

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

Vale of Glamorgan Council (1)

and

BDW Trading Limited, Taylor Wimpey UK Limited and
Persimmon Homes Limited (2)

and

Associated British Ports and ABP Property Development
Company Limited (3)

relating to the development of land at Barry
Waterfront, Barry, Vale of Glamorgan

Z March

2012

14 MAR 2012

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THIS AGREEMENT is made on

2 March

2012

BETWEEN:

- (1) **VALE OF GLAMORGAN COUNCIL** of Civic Offices Holton Road Barry (the "Council")
- (2) **The Parties whose names and addresses are set out in Schedule 11 to this Agreement ("the Developers")**
- (3) **ASSOCIATED BRITISH PORTS** a company registered in England and Wales (company number ZC000195) having its principal office at Aldwych House, 71-91 Aldwych, London WC2B 4HN ("Associated British Ports" and **ABP PROPERTY DEVELOPMENT COMPANY** a company registered in England and Wales (Company Number 01521927) and whose registered office is situate at Aldwych House 71 to 91 Aldwych London WC2B 4HN ("ABP Dev Co") (together "ABP") (together referred to as "ABP")

RECITALS

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated
- (B) The Council is the authority that can enforce the terms of this Deed for the purposes of the Act
- (C) The Developers' interest in the Site are identified in Schedule 11
- (D) ABP is the freehold owner of part of the Site registered at the Land Registry with title numbers WA793141 (in part), CYM453559 (in part), WA862420 (in part), CYM27128 (in part) and WA958988 (in part) and is the registered proprietor of the Charge
- (E) On 11 September 2009 the Developers made the Application to the Council and the parties have agreed to enter this Deed in order to secure the planning obligations contained in this Deed
- (F) The Council resolved on 7 July 2011 to grant the Planning Permission subject to the prior completion of this Deed
- (G) A further report was submitted to the Council to clarify the requirements of and to agree amendments to the proposed terms of this Deed and the Council resolved on 17 November 2011 to agree the amendments and points of clarification contained in the report.
- (H) The First Planning Agreement and the Fourth Planning Agreement were entered into in respect of the grant of outline planning permission pursuant to the application reference number 94/00144/OUT ("the Original Permission") to carry out a comprehensive redevelopment of land which included part of the Site ("the Outline Property").
- (I) The Second Planning Agreement was entered into in respect of the grant of planning permission pursuant to the application reference number 98/01290 which varied certain conditions under the Original Permission and granted planning permission for the development of a foodstore on part of the Outline Property.
- (J) The Third Planning Agreement was entered into to relinquish and extinguish part of the planning permission under reference number 94/00208/FUL for the development of No 1 Dock Barry (forming part of the Outline Property) in respect of land which includes part of the Site.
- (K) Parts of the land which were granted planning permission pursuant to the application reference number 94/00144/ OUT have been developed.

- (L) No further parts of the land with the benefit of the Original Permission including part of the Site may now be developed pursuant to the Original Permission as the time period for the submission of reserved matters has now lapsed and the obligations affecting the Original Property which were dependant on development as permitted by the Original Permission are no longer effective on that basis.
- (M) The obligations in the Original Planning Agreements which affect only the Site are being revoked and the obligations under this Deed are intended to replace the obligations in the Original Planning Agreements in so far as they affect the Site.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

- 1.1 For the purposes of this Deed the following expressions shall have the following meanings:

"1980 Act" the Highways Act 1980

"Act" means the Town and Country Planning Act 1990

"Administration Fee" means the costs of the Council (excluding any legal costs) incurred in negotiating and monitoring the implementation of the obligations contained in this Deed in the sum of £137,775

"Application" means the planning application by the Developers reference 2009/00946/OUT

"Charge" means the registered legal charge in favour of ABP over title number CYM508750 (part) which relates to the part shown cross hatched red on the Disposal Plan at Annexure 12 to this Deed

"Commencement" means the date on which any material operation (as defined in Section 56(4) of the Act) is first carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, site preparation including earth works, investigations for the purpose of assessing ground conditions, remedial works in respect of any contamination or other adverse ground conditions, diversion and laying of services, the erection of any temporary means of enclosure, the temporary display of site notices or advertisements, ecological mitigation works and the site enabling works carried out pursuant to planning application number 2010/00696/FUL

"Developers" means the owners specified in Schedule 11 or any of them whose interest in the Site are identified in Schedule 11

"Development" means a development of residential dwellings, retail, cafes, bars and restaurants, a hotel, offices and community and leisure uses on the Site and vehicular and pedestrian/cycle access including a new link road, re-grading of site to form new site levels and associated infrastructures works, parking, servicing, landscaping, public realm and public open space provision as set out in and pursuant to the Application

"Disposal" means either the sale of a freehold interest or the grant of a leasehold interest for a term in excess of 98 years and the expression "Dispose" shall be construed accordingly

"Dock Walls" means the entirety of the dock walls abutting the water frontage of the Site and below the mean water level including without limitation the coping structure mooring points bollards and supports thereof and the external and internal face of the dock wall

"Dwelling" means an apartment, house or other unit of residential accommodation comprised in the Site which has been developed by or on behalf of the Developers in accordance with the Planning Permission

"East Quay" means the area shown edged green on Plan 2

"Expert" means a single expert qualified to deal with the subject matter of the dispute, disagreement or difference who shall either be jointly nominated by the parties within a period of 10 Working Days following a failure of the parties to resolve the dispute, disagreement or difference pursuant to clause 7.2 or failing agreement on such nomination the expert shall be nominated by or on behalf of the president for the time being of the professional body chiefly relevant in England and Wales with such matters as may be in dispute and in the event that the parties disagree as to the appropriateness of the professional body in question then such question may be referred to the President for the time being of the Law Society for him to appoint a solicitor to determine the professional body to nominate the expert in the absence of agreement

"Interest Rate" means the sum which is 4% above the base rate of Barclays Bank plc

"Index" means all Items Index of Retail Prices issued by the Office for National Statistics or in the event that the index ceases to be published or if the basis on which it is calculated is altered to a material extent such other index which most closely resembles it to be agreed between the parties hereto

"Interest" means interest at the Interest Rate

"Key Events" means each of the following:

- Commencement of Development of the Dwellings
- first Occupation of a Dwelling in Phase 1
- first Occupation of a Dwelling in Phase 2
- first Occupation of a Dwelling in Phase 3
- first Occupation of a Dwelling in Phase 4
- first Occupation of a Dwelling in Phase 5
- first Occupation of 551 Dwellings
- first Occupation of 851 Dwellings
- first Occupation of 1151 Dwellings

"Land Transfer Agreement" means an agreement by the Developers pursuant to any of the provisions of this Deed to transfer an interest in part of the Site to the Council

"Licence Strip" means the strip of land within the Site having a width of 6 metres or thereabouts measured back from the external face of the Dock Walls which is owned by ABP

"Occupation" and "Occupied" means 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

"Original Planning Agreements" means:

- (i) an Agreement dated 23rd May 1997 made between (1) Vale of Glamorgan Council (2) The Associated British Ports (3) Grosvenor Square Properties Developments Limited and (4) The Welsh Development Agency ("the First Planning Agreement")
- (ii) an Agreement dated 12th November 1999 made between (1) The Vale of Glamorgan Council (2) The Associated British Ports (3) Grosvenor Waterside Developments Limited and (4) The Welsh Development Agency ("the Second Planning Agreement")
- (iii) an Agreement dated 8th December 1999 made between (1) The Vale of Glamorgan Council (2) The Associated British Ports (3) Grosvenor Waterside Developments Limited and (4) The Welsh Development Agency. ("the Third Planning Agreement")
- ((iv) an Agreement dated 22 February 2002 and made between (1) The Vale of Glamorgan Council (2) The Associated British Ports (3) Grosvenor Waterside Developments Limited and (4) The Welsh Development Agency ("the Fourth Planning Agreement")

"the Parties" means the Council, the Developers and ABP respectively and includes their successors in title and assigns

"Phase 1" means a Phase of the Development for West Pond Part 1 and Arno Quay as shown edged blue and marked 1 on Plan 2

"Phase 2" means a Phase of the Development for West Pond Part 2 shown edged purple and marked 2 on Plan 2

"Phase 3" means a Phase of the Development for South Quay Parkside shown edged yellow and marked 3 on Plan 2

"Phase 4" means a Phase of the Development for South Quay Waterside and East Quay open space shown edged orange and marked 4 on Plan 2

"Phase 5" means a Phase of the Development for East Quay residential shown edged green and marked 5 on Plan 2

"Phase" means a Phase of the Development being any one of Phase 1, Phase 2, Phase 3, Phase 4 or Phase 5

"Pie Crust Lease (ABP)" means the leasehold title registered under title number CYM508744

"Pie Crust Lease (ABPDev Co)" means the leasehold title registered under title number CYM508745

"Plan 1" means the site location plan attached to this Deed and marked "Plan 1" at Annexure 2 to this Deed

"Plan 2" means the illustrative masterplan with phases attached to this Deed and marked "Plan 2" at Annexure 3 to this Deed

"Plan 3" means the parameter plan 3 reference "SK205G" attached to this Deed and marked "Plan 3" at Annexure 4 to this Deed

"Plan 4" means the illustrative layout of South Quay Parkside attached to this Deed and marked "Plan 4" at Annexure 5 to this Deed

"Plan 5" means the ecology mitigation plan attached to this Deed and marked "Plan 5" at Annexure 6 to this Deed

"Planning Permission" means the Planning Permission issued pursuant to the Application and annexed to this Deed at Annexure 1

"Practical Completion" the date on which a Dwelling is certified as having been completed in accordance with the requirements of the National House Building Council (or like regulatory body) so as to enable immediate occupation

"Public Open Space" means land on the Site laid out as a public garden, or used for the purpose of public recreation, or open space of public value including land or areas of water which offer opportunities for sport, recreation and tourism or community allotment space each on the Site

"Public Open Space Land" means that area of land to be laid out as Public Open Space or Play Areas on the Site pursuant to paragraph 3 of Schedule 3.

"Restriction" means the following:

"no transfer or other disposition of the whole or any part of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the Head of Planning and Transportation or the Director of Legal Services of the Vale of Glamorgan Council for the time being confirming that the land has been transferred as an Affordable Housing Unit in accordance with the provisions of clause [] of an Agreement dated [] and made between The Vale of Glamorgan Council (1) and Associated British Ports and ABP Property Development Company Limited (2) and BDW Trading Limited, Taylor Wimpey UK Limited and Persimmon Homes Limited (3)"

"Revetment" means the entirety of the sloping stonework and its structure on the water frontage to the Site above and below the mean water level

"Site" means the land shown edged red on Plan 1 at Barry Waterfront, Barry in the Vale of Glamorgan

"South Quay Waterside" means the area shown edged orange on Plan 2

"South Quay Parkside" means the area shown edged yellow on Plan 2

"Transfer" means a transfer or agreement to transfer the freehold interest (or the grant of a long leasehold interest being an interest in excess of 98 years) executed by the Developers and unconditionally released for completion and "Transferred" shall be construed accordingly.

"Unit" means a Dwelling or a unit of accommodation comprised in the Site which has been developed by or on behalf of the Developers in accordance with the Planning Permission which may reasonably be expected to be sold or let for beneficial use and occupation

"West Pond Part 1" means the area shown edged blue on Plan 2

"West Pond Part 2" means the area shown edged purple on Plan 2

"Working Day" means any day of the week other than a Saturday, Sunday or bank holiday

2. CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph, Schedule, Appendix or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule, appendix or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Wherever there is more than one person named as a party and where more than one party receives the benefit of a covenant the benefit of such covenant shall be for their benefit jointly and severally
- 2.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.7 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.8 Words denoting an obligation on a party to do an act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit, suffer or allow any infringement of the restriction.
- 2.9 The clause and paragraph headings in the body of this Deed and in the Schedules do not form part of this Deed and shall not be taken into account in its construction or interpretation.
- 2.10 References to Parts Clauses Schedules paragraphs sub-paragraphs appendices and plans are (unless otherwise stated) references to Parts Clauses Schedules paragraphs sub-paragraphs appendices annexures and plans of this Deed and references to annexes are references to the annexures separately bound bearing the title of this Deed and initialled by the Parties for the purposes of identification
- 2.11 For all purposes of this Deed the terms or expressions defined in Clause 1, the Schedules to this Deed and elsewhere in this Deed shall have the meanings specified

3. **LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other powers so enabling the parties hereto.
- 3.2 The covenants, restrictions and requirements imposed upon the Parties, under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the relevant covenanting party.

4. **CONDITIONALITY**

This Deed is conditional upon and shall only come into effect upon:

- (a) the grant of the Planning Permission; and
- (b) the Commencement of Development

save for the provisions of clauses 1-4, 6-14 (inclusive) which shall come into effect immediately upon completion of this Deed

5. **OBLIGATIONS AND COVENANTS**

- 5.1 The Developers covenant with the Council to observe and perform the restrictions and obligations on their part in respect of the Site as set out in this Deed and Schedules
- 5.2 The Council covenants with the Developers to observe and perform the obligations on its part as set out in this Deed and Schedules
- 5.3 The Schedules referred to in sub clause 5.1 and 5.2 are:
- 5.3.1 Schedule 1 containing restrictions and obligations relating to the provision of Sustainable Transport
 - 5.3.2 Schedule 2 containing restrictions obligations and covenants relating to the provision Highway Works
 - 5.3.3 Schedule 3 containing restriction and obligations relating to the provision and maintenance of Public Open Space
 - 5.3.4 Schedule 4 containing restrictions and obligations relating to the provision of Community facilities
 - 5.3.5 Schedule 5 containing restrictions and obligations relating to the provision of School Facilities
 - 5.3.6 Schedule 6 containing restrictions and obligations relating to Ecology Mitigation
 - 5.3.7 Schedule 7 containing restrictions and obligations relating to the provision of Affordable Housing
 - 5.3.8 Schedule 8 containing restrictions and obligations relating to Deferred Payments and Additional Contributions
 - 5.3.9 Schedule 9 containing the terms and conditions of each Land Transfer Agreement
 - 5.3.10 Schedule 10 containing the Intermediate Housing Sale and Resale Covenants
 - 5.3.11 Schedule 11 containing details of the Developers
 - 5.3.12 Schedule 12 containing the Inputs for the Appraisal
- 5.4 ABP covenants with the Council that they will not take any steps to implement the Planning Permission unless they first enter into an agreement with the Council containing the restrictions and obligations of the Developers on terms no more nor less onerous than in this Deed.
- 5.5 The Parties acknowledge that the consent or approval of ABP to any matter shall not constitute a representation or warranty by ABP as to (1) the suitability or otherwise of the matter being approved or (2) whether any such matter may be carried out lawfully and the parties acknowledge that they are not relying on and will have no remedy in respect of any representation that may have been made by or on behalf of the other parties before the date of this Deed and that any approval or consent of any party in regard to any matter contained in this Deed does not obviate the need for the approval or consent of any other person or under any laws that may be required in respect of any such matters.
- 5.6 ABP join in this Deed for the purpose of consenting to its terms so far as they relate to the Site and for the purpose of giving effect to the obligations on its part contained in this Deed which are planning obligations within section 106 of the Act and in order to bind its interest in the Site and that of its successors in title but not further or otherwise.

