

THIS DEED dated

is made BETWEEN:-

1. THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL of Brockington 35 Hafod Road Hereford HR1 1SH ("the Council")
2. CLIFFORD ROY JENKINS and JOAN JENKINS of Bliss House Staunton on Wye Herefordshire HR4 7NA ("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 owner in fee simple in possession free from encumbrances of land described in the First Schedule to this deed ("the Land").
3. The Owner has by its agent submitted to the Council the application for planning permission described in the Second Schedule to this deed ("the Application").
4. By a notice of refusal dated 14th February, 2011 "the refusal" the Council refused planning permission for the reasons set out therein and on 21st April 2011 the Owner appealed to the Secretary of State against the refusal and gives this undertaking with the intention that any objections by the Council to the grant of planning permission are overcome.
5. The Council is the local planning authority by whom the restrictions and obligations contained in this deed are enforceable.

THIS DEED is made pursuant to Section 106 of the 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 meaning where the context so admits include the plural meaning and vice versa
- 1.3 Words of the masculine gender include the feminine and neuter genders and all references in this deed to a person or persons shall include corporations and unincorporated associations and all other legal entities.



- 1.4 Where there are two or more persons included in the expression "the Owner" covenants expressed or implied to be made by Owner shall be deemed to be made by such persons jointly and severally.
- 1.5 Words denoting an obligation on a party to do any act include an obligation to procure that it be done.
- 1.6 Words placing a party under a restriction include an obligation not to permit infringement of that restriction.
- 1.7 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.
- 1.8 "Affordable Housing" shall have the meaning in the Council's Unitary Development Plan, adopted March 2007 which defines Affordable Housing as 'subsidised housing provided by an organisation such as a registered social landlord or local authority allocating on the basis of need. While such dwellings will normally be made available for rent, they may also include subsidised home ownership, such as shared ownership, where a registered social landlord or local authority retains a continuing interest'.
- 1.9 "Affordable Housing Units" mean (unless otherwise agreed in writing by the Council) the four residential units and ancillary areas in the Development intended for occupation as 2 Social Rented housing units and 2 Intermediate Housing units identified as plots 7, 8, 9 and 10 on the drawing numbered 9213.JH.P1 revision D forming part of the Application and "Affordable Housing Unit" shall mean any one of such units.
- 1.10 "Commence Development" and "Commencement of Development" mean to commence the Development pursuant to the Permission by the carrying out of a Material Operation.
- 1.11 "Contributions" mean the Education Contribution; the Library Contribution; the Open Space and Play Area Contribution; the Recycling Contribution; the Sports and Recreation Contribution and the Transport Contribution.
- 1.12 "Development" shall mean the development of the Land disclosed by the Application.
- 1.13 "Education Contribution" means the sum of ten thousand seven hundred and five pounds (£10,705.00) index-linked in accordance with paragraph 3.11 of this deed to provide the Education Facilities required as a consequence of the Development.
- 1.14 "Education Facilities" mean enhanced educational infrastructure at "Conningsby Early Years" and "Weobley Youth" with 1% of the Education Contribution allocated towards special educational needs within the Council's maintained special schools in the city of Hereford.
- 1.15 "Herefordshire Allocations Policy" shall mean the Council's Policy for the allocation of Affordable Housing in the administrative area of the Council which under the Housing Act 1996 as amended by the Homelessness Act 2002 the Council has a duty to provide.

