

THIS DEED dated the day of Two Thousand and
Seven is made **BETWEEN:-**

- (1) **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Brockington
35 Hafod Road Hereford HR1 1SH (“the Council”)
- (2) **PETER ROY KELSALL and ANNETTE RITA KELSALL** both of Linwell House
Hope End Ledbury Herefordshire HR8 1JQ (“the Owner”)

WHEREAS:

- (1) The Council is empowered by Section 106 of the Town and Country Planning Act 1990 (as amended) (“the Act”) to enter into an agreement with any person interested in land in its area for the purpose of restricting or regulating the development or use of that land.
- (2) The Owner is the registered proprietor free from encumbrances of land described in the First Schedule hereto (“the Land”).
- (3) The Owner has by its agent submitted to the Council an application for planning permission as described in the Second Schedule hereto (“the Application”).
- (4) The Council acting by its planning committee has resolved to delegate authority to its officers for the grant of planning permission (subject to conditions) in pursuance of the Application subject to the completion of this deed for the purpose of restricting or regulating the development or use of the Land in manner hereinafter appearing.
- (5) The Council is the local planning authority by whom the restrictions and obligations contained in this deed are enforceable.

NOW THIS DEED is made pursuant to Section 106 of the Act and is a planning obligation for the purposes of that Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and all other enabling powers and enactments which may be

relevant for the purposes of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Land and **WITNESSES** as follows:-

1. Words and Expressions

In this Deed the following words and expressions shall where the context so admits have the following meanings:-

- 1.1 The expressions the “Owner” and the “Council” shall include their respective successors in title and assigns.
- 1.2 Words importing the singular number only shall include the plural number and vice versa and words importing the one gender includes the other gender and where there are two or more persons included in the expression “the Owner covenants” such covenants expressed or implied made by the Owner shall be deemed to be made by such persons jointly and severally.
- 1.3 All references in this deed to a person or persons shall include corporations and unincorporated associations and all other legal entities.
- 1.4 Words denoting an obligation on a party to do any act include an obligation to procure that it be done.
- 1.5 Words placing a party under a restriction include an obligation not to permit infringement of that restriction.
- 1.6 References to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force.
- 1.7 “The Development” means the development of the Land as authorised by the Planning Permission.
- 1.8 “The Plan” means the plan annexed to this deed.

- 1.9 “Affordable Housing” shall have the meaning in paragraph 2 of the Council’s Supplementary Planning Guidance entitled “Provision of Affordable Housing” dated March 2001 updated November 2004 which defines Affordable Housing as “housing provided for rent or sale at a price level which can be sustained by local people in housing need where households are unable to access existing markets”.
- 1.10 “Affordable Housing Units” shall mean the four residential units and ancillary areas that comprise the Development.
- 1.11 “Commencement of Development” means to commence the Development pursuant to the Permission by the carrying out of a Material Operation.
- 1.12 “Material Operation” has the meaning given by Section 56(4) of the Act.
- 1.13 “Planning Permission” shall mean the planning permission subject to conditions issued by the Council permitting the Development pursuant to the Application and the expression Planning Permission shall include all reserved matter approvals granted thereunder
- 1.14 “Registered Social Landlord” shall mean a registered social landlord as defined in Part 1 of the Housing Act 1996 who is registered with the Housing Corporation under Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act or any statutory provision amending consolidating or replacing it for the time being in force and being a preferred development partner registered social landlord listed (or intended by the Council for listing) in Appendix 1 of the Council’s aforementioned Supplementary Planning Guidance.

2. Covenants

The Owner for the purposes of Section 106 of the Act with the intention of binding the Land agrees and covenants with the Council to observe the restrictions and perform the obligations set out in the Third Schedule hereto.

3. Reservations

Nothing in this deed shall prevent the Council from exercising any of its statutory powers or functions in relation to the development of the Land.

4. Local Land Charge Provisions

This deed is a local land charge and shall be registered as such.

5. Costs

Upon completion of this deed the Owner shall pay to the Council its reasonable and proper costs in the preparation and completion of this deed.

6. Agreement and Declarations

IT IS HEREBY AGREED AND DECLARED that:-

- 6.1 The restrictions and obligations in the Third Schedule to this deed are planning obligations enforceable by the Council in accordance with the provisions of Section 106(3) of the Act against the Owner and his successors in title to the Land.
- 6.2 With the exception of paragraphs 4 and 5 of this deed which have effect on the date of this deed none of the terms or provisions of this deed will have operative effect unless and until the date that the Planning Permission is issued by the Council and the Commencement of Development.
- 6.3 If the Planning Permission shall expire before Commencement of Development or shall at any time be revoked this deed shall forthwith determine and cease to have effect but without prejudice to the validity of anything done or payments or contributions made whilst this deed is in force.
- 6.4 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.

