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DATED

20th May

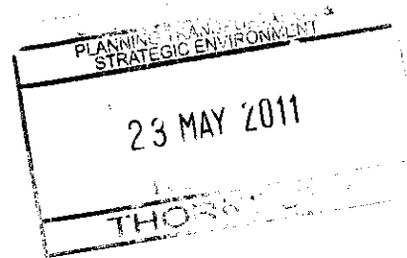
2011

SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL (1)

and

BOVIS HOMES LIMITED (2)

DEED OF VARIATION



of an Agreement made under Section 106 of the Town and Country Planning Act 1990 dated 14 March 2008 made between South Gloucestershire District Council (1) BAE Systems Plc (2) and Bovis Homes Limited (3) as varied by Deeds of Variation between South Gloucestershire District Council (1) and Bovis Homes Limited (2) dated 01 March 2010 and 30 March 2010 and 6 August 2010 and the Deeds of Variation between South Gloucestershire District Council (1) Bovis Homes Limited (2) and BAe Systems Plc (3) dated 29 January 2010 relating to land at Northfield Filton Patchway

This Deed of Variation is made the *Twentieth* day of *May* 2011

Between:

- (1) **SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL** of The Council Offices Castle Street Thornbury South Gloucestershire BS35 1HF ("the Council") of the first part and
- (2) **BOVIS HOMES LIMITED** whose registered office is at The Manor House North Ash Road New Ash Green Longfield Kent DA3 8HQ (Co. Registration Number. 00397634) ("the Developer") of the second part

1 Background

This Deed of Variation is made supplemental to an agreement dated 14 March 2008 between (1) South Gloucestershire District Council (2) BAE Systems Plc and (3) Bovis Homes Limited made under Section 106 of the Town and Country Planning Act 1990, Sections 111 and 120 of the Local Government Act 1972 and section 2 of the Local Government Act 2000 and other statutory provisions as varied by Deeds of Variation between the Council (1) and the Developer (2) dated 01 March 2010 and 30 March 2010 and 6 August 2010 and the Deeds of Variation between the Council (1) the Developer (2) and BAe Systems Plc (3) dated 29 January 2010 relating to land at Northfield Filton Patchway

2 Introduction

Terms and expressions defined in the Principal Agreement shall unless the context otherwise requires have the same meaning when used in this Deed.

- (A) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 ('the Act') and the Highway Authority for the area within which the Land is situate
- (B) This Deed is supplemental to the Principal Agreement (as herein defined)
- (C) The Planning Obligations contained within the Principal Agreement and created by this Deed are enforceable by the Council as local planning authority
- (D) Clause 4.2.1 of the Principal Deed defines Schedules 5 9 12 13 14 15 16 17 and 18 as "Developer Only Schedules" and confirms that the Owner shall not be required to observe the obligations in the Developer Only Schedules and that the Owner's Land shall not be bound by the obligations in those Schedules
- (E) Clause 4.2.2 of the Principal Agreement defines Schedules 1 2 3 4 6 7 8 10 11 and 19 as "Owner/ Developer Schedules" and confirms the Owner's and the Developer's Land shall be bound by the obligations in those Schedules

(F) The Principal Agreement is varied by this Deed so that any additional Dwellings will not attract S106 contributions, but will remain subject to the provisions relating to affordable housing

(G) Certain of the contributions to be paid under the Principal Agreement shall be varied and reduced

3 Interpretation

3.1 "Principal Agreement" means the agreement dated 14 March 2008 between (1) the Council (2) BAe Systems Plc and (3) the Developer made under Section 106 of the Town and Country Planning Act 1990 Sections 111 and 120 of the Local Government Act 1972 and section 2 of the Local Government Act 2000 and other statutory provisions as varied by Deeds of Variation between the Council (1) and the Developer (2) dated 1 March 2010 and 30 March 2010 and 6 August 2010 and the Deeds of Variation between the Council (1) The Developer (2) and BAe Systems Plc (3) dated 29 January 2010 relating to land at Northfield Filton Patchway

3.2 "Plan Number 6" shall mean the plan numbered "6" attached to this Deed

3.3 Terms and expressions defined in the Principal Agreement shall unless the context otherwise requires have the same meaning when used in this Deed

3.4 The Interpretation and Definitions clauses of the Principal Agreement shall be incorporated into this Deed as if the same was set out herein in full

3.5 On 16 November 2007 the Developer acquired that part of the Land now registered with title number GR314376 from the Owner by way of transfer of the freehold of that parcel of Land

3.6 On 17 July 2009 Arlington Business Parks GP Limited (Arlington) acquired that part of the Owner's Land contained in title number GR336266 (as shown for identification purposes only shaded blue on Plan Number 6) from BAe Systems PLC

