

THIS DEED is made the 19th day of December Two Thousand and Eighteen

B E T W E E N

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

(2) CHARTER HOUSING ASSOCIATION LIMITED of Exchange House, The Old Post Office, High Street, Newport NP20 1AA ("**the Owner**") and

(3) THE WELSH MINISTERS of Cathays Park, Cardiff CF10 3NQ ("**the Welsh Ministers**")

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 paid

- 1.1.7** "the Land" means the land known as land and buildings formerly known as Land on the West side of Herbert Road Newport registered at the Land Registry under title numbers CYM698807 CYM333104 and CYM338498 and edged red on the plan attached hereto
- 1.1.8** "the Legal Charge" means the legal charge dated 19 April 2017 in favour of the Welsh Ministers
- 1.1.9** "the Planning Application" means the application submitted to the Council by the Owner's agent for planning permission to develop the Land for by means of the construction of 195 residential units internal road networks parking landscaping and associated works affecting public right of way 407/1 which application was allocated reference number 18/0293 by the Council
- 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

2. 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 freehold owner of the Land subject to the Legal Charge.
- (C) The Council has resolved to grant the Planning Permission for the Development the subject of the Planning Application subject to the making of this Deed without which Planning Permission for the Development would not have been granted
- (D) The Welsh Ministers enter this Deed in order to consent to its terms.

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:-

- 2.1. The Owner covenants with the Council to perform the obligations and observe the restrictions specified in the Schedule
- 2.2. It is agreed and declared as follows:-
 - 2.2.1 The expressions "the Council" "the Owner" and "the Welsh Ministers" shall include their successors in title and assigns
 - 2.2.2 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
 - 2.2.3 For the purposes of this Deed Section 56 (2) of the Act shall determine the date upon which the Development is begun
 - 2.2.4 The obligations in this Deed (save for Clauses 2.2.6 below and paragraph 2 and 3.1 of Part 1 of the Schedule 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

- 2.2.5** This Deed is a Local Land Charge and shall be registered as such
- 2.2.6** Upon completion of this Deed the Owner hereby agrees to pay the reasonable legal costs incurred by the Council in the preparation and completion of this Deed
- 2.2.7** The Council shall issue the Planning Permission within 5 days of the date of this Deed
- 2.2.8** The Council will upon the written request of the Owner any time after the obligations of the Owner under this Deed have been fulfilled issue written confirmation thereof
- 2.2.9** 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
- 2.2.10** 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
- 2.2.11** 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
- 2.2.12** All sums payable by the Owner under the Schedule to this Deed shall be Index Linked in accordance with the terms of this Deed.
- 2.2.13** The Council will repay to the Owner such amount of the financial contributions made to it under the terms of this Deed which have not been expended in

accordance with the provisions of this Deed or have not been committed to be so spent within five (5) years of the date of receipt by the Council of such contributions together with Interest accrued for the period from the date of payment to the date of refund.

2.2.14 The obligations in this Deed (with the exception of Clause 2.6) shall cease to have effect if before the Commencement of Development the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

2.2.15 Any notice or other communication required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class post or recorded delivery or by commercial courier to any person required to receive the notice or communication at its address as set out at the start of this Deed or as otherwise specified by the relevant person by notice in writing to each other person.

2.2.16 Any notice shall be deemed to have been duly received:

- (a) if delivered personally when left at the address set out at the start of this Deed for the party referred to in this Deed or at any alternative address as notified in writing by one party to the other party;
- (b) if sent by pre-paid first class post or recorded delivery at 9.00 am on the second Working Day after posting; or
- (c) if delivered by commercial courier on the date and at the time that the courier's delivery receipt is signed.

2.2.17 If any court or competent authority finds that any provision of this Deed (or part of any provision) is invalid illegal or unenforceable that provision or part-provision shall to the extent required be deemed to be deleted and the validity and

enforceability of the other provisions of this Deed shall not be affected.

2.2.18 If any invalid unenforceable or illegal provision of this Deed would be valid enforceable and legal if some part of it were deleted the parties shall amend such provision so that as amended it is legal valid and enforceable and to the greatest extent possible achieves the parties' original commercial intention.