- 5.7 The Parties agree that nothing in this Deed shall prevent or restrict ABP in carrying out its functions as Port Authority (as defined in the Transport Act 1981) in relation to any neighbouring property of ABP subject to its statutory and common law obligations.
- 5.8 Where the Developers are required by the provisions of this Deed to transfer land to the Council under Schedule 3 Public Open Space, Schedule 5 School Facilities, or Schedule 7 Affordable Housing the Developers shall be entitled to exercise the Option to Purchase such land in so far as it is demised by the relevant lease being the leases registered under the leasehold titles listed in Schedule 11 in this clause referred to as "Lease" under the terms of Clause 6 of the relevant Lease and ABP will transfer such land to the Developers who shall accept the transfer of such land on the terms of clause 6 of the relevant Lease and the draft transfer annexed to the relevant Lease. The transfer to the Council of such land by the Developers will then be subject to the provisions of that transfer so far as it relates to the transferred land.
- 5.9 For the avoidance of doubt ABP shall not be required to transfer the ownership of the Dock Walls the Licence Strip or the Revetment to either the Developers or the Council.
- 5.10 For the avoidance of doubt the Developers has no option to purchase the freehold reversion of the Pie Crust Lease (ABP) and the Pie Crust Lease (ABP DevCo) Lease and ABP shall not be required to transfer the freehold reversion to the same to either the Council or the Developers.
6. **MISCELLANEOUS**
- 6.1 The Developers shall pay to the Council on completion of this Deed the reasonable legal costs of the Council in the sum of £25,000.00 plus VAT and disbursements incurred in the negotiation, preparation and execution of this Deed; and
- 6.2 The Developers shall pay the Administration Fee in the following instalments
- (a) Fifty Thousand Pounds (£50,000) upon completion of this Deed
 - (b) Thirty Thousand Pounds (£30,000) upon Commencement of Development of the Dwellings
 - (c) Thirty Thousand Pounds (£30,000) upon Commencement of Development of the Dwellings on Phase 3 or Occupation of 851 Dwellings on the Development, whichever is sooner
 - (d) Twenty Seven Thousand Seven Hundred and Seventy Five Pounds (£27,775) upon Commencement of Development of the Dwellings on Phase 4 or Occupation of 1151 Dwellings, whichever is sooner
- 6.3 A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 6.4 This Deed shall be registerable as a local land charge by the Council.
- 6.5 Following the performance and satisfaction of all 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.
- 6.6 Insofar as any clauses or paragraphs of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 6.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permissions shall be quashed, revoked or otherwise withdrawn or (without the consent of the Developers and ABP) they are modified by any statutory procedure or expire prior to the Commencement of the Development.
- 6.8 Where this Deed requires any matter to be agreed, approved, certified, consented to or determined by any party hereto or any person on behalf of any party hereto such agreement,

approval, certification, consent or determination shall be given in writing and shall not be unreasonably withheld or delayed.

- 6.9 The parties agree with one another to act reasonably and in good faith in the fulfilment of the objectives of this Deed.
- 6.10 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed:
- (a) to the extent that such breach relates to any part of the Site in which that person has no interest; and/or
 - (b) which occurs after it shall have parted with its interest in the Site or if it be part only the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest for which it shall continue to be liable.
- 6.11 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.12 All considerations given and payments made in accordance with the provisions of this Deed shall be exclusive of any VAT properly payable in respect thereof and at any time VAT is or becomes chargeable in respect of any supply made in accordance with the provisions of this Deed and to the extent that VAT has not been previously charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.
- 6.13 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings (not being Affordable Housing Unit in respect of obligations and restrictions in Schedule 7 only in so far as the obligations and restrictions relate to Affordable Housing) constructed pursuant to the Planning Permission nor against those deriving title from them nor against land held by any of the statutory utilities for their operational purpose.
- 6.14 The Developers or ABP may from time to time seek written confirmation of the Council after each or all of the obligations have been completed and/or satisfied either completely or in relation to a particular part of the Site and the Council shall acting reasonably provide such confirmation.
- 6.15 The planning obligations hereby entered into take effect upon the grant of the Planning Permission and the Commencement of Development pursuant to clause 4 of this Deed and on such date the obligations in the Original Planning Agreements shall cease to have effect in respect of the Site and shall be deemed to be revoked and shall therefore cease to be enforceable by the Council in respect of the Site.
- 6.16 The Council hereby covenant to hold any payments or contributions received from the Developers pursuant to this Deed in an interest bearing account pending its use.

7. **DISPUTES**

- 7.1 Where the parties are in dispute or disagreement or have any differences relating to any matter the subject of or connected with this Deed or its meaning or construction then the parties shall use their reasonable endeavours to resolve the same within 20 Working Days of the dispute, disagreement or difference arising.
- 7.2 Failing the resolution of any such dispute, disagreement or difference within the said 20 Working Days the dispute, disagreement or difference shall be referred for determination in accordance with the provisions of this clause 7 on the reference of any of the parties to the dispute, disagreement or difference.

- 7.3 The dispute, disagreement or difference shall be referred to the decision of an Expert.
- 7.4 The determination of the Expert (including any determination as to the responsibility for payment of his own costs and those of the parties) shall be final and binding upon the parties.
- 7.5 The terms of reference of any Expert appointed to determine a dispute, disagreement or difference shall include the following:
- (a) he shall call for representations from all parties with 10 Working Days of a reference to him under this Deed and shall require the parties to exchange representations within this period;
 - (b) he shall allow the parties 10 Working Days from the expiry of the 10 Working Days period referred to in sub-clause (a) above to make counter representations;
 - (c) any representations or counter representations received out of time shall be disregarded by the Expert;
 - (d) he shall provide the parties with a written decision (including his reasons) within 10 Working Days of the last date for receipt of counter-representations;
 - (e) he shall be entitled to call for such independent expert advice as he shall think fit; and
 - (f) his costs and the costs of any independent expert advice called for by the Expert shall be included in his award.
- 7.6 Unless the Expert shall decide otherwise the costs of any reference to the Expert shall be borne equally by the parties to the dispute, disagreement or difference in question.

8. NOTICES

- 8.1 Any notice or other written communication to be served upon or given by one party to any other party under the terms of this Deed shall be deemed to have been validly served or given in the following circumstances:
- (a) if transmitted by facsimile (and confirmed by facsimile confirmation slip) when dispatched;
 - (b) if delivered by hand upon delivery at the address of the relevant party; or
 - (c) if sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given within 2 Working Days after the date of posting

PROVIDED THAT if in accordance with the above provision any notice or other written communication would otherwise be deemed to be served or given after 17.00 hours such notice or other written communication shall be deemed to be served or given at 09.00 hours on the next Working Day.

- 8.2 The address for any notice or other written communication shall only be within the United Kingdom and is:
- (a) for the Council: The Vale of Glamorgan Council, Dock Office, Subway Road, Barry Docks, Barry, CF63 4RT marked for the attention of The Head of Planning and Transportation (facsimile number: 01446 704847)
 - (b) for the Developers at their addresses appearing in Schedule 11 and in the case of Developers being companies shall also be served at their registered office from time to time
 - (c) for ABP: Aldwych House, 71-91 Aldwych, London WC2B 4HN and c/o The Regional Property Manager South Wales, Associated British Ports, Queen Alexandra House, Cargo Road, Cardiff CF10 4LY

or such other address as any party may notify to the others at its address of service from time to time.

8.3 In the event that the parties decide that the recipients of any notice or other written communication should change from the individuals referred to in clauses 8.2(a), 8.2(b) or 8.2(c) above the parties shall notify each other in writing giving details of the replacement individual(s).

8.4 Any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.

8.5 The Developers agree to give to the Council notice in writing within 10 Working Days of the Developers becoming aware of the Key Events as they each occur

9. **INDEXATION**

Any sum referred to in Schedules shall if there is any increase in the Index be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

10. **INTEREST**

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

11. **WAIVER**

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

12. **CHANGE IN OWNERSHIP**

The Developers agree with the Council to give the Council written notice of any change in ownership of any of their interests in the Site occurring before all the obligations under this Deed have been discharged such notice to be given as soon as reasonably practicable after the said change in ownership and to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan.

13. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales as they apply in Wales.

14. **DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

15. **LAND TRANSFERS**

15.1 The provisions of this clause apply to each Land Transfer Agreement.

15.2 The form of contract for each Land Transfer Agreement shall be as set out in Schedule 9 save as may be varied by agreement between the Council and those Developers who will be parties to that transfer of title to the Council

SCHEDULE 1

SUSTAINABLE TRANSPORT

1. In this Schedule:

"Report" means the Barry Waterfront Sustainable Route Improvements Arup Report dated 19th May 2010 at Annexure 7 to this Deed

"Sustainable Transport Facilities" means information, facilities or infrastructure which provides or improves access to or from the Site for pedestrians, cyclists, public transport users, motor cycles, taxis or car sharers, which may include but shall not be limited to:

- a) Works to provide a cycleway/footway along Cardiff Road A4055 between Dinas Powys and the Site
- b) Other works to improve sustainable transport facilities as set out in the Report and costed for the purpose of paragraph 3 below, as follows:
 - i) £135,000 to improve the pedestrian / cycle route between West Pond and the high street and Barry railway station
 - ii) £120,000 to provide 4 bus stops on the Barry Island link road
 - iii) £1000 to improve the route to the Barry Island railway station
 - iv) £44,000 to improve the Clive Road Steps
 - v) £120,000 to improve links between East Quay and the Barry Dock railway station.
 - vi) £325,000 bus subsidy for a South Quay route
 - vii) £90,000 for 6 bus stops in the vicinity of the Site

"Sustainable Transport Works" means the works detailed in this Schedule or in the event that part of these works have already been undertaken such other works as the Developers and the Council shall agree acting reasonably.

2 The Developers shall pay the following sums to the Council;

- 2.1 on or before the first Occupation of any Dwelling in Phase 1 the sum of One Hundred and Thirty Five Thousand Pounds (£135,000) ;
- 2.2 on or before the first Occupation of any Dwelling in Phase 3 the sum of One Hundred and Twenty One Thousand Pounds (£121,000)
- 2.3 on or before the first Occupation of any Dwelling in Phase 4 the sum of Four Hundred and Fifty Nine Thousand Pounds (£459,000)
- 2.4 on or before the first Occupation of any Dwelling in Phase 5 the sum of One Hundred and Twenty Thousand Pounds (£120,000)

to provide Sustainable Transport Facilities.

3 Alternatively to its obligation in paragraph 2, the Developers may at the same time that it submits an application to the Council for reserved matters approval for each Phase or part of a Phase (or such other time as the Council may agree), submit a costed scheme for the Sustainable Transport Works or any part of them to be carried out by the Developers, such scheme to be agreed by the Council and thereafter the Developers may either:

- (a) carry out the relevant part of the Sustainable Transport Works in accordance with the agreed details, or

- (b) pay the relevant sum for part of the Sustainable Transport Works to the Council pursuant to paragraph 2 in accordance with the timescales set out therein.

Provided that it shall first notify the Council of its intention at least 30 days prior to the date on which the payment is due in accordance with paragraph 2.

- 4 In the event that the cost of implementing any scheme approved pursuant to paragraph 3 of this Schedule is less than the contribution that would have been payable pursuant to paragraph 2 the Developers shall pay to the Council 50% (fifty percent) of the difference between the actual cost of the approved scheme and the relevant contribution in accordance with the timescales set out in paragraph 2 for the relevant part of the Sustainable Transport Works.
- 5 The Council hereby covenants with the Developers, to use all sums received from the Developers pursuant to paragraph 2 towards the Sustainable Transport Facilities or for such other purpose as the Developers and the Council shall agree. In spending the Sustainable Transport Contribution the Council shall prioritise the delivery of the following works identified in the Report, unless they have already been provided or will be provided by other means:
- 5.1 the provision of 4 bus stops on the Barry Island link road
 - 5.2 improvements to the Clive Road Steps
 - 5.3 the provision of a crossing between East Quay and the Barry Dock railway station.
- 6 The Council hereby covenants with the Developers, to use all sums received from the Developers pursuant to paragraph 4 for the purpose of Sustainable Transport Facilities.
- 7 The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council under this Schedule which has not been expended in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment or if later the date that the payment is due pursuant to this Schedule together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers.

SCHEDULE 2

HIGHWAY WORKS

OFF-SITE HIGHWAYS

1. **In this Schedule:**

"Off-Site Highway Works" means the highway works to Junction 6 at Harbour Road/Station Approach/Paget Road at Barry Island as identified on the drawing entitled "Proposed Improvements at Junction No 6 Harbour Road/Station Approach/Paget Road" annexed to this Deed at Annexure 8 and the scope of the works detailed thereon

"Further Off-Site Works" means the highway works identified to be undertaken in the Transport Assessment or such other works as the Developers and the Council shall agree

"Transport Assessment" means the Transport Assessment dated 11 June 2010 an extract of the relevant section 7, the Arup Technical Note dated 5 October 2010 and the Arup Letter of Response dated 19 May 2011 annexed to this Deed at Annexure 9

2. The Developers shall procure that the Off-Site Highway Works are completed before Occupation of any Dwelling in Phase 3 and in accordance with the details approved by the Council pursuant to paragraph 3 of this Schedule
3. Before commencing the Off-Site Highway Works the Developers will:
- 3.1 submit a full details and specification of the Off-Site Highway Works to the Council for approval; and
- 3.2 enter into an Agreement with the Council pursuant to the Section 278 of the Highways Act 1980 (which the Council hereby covenant to offer to the Developers on its standard terms applicable from time to time save in respect of matters referred to in paragraph 4 below) in respect of these works
4. The terms of any agreement under Section 278 of the Highways Act 1980 shall contain provisions allowing the Developers to approve the identity of the valuers to be appointed by the Council (including the appointment of the Council's in-house valuers) such approval not to be unreasonably withheld or delayed to negotiate and advise on claims arising under Part 1 of the Land Compensation Act 1973 in respect of the Off-Site Highway Works
5. The Developers shall complete the Off-Site Highway Works by the date set out in paragraph 2 of this Schedule or such other date which the Developers and the Council shall agree as being reasonable in all the circumstances in the event of:
- 5.1 delay for health and safety reasons as aforesaid
- 5.2 delay which is both unreasonable and material in the granting of any permissions approvals or consents referred to in paragraph 2 hereof;
- 5.3 adverse weather conditions;

- 5.4 combination of workmen strike or lockout affecting any of the trades engaged in the preparation and manufacture or transportation of any goods or materials required for the Off-Site Highway Works;
- 5.5 civil commotion;
- 5.6 force majeure;
- 5.7 any other reason beyond the control of the Developers

and where it appears to the Developers that the completion of the Off-Site Highway Works is being or is likely to be delayed by reason of any of the matters set out in sub-paragraphs 5.1 to 5.7 hereof the Developers shall give notice to the Council specifying details of the events or events causing the delay the expectant extent of the delay and the steps being taken to minimise such delay

- 6. The Developers shall pay the sum of One Million Six Hundred and Twenty Five Thousand Pounds (£1,625,000) to the Council as a contribution towards Further Off-Site Highway Works prior to Occupation of 1151 Dwellings on the Site or Occupation of any Unit on Phase 4, whichever is sooner.
- 7. The Council hereby covenants with the Developers, to use all sums received from the Developers pursuant to paragraph 6 towards the carrying out of the Further Off-Site Works or for such other purposes as the Developers and the Council shall agree.
- 8. The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council pursuant to paragraph 6 which has not been expended in accordance with the provisions of this Schedule within ten years of the date of receipt by the Council of such payment or if later the date that such payment is due pursuant to this Schedule together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers.

SCHEDULE 3

Part I PUBLIC OPEN SPACE

I. **In this Schedule**

"Certificate of Practical Completion" means the certificate of practical completion issued by the Developers' Landscape Architect confirming that the relevant part of the Public Open Space or Play Areas have been practically completed

"Developers' Landscape Architect" includes any suitably qualified professional person (which may include any one of the Developers who has been appointed as a project manager) by the Developers (or any of them) whose duties include the supervision and construction of the Public Open Space and Play Areas

"Dock Walls" means the entirety of the dock walls abutting the water frontage of the Site and below the mean water level including without limitation the coping structure mooring points bollards and supports thereof and the external and internal face of the dock wall

"Licence Strip" means the strip of land within the Site having a width of 6 metres or thereabouts measured back from the external face of the Dock Walls which is owned by ABP

"Local Areas for Play" means an area of land of approximately 100m² (together with a 5m buffer zone where possible) which is laid out as a small low key games play area for children to a specification to be agreed with the Council in accordance with paragraph 3 of Schedule 3

"Local Equipped Areas for Play" means an area of land of approximately 400m² (together with a 10m buffer zone where possible) which is laid out as a play area for children and which is equipped with 5 different types of play equipment and a small games area to a specification to be agreed with the Council in accordance with paragraph 3 of Schedule 3

"Neighbourhood Equipped Area for Play" means an area of land of approximately 1000m² (together with a 30m buffer zone save where the play area abuts the link road where no buffer will be required) which is laid out as a play area for children and which is equipped with 8 different types of play equipment and has opportunities for ball games or wheeled activities to a specification to be agreed with the Council in accordance with paragraph 3 of Schedule 3.

