

THIS DEED is made the 10th day of August Two Thousand and Fifteen
BETWEEN

- (1) NEWPORT CITY COUNCIL of the Civic Centre, Newport, South Wales ("the Council")
(2) RIVERSEE LIMITED (Company Registration Number 05875271) of C/O UHY Hacker Young,
Lanyon House Mission Court Newport NP20 2DW ("the Developer")

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 other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition, work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying off services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and fill operations to raise current levels of the Land (which shall for the avoidance of doubt also include monitoring of settlement levels following completion of the fill operations and final certification) and "Commence" and "Commences" shall be construed accordingly

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** "Dwelling" means a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission.
- 1.1.7** "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 Agreement and the last index published prior to the date the financial sum is paid
- 1.1.8** "the Land" means the land known as land off Herbert Road Newport and edged red on Plan 1
- 1.1.9** "Occupation" and "Occupied" mean occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
- 1.1.10** "Plan 1" means the plan attached hereto and marked as "Plan 1"
- 1.1.11** "the Planning Application" means the application submitted to the Council by the Developer's agent for planning permission to develop the land for residential purposes which application was allocated reference number 13/1279 by the Council
- 1.1.12** "Planning Permission" means a planning permission granted pursuant to the Planning Application
- 1.1.13** "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 Developer is the freehold owner of the Land.
- (C) The Council has resolved to grant Planning Permission for the Development the subject of the Planning Application 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. This Deed is conditional upon:
 - 1.1 the grant of the Planning Permission; and
 - 1.2 the Commencement of Development save for the provisions of clauses 3.6 and 3.19 and clause B.1.1 of the Schedule
2. The Developer covenants with the Council to perform the obligations and observe the restrictions specified in the Schedule

3. It is agreed and declared as follows:-
- 3.1 The expressions "the Council" and "the Developer" shall include their successors in title and assigns
 - 3.2 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
 - 3.3 This Deed is a Local Land Charge and shall be registered as such
 - 3.4 Upon completion of this Deed the Developer hereby agrees to pay the reasonable legal costs incurred by the Council in the preparation and completion of this Deed and on Commencement of Development the Developer further agrees to pay the Council's monitoring fee for the monitoring of the terms of this Deed in the sum of Twenty-one Thousand Six Hundred and Fifty Four Pounds (£21,654.00)
 - 3.5 The Council will upon the written request of the Developer any time after the obligations of the Developer under this Deed have been fulfilled issue written confirmation thereof
 - 3.6 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
 - 3.7 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
 - 3.8 Without prejudice to the Council's rights to enforce any breaches of this Agreement (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

- 3.9** All sums payable by the Developer under the Schedule to this Deed shall be Index Linked in accordance with the terms of this Deed.
- 3.10.1** The Council will repay to the Developer 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.
- 3.10.2** The Council shall provide to the Developer such evidence as the Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Developer under this Deed
- 3.10.3** At the written request of the Developer the Council shall provide written confirmation of the discharge of the obligations contained in this Deed
- 3.11** The obligations in this Deed (with the exception of Clause 3.6) 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 Developer; or
 - (c) is quashed following a successful legal challenge.
- 3.12** 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.
- 3.13** Any notice shall be deemed to have been duly received:
- (a) if delivered personally when left at the address and for the contact referred to in this



J. Price.

Imhoff
Chen

KEY:
SITE BOUNDARY



Greenhill
PARTIAL AFFILIATION
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clause;

(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.

- 3.14** 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.
- 3.15** 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.
- 3.16** 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.
- 3.17** Upon written request from the Developer following the performance and satisfaction of all of the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 3.18** Nothing in this Deed shall prohibit or limit the right to develop any part of the land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date 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 SCHEDULE

A. Highways Obligations

1. Prior to first occupation of any dwelling comprised in the Development the Developer shall pay to the Council a contribution of **Five Thousand Pounds (£5,000.00)** Index Linked to BCIS towards the revalidation of the existing signalized junction at Clarence Place.

2. Prior to the first occupation of any dwelling comprised in the Development the Developer shall pay to the Council the sum of **Seventy Five Thousand Pounds (£75,000.00)** Index Linked to BCIS as a contribution towards the provision of a pedestrian crossing on Caerleon Road and other off-site footway improvement works..

B. Affordable Housing Obligations

1. Definitions

In this Schedule B 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 RSL and the Developer

"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 Affordable Housing Units"

means the units of Affordable Housing to be constructed pursuant to the Planning Permission and shall be fifteen per cent (15%) of the Dwellings to be constructed as part of the Development and of a neutral housing tenure and there shall be 6 no. x 1 bed flats 6 no. x 2 bed flats 6 no. x 2 bed flats 6 no. x 1 bed flats elderly 4 no. x 2 bed houses and 10 no. x 3 bed houses

"Alternative RSL"

means a RSL which shall be different to the RSL to which the first offer is made pursuant to paragraph 3 below as shall be approved in writing by the Council acting reasonably

"Dwelling(s)"

means a residential dwelling comprised in the Development whether a house bungalow or a flat and whether or not that Dwelling is designated as Affordable Housing

"Elderly Flats"

means the flats reserved for the elderly and those with mobility issues being unit numbers 192-203 forming part of the Affordable Housing Units

"General Needs Flats"

means the flats reserved for general needs being unit numbers 180-191 forming part of the Affordable Housing Units

"Open Market Dwellings"

means 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

"Registered Social Landlord (RSL)" means 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

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1.1. Prior to the commencement of the Development to submit to the Council for its approval:

- (a) 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
- (b) details of specification, level of servicing and programme for the construction of the Affordable Housing Units in accordance with the Development Quality Requirements Lifetime Homes Standards and Secure by Design as published by the Welsh Government or such other document updating or replacing the same