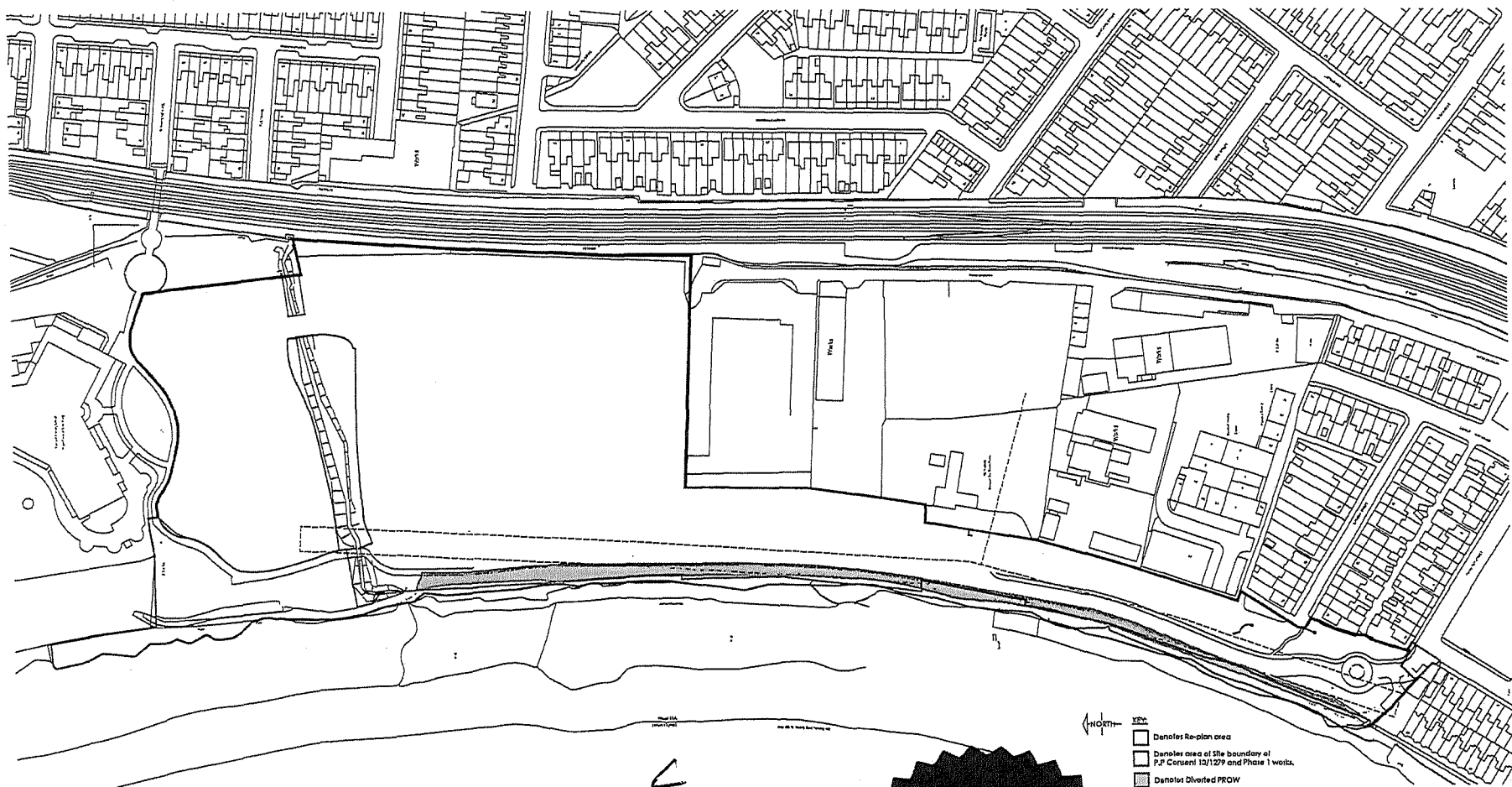
2.2.19 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

2.2.20 The obligations set out in this Deed shall not be enforceable against individual owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

2.2.21 The Welsh Ministers hereby consent to the execution of this Deed and acknowledge that subject as herein provided the Land shall be bound by the obligations contained in 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

Do not scale from this drawing.
 All dimensions shall be in accordance with the
 The Engineer shall check all dimensions
 and report all errors on the
 drawings.



- Legend:
- Denotes Re-plan area
 - Denotes area of site boundary of P.P. Consent 12/12/99 and Phase 1 works.
 - Denotes Diverted PROW