3.7 On 14 January 2011 Sovereign acquired that part of the Land contained in title GR314376 (as shown for identification purposes only edged in yellow on Plan Number 6) from the Developer ("the Yellow Land")

3.8 The parties hereto are content that none of the provisions of this Deed place any

additional burden or obligation upon either BAe Systems PLC or Arlington or Sovereign and this deed shall not affect those parts of the Land shown as plot numbers 25, 74, 28, 64, 67, 69, 70, 71, 72, 91, 95, 99, 100, 101, 102, 103, 104 and 105 on drawing number 0055-2-201 Rev 6 approved pursuant to Reserved Matters

3.9 The parties have agreed to vary the Principal Agreement in accordance with the terms of this Deed

application reference
PT0910765/2011

4 Operative Provisions

4.1 This Deed is entered into under Section 106(A)(1)(a) of the Act and creates planning obligations for the purposes of the Act and shall ~~bind the Land~~ (subject to clause 3-8 above) bind the land.

4.2 This Deed shall become effective upon the date of completion hereof

5 Variation to the Principal Agreement

5.1 It is hereby agreed by the parties that the terms of the Principal Agreement shall from the date hereof be amended as set out in this Deed

5.2 For the purposes of the words and clauses inserted into the Principal Agreement by this Deed the land shown edged green but excluding the Yellow Land on Plan Number 6 shall be described as "the Developer's Land" and in respect of the said land the Developer has agreed with the Council that the Principal Agreement shall be varied as set out in this Deed

6 Variation of the Principal Agreement in relation to the Contribution to Off Site Public Open Space (Schedule 2)

6.1 Part 2 paragraph 2.5 the following wording shall be deleted in its entirety "The Off Site Open Space Contribution has been calculated on the basis that 2,200 Dwellings will be constructed on the Application Land and in the event it is proposed that more than 2,200 Dwellings will be constructed on the Application Land the Owner/Developer will pay the Council an amended Off-Site Open Space Contribution (together with the additional sum calculated in accordance with paragraph 2.2 of this Part of this Schedule) in accordance with the timing set out in paragraph 2.1 of this Part of this Schedule and in accordance with the following formula:

$$A+B \times C$$

Where:

A = number of Dwellings to be actually constructed

B = 2,200 Dwellings proposed to be constructed

C = £2,942,928.00 (index linked in accordance with paragraph 2.2 of this Part of this Schedule)"

7 Variation of the Principal Agreement in relation to the Contribution to Community Facilities (Schedule 3)

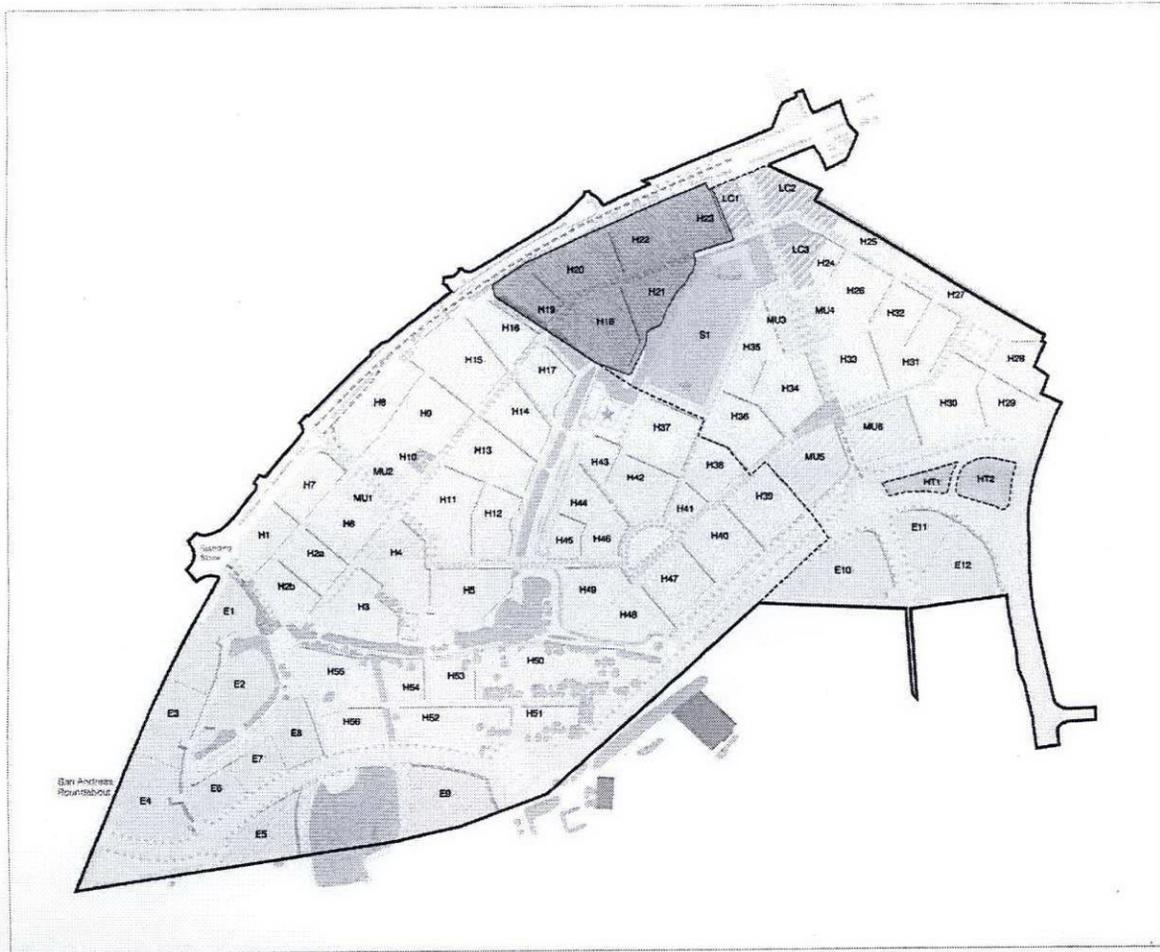
It is hereby agreed by the parties that the terms of Schedule 3 of the Principal Agreement shall from the date hereof be amended as set out below