"Public Open Space" means land on the Site laid out as a public garden, or used for the purpose of public recreation, or open space of public value including land or areas of water which offer opportunities for sport, recreation and tourism or community allotment space each on the Site

"Public Open Space Land" means that area of land to be laid out as Public Open Space or Play Areas on the Site pursuant to paragraph 3 of Schedule 3.

"West Pond Public Open Space" means land in West Pond laid out as Public Open Space shown edged red on Plan 4 at Annexure 5 to this Deed

2. The Developers shall provide and lay out the following on the Site:

- (a) 13 Local Areas for Play; and
- (b) 2 Local Equipped Areas for Play; and
- (c) 1 Neighbourhood Equipped Area for Play

- (referred to collectively below as the "**Play Areas**") in accordance with the details and specification approved by the Council pursuant to paragraph 3 of this Schedule
- 3 When making its application to the Council for reserved matters approval for each Phase or part of a Phase the Developers are to submit to the Council for approval:
- (a) details of the location, size, design and equipment in respect of each Play Area and Public Open Space area which will be included in the Phase or part of a Phase which shall generally be in accordance with the areas as shown on Plan 3 at Annexure 4 to this Deed or in such other locations on the Site as the Developers and the Council shall agree acting reasonably;
 - (b) a detailed scheme for the future maintenance for at least 20 years of each of the Play Areas and Public Open Space areas which will be included in that Phase or part of the Phase.
4. No Unit on Phase 3 is to be Occupied until the Neighbourhood Equipped Area for Play and the West Pond Public Open Space shown edged red on Plan 4 at Annexure 5 to this Deed has been laid out and a Certificate of Practical Completion has been issued by the Developer's Landscape Architect in respect of the same
 5. Each of the other Play Areas and Public Open Space areas are to be completed before Practical Completion of the last Dwelling overlooking the relevant Play Area and Public Open Space area and no Dwellings on subsequent Phases shall be Occupied until a Certificate of Practical Completion has been issued by the Developers' Landscape Architect in respect of such Play Area and other Public Open Space areas in the preceding Phase of Development.
 6. The Developers shall pay to the Council the sum of One Hundred Thousand Pounds (£100,000) as a contribution towards the provision of Public Open Space on or in the vicinity of the Site before Occupation of any Dwelling in Phase 3 or Occupation of 851 Dwellings on the Site, whichever is sooner.
 7. Prior to Occupation of 250 Dwellings on the Site, the Developers shall provide a temporary Local Equipped Area of Play on an area of Public Open Space, (which may be temporary until the completion of the Neighbourhood Equipped Area of Play as approved under paragraph 3 of this Schedule) such open space to be constructed in accordance with details and specification to be first approved by the Council.
 8. The Developers shall lay out the Play Areas and Public Open Space by the agreed dates set out in this Schedule or such other date which the Developers and the Council shall agree as being reasonable in all the circumstances in the event of:
 - 8.1 delay for health and safety reasons as aforesaid
 - 8.2 delay which is both unreasonable and material in the granting of any permissions approvals or consents referred to in paragraph 3 hereof;
 - 8.3 adverse weather conditions;
 - 8.4 combination of workmen strike or lockout affecting any of the trades engaged in the preparation and manufacture or transportation of any goods or materials required for the Play Areas and or Public Open Space;
 - 8.5 civil commotion;
 - 8.6 force majeure;
 - 8.7 any other reason beyond the control of the Developers

and where it appears to the Developers that the completion of the Play Areas and or Public Open Space is being or is likely to be delayed by reason of any of the matters set out in sub-paragraphs 8.1 to 8.7 hereof the Developers shall give notice to the Council specifying details of the events or event causing the delay the expectant extent of the delay and the steps being taken to minimise such delay.

9. The Council hereby covenants with the Developers, to use all sums received from the Developers pursuant to paragraph 6 towards the provision or enhancement of Public Open Space on or in the vicinity of the Site or for such other purposes as the Developers and the Council shall agree.
10. The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council pursuant to paragraph 6 which has not been expended in accordance with the provisions of this Schedule within ten years of the date of receipt by the Council of such payment or if later the date that such payment is due pursuant to this Schedule together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers.
11. The Developers may give a notice of an intention to elect to transfer the Public Open Space Land or part of the Public Open Space Land to the Council by giving written notice to the Council ('Intention Notice') and the following provisions 12 - 16 shall apply. For the avoidance of doubt, the Council is under no obligation to accept a transfer of the Public Open Space Land offered to it pursuant to terms of this Schedule.
12. If the Council accepts that the Public Open Space will be transferred to it, the Developers shall invite the Council to make an inspection of the Public Open Space Land or relevant part of the Public Open Space Land and the Council covenants that it:
 - 12.1 shall make an inspection of the relevant Public Open Space Land within 20 Working Days of receipt of a request to inspect.
 - 12.2 shall confirm as soon as reasonably practicable but in any event within 20 Working Days of the Council's inspection pursuant to paragraph 12.1 above the commuted sum that will be payable by the Developers to the Council on the Transfer of the relevant Public Open Space Land to the Council in the event that the Developers elect to Transfer
13. Within 30 Working Days of the Council's inspection of the relevant part of the Public Open Space Land the Council may, acting reasonably, prepare a written schedule of defects and/or matters outstanding and serve it on the Developers and in the event that the Developers are transferring the relevant Public Open Space Land to the Council the Developers shall procure that such appropriate steps are taken to ensure that the relevant Public Open Space Land in question conforms with the specification submitted to and approved by the Council pursuant to paragraph 3 (a) of this Schedule ('the Specification') and that all defects or other matters identified by the Council are rectified forthwith to ensure that it conforms to the relevant Specification.
14. If no written schedule as referred to in paragraph 13 above is produced by the Council within 5 Working Days of the inspection the Council shall be deemed to accept that the Public Open Space Land in question conforms to the Specification.
15. The Developers shall on completion of any residual works in accordance with paragraph 13 above request the Council to inspect and the provisions of paragraphs 12 - 15 shall apply.

16. The Developers covenant that upon completion of a Transfer of the relevant part of the Public Open Space Land to the Council they will forthwith pay to the Council the commuted sum notified to the Developers pursuant to paragraph 12.2 above
17. The use of any Public Open Space which is located on the Licence Strip shall be on the terms agreed by the Developers with ABP by Licences dated 21 September 2010

SCHEDULE 4

COMMUNITY FACILITIES

1. The Developers shall pay the Council the sum of Three Hundred Thousand Pounds (£300,000) prior to Occupation of any Dwelling in Phase 4 or before Occupation of 1151 Dwellings on the Site, whichever is sooner, and the Council is to use such sum as follows:
 - 1.1 One Hundred Thousand Pounds (£100,000) towards the provision of water sports facilities for the community within the vicinity of the Site
 - 1.2 Two Hundred Thousand Pounds (£200,000) to provide facilities or services on or within the vicinity of the Site which meet local community needs and are publicly available.
2. The Council hereby covenants with the Developers, to use all sums received from the Developers pursuant to paragraph 1 for the purposes specified therein for which they are to be paid or for such other purposes as the Developers and the Council shall agree.
3. The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council pursuant to paragraph 1 which has not been expended in accordance with the provisions of this Schedule within five years of the date of receipt by the Council of such payment or if later the date that such payment is due pursuant to this Schedule together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers.
4. Alternatively to its obligation in paragraph 1, the Developers may elect to:
 - 4.1 carry out the works to provide a water sports facility for the community within the vicinity of the Site subject to providing a costed scheme for the works to the Council for approval and thereafter the Developers may:
 - (a) carry out the works for the provision of the water sports facility in accordance with the approved scheme and the timescales set out in paragraph 1 for the payment of the sum to be applied towards the provision of the water sports facilities in paragraph 1.1 of this Schedule, or
 - (b) pay the sum in paragraph 1.1 in accordance with the timescale set out in paragraph 1
 - 4.2 put forward a scheme to the Council for approval for the provision of community facilities or services within the vicinity of the Site and thereafter may:
 - (a) carry out the approved scheme in accordance with the timescales set out in paragraph 1, or
 - (b) pay the sum in paragraph 1.2 in accordance with the timescale set out paragraph 1

SCHEDULE 5

SCHOOL FACILITIES

1. **In this Schedule:**

"Primary School" means that part of the Development comprising the school buildings and grounds constructed in accordance with the Primary School Detailed Specification

"Primary School Outline Drawings" means the outline drawings for the Primary School Outline Specification which shall include the siting, size, location, layout and details of access, car parking, playing fields and other recreational areas to be submitted to the Council for approval.

"Primary School Outline Specification" a 1 form entry primary school with 210 places (which is capable of expansion by the Council in the future to create a primary school with 420 places) and a nursery with no more than 32 places, together with all ancillary facilities including hard and soft play areas, sports pitches, habitat and social areas, car parks and delivery roads and other external works constructed in accordance with:

- a) the Education (School Premises) Regulations 1999
- b) the minimum standards set out in the Welsh Government Guidance 21st Century Schools
- c) the Planning Permission
- d) all other statutory requirements

but only to the extent that such are required to Establish the Primary School

and including the provision of all required furniture, fixtures and fittings, IT equipment, external equipment and catering equipment as shall be necessary for the operation of a 1 form entry primary school but excluding any items that are revenue funded in the ordinary course of the Council and the Primary School's business

"Developers' Architect" includes any suitably qualified professional person appointed by the Developers (or any of them) approved by the Council's Surveyor (such approval not to be unreasonably withheld or delayed) provided that there shall be no requirement that the Developer's Architect is on any Council approved list whose duties include the supervision of the construction of the Primary School

"Council's Surveyor" means a person nominated by the Head of Planning and Transportation at the Council

"Developers' Architect's Certificate" means a certificate or certificates of interim payment issued by the Developers' Architect

"Education Site" means 1.5 hectares of land within West Pond shown edged red on the Education Site Plan which is in the ownership of the Developers

"Education Site Plan" means the plan attached to this Deed at Annexure 10

"Establish the Primary School" means the establishment of the Primary School pursuant to section 28(1)(a) and (aa) of the School Standards and Framework Act 1998 and the Education (School Organisation Proposals)(Wales) Regulations 1999 (SI1999/1671)

"Primary School Certificate of Practical Completion" means the certificate of practical completion issued by the Developers' Architect confirming that the Primary School has been practically completed

"Primary School Contribution" means a sum equivalent to:

- a) the cost of development and construction of a 1 form entry Primary School with 210 places together with nursery for no more than 32 places in accordance with the Primary School Detailed Specification as agreed or determined pursuant to paragraph 9 but excluding any sum attributable to any enhancements to the specification requested by the Council
- b) the design costs for the Primary School as agreed or determined pursuant to clause 7 of this Deed but excluding any sum attributable to any enhancements to the specification requested by the Council

less such fees as shall have been incurred by the Developers in connection with the preparation of the Primary School Detailed Specification and the Developers satisfying its obligations in this Schedule such sum to be agreed by the Council and the Developers acting reasonably and in the event of disagreement shall be determined in accordance with clause 7 of this Deed and which shall be used by the Council towards the provision of additional capacity in primary schools in Barry to create up to a maximum of 210 additional primary education places and 32 nursery education places to meet the needs arising from the Development

"Primary School Detailed Specification" means a detailed specification and plans of the Primary School which accords with the Primary School Outline Specification

"Primary School Land Contribution" means a sum equivalent to the value of the Education Site such valuation to be made with the assumption for valuation purposes only that the land is to be used as land for educational purposes only such sum to be agreed by the Council and the Developers and in the event of disagreement shall be determined in accordance with clause 7 of this Deed

"School Longstop Date" means the date which is the earlier of:

- a) the date which is 12 months following the date of submission to the local planning authority of a planning application for the Primary School pursuant to paragraph 12 or such longer date as the parties shall agree and
 - b) the date of Occupation of the 950th Dwelling on the Site
2. Prior to the Occupation of 300 Dwellings on Phase 1 the Council shall give notice to the Developers as to whether it elects to enhance the Primary School Outline Specification to a two form entry primary school with 420 places at the Council's own cost and to give full details of such enhancement at the same time and such enhancements shall only be made on the proviso that:
- 2.1 all additional costs relating to the design and construction of the Primary School which are a result of the Council's enhancements and changes to the Primary School Outline Specification shall be met by the Council and paid within 30 days of receipt of an invoice in respect of the design fees and in the case of construction and supervision fees shall be within 30 days of a Developers' Architect Certificate being issued by the Developers' Architect certifying the amount payable by the Council
 - 2.2 the Council shall make available at nil cost to the Developers any additional land as shall be required to accommodate the enhanced Primary School Outline Specification

3. Prior to the Occupation of 300 Dwellings on Phase 1 the Council and the Developers shall use reasonable endeavours to agree the location of the proposed access for the Primary School and the Council shall make available to the Developers any adjoining land in its ownership that may be required to facilitate such access PROVIDED THAT the obligation on the Council shall not prejudice and shall be subject to its duties as a local planning authority in carrying out its statutory functions
4. Prior to Occupation of 350 Dwellings on Phase 1 the Developers shall submit the Primary School Outline Drawings to the Council for approval.
5. Following submission of the Primary School Outline Drawings the Developers and the Council shall use reasonable endeavours to agree the draft Primary School Outline Drawings no later than 20 Working Days after the date the Primary School Outline Drawings are submitted to the Council and following agreement or determination in accordance with clause 7 of this Deed they shall become the Primary School Outline Drawings
6. The Council shall give notice of its intention to establish the Primary School pursuant to section 28 (1)(a) and (aa) of the School Standards and Framework Act 1998 and the Education (School Organisation Proposals)(Wales) Regulations 1999 (SI1999/1671) within 20 working days of the date that the Primary School Outline Drawings are agreed or determined pursuant to paragraph 5 above and shall provide a copy of the same to the Developers
7. The Council shall keep the Developers informed as to the Establishment of the School pursuant to paragraph 6 above.
8. Subject to the Council giving notice pursuant to paragraph 6 within the timescales set out therein and the proposed access for the Primary School being agreed pursuant to paragraph 3 the Developers shall submit a draft Primary School Detailed Specification to the Council for approval prior to the Occupation of any Unit on Phase 3 or the Occupation of 851 Dwellings built pursuant to the Planning Permission, whichever is sooner PROVIDED THAT the obligation on the Council shall not prejudice and shall be subject to its duties as a local planning authority in carrying out its statutory functions
9. Following the submission of the draft Primary School Detailed Specification by the Developers to the Council the parties shall use reasonable endeavours to agree the draft Primary School Detailed Specification no later than 30 Working Days after delivery and following agreement or determination in accordance with clause 7 of this Deed it shall become the Primary School Detailed Specification PROVIDED THAT the obligation on the Council shall not prejudice and shall be subject to its duties as a local planning authority in carrying out its statutory functions
10. The Developers may vary the Primary School Detailed Specification in such manner as may in their reasonable opinion become necessary having regard to labour and materials obtainable or other unforeseen circumstances arising in the ordinary course of construction provided that any proposed variation shall not result in a material degradation in the quality or design or make an alteration to the accommodation dimensions or net floor area of the Primary School unless the variation has previously been agreed by the Council or determined in accordance with clause 7 of this Deed
11. The Developers will apply for all necessary permissions consents and approvals (save as to any approvals to Establish the Primary School) required for the construction of the Primary School (including approvals under the Planning Permission and under building regulations)
12. The Developers shall submit a planning application for the construction of the Primary School within 3 months of the date that the Primary School Detailed Specification is agreed or determined pursuant to paragraph 9.