1000000

Area of Bound of Plot/Inclusion

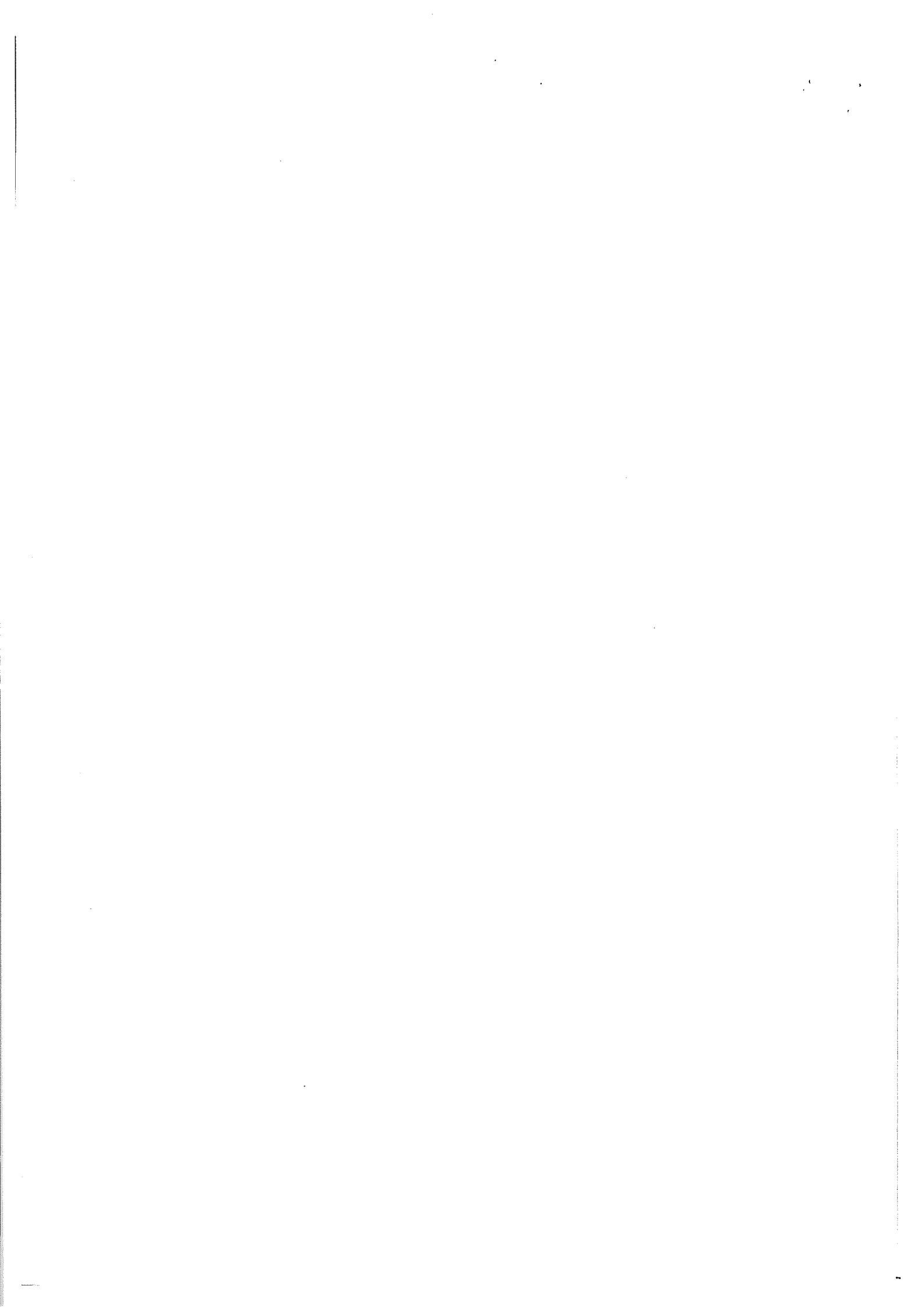
Sheet
 P&I Group

Project
 Herbert Road Replan
 Newport

Drawing Title
 Site Location

Project No.	Drawing No.	Revision
3075	(04/00)	A
Drawn	Checked	Date
WMO	SM	20/12/2017
Project Status	Issue	
Approved	PL	
Scale:	Sheet Size:	
1:1000	A3	

EO
 The Architects Limited
 The Archway, 100 The Road,
 Newport,
 South Wales, NP23 5PP
 Tel: 01492 24751
 www.eoaofwales.co.uk



THE SCHEDULE

Part 1 Affordable Housing

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 Owner 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.
"the Affordable Housing Units"	the units consisting of 48 housing units to be constructed pursuant to the Planning Permission and consisting of 24 one beds 18 two beds and 6 three beds units.
"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 which is preferred for the scheme by the Council.

"Alternative RSL"

a RSL who shall be different to the Preferred RSL to which the first offer is made pursuant to paragraph 3.4 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

2.

At least one month prior to commencing the Development the Owner shall notify the Council of the date when commencement will occur.

3

3.1 The Owner shall prior to the commencement of the Development submit to the Council for its approval:

3.1.1 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.