- 6.5 If any provision in this deed shall be held to be invalid illegal or unenforceable the validity legality or enforceability of the remaining provisions hereof shall not in any way be deemed to be affected or impaired.
- 6.6 The Owner shall not be entitled to any costs or compensation whatsoever from the Council arising from the agreement restrictions and obligations contained in this deed.
- 6.7 A person who is not a party to this deed has no right under the Contracts (Rights of Third Party) Act 1999 to enforce any term of this deed but this does not affect any right or remedy of a third party which exists or is available apart from such act.
- 6.8 No person shall be liable for a breach of a covenant contained in this deed after parting with all interest in the Land or the part of the Land in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 6.9 The headings in this deed are for convenience only and shall not be taken into account in the construction and interpretation thereof.

7. Notices

A notice under this deed is valid only if:-

- 7.1 It is given by hand sent by recorded delivery or document exchange or sent by fax provided that a confirmatory copy is given by hand or sent by recorded delivery or document exchange on the same day, and
- 7.2 It is served
- 7.2.1 at the address shown in this deed for the receiving party (and in the case of the Council is marked for the attention of the Head of Planning Services quoting reference DCNC2006/3893/F or at any address specified in a notice given by that party to the other parties.

7.3 A notice

7.3.1 sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post on the third working day after posting if sent by second class post

7.3.2 sent through a document exchange is to be treated as served on the first working day after the day on which it would normally be available for collection by the recipient

7.3.3 sent by fax is to be treated as served on the day on which it is successfully sent or the next working day where the fax is sent successfully after 1600 hours or on a day that is not a working day whenever and whether or not the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail or the document exchange undelivered.

8. Waiver

No waiver (whether express or implied) by the Council or any breach or default by the Owner in performing or observing any of the obligations or other terms of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the obligations or other terms of this deed or from acting upon any subsequent breach or default in respect thereto by the Owner.

9. Arbitration

In the event of any dispute or difference arising out of this deed between the parties (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this deed) which is not resolved within 14 days such dispute or difference shall at the request of any party be referred for arbitration under the Arbitration Act 1996 to a sole arbitrator to be agreed between the parties or in the absence of agreement within fourteen days after any party has given to the other(s) a

written request to concur in the appointment of an arbitrator to be appointed at the request of any party by the President or Vice President of the Chartered Institute of Arbitrators and in these respects these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996.

10. Warranty as to Title

The Owner hereby warrants to the Council that the title details referred to in recital 2 and in the First Schedule hereto are complete and accurate in every respect.

IN WITNESS of which this instrument has been duly executed as a deed by the parties and delivered the day and year first before written.

FIRST SCHEDULE

(“the Land”)

The freehold land situated at Risbury, Leominster shown edged red on the Plan and forming part of the Title Number HE22694

SECOND SCHEDULE

(“the Application”)

An application for Planning Permission dated the day of 200 made under the Council’s reference DCNC2006/3893/F for demolition of existing buildings (if any) and erection of four dwellings and associated garages and/or parking spaces and associated drainage.

THIRD SCHEDULE

1. To construct or procure the construction of the Affordable Housing Units in accordance with the Planning Permission and to current Housing Corporation scheme development standards and to the Joseph Rowntree “Lifetime Homes” standards.
2. The Affordable Housing Units shall be occupied as a sole residence only by a person or in the case of two or more persons one of whom has a local connection with the parish of Humber Ford and Stoke Prior Group Parish or in the event of there being no person having a local connection to the parish of Humber Ford and Stoke Prior Group Parish a person with a local connection to the adjoining parishes of

or in the event of there being no person with a local connection with any of the preceding parishes any other person ordinarily resident within the administrative area of the Council.
3. For the purposes of paragraph 2 of this Schedule “local connection” means having a local connection to one of the parishes specified above because that person:

is or in the past was normally resident there and that residence is or was of his own choice; or

is employed there; or

has a family association there; or

shows a proven need to give support to or receive support from family members; or

can show special circumstances;

and for the purposes of this paragraph 3:

“normally resident” shall be established by twelve months prior residence in one of the parishes specified in paragraph 2 of this Schedule

“employed” shall mean in the employ of another not being of a casual nature but shall not exclude part-time employment of 16 hours or more per week or self-employment

“family association” shall mean where a person or a member of his household has parents, adult children, brothers or sisters currently residing in one of the parishes specified in paragraph 2 above and who have been resident for a period of at least one year and that person indicates a wish to be near them

“support” shall mean a proven need to provide or receive personal and physical care to enable a person or a family member to live independently in the community

“special circumstances” shall not normally apply but amount to circumstances which in the view of the Council may give rise to a local connection.