- 1.16 "Home Point" means the agency or body (or any successor agency or body) that on behalf of the Council holds the common housing register and operates a choice based lettings system (or any subsequent lettings system) through which Affordable Housing in the administrative area of the Council is advertised.
- 1.17 "Intermediate Housing" means Affordable Housing at prices and rents above those for Social Rented housing but below Open Market prices or rents which may include Shared Equity housing; Shared Ownership housing; Intermediate Rented housing or any other type of Affordable Housing approved in writing by the Council.
- 1.18 "Intermediate Rented" means housing at rent levels above those of Social Rented housing but below Open Market rented housing.
- 1.19 "Library Contribution" means the sum of one thousand six hundred and one pounds (£1,601.00) index-linked in accordance with paragraph 3.11 of this deed towards the Library Facilities.
- 1.20 "Library Facilities" mean existing or new library services in the village of Weobley.
- 1.21 "Material Operation" has the meaning given by Section 56 (4) of the Act.
- 1.22 "Occupy" "Occupied" and "Occupation" means the first occupation of the Development for residential purposes but excluding occupation for the purposes of construction and fitting out.
- 1.23 "Open Market" means the open market for the sale or letting of housing by a person or body other than (a) a local housing authority (b) a Registered Provider or (c) any other person or body offering housing accommodation to the public at less than the prevailing market sale/rent price.
- 1.24 "Open Market Units" mean those residential units in the Development that are not Affordable Housing Units and which are intended for sale or letting on the Open Market and 'Open Market Unit' shall mean any one of such units.
- 1.25 "Open Space and Play Area Contribution" means the sum of eighteen thousand two hundred and thirty-five pounds (£18,235.00) index-linked in accordance with paragraph 3.11 of this deed towards the Open Space and Play Area Facilities.
- 1.26 "Open Space and Play Area Facilities" mean new or enhanced off-site play provision at the existing play facility at Staunton on Wye in lieu of such facilities within the Development.
- 1.27 "Permission" shall mean a notice of decision that may be granted by the Secretary of State permitting the Development in accordance with the Application.
- 1.28 "Plan" means the plan attached to this deed.
- 1.29 "Recycling Contribution" means the sum of eight hundred and forty pounds (£840.00) index-linked in accordance with paragraph 3.11 of this deed towards the provision of the Recycling Facilities.
- 1.30 "Recycling Facilities" mean new waste recycling facilities or enhanced waste recycling facilities in Staunton on Wye.
- 1.31 "Registered Provider" means a registered provider of Affordable Housing under Part 2 of the Housing and Regeneration Act 2008 or any statutory provision

amending consolidating or replacing it for the time being in force and being a preferred development partner Registered Provider listed (or intended for listing) in the Council's 'provision of affordable housing technical data' which supports the supplementary planning document Planning Obligations April 2008 (or any subsequent or updated document).

- 1.32 "Shared Equity" means housing secured by a conventional mortgage and a low cost equity loan arrangement and where the provider may take a share of equity growth.
- 1.33 "Shared Ownership" means ownership under the terms of a lease by which a lessee may acquire a share or shares of the equity in an Affordable Housing Unit from the housing provider who retains the remainder and may charge a rent
- 1.34 "Sports and Recreation Contribution" means the sum of five thousand four hundred and thirty-four pounds (£5,434.00) index-linked in accordance with paragraph 3.11 of this deed to provide the Sports and Recreation Facilities.
- 1.35 "Sports and Recreation Facilities" mean new or enhanced sporting and recreational facilities in Staunton on Wye or in the city of Hereford in the absence of any identifiable local need in lieu of such facilities within the Development.
- 1.36 "Social Rented" means rented housing owned and managed by councils and Registered Providers, for which guideline target rents are determined through the national rent regime as defined in Annex B of Planning Policy Statement 3.
- 1.37 "Transport Contribution" means the sum of thirty-one thousand nine hundred and sixty-four pounds (£31,964.00) index-linked in accordance with paragraph 3.11 of this deed to provide the Transport Facilities.
- 1.38 "Transport Facilities" mean either or both of the following:
- 1.38.1 improvements to sustainable transport infrastructure in Staunton on Wye and the surrounding area;
- 1.38.2 "Safe Routes to Schools" a road safety initiative.

2. Covenant

- 2.1 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 to this deed.
- 2.2 The Council covenants with the Owner that the Council will comply with the obligations on its part set out in the Fourth Schedule to this Deed

3. Agreement and Declarations

IT IS HEREBY AGREED AND DECLARED that

- 3.1 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.