- 13 Subject to:
- 13.1 all necessary consents and approvals to establish and construct the Primary School being obtained; and
 - 13.2 the access for the Primary School being agreed pursuant to paragraph 3 and the necessary consents and approvals for the location and the construction of the access for the Primary School being obtained; and
 - 13.3 land (if any) in third party ownership required for the construction of the access being made available to the Developers at nil cost for the purpose of constructing the access for the Primary School and its subsequent use as an access for the Primary School thereafter; and
 - 13.4 the Council granting a licence to the Developers pursuant to paragraph 24
- prior to the School Longstop Date the Developers covenant to construct the Primary School on the Education Site in accordance with the Primary School Detailed Specification which has been approved by the Council pursuant to paragraph 9 and procure the issue of the Primary School Certificate of Practical Completion before the first Occupation of any Unit on Phase 4 or Occupation of 1151 Dwellings on the Site, whichever is sooner ('the School Date') subject to the provisions in paragraph 14 below.

14. The Developers hereby covenant to construct and complete the Primary School in accordance with the provisions in paragraph 7 above or by such other date which the Developers and the Council shall agree as being reasonable in all the circumstances in the event of:

- 14.1 delay for health and safety reasons as aforesaid;
- 14.2 delay which is both unreasonable and material in the granting of any permissions approvals or consents referred to in this Schedule;
- 14.3 adverse weather conditions;
- 14.4 combination of workmen strike or lockout affecting any of the trades engaged in the preparation and manufacture or transportation of any goods or materials required for the Primary School;
- 14.5 civil commotion;
- 14.6 force majeure;
- 14.7 any other reason beyond the control of the Developers

and where it appears to the Developers that the completion of the Primary School is being or is likely to be delayed by reason of any of the matters set out in sub-paragraphs 14.1 to 14.7 hereof the Developers shall give notice to the Council specifying details of the events or events causing the delay the expectant extent of the delay and the steps being taken to minimise such delay.

15. On practical completion of the Primary School in accordance with the provisions of this Deed to procure that the Developers' Architect shall issue the Primary School Certificate of Practical Completion (which shall be conclusive and binding on the Council save in the case of manifest error)

16. The Developers must ensure that the Developers' Architect does not issue the Primary School Certificate of Practical Completion without previously giving to the Council's

Surveyor not less than 15 Working Days notice that he proposes to carry out an inspection on a date specified in the notice.

17. If the inspection does not take place or if, following the inspection, the relevant certificate is not issued, the Developers must ensure that the certificate is not subsequently issued unless notice has again been given to the Council's Surveyor in accordance with paragraph 9 of this Schedule and this procedure must be repeated as often as necessary until the relevant certificate is issued.
18. The Council's Surveyor may attend every inspection referred to in paragraph 16 and paragraph 17 above, and the Council's Surveyor may make observations and written representations within 10 Working Days after the date of the inspection concerning the issue of the Primary School Certificate of Practical Completion.
19. The Developers must ensure that the Developers' Architect has due regard to any written representations made by the Council's surveyor pursuant to paragraph 18 provided that such written representations are made within the timescale set out in paragraph 18.
20. The Developers shall procure that the terms of the Developers' Architect's professional appointment require the Developer's Architect to act impartially when exercising the power to issue the Primary School Certificate of Practical Completion and a copy of such appointment shall be provided to the Council.
21. The Developers covenant to procure collateral warranties in favour of the Council from the Developers' Architect and any other professional advisors and contractors engaged in the design and supervision or construction of the Primary School such warranties to be in standard industry wording.
22. The Developers and the Council agree that save in circumstances where paragraph 23 applies:
 - 22.1 the Developers shall transfer the Education Site shown edged red on the Education Site Plan in its ownership to the Council free of charge in accordance with the terms of Schedule 9
 - 22.2 Completion of the Transfer of that part of the Education Site shown edged red on the Education Site Plan shall take place 20 Working Days following the issue of the Primary School Certificate of Practical Completion or on such later date as the Developers and the Council shall agree.
23. If:
 - 23.1 all necessary consents and approvals to establish and construct the Primary School are not granted or
 - 23.2 the access for the Primary School and the necessary consent and approvals for the location and the construction of the access for the Primary School are not agreed or granted or
 - 23.3 if any third party land or land in the ownership of the Council required for the construction of the access to the Primary School is not made available to the Developers at nil cost

by the School Longstop Date the Developers shall be under no further obligation to provide the Primary School or transfer the Education Site for any purpose and shall be free to develop the Education Site in accordance with a planning permission free of any obligation contained in this Schedule and shall subject to the Council agreeing the location of the access to the Education Site and making available to the Developers any adjoining land in its ownership that may be required to facilitate such access (the

Access Condition) pay the Primary School Contribution and the Primary School Land Contribution to the Council in lieu of the provision of the Primary School within three months from the date which is the later of the Primary School Contribution and the Primary School Land Contribution being agreed or determined pursuant to clause 7 of this Deed and the date that the Access Condition is satisfied.

24. Where adjoining land in the ownership of the Council is required to facilitate the access to the Primary School agreed pursuant to paragraph 3 of this Schedule the Council agrees to grant the Developers the right and licence at no cost to the Developers to enter upon such part of the adjoining land in its ownership for the purpose of constructing and maintaining and using the access for the Primary School.
25. Where adjoining land in the ownership of the Council is required to facilitate an enhanced Primary School Outline Specification pursuant to paragraph 2.2 the Council shall grant to the Developers such rights and licence at no cost to the Developers to enter upon such part of the adjoining land in its ownership for the purpose of constructing the Primary School
26. On completion of the transfer of the Education Site pursuant to paragraph 22 above the Council accepts that the Developers have satisfied all their obligations pursuant to this Schedule and the Developers shall have no further liability in respect of the Primary School.
27. The Council hereby covenants with the Developers in respect of the Primary School Contribution and Primary School Land Contribution as follows:
 - 27.1 to hold the Primary School Contribution and Primary School Land Contribution in an interest bearing account pending its use;
 - 27.2 to use the Primary School Contribution and Primary School Land Contribution towards the provision of additional capacity in primary schools in Barry to create up to a maximum of 210 additional primary education places and 32 nursery education places to meet the needs arising from the Development
 - 27.3 upon request from time to time but not exceeding once per year to provide the Developers with details of the expenditure of the said contribution demonstrating how such expenditure has provided additional capacity to meet the needs arising from the Development; and
 - 27.4 to pay to the Developers such amount of the said Primary School Contribution and Primary School Land Contribution which has not been expended in accordance with the provisions of this Deed within 5 years of the date of receipt by the Council of the Primary School Contribution together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers

SCHEDULE 6

ECOLOGY MITIGATION

PART A

In this Schedule

"Access Strip" means an accessway of 6 metres in width leading from ABP's adjoining land at such point as may be determined by ABP acting reasonably to the Maintenance Strip such access to be capable of safely accommodating maintenance vehicles

"Dock Walls" means the entirety of the dock walls abutting the water frontage of the Ecology Mitigation Land and below the mean water level including without limitation the coping structure mooring points bollards and supports thereof and the external and internal face of the dock wall

"Ecology Mitigation Land" means the land shown shaded green on Plan 5 at Annexure 6 to this Deed

"Ecology Mitigation Works" means the clearance of debris and litter of the existing grassed area on the Ecology Mitigation Land and the cutting of the grass on the Ecology Mitigation Land outside of the bird nesting season so that it is no less than 120mm in height and no more than 250mm in height

"Maintenance Strip" means a strip of land having a width of 6 metres measured back from the front edge of Dock Wall or the Revetment as the case may be

"Method Statement" means a statement prepared by the Developers which shall set out a specification of the proposed works the construction method and resources to be employed in executing the works and a programme of works

"Revetment" the entirety of the sloping stonework and its structure on the water frontage to the Ecology Mitigation Land above and below the mean water level

1. ABP is the owner of Ecology Mitigation Land and is a party to this Deed for the purpose of granting a licence to the Developers in the form set out in Part B to this Schedule below and its employees agents contractors and others including any management company to enter and remain on the Ecology Mitigation Land in order to carry out the Ecology Mitigation Works and agrees that the Ecology Mitigation Works will thereafter remain on the Ecology Mitigation Land in perpetuity.
2. ABP is the freehold owner of the Ecology Mitigation Land which registered at HM Land Registry under title number WA793141 (in part) and CYM453559 (in part)
3. ABP hereby covenants with the Council and the Developers as to their respective parts of the Ecology Mitigation Land respectively owned by them for the benefit of the Site subject always to the provisions of paragraph 2.7 of Part B of this Schedule :
 - 3.1 that ABP will not erect or construct any building or structure on the Ecology Mitigation Land and that the Ecology Mitigation Land shall be kept as an open grassed area
 - 3.2 to comply at the Developers' cost with any conditions (other than the Ecology Mitigation Works) imposed in the Planning Permission or any obligation imposed by this Deed with regards to the use of the Ecology Mitigation Land
4. If at any time the Planning Permission or this Deed is not implemented or lapses or is otherwise varied amended or superseded so that the requirements of clause 5.3.6 of

this Deed and of this Schedule 6 are no longer planning requirements the provisions of Clause 5.3.6 of this Deed and of this Schedule 6 shall lapse.

PART B

The Developer's Licence

1. ABP hereby grants a licence on the terms set out in paragraph 2 below to the Developers and its employees agents contractors and others including any management company that the Developers may assign this licence to the right to enter and remain on the Ecology Mitigation Land with or without vehicles plant and machinery for the purpose of carrying out the Ecology Mitigation Works.
2. The rights granted in paragraph 1 of this Part of the Schedule are subject to:

2.1 STARTING THE WORKS

- 2.1.1 The Developers must not start the Ecology Mitigation Works until it has complied with the requirements of this paragraph 2.1.
- 2.1.2 The Developers must obtain all consents that are required for the Ecology Mitigation Works under the Act all other Statutory Requirements (if any) and all other applicable consents (if any) and produce the same to ABP.
- 2.1.3 Prior to commencement of the Ecology Mitigation Works to consult with ABP and provide ABP with plans and a Method Statement and any other information including a risk assessment which ABP reasonably requires for ABP's prior approval to the Method Statement and the consent of ABP (such approval and consent not to be unreasonably withheld or delayed).
- 2.1.4 The Developers must notify ABP of the date it intends to start carrying out the Ecology Mitigation Works and the anticipated date for their completion.
- 2.1.5 The Developers must give ABP an appropriate number of copies of the plans and specification for the Ecology Mitigation Works

2.2 CARRYING OUT AND COMPLETING THE ECOLOGY MITIGATION WORKS

- 2.2.1 The Developers must carry out and thereafter maintain the Ecology Mitigation Works at its own cost:
 - (a) using materials which are of good quality
 - (b) in a good and workmanlike manner and in accordance with good building and other relevant practices, codes and guidance
 - (c) in compliance with (if any) any permission consent licence or other approval required for the Ecology Mitigation Works
 - (d) in accordance with the Act and any other Statutory Requirements and in accordance with any agreement or undertaking made pursuant to this Deed
 - (e) in accordance with the said drawings and specifications
 - (f) in compliance with the CDM Regulations
 - (g) to adoptable standards (where applicable).

- (h) in accordance with the requirements of the insurers of the Ecology Mitigation Land.
- 2.2.2 The Developers must take all reasonable steps to ensure that the carrying out of the Ecology Mitigation Works does not damage or make the Ecology Mitigation Land the Dock Walls the Revetment or any other adjoining land buildings or services unsafe
- 2.2.3 In carrying out the Ecology Mitigation Works the Developers must cause as little disturbance and inconvenience as reasonably practicable to ABP and the Ecology Mitigation Land
- 2.2.4 The Developers must make good, to the reasonable satisfaction of ABP, any damage which is caused to the Ecology Mitigation Land the Dock Walls the Revetment or any other of ABP's adjoining land or buildings by carrying out the Ecology Mitigation Works as soon as reasonably practicable.
- 2.2.5 The Developers must allow ABP and its surveyors access to the Ecology Mitigation Land both whilst the Ecology Mitigation Works are being carried out and afterwards and will give ABP such information it reasonably requests to establish that the Ecology Mitigation Works are being and have been carried out in accordance with this Licence.
- 2.2.6 The Developers shall notify ABP as soon as the Ecology Mitigation Works have been completed and will send to ABP an appropriate number of copies of plans showing the Ecology Mitigation Land as altered by the Ecology Mitigation Works

2.3 **CDM REGULATIONS**

- 2.3.1 This clause applies to the extent that the CDM Regulations apply in relation to the Ecology Mitigation Works
- 2.3.2 If and to the extent that ABP may be a client for the purposes of the CDM Regulations in relation to the Ecology Mitigation Works ABP appoints the Developers as the only client in respect of them.
- 2.3.3 Before starting the Ecology Mitigation Works the Developers must have a declaration that it is the only client in respect of the Ecology Mitigation Works for the purposes of the CDM Regulations and have given ABP a copy of the declarations
- 2.3.4 The Developers must comply with its obligations as a client for the purposes of the CDM Regulations and must ensure that the planning supervisor and any contractor it appoints in relation to the Ecology Mitigation Works comply with their respective obligations under the CDM Regulations
- 2.3.5 Within one month after completion of the Ecology Mitigation Works the Developers must give ABP all documents relating to the Ecology Mitigation Works that are required under the CDM regulations to be kept in the health and safety file for the Ecology Mitigation Works

2.4 **ADDITIONAL WORKS**

- 2.4.1 If the terms of any planning permission licence or consent obtained for the Ecology Mitigation Works require any other works to be carried out (whether to the Ecology Mitigation Land or to any other land or building or service) the Developers must use all reasonable endeavours to carry out such other works within any time limit imposed by such permission licence or consent

- 2.4.2 The terms of this licence will apply to the carrying out of such works as if they formed part of the Ecology Mitigation Works
- 2.4.3 This clause is without prejudice to any requirements on the Developers to obtain the consent of the ABP to such other works (such consent not to be unreasonably withheld or delayed) and the consent of any other person (if any) that may be required for such other works

2.5 **FEES RATES AND TAXES**

The Developers must pay all costs fees rates and taxes that arise by reason of the Ecology Mitigation Works (including any arising under the Act in relation to the Ecology Mitigation Works) whether imposed on ABP or the Developers and the Developers must indemnify ABP against all liability for such costs fees rates and taxes

2.6 **NO WARRANTY**

No representation or warranty is given or to be implied by ABP as to the suitability of the Ecology Mitigation Land for the Ecology Mitigation Works or whether the Ecology Mitigation Works or any removal or reinstatement of them may be lawfully carried out

2.7 **ABP'S FURTHER RIGHTS**

Notwithstanding the covenants given by ABP in paragraph 3 of Part A of this Schedule ABP shall have the following rights:

- 2.7.1 to construct and retain in position on the Ecology Mitigation Land the Access Strip and Maintenance Strip to the intent that the Access Strip the Maintenance Strip the Dock Walls and the Revetment shall not form part of the grassed area required for the Ecology Mitigation Works and which shall not therefore be subject to the restrictions referred to in this Deed
- 2.7.2 Access to and egress from the Ecology Mitigation Land over the Access Strip and the Maintenance Strip at all times with or without workmen vehicles plant and equipment:
- a) for the inspection, cleaning, maintenance and drainage of the Access Strip the Maintenance Strip the Dock Walls the Revetment the dock any part of the dock or any adjoining land, building or services
 - b) for all purposes connected with the use and enjoyment of the Ecology Mitigation Land by ABP as a Statutory Port Authority in accordance with its statutory and common law obligations and undertaking
 - c) for the provision and maintenance of measures for the purpose of ensuring the safety and security of the owners and occupiers of adjoining land of ABP their respective licensees and members of the public
 - d) the rights to enter the Ecology Mitigation Land to carry out any of ABP's obligations pursuant to its function as a Statutory Port Authority in accordance with its statutory and common law obligations and undertaking

2.8 **INDEMNITY**

- 2.8.1 The Developers will indemnify ABP against any action, claim, demand, damage, liability, cost, fee or expense arising out of;

- a) The execution of the Ecology Mitigation Works and their maintenance thereafter or the failure to do so;
- b) Any breach of obligation contained in this licence or;
- c) Any act or default of the Developers or any person under the Developers' control in connection with the execution of the Ecology Mitigation Works including for the avoidance of any doubt any damage caused to the Ecology Mitigation Land in carrying out the Ecology Mitigation Works.

2.9 Nothing in this Schedule shall prevent or restrict ABP in carrying on its function as a Statutory Port Authority in relation to such part of the Ecology Mitigation Land or any adjoining or neighbouring property of ABP as is in its ownership.