4. The Owner further covenants with the Council that in the event of a disposal of any one or more of the Affordable Housing Units (and in this Agreement the expression “disposal” or “disposed of” shall mean the completion of any transaction for the sale of the freehold or leasehold or any assignment of any terms created by a lease conferring a right to occupy such dwelling residentially) then such disposal shall not take place except in accordance with the following provisions:-
 - 4.1 such disposal shall not take place other than to a person or persons who intends to occupy the Affordable Housing Unit as his only or principal home and satisfies all or any of the criteria set out in paragraphs 2 and 3 of this Schedule and
 - 4.2 notice of intended disposal together with full sales particulars and details of the intended purchasers together with the circumstances whereby the intended purchasers satisfy the criteria set out in paragraphs 2 and 3 have been satisfied shall have been served by the Owner or any subsequent owner on the Council and
 - 4.3 the Council has within 28 days of receipt of the notice referred to in 4.2 confirmed in writing to the Owner that the disposal can proceed subject to the price for such disposal being determined in accordance with the provisions of paragraph 5 hereunder
5. The purchase price applicable to the disposal or any subsequent disposal shall be:
 - 5.1 the open market value of the Affordable Housing Unit discounted in accordance with the provisions of the Supplementary Planning Guidance entitled “Provision of

Affordable Housing” dated March 2001 and updated November 2004 or any subsequent modification thereof and in force at the time of the relevant disposal and where

5.2 the open market value of the Affordable Housing Unit is the value of the dwelling with vacant possession if sold on the open market in good faith by a willing seller and disregarding the obligations in this deed and which shall be the mean of the total of two valuations obtained by the Owner from two independent RICS qualified valuers practising within 20 miles of the Development.

6. If within a period of six months following the date of practical completion of the Development (and for this purpose practical completion shall be determined by the issue of a Practical Completion Certificate by the Council’s Building Control Officer) any one or more of the Affordable Housing Units has not been disposed of or occupied by a person or persons satisfying the criteria set out in paragraphs 2 and 3 of this Schedule then the Owner shall be at liberty to dispose of any one or more of the Affordable Housing Units not so occupied or disposed of to the Marches Housing Association a Registered Social Landlord approved by the Council and at a price determined in accordance with the provisions of paragraph 5 hereof.

7. The Owner agrees so as to ensure compliance with the provisions of this deed that on the first and each and every subsequent disposal of any one or more of the Affordable Housing Units to apply to the Registrar of the Land Registry to enter a Restriction on that part of the Owner’s Registered Title number HE22694 comprising the Development and described in Schedule 1 hereto in the following terms:-

“No disposition of the registered estate forming or previously forming part of Title Number HE22694 is to be registered except on the filing at the Land Registry of a certificate by the registered proprietor’s solicitor or licensed conveyancer that the covenants contained in the Third Schedule of a Deed made pursuant to Section 106 of

the Town and Country Planning Act 1990 (as amended) and made between the County of Hereford District Council of the one part and Peter Roy Kelsall and Annette Rita Kelsall of the other part dated the day of 2007 have been complied with and notice thereof has been given to the Head of Planning Services, County of Hereford District Council Brockington 35 Hafod Road Hereford HR1 1SH reference DCNC2006/3893/F”

EXECUTED AS A DEED when)
THE COMMON SEAL of THE)
COUNTY OF HEREFORDSHIRE)
DISTRICT COUNCIL was)
hereunto affixed BY ORDER)

Authorised Officer

SIGNED AS A DEED by the said)
PETER ROY KELSALL in the)
presence of:-)

Witness signature:

Name:

Address:

Occupation:

SIGNED AS A DEED by the said)
ANNETTE RITA KELSALL in)
the presence of:-)

Witness signature:

Name:

Address:

Occupation:

DATED

2007

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

and

MR PETER ROY KELSALL
and MRS ANNETTE RITA KELSALL

DEED OF PLANNING OBLIGATION
made under the provisions of
Section 106 Town and Country Planning Act 1990 (as amended)
relating to freehold land situated at Risbury, Leominster
and forming part of Title Number HE22694

Beaumonts
Beaumont House
Offa Street
Hereford
HR1 2LH