3.1.2 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 Development Quality Requirements published by the Welsh Government

- 3.2 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
- 3.3 The Development shall not be commenced until such time as the details required by clause 3.1.1 and 3.1.2 above have been approved in writing by the Council such approval not to be unreasonably withheld or delayed.
- 3.4 No Open Market Dwellings shall be occupied until such time as the Owner (save to the extent it is the preferred RSL) has made an offer in writing to the Preferred RSL to build and transfer the Affordable Housing Units to the Preferred RSL in accordance with:
- 3.4.1 the Planning Permission
 - 3.4.2 the details and specification approved pursuant to paragraph 2 above and
 - 3.4.3 Building Regulations and other statutory consents required and the Owner has provided evidence to the Council of this offer in writing.
- 3.5 The Owner shall (save to the extent it is the Preferred RSL) use reasonable endeavours to enter into a binding unconditional contract in accordance with Paragraph 3 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 Owner and the Preferred RSL) then the Owner shall use reasonable endeavours to enter into a binding unconditional contract in accordance with Paragraph 3 above with the Alternative RSL.
- 3.6 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 .
- 3.7. The Owner hereby undertakes 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 this covenant shall not bind :
- 3.7.1 mortgagees, chargees or receivers of an Affordable Housing Unit, disposing of an Affordable Housing Unit in exercise of a statutory power of sale, and this covenant shall not apply to the sale, and the Affordable Housing Unit shall thereafter absolutely cease to be subject to the provisions of this Deed;

3.7.2 The provisions of Part 1 of the Schedule shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any 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 Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver.

3.7.3 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 statutory right to acquire, 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.

3.8.

The Owner covenants with the Council as follows:

The offer referred to a paragraph 3.4 above shall be made on the following basis:

- 3.8.1 with full title guarantee;
- 3.8.2 with vacant possession;
- 3.8.3 free of financial encumbrance;
- 3.8.4 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;
- 3.8.5 with such other terms as may be agreed between the parties thereto;
- 3.8.6 subject to each party bearing its own costs in relation to such transfer;
- 3.8.7 with a price of not more than 50% ACG;
- 3.8.8 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

3.8.9 subject to the Owner procuring the issue of an insurance certificate from NHBC (or other warranty provider approved by the Council of Mortgage Lenders) in relation to the Affordable Housing Units.

Part 2 Education and Leisure Contributions

1 The Owner will pay to the Council:

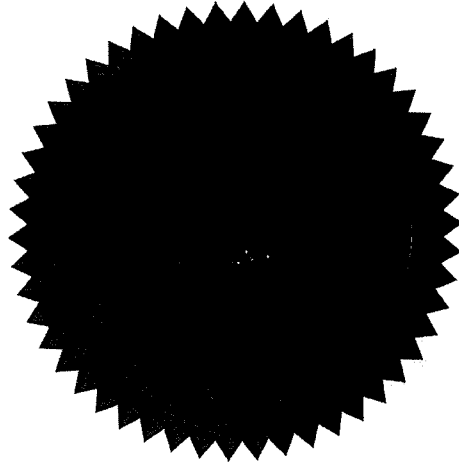
1.1.1 a contribution towards the provision of education consisting of the total sum resulting from the following calculation;

- (a) three hundred and fifty-four thousand five hundred and thirty pounds (£354,530) for primary education at Glan Usk and/or St Julian's Primary Schools, and
- (b) two hundred and sixty thousand two hundred and twenty-four pounds (£260,224) for secondary education at St Julian's High School.
- (c) a leisure contribution of one hundred and twenty-two thousand pounds (£122,000) towards upgrading and maintenance of off-site equipped play provision at the Glebelands Recreation Ground and/or Turner Street Playground.

1.1.2 Fifty per cent of the total contribution shall be paid prior to the occupation of the ninety-eighth dwelling comprised in the Development and the remaining 50% shall be paid prior to occupation of the one hundred and forty-seventh dwelling comprised in the Development.

1.1.3 All education contributions shall be Index Linked to BCIS and the leisure contribution shall be Index Linked to RPI.

THE SEAL of NEWPORT CITY COUNCIL)
was hereunto affixed in the presence of:)



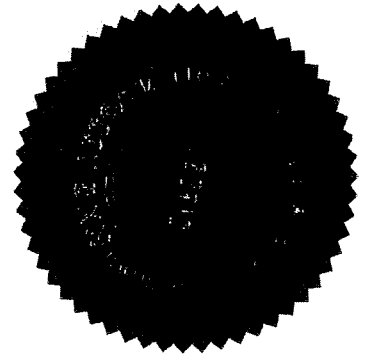
Executed as a Deed by affixing the Common Seal of
CHARTER HOUSING ASSOCIATION
LIMITED acting in the presence of:
~~by two directors or one director and its~~
secretary:

* DB

~~Company Secretary~~
Authorised

Director
Authorised

* KE



EXECUTED AS A DEED by
applying the seal of **THE**
WELSH MINISTERS the
Application of the seal of The
Welsh Ministers is
AUTHENTICATED by:

Who is duly authorised for that purpose by the Director of Legal Services by authority of the Welsh
Ministers under section 90(2) of the Government of Wales Act 2006

Signed:.....