SCHEDULE 7

Affordable Housing

In this Schedule

"ACG" means the published list of acceptable costs per dwelling according to the relevant dwelling type in question determined by the Welsh Government from time to time (or a subsequent list of costs used or published at the relevant time and having the same effect as that which was published by the Welsh Government at the date of this Deed)

"Affordable Housing" means housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford housing at open market values, including Social Rented Housing and Intermediate Housing and where there is provision for the home to remain affordable for future eligible households or where staircasing to full ownership takes place, any subsequent capital receipts should be recycled to provide replacement affordable housing by the relevant RSL/affordable housing provider

"Affordable Housing Contribution" means Social Rented Housing Contribution and the Intermediate Housing Contribution

"Affordable Housing Units" means that part of the Development to be built and thereafter occupied as Affordable Housing comprising 15% of the total number of Dwellings (rounded up) to be built on the Site pursuant to the Planning Permission of which 12% are to be Social Rented Housing Units (rounded up) and 3% to be Intermediate Housing Units (rounded down)

"Affordable Rent" means (in cases where the relevant landlord is not a local authority) a rent payable for a Social Rented Housing Unit which is equal to or less than the benchmark rent levels for the Vale of Glamorgan as determined by the Welsh Government from time to time or (in cases where the relevant landlord is a local authority) a rent payable for an affordable rented housing unit determined by the Welsh Government from time to time and calculated using statistical information provided by individual local authorities

"Chargee" means any mortgagee or chargee of the RSL or a purchaser of a Intermediate Housing Unit pursuant to Schedule 7 only or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

"DQR" means the Development Quality Requirements Guidance produced by the Welsh Government current at the time of construction of the relevant Social Rented Housing Units

"Eligible Person" a person who meets all of the following criteria:

- a) is over the age of 18;
- b) is a UK citizen or EU/EEA passport holder or have 'indefinite leave to remain' stamped in their passport;
- c) is able to pay associated costs e.g. stamp duty and solicitors fees;
- d) lives or works in the Vale of Glamorgan for the last 6 months;
- e) For those leaving the Armed Forces, has lived in the Vale of Glamorgan for 6 months prior to joining the Armed Forces;
- f) is able to secure a mortgage finance for the 70%;
- g) is a first time buyer or is assessed by the Council to be first time buyer in "own right";

- h) is not able to purchase the property at the market value;
- i) is not in breach of their tenancy (if social housing tenant)

"Grant Funding" means grant provided by the Welsh Government as a subsidy towards the provision of Affordable Housing which shall be sufficient to cover the cost of DQR compliance

"Intermediate Housing" means housing (including equity sharing schemes) where capital prices or rents are above those of Social Rented Housing but below open market housing prices or rents PROVIDED THAT this does not include low cost market housing which the Welsh Government does not consider to be Affordable Housing for the purpose of the land use planning system

"Intermediate Housing Contribution" means 30% of the Market Value of the relevant Intermediate Housing Unit referred to in paragraph 17.2

"Intermediate Housing Requirement" means 3% of the total Dwellings on Site (rounded down) pursuant to the Development shall be for Intermediate Housing Units pursuant to the terms within this Schedule and which shall unless otherwise agreed by the Council proportionately reflect the type and mix of the Open Market Dwellings

"Intermediate Housing Unit" means Dwellings constructed on the Site for Intermediate Housing pursuant to the provisions in this Schedule

"Low Cost Home Ownership Register" means the list maintained by the Council of persons in the Council's area qualifying for nomination as purchasers of Intermediate Housing Units

"Market Value" shall mean the price at which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arms length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion

"Market Housing Units" means that part of the Development which is general market housing for sale in the open market and which is not Affordable Housing

"Notice Period" means three months from the date of receipt by the RSL of the Sale Notice

"Offer Notice Period" means three months from the date or receipt by the nominated party or the Council as the case may be of the Offer Notice

"Open Market Dwellings" means each of the Dwellings in the Development which are not Affordable Housing Units;

"Reserved Matters Area" means the part of the Development specified in an application for approval of reserved matters pursuant to the Planning Permission

"RSL" means such registered social landlords registered with the Welsh Government as the Council and the Developers shall agree

"Sale Notice" means a notice served by the Developers on the RSL offering to sell the Social Rental Unit(s) in accordance with the terms of this Schedule

"Sale Price" 70% of the Market Value of the relevant Intermediate Housing Unit to be agreed or determined pursuant to paragraph 11

"Social Rented Housing" means housing provided by a local authority or an RSL where rent levels have regard to Affordable Rents

"Social Rented Housing Contribution" means 58% of the ACG for the relevant Social Rented Housing Unit referred to in paragraph 8

"Social Rented Housing Requirement" means 12% of the total Dwellings on Site (rounded up) pursuant to the Development shall be for Social Rental Housing pursuant to the terms within this Schedule and which shall unless otherwise agreed by the Council proportionately reflect the type and mix of the Open Market Dwellings

"Social Rented Housing Unit" means Dwellings constructed on the Site for Social Rental Housing pursuant to the provisions in this Schedule

"Welsh Housing Quality Standards" means the Welsh Housing Quality Standards Guidance produced by the Welsh Government current at the time of construction of the relevant Social Rented Housing Units

Affordable Housing

1. For every 100 of the Dwellings no more than 85 shall be occupied unless 15 Affordable Housing Units:
 - 1.1 in the case of Social Rented Housing Units have been offered to the RSL pursuant to paragraph 4 save in circumstances where paragraphs 7 or 8 applies
 - 1.2 in the case of Intermediate Housing Units been constructed and Notice served on the Council of the Market Value save in circumstances where paragraph 17 applies.
2. The Developers covenant with the Council to:
 - 2.1 Construct or procure the construction of the Social Rented Housing Units :
 - (a) in accordance with the Planning Permission;
 - (b) to a standard which satisfies the Welsh Housing Quality Standards save where Grant Funding is available to the RSL or owner for the Social Rental Housing Units then in such case the units shall be constructed to a standard which satisfies the DQR
 - 2.2 The party disposing of the Affordable Housing Units shall procure that each Affordable Housing Unit shall benefit from the following:
 - (a) a covenant to construct roads and footpaths to serve the relevant Affordable Housing Units;
 - (b) a covenant to construct drains and sewers to serve the relevant Affordable Housing Units;
 - (c) full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units;
 - (d) full and free rights to the passage of water, soil electricity and, gas and other services through the pipes, drains, channels, wires, cables and conduits which shall be adjoining land up to and abutting the boundary of the Affordable Housing Units all such services to be connected to the mains; and
 - (e) such other rights or covenants as may be reasonably required by the Developers provided that such rights or covenants are (unless necessary for the proper Development of the Site) no more onerous than the covenants imposed by the transfers of Open Market Dwellings

Social Rented Housing

- 3 Unless paragraph 8 applies from the date of Practical Completion of the Social Rented Housing Units procure that they shall not be used other than for Social Rented Housing and the transfer or lease of each Social Rented Housing Unit in accordance with the provisions of paragraph 6 below shall contain a restriction in similar form to the Restriction which shall be registerable in the proprietorship register of the title to the Social Rented Housing Unit with the intention that it shall remain as a Social Rented Housing Unit in perpetuity save that this obligation shall not be binding on:
- (a) any Chargee provided that the Chargee shall have first complied with the Chargee's Duty;
 - (b) any person exercising a right to acquire
- 4 Prior to the commencement of construction of the Social Rental Housing Units:
- (a) serve a Sale Notice on a RSL and offer to sell the freehold or leasehold of at least 98 years of such Social Rented Housing Units to the RSL pursuant to the provisions of this Agreement; and
 - (b) serve a copy of the Sale Notice on the Council's Housing Services Manager
- 5 The RSL may accept the offer referred to in paragraph 4 above by signing and returning a copy of the Sale Notice to the person who served it upon them within the Notice Period and by exchange of contracts for the sale of the relevant Social Rented Housing Unit within a period of 3 months from the expiry of the Notice Period or if later the date which is 10 Working Days after the date that reserved matters consent is granted in respect of the relevant Social Rented Housing Unit which is the subject of the Sale Notice
6. The Developers shall use reasonable endeavours to ensure that the transfer of the Social Rented Housing Units to an RSL shall be completed upon the terms set out in this Schedule 7 within 10 Working Days after Practical Completion of such Social Rented Housing Unit
7. If the RSL:
- a) having accepted the offer by returning a copy of the Sale Notice in accordance with paragraph 5 and subsequently fails to exchange contracts for the purchase of the Social Rental Housing Unit within the period set out in paragraph 5; or
 - b) fails to accept the offer referred to in paragraph 5 within the Notice Period
- the Developers may serve written notice on the Council giving the Council three months within which to exchange contracts for the purchase of the Social Rental Housing Unit(s) itself or procure the purchase of it by another RSL.
8. If the Council or its RSL fails to exchange contracts within the three month period set out in paragraph 7 the Social Rented Housing Unit may be disposed of free from the obligations set out in this Schedule 7 and the Social Rented Housing Contribution shall be paid to the Council within 28 days of the completion of the sale of the relevant Social Rented Housing Unit and the Developers shall not be required to provide any Social Rented Housing Unit in substitution for such Social Rented Housing Unit whether within the Reserved Matters Area or the Development and the Social Rented Housing Requirement for the Development shall be reduced accordingly and all obligations in relation to the provision of that Social Rented Housing Unit to meet the Social Rented Housing Requirement shall cease and be extinguished

9. On Completion of the transfer or lease of each Social Rented Housing Unit procure that an NHBC Certificate or such other certificate of a similar nature is issued to the purchaser.

Intermediate Housing

10. The Developers covenant with the Council:
- 10.1 Not to sell lease or otherwise dispose of the Intermediate Housing Units save on the terms that:
- a) the price received by the Developers is the Sale Price;
 - b) include the provisions set out in Schedule 10 or such amended or alternative provisions as may be approved by the Council for the purpose of securing that a dwelling remains an Intermediate Home Unit for successive owners save that the provisions in Schedule 10 shall not be binding on any Chargee provided that the Chargee shall have first complied with the Chargee's Duty
- 10.2 To notify the Council in writing of the Market Value of each Intermediate Housing Unit no earlier than the approval of the reserved matters application for the Reserved Matters Area which includes the relevant Intermediate Housing Unit and no later than the date the construction of that Intermediate Housing Unit reaches slab level;
11. If the Council does not agree with the Market Value of the relevant Intermediate Housing Unit stated in the notice given pursuant to paragraph 10.2 above they shall within 30 Working Days of receipt of the notice give written counter notice to that effect to the Developers the question in dispute shall in default of agreement by the parties within 30 Working Days of the counter notice be determined as provided in clause 7 of this Deed provided always that if the Council does not give a counter notice within the time specified in this paragraph, the Market Value as stated in the notice given pursuant to paragraph 10.2 above shall be deemed to have been agreed by the Council
12. The Council shall be entitled within 30 Working Days of receipt of the notice given pursuant to paragraph 10.2 above or if later 15 working days from the date on which Market Value has been agreed or determined to:
- i) make one nomination in relation to each Intermediate Housing Unit as to persons on the Low Cost Ownership Register to whom such Intermediate Housing Unit is to be offered for sale; or
 - ii) may themselves elect to acquire the relevant Intermediate Housing Unit; or
 - iii) nominate a RSL Partner to acquire the relevant interest in the Intermediate Housing Unit
- ("the Nomination Notice")
13. The Developers shall offer the Intermediate Housing Unit for sale to the party nominated in the Nomination Notice by issuing a notice offering to sell the relevant Intermediate Housing Unit at the Sale Price ("the Offer Notice") such Offer Notice may only be issued once reserved matters consent has been granted in respect of the relevant Intermediate Housing Unit
14. The Nominated Party may accept the offer referred to in paragraph 13 above by signing and returning a copy of the Offer Notice to the person who served it upon them within the Offer Notice Period and by the exchange of contracts for the sale of the relevant Intermediate Housing Unit within a period 3 months from the date of receipt by the Developers of the signed copy of the Offer Notice.

15. From the date of Practical Completion of the Intermediate Housing Units procure that they shall not be used other than as Intermediate Housing Units and the transfer or lease of each Intermediate Housing Unit shall contain a restriction in similar form to the Restriction which shall be registerable in the proprietorship register of the title to the Intermediate Housing Unit with the intention that it shall remain as an Intermediate Housing Unit in perpetuity save that this obligation shall not be binding on:
- (a) any Chargee provided that a Chargee shall have first complied with the Chargee's Duty; or
 - (b) any person exercising a right to acquire
16. In the event that either
- 16.1 the Council fails to serve written notice on the Developers containing details of the persons on the Low Cost Ownership Register to whom the Intermediate Housing Unit is to be offered for sale or that the Council wishes to acquire the Intermediate Housing Unit within the timescale referred to in paragraph 12 above; or
 - 16.2 the person or persons so nominated or the Council (as the case may be) fail to accept the offer by returning a signed Offer Notice within the Offer Notice Period; or
 - 16.3 the person or persons so nominated or the Council (as the case may be) fail to exchange contracts for the purchase of the Intermediate Housing Unit within the timescale set out in paragraph 14 above
- then the provisions in paragraph 17 below shall apply.
17. The Developers may either:
- 17.1 dispose of the relevant Intermediate Housing Unit to an Eligible Person an RSL or such other person approved by the Council at the Sale Price and in accordance with paragraph 15 of this Schedule and including the provisions at Schedule 10 and will provide to the Council such information as the Council may reasonably require in respect of such disposition within 10 Working Days of completion of the same; or
 - 17.2 dispose of the relevant Intermediate Housing Unit as an Open Market Dwelling free of the requirements of Schedule 7 and Schedule 10 and pay the Intermediate Housing Contribution to the Council within 28 days of completion of the sale of the relevant Intermediate Housing Unit and the Developers shall not be required to provide any Intermediate Housing Unit in substitution for such Intermediate Housing Unit whether within the Reserved Matters Area or the Development and the Intermediate Housing Requirement for the Development shall be reduced accordingly and all obligations in relation to the provision of that Intermediate Housing Unit to meet the Intermediate Housing Requirement shall cease and be extinguished
18. If the Council elect to acquire an Intermediate Housing Unit under paragraph 14 above the terms as contained in this Schedule and Schedule 10 shall apply with the modification that the Transfer shall contain covenants for the benefit of the Developers that the Council or the RSL as the case may be shall covenant not to sell the relevant Intermediate Housing Unit except to a purchaser on the Low Cost Ownership Register unless a sale is by a mortgagee in possession or any receiver or administrator (including an administrative receiver) appointed pursuant to the Law of Property Act 1925.

19. The relevant Developers in respect of each Intermediate Housing Unit agrees to provide each person nominated to acquire an Intermediate Housing Unit in accordance with the provisions of this Schedule with the same customer care and after sales service that is provided to buyers of Open Market Dwellings

PART 2

Chargee's Duty

In this part:

- 1.1 The Chargee prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than 3 months prior notice in writing to the Council of its intention to dispose and:
- (a) in the event that the Council responds within 1 month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer.
 - (b) if the Council or any other person cannot within 2 months of the date of service of its response under paragraph 1.1(a) secure such transfer then provided that the Chargee shall have complied with its obligations under this part the Chargee shall be entitled to dispose of the Affordable Housing Units as Market Housing Units or for Market Housing free of the restrictions set out in this Schedule and the Chargee shall:
 - (i) in relation to an Affordable Housing Unit which is a Social Rented Housing Unit subject to the Chargee having received all moneys outstanding under the charge or mortgage pay to the Council a sum equivalent to the difference between the sum received by the Chargee in respect of each Dwelling sold as a Market Housing Unit and the amount which the Dwelling could reasonably be expected to have been sold for as an Affordable Housing Unit ('the Social Housing Repayment Sum') and where there are insufficient monies from the proceeds of the sale after deducting the moneys outstanding under the charge or mortgage to pay the Social Housing Repayment Sum the Chargee shall pay any balance of the monies received from the proceeds of sale after deducting all monies due to them under the mortgage or charge to the Council; or
 - (ii) in relation to an Affordable Housing Unit which is an Intermediate Housing Unit subject to the the Chargee having received all moneys outstanding under the charge or mortgage pay to the Council 30% of the sum received by the Chargee in respect of each Dwelling sold as a Market Housing Unit ('the Intermediate Repayment Sum') and where there are insufficient monies from the proceeds of the sale after deducting the moneys outstanding under the charge or mortgage to pay the Intermediate Repayment Sum the Chargee shall pay any balance of the monies received from the proceeds of sale after deducting all monies due to them under the mortgage or charge to the Council

PROVIDED THAT at all times the rights and obligations in this paragraph 1.1 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage to ensure that the Chargee receives all moneys outstanding under the mortgage or charge.