7.1 Part 1 paragraph 1.1 The words "the Litter and Dog Bins Financial Contribution shall mean the sum referred to in Paragraph 3.1 of Part 2 of this Schedule" shall be deleted in its entirety

7.2 Part 2 paragraph 2.4. The following wording shall be deleted in its entirety

"The Sewer Baiting Financial Contribution has been calculated on the basis that 2,200 Dwellings will be constructed on the Application Land and in the event it is proposed that more than 2,200 Dwellings will be constructed on the Land the Owner/Developer will pay to the Council an amended Sewer Baiting Financial Contribution (together with an additional sum calculated in accordance with paragraph 2.2 of this Part of this Schedule) in accordance with the timing set out in paragraph 2.1 of this Part of this Schedule and in accordance with the following formula

$$A + B \times C$$



The tracing of this drawing carries no liability
 Revision: _____ Date: _____

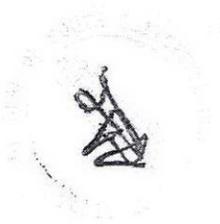
 Schedule 18 Land

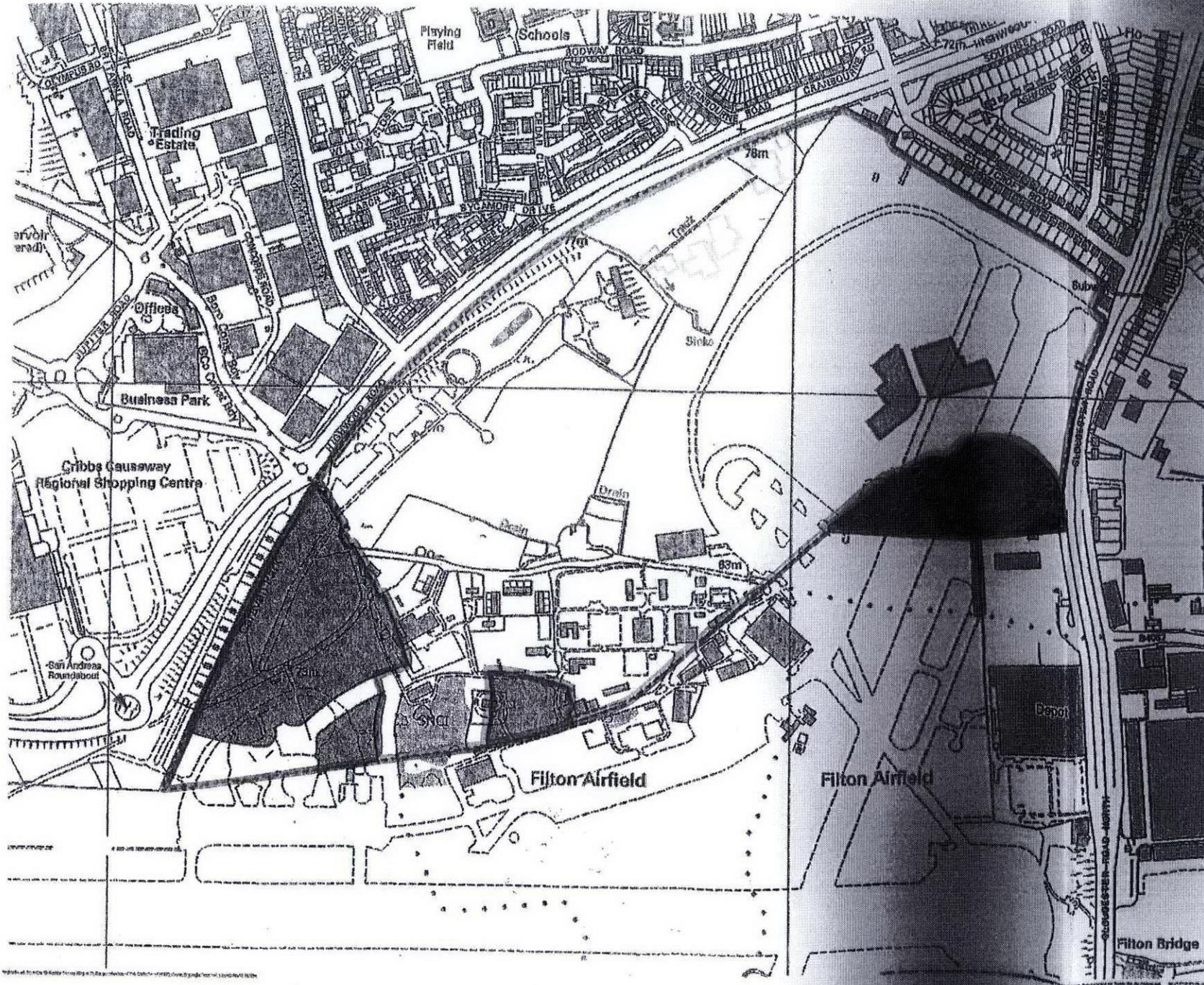
Project:
North Filton
 Drawing Title:
First Phase
Section 106 Plan 4
 Date: 01-11-18 Scale: 1:5000(2A3) Drawn By: FT
 Project No: 13957 Drawing No: 1019