- 3.2 With the exception of this paragraph 3.2 and paragraphs 5, 6 and 12, delivery and any other relevant paragraphs 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 Permission is issued by the Secretary of State.
- 3.3 If the Permission shall expire before Commencement of Development or shall at any time be revoked this deed shall forthwith determine and cease to have effect insofar only as it has not already been complied with and without prejudice to the validity of anything done or payments or contributions made or expended whilst this deed is in force.
- 3.4 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 Permission) granted (whether or not on appeal) after the date of this deed.
- 3.5 If any provision or part provision of this deed:
- 3.5.1 shall be held by any court or competent authority to be invalid illegal or unenforceable the validity legality or enforceability of the remaining provisions shall not in any way be deemed to be affected or impaired; and
- 3.5.2 if any invalid illegal or unenforceable provision or part provision of this deed would be valid legal and enforceable if some part or parts of it were amended the parties shall amend such provision(s) so that as amended it is legal valid and enforceable and so far as possible achieves the original intentions of the parties.
- 3.6 The parties to this deed shall not be entitled to any costs or compensation whatsoever from the Council arising from the agreement restrictions and obligations contained in this deed.
- 3.7 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.
- 3.8 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.
- 3.9 The restrictions and obligations in the Third Schedule to this deed shall not be enforceable against owner-occupiers of the Open Market Units nor against those deriving title from them except for the restriction on residential occupation in paragraph 1.2 of the Third Schedule.
- 3.10 The obligations contained in paragraph 2 of the Third Schedule to this deed shall not apply to or be enforceable against any Registered Provider or their mortgagees or chargees with a legal interest in the Affordable Housing Units or occupiers thereof.
- 3.11 The Contributions payable in accordance with the obligations contained in paragraph 2 of the Third Schedule to this deed shall be uplifted by reference to:
- 3.11.1 any increase in the BCIS tender price index published by the Royal Institute of Chartered Surveyors occurring between the date of its

publication prior to the date of the Permission and the date that such sum is actually paid to the Council; or

3.11.2 an equivalent index that the Council may at their discretion select in the event that the BCIS tender price index shall cease to be published before such sums are paid.

3.12 Any of the Contributions paid to the Council under the terms of this deed may at the Council's discretion be pooled with other contributions paid or intended for payment to secure the facilities as referred to in this deed for which the Contribution in question was paid for the benefit of the Development and for the wider locality.

3.13 The headings in this deed are for convenience only and shall not be taken into account in the construction and interpretation thereof.

4. Reservations

For the avoidance of doubt 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.

5. Local Land Charge Provision

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

6. Costs

On or before the date of this deed the Owner shall pay to the Council its reasonable and proper costs in the preparation and completion of this deed and an administration fee of £1,376.00 towards the cost to the Council of monitoring the obligations in this deed.

7. Notices

7.1 A notice under this deed is valid only if 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 it is served 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 planning obligations manager quoting reference DMN/102975/O or at any address specified in a notice given by that party to the other parties.

7.2 A notice:

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

7.2.2 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

7.2.3 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

7.3 The Council's planning obligations manager shall be given 14 days prior notice of Commencement of Development.

8. Waiver

No waiver (whether express or implied) by the Council of 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 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 warrants to the Council that the title details referred to in recital 2 and the first schedule are complete and accurate in every respect and that no person other than the Owner has any legal or equitable interest in the Land.

11. VAT

All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax properly payable.

12. Interest

If any payment due under the terms of this deed is paid late interest calculated at the Council's standard rate of 4% above the Bank of England base rate from time to time will be payable from the date payment is due to the date payment is made.

13. Jurisdiction

This deed is governed by and in accordance with the law of England.

IN WITNESS of which this instrument has been duly executed as a deed by the parties and delivered on the date set out above

FIRST SCHEDULE

(the Land)

The freehold land lying to the north and east of Bliss House Staunton on Wye Herefordshire HR4 7NA more particularly described in part in a Conveyance dated 1st March 1983 made between (1) Eric Keysall Yapp and (2) the Owner, in part in a Conveyance dated 1st March 1983 between (1) John Watt Wightman, Hugh John Stewart Henderson and Michael George Humphrey Fletcher and (2) the Owner and in part in an Assent dated 5th December 1991 made between (1) Anthony Edward Jenkins and (2) the Owner and shown edged red on the Plan.

SECOND SCHEDULE

(the Application)

An application dated 15th November, 2010 for planning permission for eleven houses (seven market houses and four affordable houses) with associated landscaping and infrastructure made under the Council's reference DMN/102975/O.