SCHEDULE 8
Part 1
Deferred Payments

1. Definitions

1.1 In this Schedule

"Additional Contributions" means the contributions set out in Part 2 of this Schedule

"Appraisal" means the process of calculation of net pre tax profit of the Developers in respect of the Development at the Appraisal Date required to ascertain whether the Council is entitled to the Deferred Payment. The model for the Appraisal shall be ARGUS/CIRCLE a model template of which is included at Annexure 11

"Appraisal Dates" means the First Appraisal Date, the Second Appraisal Date, the Third Appraisal Date, the Fourth Appraisal Date and the Final Appraisal Date

"Baseline Obligations" means the financial contributions and obligations to be made by the Developers and which are set out in Schedules 1 to 10 inclusive in this Deed

"Build Costs" means the Direct Housebuild Costs and Commercial Build Costs as defined in Schedule 12

"Connected Party" means a party connected to the Developers that is to say company individual or other entity who would be a person connected with the Developers for the purposes of section 839 of the Income and Corporation Taxes Act 1988

"Deferred Affordable Housing Contribution" means the Social Rented Deferred Contribution and the Low Cost Deferred Housing Contribution

"Deferred Payment" means the sum payable by the Developers calculated in accordance with the terms of this Schedule 8 and a reference to the Deferred Payment includes the whole or part of it as the context may require

"First Appraisal Date" means the earlier of the following dates

- (a) the date of Occupation of the 500th Dwelling;
- (b) the date on which all the Dwellings on Stage 1 of the Development are in Occupation;
- (c) 5 years from the date of Commencement of Development

"Final Appraisal" means a final appraisal undertaken on the Final Appraisal Date pursuant to Paragraph 7 of Part1 of this Schedule

"Final Appraisal Date" means the date which is 3 years from the date of the Fourth Appraisal

"Fourth Appraisal Date" means the earlier of the following dates:

- (a) the date of Occupation of the Trigger Unit;
- (b) 20 years from the date of Commencement of Development

"Independent Surveyor" means the suitably qualified surveyor appointed by agreement between the Council and the Developers pursuant to paragraph 8.1 of Part 1 of this Schedule to undertake the Appraisal and verify the Appraisal Inputs and calculation of net pre tax profit

"Inputs" means the inputs set out in Schedule 12 which are required for the calculation of the Appraisal using Circle template at Annexure 11

"Low Cost Deferred Contribution" means the amount calculated in accordance with the following formula

$$D = (30\% \times \text{Open Market Value}) \times N$$

where D is the Social Rented Deferred Contribution and

N is 3% of the number of Dwellings built pursuant to the Planning Permission at the Appraisal Date which shall unless otherwise agreed with the Council reflect the type and mix of the Open Market Dwellings

"Payment Date" means the date on or with effect from which the Deferred Payment becomes payable in accordance with paragraph 3 of Part 1 of this Schedule

"Public Art Contribution" means a sum equivalent to the value of 1% of the Build Costs

"Second Appraisal Date" means the earlier of the following dates:

- (a) the date of Occupation of the 1000th Dwelling;
- (b) the date on which all the Dwellings on Stage 2 of the Development are in Occupation;
- (c) 10 years from the date of Commencement of Development

"Social Rented Deferred Contribution" means the amount calculated in accordance with the following formula

$$D = (0.58 \times \text{Acceptable Cost Guidance}) \times N$$

where D is the Social Rented Deferred Contribution and

N is 12% of the number of Dwellings built pursuant to the Planning Permission at the Appraisal Date which shall unless otherwise agreed with Council reflect the type and mix of the Open Market Dwellings

"SSAP" means the current edition of the Statement of Standard Accounting Practice (issued by the Accounting Standards Committee)

"Stage 1 of the Development" means for the purpose of the First Appraisal Date means Practical Completion of Phase 1 (West Pond Part 1 and Arno Quay) and Phase 2 (West Pond Part 2)

"Stage 2 of the Development" means for the purposes of the Second Appraisal Date Practical Completion of Phase 3 (South Quay Parkside) and South Quay Waterside Part 1

"Stage 3 of the Development" means for the purposes of the Third Appraisal Date Practical Completion of South Quay Waterside Part 2 and East Quay

"Third Appraisal Date" means the earlier of the following dates:

- (a) the date of Occupation of the 1500th Dwelling;
- (b) the date on which all the Dwellings on Stage 3 of the Development are in Occupation;
- (c) 15 years from the date of Commencement of Development

"Total Deferred Payment" means the sum of FOUR MILLION TWO HUNDRED AND TWENTY THREE THOUSAND AND SIX HUNDRED POUNDS (£4,223,600) plus the values of the Deferred Affordable Housing Contribution and the Public Art Contribution

"Trigger Unit" means the Dwelling which when constructed leaves 50 Dwellings remaining to be constructed on the Site

- 1.2 References to lease include underlease where the circumstances so require
- 1.3 Measurement of area required under the provisions of this Schedule is by reference to the principles laid down by the RICS Code of Measuring Practice (Sixth Edition 2007) or the equivalent Code in use at the relevant time
- 1.4 References to paragraph numbers are to paragraphs of this Schedule 8 unless the context otherwise requires
2. **Council's right to a Deferred Payment**
 - 2.1 An Appraisal of the Development that has been undertaken on the Site at the Appraisal Date will be carried out at each Appraisal Date.
 - 2.2 The Council is entitled at each Payment Date to a Deferred Payment in the circumstances referred to in paragraph 2.3
 - 2.3 The Deferred Payment will be payable by the Developers to the Council if after each Appraisal there is left a balance of net pre tax profit for the Developers in respect of the Development and the proportion due to the Council of the balance of the Developers' net pre tax profit for the Development is twenty five percent (25%) up to a maximum Deferred Payment to the amount of the Total Deferred Payment
 - 2.4 The participation of the Council in the balance of the net pre tax profit by way of the Deferred Payment does not create a partnership between the parties
 - 2.5 The Council will consult with the Developers as to how any Deferred Payments received by the Council are allocated to or towards the delivery of the identified elements of the Additional Contributions.
 - 2.6 The Council shall take proper and due account of the representations made by the Developers as to the allocation of any Deferred Payments towards the delivery of the identified elements of the Additional Contributions and shall keep the Developers fully updated as to any decision made by the Council in this regard and the reasons for the decision.
 - 2.7 The Council shall use its reasonable endeavours to use all Deferred Payments received and which are to be allocated towards the Affordable Housing element of the Additional Consideration towards the provision of additional Affordable Housing on the Site with the aim of having 30% of the Dwellings on the Site as Affordable Housing. For the avoidance of doubt where the Council uses the Deferred Payment towards the provision of Affordable Housing on the Site it shall do so by purchasing the Dwellings

at Open Market Value or at such price as the relevant Developers with an interest in the Dwelling shall agree but the Developers shall be under no obligation to make any reduction to the price by virtue of the Dwellings being acquired by the Council for Affordable Housing and for the avoidance of doubt any payments made under this Schedule shall be in addition to and not in lieu of any payments under Schedule 7 of this Deed.

3. **Payment of the Deferred Payment**

3.1 The Deferred Payment becomes payable to the Council on or as the case may be with effect from the Payment Date

3.2 The Payment Date shall be thirty (30) days after the later of the following dates:

- (a) the date on which the Deferred Payment has been determined by the Independent Surveyor following the Appraisal Date;
- (b) in the event that either party disagrees with the findings of the Independent Surveyor, the date which the Council and the Developers agree the amount of the Deferred Payment due; or
- (c) in the event that the Deferred Payment is not agreed, the date that the Deferred Payment is determined by an expert pursuant to clause 7 of this Deed.

3.3 Interest compounded annually is to accrue with effect from the Payment Date on so much of the Deferred Payment as for the time being remains unpaid thereafter

3.4 If the Developers do not make the full payment of the amount due for payment at or before the times laid down for payment in paragraph 3.2 Interest is to accrue with effect from the time when the amount became due for payment or during the period in which the Developers are in breach (as the case may be) on so much of the amount of Deferred Payment as is overdue for payment plus the interest already accrued upon it under paragraph 3.3 of Part 1 during the time that it remains unpaid

4. **Expert Determination**

4.1 In case of a dispute between the parties arising under this Schedule which

- 4.1.1 does not involve a breach of obligation or the interpretation of the provisions of this Schedule or
- 4.1.2 is the subject matter of the independent audit of the Appraisal or on the failure of the parties to agree a matter or issue which they are at first instance required to do the matter or issue is to be dealt with by independent expert determination in accordance with the provisions of clause 7 of this Deed

5. **Duty to notify**

5.1 The Developers will notify in writing the Council when each Appraisal Date occurs

5.2 The Council will keep confidential all commercially sensitive information provided to it and use it solely for the purposes of monitoring its rights to a Deferred Payment, provided it shall not compromise its duties under the Freedom of Information Act 2000 or such other Act of similar provisions

6. Appraisal and Cost

- 6.1 The Appraisal involves the ascertainment of the Developers' net pre tax profit for the Development up to the Appraisal Date calculated by inputting the Inputs.
- 6.2 The Developers shall provide to the Council and the Independent Surveyor the relevant information required for the Inputs to carry out the Appraisal within 30 Working Days of the relevant Appraisal Date

7. Final Appraisal

- 7.1 A Final Appraisal will be undertaken on the Final Appraisal Date as a balancing exercise to ascertain the net pre-tax profit for the Development and to determine whether any further Deferred Payment is due to the Council or whether there has been an overpayment by way of Deferred Payment already paid by the Developers to the Council.
- 7.2 In the event that the Final Appraisal undertaken on the Final Appraisal Date identifies that there has been an overpayment of Deferred Payments to the Council by the Developers the Council shall refund any part of the Additional Contributions which have already been made by the Developers which are unexpended or which have not been committed for expenditure by the Council by way of a contract being entered into or such other similar circumstance whereby in such circumstances the Council would be in breach of its obligations and would be liable to pay such sums under the contract (and the Council shall provide the Developers with such evidence as may be required by the Developers to demonstrate that Additional Contributions have been expended or committed for expenditure) up to the amount of the overpayment in satisfaction of the overpayment due to the Developers within 30 Working Days.

8. Independent Surveyor

- 8.1 Each Appraisal is to be undertaken by the Independent Surveyor who is to be appointed by the parties jointly within 15 working days of the relevant Appraisal Date or on their failure to agree on the appointment appointed at the request of either party by the President (or other acting senior officer) of the Institute of Chartered Surveyors in England and Wales
- 8.2 The Independent Surveyor shall verify the Developers' evidence and values for the Inputs to be used in the Appraisal and shall ensure that an appropriate appraisal toolkit is used for the Appraisal, such as CIRCLE or other mechanism as shall otherwise be agreed by the Council and the Developers
- 8.3 The Independent Surveyor shall provide the Council and the Developers with a final appraisal report within 8 weeks of being appointed pursuant to paragraph 8.1 of Part 1 of this Schedule identifying the Developers net pre-tax profit for the Development at the relevant Appraisal Date for the purpose of calculating the Deferred Payment and in the event that the Council or the Developers do not agree with any matter in the appraisal report the Council and the Developers shall use reasonable endeavours to agree the net pre tax profit and the Deferred Payment and in the event of disagreement either party may refer the matter to be determined by and Expert pursuant to Clause 7 of this Deed
- 8.4 The cost of the audit shall be borne by the Developers and is to be treated as an item of cost which shall be included as an Input for the Appraisal

Part 2

Additional Contributions

- 1 £993,000 towards off-site highway works required as a result of the Development
- 1.1 The Council hereby covenants with the Developers to use all sums received from the Developers pursuant to paragraph 1 of this Part towards the carrying out of off-site highway works required as a result of the Development
- 1.2 The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council under this paragraph 1 of this Part which has not been expended or Committed for Expenditure in accordance with the provisions of this Deed within ten years of the date of receipt by the Council of such payment together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers.
- 2 £800,000 towards provision or enhancement of Sustainable Transport Facilities for the benefit of future users and occupiers of the Development
- 2.1 The Council hereby covenants with the Developers to use all sums received from the Developers pursuant to paragraph 2 of this Part towards the provision Sustainable Transport Facilities for the benefit of future users and occupiers of the Development
- 2.2 The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council under this paragraph 2 of this Part which has not been expended or Committed For Expenditure in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers.
- 3 £956,100 towards Welsh medium education for the benefit of future users of the Development
- 3.1 The Council hereby covenants with the Developers to use all sums received from the Developers pursuant to paragraph 3 of this Part towards Welsh medium education for the benefit of future users of the Development
- 3.2 The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council under this paragraph 3 of this Part which has not been expended or Committed for Expenditure in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers.
- 4 £62,500 towards school transport costs for the benefit of future users and occupiers of the Development
- 4.1 The Council hereby covenants with the Developers to use all sums received from the Developers pursuant to paragraph 4 of this Part towards school transport costs for the benefit of future users and occupiers of the Development

- 4.2 The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council under this paragraph 4 of this Part which has not been expended or Committed for Expenditure in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers
- 5 £700,000 towards provision or enhancement of open space and recreational facilities for future occupiers of the Development
- 5.1 The Council hereby covenants with the Developers to use all sums received from the Developers pursuant to paragraph 5 of this Part towards provision or enhancement of open space and recreational facilities for future occupiers of the Development
- 5.2 The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council under this paragraph 5 of this Part which has not been expended or Committed for Expenditure in accordance with the provisions of this Deed within ten years of the date of receipt by the Council of such payment together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers
- 6 £500,000 towards provision or enhancement of community facilities for the benefit of future users and occupiers of the Development
- 6.1 The Council hereby covenants with the Developers to use all sums received from the Developers pursuant to paragraph 6 of this Part towards provision or enhancement of community facilities for the benefit of future users and occupiers of the Development
- 6.2 The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council under this paragraph 6 of this Part which has not been expended or Committed for Expenditure in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers
- 7 £200,000 towards ecology compensation measures as a result of the Development
- 7.1 The Council hereby covenants with the Developers to use all sums received from the Developers pursuant to paragraph 7 of this Part towards ecology compensation measures as a result of the Development
- 7.2 The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council under this paragraph 7 of this Part which has not been expended or Committed for Expenditure in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers

- 8 £12,000 towards pollution monitoring as a result of the Development
- 8.1 The Council hereby covenants with the Developers to use all sums received from the Developers pursuant to paragraph 8 of this Part towards pollution monitoring as a result of the Development
- 8.2 The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council under this paragraph 8 of this Part which has not been expended or Committed for Expenditure in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers
- 9 The value of the Public Art Contribution which has not already been provided by the Developers as Public Art on the Site pursuant to the conditions attached to the Planning Permission
- 9.1 In order to determine the value of the Public Art Contribution, the Developers shall submit a schedule of Build Costs to the Council at the Appraisal Date in order to calculate the value of the Public Art Contribution relevant at that time, which may or may not be verified by the Independent Surveyor
- 9.2 In order to determine the Public Art Contribution that has been expended by the Developers through the provision of Public Art on the Site, the Developers shall submit to the Council for its approval details of the costed scheme for the provision of Public Art on the Site, which may or may not be verified by the Independent Surveyor
- 9.3 The Council hereby covenants with the Developers to use all sums received from the Developers pursuant to paragraph 9 of this Part towards the provision of Public Art on the Site or for the benefit of the Development
- 9.4 The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council under this paragraph 9 of this Part which has not been expended or Committed for Expenditure in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers
- 10 The value of the Deferred Affordable Housing Contribution to provide Affordable Housing on the Site
- 10.1 For the avoidance of doubt, the Deferred Affordable Housing Contribution is payable in addition to the Affordable Housing obligations contained in Schedule 7 of this Deed
- 10.2 The Council and the Developers agree, that part of Total Deferred Payment that relates to the Deferred Affordable Housing Contribution shall be used by the Council to provide additional Affordable Housing on the Site as part of the Development unless otherwise agreed by both parties acting reasonably to procure the Affordable Housing off site.
- 10.3 The Council hereby covenants with the Developers to use all sums received from the Developers pursuant to paragraph 10 of this Part in accordance with paragraph 10.2 of this Part and paragraph 2.7 of Part 1 of this Schedule 8

- 10.4 The Council hereby covenants with the Developers, that it will pay to the Developers, such amount of any payment made by the Developers to the Council under this paragraph 10 of this Part which has not been expended or Committed for Expenditure in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment together with any interest accrued thereon for the period from the date of payment to the date of refund such repayment to be made within 10 Working Days of receipt of a request for repayment being made by the Developers
11. In this Part 2 Committed For Expenditure means committed for expenditure by the Council by way of a contract being entered into or such other similar circumstance whereby in such circumstances the Council would be in breach of its obligations and would be liable to pay such sums under the contract to a third party
12. The Council shall provide the Developers with evidence as may be required by the Developers to demonstrate that Additional Contributions have been expended or Committed for Expenditure

SCHEDULE 9

FORM OF CONTRACT FOR LAND TRANSFER AGREEMENTS TO THE COUNCIL

Terms and Conditions of any Land Transfer Agreement

1. **Interpretation**

For the purposes of this Schedule:

- 1.1 **"the Transferred Land"** means each tranche of land required to be sold to the Transferee pursuant to this Agreement (save that this Schedule shall not apply to the transfer of any Affordable Housing Units pursuant to Schedule 7)
- 1.2 **"the Retained Land"** means the remainder of the Site (other than the Transferred Land)
- 1.3 **"the Transferor"** means the Developers or other person who is the owner of each tranche of land being transferred pursuant to this Agreement
- 1.4 **"the Transferee"** means the Council
- 1.5 **"Perpetuity Period"** means the period of eighty years from the date of the Transfer

2. **Interest to be Sold**

Freehold or leasehold interest

3. **Price**

The price for the transferred Land shall be One Pound exclusive of VAT

4. **Title**

Title to the Transferred Land shall be deduced prior to the date of Transfer.