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PLAN 6



R
Edel R


 North

 1:1000
 North Filton
 Drawing No.
 Employment Land Plan
 with Site Boundary
 Date: 18.11.07
 Project No: 1357
 Scale: A3
 Date: 08-14

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 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000
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A = number of Dwellings to be actually constructed

B = 2,200 Dwellings proposed to be constructed

C = £918.00 (index linked in accordance with paragraph 2.2 of this Part of this Schedule)"

- 7.3 Part 3 paragraph 3.1 the following wording shall be deleted in its entirety "The Owner/Developer will pay to the Council the sum of Twenty Nine Thousand Nine Hundred and Twenty Pounds (£29,920.00) (together with an additional sum calculated as set out below) as a contribution towards the costs of the provision of litter and dog bins within the Development the payment of 25% of the Litter and Dog Bin Financial Contribution to be paid on the first legal transfer of the 750th Dwelling a further payment of 40% of the Litter and Dog Bin Financial Contribution to be paid on the first legal transfer of the 1500th Dwelling and a final payment of 35% of the Litter and Dog Bin Contribution to be paid on the first legal transfer of the 2100th Dwelling or within 22 months from the date of the first legal transfer of the 1700th dwelling whichever is the earlier"
- 7.4 Part 3 paragraph 3.2 the following wording shall be deleted in its entirety "The Litter and Dog Bin Financial Contribution due and payable (having been calculated at (March 2006 prices) shall if not paid on the date hereof be increased in accordance with any increases in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this deed in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained"
- 7.5 Part 3 paragraph 3.3 the following wording shall be deleted in its entirety "The payment of the Litter and Dog Bin Financial Contribution shall be made on condition that such payments (if accepted) shall be used only for the provision by the Council of litter bins and dog bins within the Land and that such sums that remain unspent after a period of five years from the date of each payment shall be returned to the Owner/Developer as appropriate with interest from the date of payment until repayment at the 7 day LIBID rate on the amount repaid unless otherwise agreed between the Owner/Developer and the Council"
- 7.6 Part 3 paragraph 3.4 the following wording shall be deleted in its entirety "The Litter and Dog Bin Financial Contribution has been calculated on the basis that 2,200 Dwellings will be constructed on the Application Land and in the event it is proposed that more than 2,200 Dwellings will be constructed on the Application Land the Owner/Developer will pay to the Council an amended Litter and Dog Bin Financial Contribution (together with the additional sum calculated in accordance with paragraph 3.2 of this Part of this Schedule) in accordance with the timing set out in paragraph 3.1 of this Part of this Schedule and in accordance with the following formula:

$$A \div B \times C$$

Where:

A = number of Dwellings to be actually constructed

B = 2,200 Dwellings proposed to be constructed

C = £29,920.00 (index linked in accordance with paragraph 3.2 of this Part of this Schedule)".