1.2 The Affordable Housing Units shall be constructed so that 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

1.3 The Development shall not be commenced until such time as the details required by

Paragraph 1.1 above have been approved in writing by the Council such approval not to be unreasonably withheld or delayed

1.4 No more than five (5%) of the Open Market Dwellings shall be occupied until such time as the Developer has entered into a binding unconditional contract with the RSL to build and transfer the Affordable Housing Units in a phased manner in accordance with paragraph[]below to the RSL and in accordance with:

- (a) the Planning Permission
- (b) the details and specification approved pursuant to paragraph 1.1 above and
- (c) Building Regulations and other statutory consents required

and the Developer has provided evidence to the Council of this contract in writing

1.5 To use reasonable endeavours to enter into a binding unconditional contract in accordance with Paragraph 1.4 above with a RSL but in the event that the RSL fails to enter into such a contract within three (3) months from the date the draft contract is submitted to the RSL (or longer by agreement of the Developer and the RSL) then the Developer shall use reasonable endeavours to enter into a binding unconditional contract in accordance with Paragraph 1.4 above with the Alternative RSL

1.6 In the event that the Developer is unable to enter into a binding unconditional contract with the RSL or the Alternative RSL within a period of 12 months from the Commencement Date and the Council is satisfied that the Developer has used reasonable endeavours to enter into such a contract then the Council will accept a lump sum in lieu of onsite affordable housing provision. The lump sum will be calculated in accordance with the provisions of the version of the Council's Supplementary Planning Guidance for Affordable Housing that is prevailing at the

time that the Council agree to accept the said lump sum and shall be paid to the Council within 3 months of the date of that agreement.

2.

2.1 No more than Sixty Five (65%) Open Market Dwellings may be Occupied until such time as the General Needs Flats have been constructed.

2.2 No more than Seventy (70%) of the remaining Open Market Dwellings may be Occupied until such time as the Elderly Flats have been constructed.

2.3 No more than Eighty (80%) of the remaining Open Market Dwellings may be Occupied until such time as the 14 houses forming part of the Affordable Housing Units have been constructed.

2.4 Where the Council (having first certified that a lump sum payment may be made) has received from the Developer the said lump sum payment in accordance with paragraph 1.6 above (the lump sum payment to be used by the Council to provide affordable housing at its discretion in the City of Newport) the Affordable Housing Obligation shall be treated as having been immediately discharged,

3. The Developer hereby undertakes to the Council not to transfer lease mortgage or otherwise dispose of the Affordable Housing Units and any land occupied therewith or any part of it save by way of sale of the freehold of the whole with the Affordable Housing Units erected thereon to a Registered Social Landlord provided always that this covenant shall not bind:

3.1 Mortgagees chargees or receivers of an Affordable Housing Unit disposing of an Affordable Housing Unit on the open market in exercise of a statutory power of sale or in exercise of its power of sale under the terms of the mortgage or charge

and the Affordable Housing Unit shall thereafter absolutely cease to be subject to the provisions of this Agreement

3.2 The owner of an Affordable Housing Unit who has staircased to 100% ownership, or has been granted a shared ownership lease by RSL (or similar arrangement where a share of the Affordable Housing Unit) is owned by the tenant and a share is owned by the RSL) by the RSL in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the RSL all the remaining shares so that the tenant owns the entire Affordable Housing Unit 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 Agreement.

- 4.** That the offer referred to at Paragraphs 3 shall be made on the following basis:
- 4.1.** with full title guarantee;
 - 4.2.** with vacant possession;
 - 4.3.** free of financial encumbrance;
 - 4.4.** 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;
 - 4.5** with such other terms as may be agreed between the parties thereto;
 - 4.6** subject to each party bearing its own costs in relation to such transfer;
 - 4.7** the Standard Conditions of Sale (Third Edition) or any modification or subsequent reissue thereof shall apply to the transfer in so far as the same are not inconsistent with the express terms of this Agreement;

- 4.8 with a price of not more than 58% ACG; and
- 4.9 subject to the Developer agreeing to procure the issue of an insurance certificate from the NHBC (or other warranty provider approved by the Council of Mortgage Lenders) in relation to the Affordable Housing Units

C. Education Contribution

The Developer shall pay to the Council a financial contribution of **Five Hundred and Ninety Four Thousand Seven Hundred and Ninety-Seven Pounds (£594,797.00)** Indexed Linked to BCIS for provision and improvement of education facilities at St Julian's High School with fifty per cent (50%) of the required Education Contribution payable upon the Occupation of the one hundred and fiftieth (150th) Dwelling and the remaining part of the Education Contribution being the other fifty per cent (50%) being payable upon the Occupation of the two hundredth (200th) Dwelling

D. Leisure Provision

The Developer shall pay to the Council a financial contribution of **One Hundred and Twenty Two Thousand Pounds (£122,000.00)** Indexed Linked to RPI with fifty per cent (50%) of the required Leisure Contribution payable upon the Occupation of the one hundred and fiftieth (150th) Dwelling and the remaining part of the Leisure Contribution being the other fifty per cent (50%) being payable upon the Occupation of the two hundredth (200th) Dwelling and the said amount shall be used by the Council to upgrade and maintain off-site equipped play at the Glebelands Recreation Ground and at the Turner Street playground.

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



Green Dice
Head of Law and Standards

SIGNED AS A DEED by
RIVERSEE LIMITED
acting by its directorS
bwo

) MR DARRAN WATTS *DM WATTS*
)
) *DM WATTS*

In the presence of:

Witness Name: *CLAIRE WATTS*

Witness Address:
*ORCHARD HOUSE
21 CASTLE RISE
LLANVACHES
NEWPORT
NP26 3BS*