5. **Covenant for Title**

5.1 The Transferor shall convey the Transferred Land with full title guarantee

5.2 The Transfer shall contain provisions that:

5.2.1 for the purposes of sections 3(1) and (2) of the Law of Property (Miscellaneous Provisions) Act 1994:

5.2.1.1 for the avoidance of doubt the knowledge of the Transferor is solely the knowledge of those persons comprising the directing mind and will of the Transferor

5.2.1.2 the Transferred Land is subject to all matters imposed and rights conferred by or under any enactment

5.2.2 for the purposes of section 6(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1994 all matters now recorded in registers open for public inspection are to be considered within the actual knowledge of the Transferee

6. Matters subject to which the land is sold

The Transferred Land is sold subject to and with the benefit of:

6.1 all matters registered or capable of registration as local land charges

6.2 the relevant provisions of this Agreement

6.3 all notices orders proposals or requirements affecting relating to the Transferred Land given or made by any government department statutory undertaker or other public or local authority

6.4 all rights easements quasi-easements and privileges in the nature of light air drainage way and passage and other rights used or enjoyed over the Transferred Land

6.5 all matters registered at HM Land Registry in the registers of the title(s) of which the Transferred Land forms part/the matters contained or referred to in the documents of title supplied to the Council prior to the date of this Agreement

6.6 The provisions of the Transfer of the Transferred Land from ABP to the Developers.

7. Conditions of Sale

The Standard Conditions of Sale (Third Edition) shall so far as appropriate apply to each sale and purchase except as varied by the express terms in this Schedule

8. Boundaries

8.1 Subject to paragraph 8.2 the Transferor and the Transferee shall endeavour to agree the precise boundaries of the Transferred Land no later than one calendar month before the dated fixed for completion of the sale and purchase of it and shall be adjusted where appropriate to take account of any change in alignment of any road or other infrastructure or change in position of any intended adjoining land and shall also be adjusted to take into account the layout of any development proposed on adjoining land

8.2 If the Transferor and the Transferee shall fail to agree the boundaries within 14 days of a request to do so then such boundaries shall be determined in accordance with clause 7 of this Deed

9. Vacant Possession on completion

Vacant possession will be given on completion

10. Date of Completion

10.1 Date of Completion for the Education Site

Completion of the transfer of the part of the Education Site referred to in Schedule 5 shall take place on the date calculated in accordance with Schedule 5

10.2 Date of Completion for other land

In all other cases completion of the transfer of Transferred Land shall take place on the date calculated in accordance with the relevant Schedule containing a Land Transfer Agreement

11. Transfer

11.1 The form of Transfer(s) or Lease shall be prepared by the Transferor's solicitors and approved by the Transferee (such approval not to be unreasonably withheld or delayed)

11.2 The Transfer shall contain the grant for the benefit of the Transferred Land of rights in favour of the Transferee:

11.2.1 to connect into and use all roads and footpaths necessary to gain access to and from the Transferred Land

11.2.2 to use all appropriate Service Media for the passage of Services (for the uses mentioned in paragraph 12.1 below laid or to be laid within the Perpetuity Period in over under or through the Retained Land) subject to there being available capacity which shall in any event be limited to the capacity that would be required for residential development with rights to go onto such land when reasonably necessary for the purposes of laying inspecting maintaining renewing and repairing such Service Media and making connections with them

11.2.3 of support and protection from adjoining land as enjoyed on completion of the Development

11.2.4 the right to use appropriate Service Media for the passage of services

- 11.3 The Transfer or Lease shall reserve and (where applicable) grant to the Transferor and each member of the Developers for the benefit of such of the Retained Land owned by it and each and every part thereof
- 11.3.1 to connect into and use all roads and footpaths on the Transferred Land for the purposes of access to and from such dominant land with rights to go on to the Transferred Land for the purposes of inspecting maintaining renewing and repairing such roads and footpaths
 - 11.3.2 the right to connect into and use all Service Media for the passage of Services laid or to be laid within the Perpetuity Period in over under or through the Transferred Land with rights to go onto such land for the purposes of laying inspecting maintaining renewing and repairing and making connections with such Service Media
 - 11.3.3 rights of support and protection as enjoyed on completion of the Development
 - 11.3.4 the right to build or develop deal with or use any adjoining or neighbouring property of the Transferor or the Retained Land in such manner as the Transferor (or the other Developers) think fit even though the amenity of the Transferred Land or the access of light and air may be lessened thereby and without making any compensation therefor
- 11.4 The rights referred to in paragraphs 11.2.1 11.2.2 11.3.1 and 11.3.2 shall be subject to a proviso that:
- 11.4.1 the rights shall not be exercised over land which has been or is being or is intended to be developed by the construction of buildings or their curtilages including shared access areas not intended to be made available for general use
 - 11.4.2 any rights of entry on land shall be upon reasonable notice and at reasonable times
 - 11.4.3 connection to roads and footpaths and/or Service Media shall only be made to the extent there is capacity therefor
 - 11.4.4 the position and specification of connections to and construction and/or laying-of roads and footpaths and/or Service Media pursuant to the rights shall be approved by the owner of the land on which the same are being effected (such approval not to be unreasonably withheld or delayed)
 - 11.4.5 the person exercising the rights shall cause as little damage and disturbance as reasonably possible and shall make good all damage caused as soon as reasonably practicable

- 11.4.6 the person exercising the rights shall contribute a fair and reasonable proportion of the cost of inspecting cleansing repairing maintaining renewing or replacing the roads and footpaths and/or Service Media over or through which the rights are exercised
 - 11.4.7 the rights shall cease to the extent that the roads and footpaths and/or Service Media over or through which the rights are exercised become adopted and/or maintainable at the public expense
 - 11.4.8 the owner of the land in which the same are situate may alter the position of the roads and footpaths and/or Service Media over or through which the rights are exercised and the rights shall then apply to the roads and footpaths and/or Service Media in the altered position PROVIDED that the exercise of the rights shall not be materially and unreasonably prejudiced by such alterations
- 11.5 Where the Transferred Land or the servient land in respect of the grant of rights is in the ownership of more than one of the Developers then the relevant owners shall join in one single transfer of it

12. Covenants on a transfer of the Education Site

- 12.1 In the case of the Education Site the Transfer shall contain restrictive covenants by the Transferee with the Transferor and the Developers with the intent to bind the Transferred Land and each and every part thereof and to benefit successors in title to each and every part of the Retained Land but only to the extent that the Transferor and the Developers shall expressly assign the benefit of such restrictive covenants to them:
- 12.1.1 not to use the Transferred Land for any purpose other than for a school a nursery or other educational purpose or as a community centre which may include facilities for the provision of public services to members of the general public
 - 12.1.2 not to do or cause permit or suffer to be done on the Transferred Land or any building constructed thereon anything which may be or become a nuisance or may cause damage to the Transferor the Developers or the owners or occupiers of adjoining or neighbouring property
 - 12.1.3 not to dispose of any interest in the Transferred Land without first requiring the disponee to enter into covenants with the Transferor and the Developers in the same terms as paragraph 12 of this Schedule
 - 12.1.4 not to use any area of the Transferred Land which is designated for public use for any purpose other than that for which such an area is intended to be used
 - 12.1.5 not to use any area of the Transferred Land which is designated for use as a car parking area for any purpose other than the parking of motor vehicles

12.2 The Transfer shall contain a covenant by the Transferee with the Transferor and the Developers to maintain the Transferred Land and any buildings erected thereon in a good state of repair and condition so that it fulfils the purpose for which it is intended in accordance with paragraph 12.1 above

12.3 All such covenants shall be supported by a restriction entered at HM Land Registry binding the Transferred Land and prohibiting any disposition of the same without the consent of the Transferor and the Developers and the Transferor and the Developers shall covenant to give such consent upon the disponee entering into covenants as required by paragraph 12.1.3 above and by registration of a notice at HM Land Registry

13. Covenants on a transfer or Lease of Public Open Space Land

Not to use the Public Open Space land for any other purpose than as public open space or play areas for the benefit of the community.

14. Covenant for Indemnity

The Transfer will contain a covenant by the Transferee (so as to afford the Transferor and the Developers and their successors in title in relation to the Retained Land a full and sufficient indemnity in respect of any breach of any of the covenants restrictions stipulations and conditions set out in the transfer or referred to in the title to the Transferred Land) to observe and perform in respect of the Transferred Land such covenants restrictions stipulations obligations and conditions and at all times to keep the Transferor and the Developers and their successors in title and assigns indemnified against all action costs claims demands and liability as a result of the breach of any of such covenants restrictions stipulations obligations and conditions so far as the same affect the Transferred Land and/or the exercise of the rights granted to the Transferee and are still subsisting and capable of being enforced

SCHEDULE 10

THE INTERMEDIATE HOUSING SALE AND RESALE COVENANTS

1. In the covenant set out in this Schedule the following terms shall have the meaning ascribed to them below:
 - "Approved RSL"** means and RSL nominated or approved by the Council acting reasonably
 - "Financial Contribution"** means a sum equivalent to the difference between the Market Value and the Intermediate Housing Value for the relevant Intermediate Housing Unit;
 - "Market Value"** means the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arms' length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;
 - "Intermediate Housing Value"** means seventy percent (70%) of Market Value in the case of every sale;
 - "Owner"** means the first purchaser of a Intermediate Housing Unit from the Developers and each subsequent owner of the freehold or leasehold of a Intermediate Housing Unit
 - "Sale Notice"** means a notice served by the Owner or their successors in title upon the Council or an Approved RSL which informs the Council of the intention to offer for sale or other disposal of a Intermediate Housing Unit in accordance with this covenant.
2. The Owner shall serve the Sale Notice upon the Council in respect of each Intermediate Housing Unit within 7 days following the formation of an intention to offer for sale or disposal and in any event prior to sale or other disposal of any such Intermediate Housing Unit.
3. The Owner will not sell any Intermediate Housing Unit without having first served a Sale Notice on the Council and shall use reasonable endeavours to agree the Intermediate Housing Value with the Council or as the case may be an Approved RSL before the Intermediate Housing Unit ("the Property") is put on the market.
4. The Council shall be entitled following the Sale Notice given pursuant to paragraph 2 above to nominate a purchaser for the Intermediate Housing Unit for a period of no more than 12 weeks from the date of each Sale Notice (or such longer period during which no other bona fide prospective purchaser has been found by the Owner) (being in either case the "Relevant Period") and the Owner shall be obliged to use reasonable endeavours to sell to such prospective purchasers at the Intermediate Housing Value and otherwise on terms comparable to those which would apply generally to a sale of a housing unit in the general housing market

in the locality by a willing seller to a willing purchaser. If the purchaser nominated by the Council in respect of any Intermediate Housing Unit fails to proceed with the purchase the Council shall be entitled to nominate further purchasers until the expiry of the Relevant Period and the provisions of this Schedule shall apply equally in respect of such purchaser.

5. In the event of the Council failing to nominate a purchaser for the Intermediate Housing Unit who has exchanged contracts to purchase the relevant Intermediate Housing Unit within the Relevant Period the Owner shall notify the Council or as the case may be an Approved RSL providing at the same time a full explanation of the failure to exchange contracts and (unless the Council or as the case may be the Approved RSL disputes that the Owner has used his reasonable endeavours in accordance with paragraph 4 above) the Owner shall after the expiry of a period of 10 days from such notification or following a dispute being resolved in his favour if the Council makes a reference in accordance with paragraph 6 within that time be entitled to sell the relevant Intermediate Housing Unit as an Open Market Dwelling but shall pay to the Council the Financial Contribution payable in respect of that Intermediate Housing Unit within 7 days of the resale.
6. In the event of any dispute between the Owner and the Council as to the Intermediate Housing Value or as to whether the Owner has used its reasonable endeavours in accordance with paragraph 4 above the following provisions shall apply:
 - 6.1 Any such dispute shall in default of agreement be determined on the application of either party by reference to the decision of an expert agreed between the parties and in default of agreement to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors.
 - 6.2 The expert nominated shall have at least five years experience in matters relating to the valuation of residential property.
 - 6.3 The expert shall require each party to deliver to him and to each other written submissions on their respective opinions as to the matters in dispute.
 - 6.4 Each party shall have the opportunity to deliver to the expert and to each other written counter submissions.
 - 6.5 After the delivery of counter submissions or (if none) after submission of written submissions no party shall be entitled to make any further submissions and the expert shall forthwith deliberate and deliver to each party his decision in writing within a reasonable time of closing submissions or counter submissions.
 - 6.6 Each party shall bear their own costs in respect of the reference and the costs of the expert shall be paid by the parties in equal shares.

SCHEDULE 11

"The Developers"

Name	Address	Interest in Site
BDW Trading Limited	(Company Registration Number 03018173) whose registered office is at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1OF	Leasehold interest registered under title numbers CYM508743, CYM508744, CYM508745, CYM508746, CYM508749, CYM508750 and CYM508742
Persimmon Homes Limited	(Company Registration Number 04108747) whose registered office is at Persimmon House, Fulford, York, YO19 4FE	
Taylor Wimpey UK Limited	(Company Registration Number 01392762) whose registered office is at Gate House, Turnpike Road, High Wycombe, Buckinghamshire, HP12 3NR	

SCHEDULE 12

INPUTS

Part A

1. The Council and the Developers agree that the following Inputs set out in Part B of this Schedule shall be used for the purpose of calculating the net pre tax profit of the Developers in respect of the Development carried out on the Site at the Appraisal Dates using the ARGUS/CIRCLE model template attached at Annexure 11
2. The Developers shall submit to the Independent Surveyor the figures for the Inputs set out in Part B of this Schedule and the Developers shall also ensure that information required in support of any input is expediently made available to the Independent Surveyor if requested.
3. The Appraisals shall be undertaken on a cumulative basis so that the Inputs shall be inserted up until each Appraisal Date and the pre tax profits or losses shall be calculated on a cumulative basis and in calculating whether any Deferred Payment is due on subsequent Appraisals any Deferred Payments that have been paid on previous Appraisals shall be deducted from any Deferred Payment due.
4. In submitting the figures for the Inputs pursuant to paragraph 2 above and in carrying out the Appraisal any revenue item or cost item counted under one head is not to that extent to be counted under another head.
5. Save in respect of the Company Overhead at Item 16 set out in the Table of Inputs in Part B of this Schedule all items of cost included as Inputs within the Appraisal shall have been incurred in relation to the Development

Part B

In this Table

1.

