is in excess of available capacity at Glan Usk Primary School (as assessed at the date of Commencement of the Development) multiplied by £19,034.

All education contributions shall be Index Linked to BCIS

- 3.2. a leisure contribution consisting of the total sum resulting from calculations made under the following formulae to be used towards the maintenance and improvement of outdoor play facilities serving the St Julians ward:
 - (a) Number of one bed Open Market Dwellings x £397.

All leisure contributions shall be Index Linked to RPI and paid prior to occupation.

- 4 It being agreed that payment shall not be due pursuant to this Schedule if all units on the Land shall be developed as Affordable Housing.

THE SEAL of **NEWPORT CITY COUNCIL**)

was hereunto affixed in the presence of:)

Head of Law and Standards/Legal Services Manager

SIGNED and **DELIVERED** as a **DEED** by)
KIVEO PROPERTIES LTD acting by one)
of its directors in the presence of:)

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Witness signature

Witness name

Witness address

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