- 7.7 Part 3 paragraph 3.5 the following wording shall be deleted in its entirety "The Owner/Developer hereby agree that if the first legal transfer of the 1,700th Dwelling has not been completed within a period of three years from the first legal transfer of the 1,500th Dwelling and the Owner/Developers have not paid 77% of the Litter and Dog Bin Financial Contribution the Owner/Developer shall pay to the Council any difference between the sum actually paid and 77% of the Litter and Dog Bin Financial Contribution paid"
- 8 **Variation of the Principal Agreement in relation to a Financial Contribution towards a Car Club and Development of Personal Travel Plans (Schedule 5)**
- 8.1 **Schedule 5: Financial Contribution towards a Car Club and Development of Personal Travel Plans shall be deleted in its entirety and replaced with the following provisions**
- 8.2 **"Part 1 Definitions relating to the car club**
- 8.3 *Part 1 paragraph 1 In this Schedule the words below shall mean as follows:*
- 8.4 *Part 1 paragraph 1.1 The "Car Club" shall mean a car club operated by a company that is accredited by Carplus which residents of the Development and members of the general public may join and which makes cars available to hire to its members either on a commercial or part subsidised basis;*
- 8.5 *Part 1 paragraph 1.2 The "Car Club Scheme" shall mean a scheme for the Car Club which shall include the provisions in Part 2 of this Schedule*
- 8.6 *Part 1 paragraph 1.3 "Carplus" shall mean Carplus or its successor or equivalent organisation being the umbrella organisation for the promotion of sustainable car use and which gives accreditation to car club operators that meet set standards promoting responsible car use which runs an accreditation scheme for car club companies as a tool for organisations to use in assessing which clubs to support;*
- 8.7 *Part 1 paragraph 1.4 "Car Club Spaces" shall mean five (5) parking spaces to be provided as agreed in writing between the Developer and the Council as part of the Development; or on a nearby street location*
- 8.8 *Part 1 paragraph 1.5 "the Monitoring Officer" shall mean the Director*
- 8.9 *Part 1 paragraph 1.6 "One Year Memberships" shall mean a one year's membership of the Car Club Scheme provided by the Car Club to the first Occupier of a Dwelling constructed on the Land*
- 8.10 **Part 2: Covenants relating to the provision of the Car Club Scheme**
- 8.11 *Part 2 paragraph 2.1 prior to the first legal transfer of the 300th Dwelling the Developer shall have entered into a Car Club Scheme*
- 8.12 *Part 2 paragraph 2.2 Prior to the first legal transfer of the 300th Dwelling the Developer shall provide a minimum of one (1) of the Car Club Spaces and a maximum of two (2) Car Club*

Spaces in accordance with the Car Club Scheme free of charge on the Land (in locations as agreed with the Council) exclusively for the Car Club users

- 8.13 *Part 2 paragraph 2.3 the Developer shall provide and maintain (unless the Car Club Spaces are provided on the public highway where upon they will be maintained by the Council) the Car Club Spaces for a minimum of four (4) years and shall meet reasonable requirements for signage and car park access*
- 8.14 *Part 2 paragraph 2.4 The Developer shall market the Car Club service to all new residents and tenants in welcome packs and at all appropriate opportunities*
- 8.15 *Part 2 paragraph 2.5 The Developer shall make available free of charge relevant media (advertisements and signage) on the Land sufficient to identify the Car Club parking spaces*
- 8.16 *Part 2 paragraph 2.6 The Developer will procure that the Car Club operator shall provide two (2) vehicles on the Land upon the first legal transfer of the 300th Dwelling the remaining three (3) vehicles shall be provided as the existing vehicles reach adequate levels of usage as certified by the Monitoring Officer*
- 8.17 *Part 2 paragraph 2.7 The Developer will procure that the Car Club operator shall make available to occupiers of the Dwellings 1000 x One Year Memberships*
- 8.18 *Part 2 paragraph 2.8 The Developer will procure that the Car Club operator shall offer each new member of the Car Club a £25 driving credit towards the cost of hiring the vehicles*
- 8.19 ***Part 3 Developer covenants with the Council in relation to the Car Club Scheme***
- 8.20 *Part 3 paragraph 1.1 the Developer shall serve written notification on the Monitoring Officer within 20 working days of receipt from the Car Club operator that the Car Club operator is no longer running the Car Club Scheme*
- 8.21 *Part 3 paragraph 1.2 the Developer shall use all reasonable endeavours to enter into a Car Club Scheme with another Car Club operator within 12 weeks of the notification referred to in paragraph 1.1 above and if at the expiry of the said 12 weeks the Developer has been unable to enter into a Car Club Scheme the Monitoring Officer may continue to seek a Car Club operator for a further period of six (6) weeks and shall be entitled to recover from the Developer all costs properly incurred in doing so*
- 8.22 *Part 3 paragraph 1.3 prior to the first legal transfer of 250th Dwelling the Developer shall submit a plan identifying the Car Club Spaces to be provided in accordance with paragraph 2.2 of Part 2 for the written approval of the Council*
- 8.23 *Part 3 paragraph 1.4 the Developer shall provide the Car Club Spaces (not already provided under paragraph 2.2 of Part 2 above) prior to the first legal transfer of more than 10% of the Dwellings contained in the Sub Phase within which the Car Club Space(s) is/are to be provided (as agreed under paragraph 1.3 of Part 3 above)*
- 8.24 *Part 3 paragraph 1.5 If at the expiry of 18 weeks from the notification referred to in paragraph 1.1 of Part 3 above no alternative Car Club operator has entered into a Car Club Scheme the Monitoring officer shall notify the Developer which shall within 2 weeks submit in writing alternative parking mitigation measures to the Council for approval PROVIDED THAT the*