"Actual" means the actual figures for the relevant item listed in the table calculated at the First Appraisal Date as being received or incurred up to the First Appraisal Date and in relation to the subsequent Appraisal Date shall be the actual figures for the relevant item listed in the table calculated as being received or incurred up to the subsequent Appraisal Date so that the Appraisal is undertaken on a cumulative basis and verified by the Independent Surveyor

"Adoptable Land" means any land to be used or developed as or adopted dedicated or transferred to any relevant authority as Spine Road, or for the provision of Mains Service Installations or Mains Drainage Systems or as open space relating to Main Infrastructure Works

"Contamination" means any plant substance or material which affects the Site whether harmless or otherwise whether underground on the surface or which adversely affects the development and/or occupation of the Site and/or the Site.

"Dwelling" means an apartment, house or other unit of residential accommodation comprised in the Site which has been developed by or on behalf of the Developers in accordance with the Planning Permission

"Drainage" means the disposal of foul and surface water and land drainage.

"Drainage Systems" means any sewers drains pipes rising mains manholes culverts channels watercourses soakaways outfalls and other conduits and apparatus systems necessary for Drainage and including (but not by way of limitation) any upgrading and improvement works to the existing drainage

system and any balancing facilities petrol interceptors pumping stations sewage treatment works and the culverting diversion and protection of existing systems and any headwalls bridges (including any railway and/or river crossings) tunnels and underpasses for drainage .

"Estate Roads" means Roads to which frontage development is permitted (whether or not on both sides) but excluding all Spine Roads

"Mains Drainage Systems" means any Drainage Systems designed to drain the Development (whether in or outside the Site) and to be available for connection to and within each residential parcels, mixed use parcels and any commercial parcels within the Site any community facilities and to ultimately link the same to adopted Drainage Systems

"Main Infrastructure Works" means the provision of all matters (whether within or outside the Site necessary for the development of the same which may be required so as to enable the Development of the Site including (but not limited to):-

- (1) the design supervision and construction of any Spine Roads
- (2) improvements to existing highways and/or widening existing highways or other roadworks outside the Site which are required or which will enhance the development of the Site
- (3) the design supervision construction and installation of any acoustic barriers
- (4) the cycleways and footpaths
- (5) the design supervision construction and installation of any Mains Drainage Systems
- (6) the design supervision and installation of any Mains Service Installations
- (7) the design laying out and provision of any additional areas of open space to the open space required pursuant to this Deed
- (8) the design supervision and construction of any additional community facilities to the community facilities required pursuant to this Deed
- (9) the design supervision and construction of any Spine Roads accessways Drainage Systems and Service Installations exclusively serving any open Space or community facilities
- (10) the carrying out of any works required under any Works Agreement relating to Main Infrastructure Works
- (11) maintenance and remedial works pending adoption of any of the above
- (12) the removal or remediation of Contamination
- (13) carrying out measures required to investigate protect and/or relocate ecological habitats in the Site
- (14) any other main services facilities amenities and accommodation works comprised in or intended to serve the Development:-
- (15) carrying out measures required to investigate protect and/or relocate items of archaeological significance in the Site
- (16) servicing the retained land of Associated British Ports and ABP Development Company Limited pursuant to the obligations in land acquisition agreement for the Site

- (17) carrying out any off Site works which are required for the Development or which enhance the Development
- (18) carrying out any diversions or laying or enhancing or reinforcing any Services Installations and Drainage Systems on or off the Site for the benefit of the Development
- (19) site wide clearance and demolitions
- (20) earthworks

and "Main Infrastructure" shall be construed accordingly

"Mains Service Installations" means any Service Installations required to enable the supply of Services to the Development so as to be available for connection to each residential land parcel any commercial land parcel and community facilities and mixed use land parcels to ultimately link the same to the mains networks including any Service Installations within and exclusively serving the individual residential land parcels in so far as they are constructed within the Roads

"Roads" means roads footways footpaths verges visibility splays junctions roundabouts bridges bus laybys cycleways accommodation works traffic management schemes street lighting and street furniture and ancillary landscaping adopted or intended to be adopted as public highways maintainable at the public expense and "Road" means any one of them.

"Services" means the supply of water gas electricity telephone telecommunications cable television and all other appropriate services other than Drainage

"Service Installations" means all culverts gullies conductors channels outlets flues pipes conduits poles wires optic fibres cables dishes mains ducts ventilation shafts and other channels and other conducting media for the supply and transmission of Services and including any upgrading and improvement works and all ancillary apparatus buildings structures and installations

"Spine Road" means the Roads to be constructed on the Site for the main distribution of traffic within the Development and to provide access from existing public highways to the residential development parcels and mixed use land parcels the commercial land parcels and any community facilities and including any works connecting the same to the public highway but excluding any Estate Roads.

"Works Agreement" means any agreement under:

- (1) Section 38 or Section 278 of the Highways Act 1980 or similar agreement for the construction maintenance and adoption of any Road and the connection of the same to the public highway or any other works to the public highway
- (2) Section 98 or Section 104 of the Water Industry Act 1991 or similar agreement relating to the provision and adoption of any Drainage Systems or for the diversion of existing Drainage Systems
- (3) any agreement with a relevant authority for the installation of any Service Installations required for the provision and supply of Services or for the diversion of existing Service Installations
- (4) any other similar agreement for the carrying out maintenance and (where appropriate) adoption of works by a relevant authority

TABLE OF INPUTS

ITEM	FIXED COST/ VARIABLE COST	CIRCLE INPUT HEAD
<p>1. Revenue - means the proceeds of the first disposal of Dwellings by the Developers to an unrelated third party on the Site as at the Appraisal Date less the value of any incentives given as part of the disposal</p>	Actual Variable Cost	Revenue
<p>2. Commercial Revenue -</p> <p>(i) means the proceeds of the first disposal received by the Developers pursuant to the Development to an unrelated third party of any commercial land or commercial units constructed on the Site (which shall include the commercial element of any mixed use land) as at the Appraisal Date less the value of any incentives given as part of the disposal and</p> <p>(ii) means any other revenues received by the Developers pursuant to the Development which shall be agreed by the Council and the Developers as being appropriate to include in the Appraisal excluding any revenue received under item 1 and 2(ii) above and the proceeds from the disposal of any residential land.</p>	Actual Variable Cost	Revenue
<p>3. Land Cost - means</p> <p>a) the historic acquisition cost of the Site of [REDACTED] and</p> <p>b) the cost of acquisition of estate and interest in the Site apart from the historic acquisition cost to facilitate the Development</p> <p>c) the cost of extinguishment modification or variation of any interests or rights in over or against the Site held by a person who by the lawful exercise of his powers could prevent restrict or impede the carrying out or progress of the Development or its use and enjoyment of the Site</p> <p>d) the cost incurred of acquiring additional land or rights for the improvement or enhancement of the development potential of the Site</p>	Fixed Cost of [REDACTED] in respect of item a) plus Actual Variable Cost of Items referred to in b) c) and d) of this Item	Acquisition Costs
<p>4. Stamp Duty Land Tax on Land Cost means</p>	Fixed Cost of [REDACTED] in	Acquisition Costs

<p>(a) the sum of Two Million Four Hundred and Ninety One Thousand Pounds [REDACTED] being the Stamp Duty Land Tax paid on the historic acquisition cost</p> <p>(b) any stamp duty land tax payable in respect of paragraphs b, c and d of Item 3</p>	<p>respect of item a) and Actual Variable Cost in respect of item b) in this Item</p>	
<p>5. Direct Housebuild Costs for Dwellings - means the cost of a standard residential Dwelling constructed having regard to the following baseline specification as appropriate to the Dwellings under consideration:</p> <p>(a) facing brickwork elevations (£185 per 1000 in number)</p> <p>(b) concrete roof tile</p> <p>(c) UPVC windows and doors</p> <p>(d) upvc cills</p> <p>(e) PVC rainwater goods</p> <p>(f) Building constructed to current Building Regulations</p> <p>(g) Wet radiator gas central heating</p> <p>(h) NHBC electrical specification</p> <p>(i) Shower above bath on 4 beds only</p> <p>(j) 600mmx225mm deep traditional concrete strip foundation</p> <p>(k) Plot drainage</p> <p>(l) lawn front garden,</p> <p>(m) precast concrete paved footway from adopted highway to front door,</p> <p>(n) tarmac driveway/parking space,</p> <p>(o) rear garden top soiled</p> <p>(p) 2no. 1800mm panels either side and then 1200mm SW timber close board fence to rear boundary only.</p>	<p>Actual Variable Cost</p>	<p>Construction Costs</p>
<p>6. Infrastructure Costs means all of the following costs expenses and liabilities incurred:</p> <p>(a) the cost of securing planning for the Site and any Main Infrastructure Works</p> <p>(b) all sums payable under or incurred in connection with any Works Agreement relating to Main Infrastructure Works including the cost of procuring any requisite security bond or deposit</p> <p>(c) the cost and expenses of carrying out and providing the Main Infrastructure Works</p> <p>(d) any sums payable for the provision of Mains Service Installations and Mains Drainage Systems for the supply of Services to and Drainage from the Site for the benefit of the Site as a whole</p> <p>(e) the cost and expenses of remediating</p>	<p>Actual Variable Cost</p>	<p>Construction Costs</p>

<p>any Contamination</p> <p>(f) all sums payable under or incurred in connection with the appointment of a manager to maintain the Open Space including any commuted or other sums payable for such maintenance and the cost of procuring any requisite security bond or deposit</p> <p>(g) the cost of any site investigation or surveys</p>		
<p>7. Code for Sustainable Homes Costs (CFSH Costs)- means the cost of enhancements to the baseline specification referred to in Item 5 to achieve the Code for Sustainable Homes accreditation</p>	Actual Variable Cost	Construction Costs
<p>8. Estate Roads and Sewers Costs- means all cost associated with the provision of access roads, footpaths, streetlights, sewers and service connections to each Dwelling or commercial unit</p>	Actual Variable Cost	Construction Costs
<p>9. Foundation Costs - means the cost of providing any non standard strip foundations. The standard strip foundations being set out in paragraph j) of Item 5 above</p>	Actual Variable Cost	Construction Costs
<p>10. Elevation Enhancement Costs - means the increased cost of building materials and labour above those set out in the baseline specification in Item 5 above which may include by way of example but is not limited to render, cladding, balconies, slate tile roofs and stonework</p>	Actual Variable Cost	Construction Costs
<p>11. Abnormal Plot Costs - means the increased costs of enhancing the plot of the Dwelling which may include by way of example but is not limited to patio areas, brick boundary walls, railings, hedges, driveway paving</p>	Actual Variable Cost	Construction Costs
<p>12. Commercial Build Costs - means (i) the cost of the Developers (or their contractors, agents or persons authorised by them) constructing any commercial units on the Site</p>	Actual Variable Cost	Construction Cost
<p>13. Site Overheads - means the site overhead costs which shall include by way of example but is not limited to the cost of Site management and labour (and any associated staff costs including but not limited to bonus and company cars), site compounds, skips, waste management, forklifts and fuel and not already allowed for</p>	Actual Variable Cost	Other Construction Costs

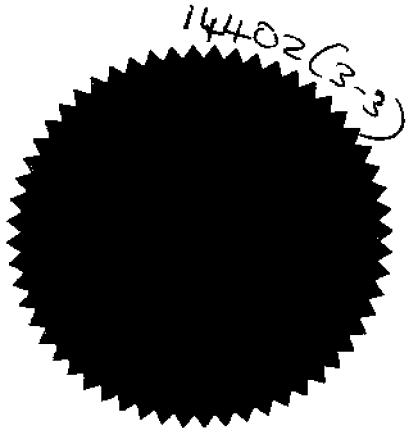
under any other item (e.g. professional fees, construction/infrastructure costs etc.)		
14. Section 106 Costs - means: (a) the cost of the provision of the Baseline Obligations (as defined in Schedule 8) but not including the provision of Affordable Housing Provision pursuant to Schedule 8 save that where an Affordable Housing Contribution is payable this shall be included as a Section 106 Cost and Deferred Payments as defined in Schedule 8 Part 1 and the cost expended in the provision of Public Art on the Site pursuant to paragraph 9.2 of Part 2 of Schedule 8	Actual Variable Cost	Other Construction Costs
15. Overage - Means any additional monies payable to Associated British Ports and ABP Development Company Limited pursuant to the contractual terms of the Developers' land purchase agreement for the Site	Actual Variable Cost	Other Construction Costs
16. Company Overhead - means 6.5% of Revenue at Item 1 above and Commercial Revenue at Item 2 above as a project contribution towards the costs of each Developers company including by way of example but not limited to the cost of staff at both the National Group and Regional company offices, health and safety, insurances, apprenticeships, holding costs	Fixed Cost at 6.5% of Revenue	Other Construction Costs
17. Finance Cost - means the cost set out in the next column in this table	The credit interest rate of 5% and debit interest rate of 5 % per annum over the base rate of the Bank of England (base rate at time of payment of cost to be applied on Items 3,4,5,6,7,8,9,10,11,12,13 and 14 from the date that the relevant Item of cost was incurred. For the purposes of the Appraisal credit and debit interest rates are matched. In the event that the there is an overall profit on the development cash flow recorded at	Finance Costs

	<p>the review date (in the preferred ARGUS/CIRCLE model this will be ascertained with reference to the "Total Finance Cost" entry in the summary appraisal report)</p> <p>then this net cash flow profit will need to be deducted from the appraisal to ensure that, at best, the overall cash flow can only ever break even and no profit be generated on this element of the overall appraisal."</p>	
<p>18. Professional Fees -</p> <p>means the fixed and variable cost set out in the next column in this table</p>	<p>1. Fixed Cost at 8% of items 5, 7,8,9,10,11 and 12</p> <p>2. Actual professional fees incurred in connection with Items 3, 4, 6, 13,14,15,and 20 and not allowed for elsewhere within the Appraisal.</p>	Professional Fees
<p>19. Sales Costs -</p> <p>means the fixed cost set out in the next column of this table as a contribution towards the cost of sales facilities, staff, marketing and the associated legal conveyancing costs</p>	<p>Fixed Cost at:</p> <p>a) 3% of Revenue in respect of Open Market Dwellings</p> <p>b) 2% of Revenue in respect of Intermediate Housing Units</p> <p>c) 1% of Revenue in respect of Social Rented Housing Units</p>	Disposal Fees
<p>20. Other Costs shall include</p> <p>(a) the cost of any insurance for the Site</p> <p>(b) value added tax on supplies of goods and services relating to the Development to the extent that it is not recoverable by credit against output tax or repayment by the Commissioners of HM Revenue</p>	Actual Variable Cost	Other Costs

(c) any other costs reasonably and properly incurred in respect of the development as shall be agreed by the Independent Surveyor at the time of the Appraisal		
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IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

Executed as a deed on behalf of **THE VALE OF GLAMORGAN COUNCIL** by the affixing of its seal in the presence of:



PETER H EVANS
 Director of Legal, Public Protection and Housing Services

EXECUTED AS A DEED on behalf of **BDW TRADING LIMITED** in exercise of the powers conferred on them by a Power of Attorney dated

EXECUTED AS A DEED by affixing the Common Seal of **TAYLOR WIMPEY UK LIMITED** in the presence of

Director

Director

EXECUTED AS A DEED by
PERSIMMON HOMES LIMITED
acting by its Attorneys

and

in the presence of

THE COMMON SEAL of
ASSOCIATED BRITISH PORTS
was affixed in the presence of

Secretary

Assistant Secretary

THE COMMON SEAL of
ABP PROPERTY DEVELOPMENT COMPANY
LIMITED as affixed

in the presence of

Director

Secretary