THIRD SCHEDULE

(Restrictions and Obligations)

The Owner covenants with the Council that no dwellings erected or to be erected on the Land will be Occupied except in accordance with the following restrictions and obligations:

1. Affordable Housing

1.1 To construct or procure the construction of the Affordable Housing Units at no cost to the Council only in accordance with:

1.1.1 the Permission; and

1.1.2 the Homes and Communities Agency 'Design and Quality Standards 2007' (or to such subsequent design and quality standards of the Homes and Communities Agency as are current at the date of construction); and

1.1.3 the Joseph Rowntree Foundation 'Lifetime Homes' standards; and

1.1.4 level 3 of the Code of Sustainable Homes published by the Department for Communities and Local Government on 27th February, 2008 as updated by the technical guide version 2 published in May, 2009; independent certification of compliance being provided to the Council before Commencement of Development and again following Occupation of the last dwelling within the Development.

1.2 Not to Occupy or cause or permit the Occupation of more than four Open Market Units on any part or parts of the Land until the Affordable Housing Units have been constructed in accordance with paragraph 1.1 above and are ready and available for residential occupation and are accessible by vehicles and pedestrians and have been transferred (by freehold transfer with title absolute and

full title guarantee) to a Registered Provider on terms that accord with relevant Homes and Communities Agency funding requirements current at the date of construction of the Affordable Housing Units.

- 1.3 The transfer of the Affordable Housing Units to the Registered Provider shall include the following provisions:-
 - 1.3.1 the grant to the acquiring Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units.
 - 1.3.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development.
- 1.4 the Affordable Housing Units must at all times be let and managed or co-owned by a Registered Provider in accordance with the guidance issued from time to time by the Homes and Communities Agency (or any successor agency) with the intention that the Affordable Housing Units shall not be used for any purpose other than the provision of Affordable Housing in the tenure(s) specified in definition 1.8 of this deed (unless otherwise agreed in writing by the Council) to persons who are:
 - 1.4.1 registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and
 - 1.4.2 satisfy the requirements of paragraph 1.5 below.
- 1.5 The Affordable Housing Units must be advertised through Home Point and allocated in accordance with the Herefordshire Allocation Policy for occupation as a sole residence to a person or persons one of whom has:-
 - 1.5.1 a local connection with the parish of Staunton on Wye; or
 - 1.5.2 in the event of there being no person having a local connection to the parish of Staunton on Wye a person with a local connection to one of the following parishes: Letton; Norton Canon; Bredwardine; Brobury with Monnington on Wye and Mansell Gamage; or
 - 1.5.3 in the event of there being no person with a local connection to a relevant parish referred to in sub-paragraphs 1.5.1 and 1.5.2 above any other person who has a local connection to the County of Herefordshire of a type described in sub-paragraphs 1.6.1 to 1.6.5 below and is eligible under the allocations policies of the Registered Provider if the Registered Provider can demonstrate to the Council that after 28 working days of any of the Affordable Housing Units becoming available for letting the Registered Provider having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraphs 1.5.1 or 1.5.2 above.
- 1.6 For the purposes of sub-paragraphs 1.5.1 or 1.5.2 of this schedule 'local connection' means having a local connection to one of the parishes specified above because that person:
 - 1.6.1 is or in the past was normally resident there; or

- 1.6.2 is employed there; or
 - 1.6.3 has a family association there; or
 - 1.6.4 a proven need to give support to or receive support from family members;
or
 - 1.6.5 because of special circumstances
- 1.7 For the purposes of paragraph 1.6 of this schedule
- 1.7.1 "normally resident" shall be established by having resided in one of the parishes specified in sub-paragraphs 1.5.1 or 1.5.2 of this schedule for 6 out of the last 12 months or 3 out of the last 5 years.
 - 1.7.2 "employed" shall mean in the employ of another (or a formal offer of such employment) not being of a casual nature but shall not exclude part-time employment of 16 hours or more per week or self employment.
 - 1.7.3 "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 sub-paragraphs 1.5.1 or 1.5.2 above and who have been resident for a period of at least 12 months and that person indicates a wish to be near them.
 - 1.7.4 "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 and includes people who are in need of such support but are not normally resident but have long standing links with the local community.
 - 1.7.5 "special circumstances" shall not normally apply but amount to circumstances which in the view of the Council may give rise to a local connection.
- 1.8 The provisions of paragraphs 1.4, 1.5, 1.6 and 1.7 of this schedule shall not be binding on nor enforceable against
- 1.8.1 any mortgagee or chargee of the Registered Provider which exercises its power of sale appointment of a receiver or power of entry as mortgagee or chargee or its successors in title deriving title under such mortgagee or chargee shall not be bound by any of the restrictions provisions or obligations set out in this Schedule if the mortgagee or chargee shall have complied with its obligations pursuant to Sections 144 to 154 of the Housing and Regeneration Act 2008 and no proposals for the future ownership and management of the Land by a Registered Provider shall have been agreed by the mortgagee or chargee within the moratorium period determined in accordance with Sections 145 to 147 of the said Act;
or
 - 1.8.2 any occupier of an Affordable Housing Unit who has exercised a statutory right to buy or acquire the whole of the freehold estate in an Affordable Housing Unit nor any mortgagee of such occupier or their respective successors in title.