costs of providing such alternative measures shall be no more than the cost to the Developer of entering into the Car Club Scheme as required by paragraph 1.2 of Part 3 above

9 Variations of the Principal Agreement in relation to the Financial Contribution towards Highway Infrastructure Improvements (Schedule 6)

9.1 Part 2 paragraph 2.1 the following wording shall be deleted in its entirety "the Owner/Developer will pay the Highways Contribution to the Council being the sum of three million eight hundred thousand pounds (£3,800,000) (together with an additional sum calculated as set out below) as a contribution towards the Off Site Highway Works" and shall be replaced with the following words "*The Owner/Developer will pay the Highways Contribution to the Council being the sum of three million two hundred and ninety four pounds (£3,000,294) together with an additional sum calculated as set out below) as a contribution towards the cost of the Off Site Highway Works*"

9.2 Part 2 paragraph 2.2.4 the words "£1.5M" shall be deleted and shall be replaced with "£700,294"

9.3 Part 2 paragraph 2.5 the following wording shall be deleted in its entirety "The Highway Contribution has been calculated on the basis that 2,200 Dwellings will be constructed on the Application Land and in the event it is proposed that more than 2,200 Dwellings will be constructed on the Application Land the Owner/Developer will pay the Council an amended Highway Contribution (together with the additional sum calculated in accordance with paragraph 2.2 of this Part of this Schedule) in accordance with the timing set out in paragraph 2.1 of this Part of this Schedule and in accordance with the following formula:

$$A+B \times C$$

Where:

A = number of Dwellings to be actually constructed

B = 2,200 Dwellings proposed to be constructed

C = £3,800,000.00 (index linked in accordance with paragraph 2.4 of this Part of this Schedule)"

10 Variations of the Principal Agreement in relation to the Financial Contribution to Public Transport Provision (Schedule 7)

10.1 **Schedule 7:** Financial Contribution to Public Transport Provision shall be deleted in its entirety and replaced with the following provisions.

10.2 **Part 1: Definitions relating to the financial contribution towards public transport provision**

10.3 **Part 1 paragraph 1.** in this Schedule the words below shall mean as follows:

10.4 **Part 1 paragraph 1.1** "the Public Transport Contribution" shall mean the sum of one million eight hundred and twenty thousand nine hundred and seventy four pounds (£1,820,974) to be paid by the Owner/Developer towards the provision of the new bus services servicing the Land"

- 10.5 *Part 1 paragraph 1.2 The "Index" shall mean the indices based on the Retail Price Index (all items) compiled and published by The Office for National Statistics or any other such index that substitutes the Retail Price Index*
- 10.6 **Part 2: Covenants relating to the financial contribution towards public transport provision**
- 10.7 *Part 2 paragraph 2.1 The Owner/Developer will pay the Public Transport Contribution to the Council in the following instalments:*
- 10.8 *Part 2 paragraph 2.1.1 the sum of six hundred thousand pounds (£600,000)(together with an additional sum calculated as set out below) shall be paid upon the first legal transfer of the 350th Dwelling*
- 10.9 *Part 2 paragraph 2.1.2 upon the first anniversary of the date that the payment was made in 2.1.1 above the Owner/Developer shall pay the sum of six hundred thousand pounds (600,000) (together with an additional sum calculated as set out below)*
- 10.10 *Part 2 paragraph 2.1.3 upon the second anniversary of the date that the payment was made in 2.1.1 above the Owner/Developer shall pay the sum of six hundred and twenty thousand nine hundred and seventy four pounds (£620,974) (together with an additional sum calculated as set out below)*
- 10.11 *Part 2 paragraph 2.2 The Public Transport Contribution due and payable (having been calculated at March 2006 prices) shall be increased in accordance with any increases in the Index between that date and the actual payment PROVIDED THAT if there is any change after the date of this Deed in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of execution of the Deed had been retained*
- 11 **Variation of the Principal Agreement in relation to the provision of New Public Transport Services (Schedule 8)**
- 11.1 The whole of **Schedule 8: Provision of New Public Transport Services** shall be deleted in its entirety.
- 12 **Variation of the Principal Agreement in relation to the provision of a Community Development Worker (Schedule 9)**
- 12.1 The whole of **Schedule 9: Community Development Worker** shall be deleted in its entirety.
- 13 **Variation of the Principal Agreement in relation to the provision of a contribution to the Local Library (Schedule 10)**
- 13.1 Part 2 paragraph 2.4 the following wording shall be deleted in its entirety "The Local Library Contribution has been calculated on the basis that 2,200 Dwellings will be constructed on the Application Land and in the event it is proposed that more than 2,200 Dwellings will be constructed on the Application Land the Owner/Developer will pay the Council an amended Local Library Contribution (together with the additional sum calculated in accordance with paragraph 2.2 of this Part of this Schedule) in accordance with the timing set out in paragraph 2.1 of this Part of this Schedule and in accordance with the following formula:

A+B x C

Where:

A = number of Dwellings to be actually constructed

B = 2,200 Dwellings proposed to be constructed

C = £110.24 (index linked in accordance with paragraph 2.2 of this Part of this Schedule)

- 14 **Variation of the Principal Agreement in relation to the provision of Open Space (Schedule 11)**
- 14.1 Part 1 paragraph 1.14 in the definition of "Open Spaces" after the words 'Plan Number 3' on line three the following words shall be inserted "*or such other plan as agreed by the Council in writing (providing that the Public Open Space shall be no less than 6.3652 Ha)*"
- 14.2 Part 1 a new paragraph 1.20 shall be inserted as follows: "*the Management Company*" means the company limited by guarantee and open to membership only by the Developer and the transferees or lessees (including the appropriate Affordable Housing Provider) of Dwellings formed under paragraph 1.21.5 whose principal object shall be to manage and maintain the Open Space and Incidental Open Space within the Developer's Land and to fulfil the functions set out in this Schedule and the Management Brief(s) The first directors of the Management Company shall be representatives of the Developer who will be required to hold office until six months after the completion of the disposal of all the Dwellings within the Sub Phase the subject of a Management Brief
- 14.3 Part 1 a new paragraph 1.21 shall be inserted as follows: "*the Management Brief*" means the detailed specification for the upkeep and future maintenance and management of the Open Space and Incidental Open Space following the satisfactory laying out of the Open Space and Incidental Open Space which shall:
- 14.3.1 *identify the relevant areas of Open Space and Incidental Open Space and the Dwellings to which the Rentcharge funding the same will be applied and*
 - 14.3.2 *include full details of the maintenance programme the constitution of the Management Company and the form of transfer imposing the Rentcharge on those Dwellings and*
 - 14.3.3 *be agreed between the Developers and the Director of Community Services prior to the commencement of any works for the laying out of the relevant areas of Open Space or Incidental Open Space referred to in that Management Brief*
- 14.4 Part 1 a new paragraph 1. 22 shall be inserted as follows: "*Phase*" means one of the three parcels of land identified on the Phasing Plan or as may be designated by the Developers from time to time by reference to an appropriate scale plan submitted to the Council for its approval (such approval not to be unreasonably withheld or delayed)
- 14.5 Part 1 a new paragraph 1.23 shall be inserted as follows: "*the "Rentcharge"*" means the perpetual yearly variable estate rentcharge imposed on each Dwelling to cover the annual costs of complying with the obligations under the Management Brief such rentcharge to

include the administrative and management costs of the Management Company once established in consideration of the Management Company covenanting to perform its obligations under the Management Brief(s) PROVIDED ALWAYS that the rentcharge on each individual Dwelling shall be an equal share of the total annual costs incurred by the Developer and/or Management Company in relation to the Open Spaces and Incidental Open Spaces and PROVIDED FURTHER THAT nothing in this Agreement shall require the payment of such rentcharge by the Occupier of any Affordable Housing Unit which rentcharge shall be payable by the appropriate Affordable Housing Provider