1.9 Where any of the Affordable Housing Units are made available for Shared Equity housing or Shared Ownership housing the occupiers shall not be permitted to own more than 80% of the total equity value of such Affordable Housing Units.

2. Contributions

Not to Commence Development or cause or permit the Commencement of Development until the Contributions have been paid to the Council.

FOURTH SCHEDULE

(Council's Covenants)

1. Upon receipt of the Contributions the Council will place the same in an interest bearing account.
2. The Council shall apply the Contributions towards the facilities referred to in this deed or to such other facilities that the Council and the Owner may agree in writing are appropriate as a result of the Development.
3. The Council agree that if any part of the Contributions has not been expended or remains uncommitted following ten years from the date of payment then such part of the Contributions as may remain unspent or uncommitted together with interest accrued as aforesaid on the balance shall be returned to the payer of the Contributions.
4. If so requested to provide the payer of the Contributions with such evidence as shall be reasonably requested to confirm the expenditure of the Contributions.

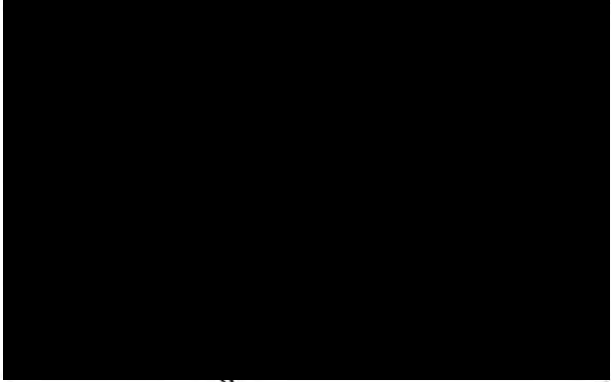
EXECUTED AS A DEED when
THE COMMON SEAL OF
THE COUNTY OF HEREFORDSHIRE
DISTRICT COUNCIL
was hereunto affixed BY ORDER

Authorised Officer

SIGNED AS A DEED by
CLIFFORD ROY JENKINS
In the presence of:



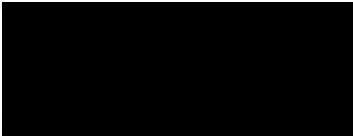
Witness signature:



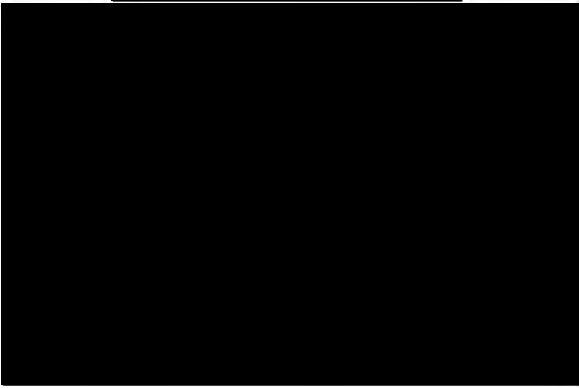
Name (capitals):

Address:

SIGNED AS A DEED by
JOAN JENKINS
In the presence of:



Witness signature:



Name (capitals):

Address:

Dated

2011

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

- and -

CLIFFORD ROY JENKINS and JOAN JENKINS

DEED OF PLANNING OBLIGATION
made under the provisions of
Section 106 Town and Country Planning Act 1990 (as amended)
relating to land to the north and east of
Bliss House Staunton on Wye Herefordshire

Legal Services
Legal and Democratic
Herefordshire Council,
Brockington,
35 Hafod Road,
Hereford, HR1 1SH.