- 14.6 Part 2 paragraph 1.10.1 the following wording shall be deleted in its entirety "Within one month following the signing-on of Certificate A or Certificates A of each area of Open Space or Incidental Open Space (together with any associated Surface Water Infrastructure) the Owner/Developer (as appropriate dependant on land ownership) shall offer to legally transfer such area(s) to the Council and in doing so shall" and shall be replaced with the following "Within one month following the signing-on of Certificate A or Certificates A of each area of Open Space or Incidental Open Space (or any associated Surface Water Infrastructure) the Developer shall offer to legally transfer such area(s) to the Council or to a Management Company in accordance with the election made by the Developer under paragraph 1.21.1 PROVIDED THAT if the Developer elects to transfer the Open Space or Incidental Open Space (together with associated Surface Water Infrastructure) to the Council in doing so shall"
- 14.7 Part 2 paragraph 1.11 shall commence with the wording "If Open Space is transferred to the Council"
- 14.8 Part 2 paragraph 1.13 the following word shall be deleted "2,200" and replaced with the following "2,400"
- 14.9 Part 2 paragraph 1.14 the following wording shall be deleted in its entirety "The Commuted Sums have been calculated on the basis that 2,200 Dwellings will be constructed on the Application Land and in the event it is proposed that more than 2,200 Dwellings will be constructed on the Application Land the Owner/Developer will pay the Council the Commuted Sums together with the additional sum calculated in accordance with paragraph 1.12 of this Part of this Schedule in accordance with the timing set out in paragraph 1.11 of this Part of this Schedule and in accordance with the following formula:

$$A+B \times C$$

Where:

A = number of Dwellings to be actually constructed

B = 2,200 Dwellings proposed to be constructed

C = the relevant Commuted Sum (index linked in accordance with paragraph 1.12 of this Part of this Schedule)"

- 14.10 Part 2 new paragraph 1.21 shall be inserted as follows:

Management of the Open Space and Incidental Open Space

- 14.11 paragraph 1.21.1 *The Developer may at its absolute discretion elect to retain ownership of and responsibility for all those parts of the Open Space and Incidental Open Space within the Developer's Land and if it so determines it shall inform the Council of such in writing within 28 days of the date hereof*
- 14.12 paragraph 1.21.2 *The Developer shall (as appropriate to the determination made in paragraph 1.21.1 above) either transfer the Open Space or Incidental Open Space in any Sub Phase to the Council or transfer the Open Space or Incidental Open Space to the Management Company (such Management Company shall be set up for this purpose as soon as reasonably possible after the date of this Agreement and consistent with the requirement set out in paragraph 1.21.5 below)*
- 14.13 paragraph 1.21.3 *The Developer shall not permit the first legal transfer of any Dwelling in any Sub Phase the subject of a Management Brief unless the Rentcharge has been created in favour of the Developer in respect of that Dwelling*
- 14.14 paragraph 1.21.4 *Once the Management Brief has been agreed the Developer shall implement and thereafter comply with the provisions of the Management Brief*
- 14.15 paragraph 1.21.5 *The Developer shall not permit the first occupation of the 500th Dwelling until it has formed or appointed the Management Company in a form previously approved by the Council (such approval not to be unreasonably withheld or delayed) which shall be responsible for implementing and complying with the Management Brief provided that in the event the Management Company is not formed or appointed in accordance herewith the Developers shall continue to be so responsible*
- 14.16 paragraph 1.21.6 *Until the expiry of a six (6) month period following the disposal of all of the Dwellings within the Sub Phase the subject of the Management Brief the Developer shall at its own expense maintain the Open Spaces and the Incidental Open Spaces in accordance with the Management Brief(s) and to the satisfaction of the Council PROVIDED ALWAYS that the costs of so doing shall be borne by the Developer who shall be at liberty to recover a proportion of those costs through the Dwellings liable to pay the Rentcharge at the expiry of the six (6) month period referred to above the Members of the Management Company shall nominate two (2) or more persons to become Directors of the Management Company and the Developer shall transfer the Open Spaces and Incidental Open Spaces and the benefit of the Rentcharge to the Management Company*
- 14.17 paragraph 1.21.7 *The Developer shall ensure that from the date of this Deed unless the Open Space or Incidental Open Space is transferred to the Council as and when each of the Dwellings is sold or let the Developer will require that each of the purchasers or tenants or Affordable Housing Provider (as appropriate) becomes a member of the Management Company.*
- 14.18 paragraph 1.21.8 *The Developer shall include in the transfer or lease of each Dwelling a covenant on the part of the purchaser or lessee or Affordable Housing Provider (as appropriate) to become a Member of the Management Company and to be bound by the Memorandum and Articles of Association of the Management Company and abide by any regulations made by it*

- 14.19 *paragraph 1.21.9 The Developer shall procure that upon any future conveyance transfer or assignment of any such Dwelling the relevant seller or assignor shall become a member of the Management Company each transfer of each Dwelling on the Land shall contain provisions to effect a Rentcharge providing for the ongoing maintenance of the Open Space and Incidental Open Space*
- 14.20 *paragraph 1.21.10 For the avoidance of doubt if the Developer elects in writing to retain the Open Space and Incidental Open Space under this Schedule it shall nevertheless lay out the Open Space and or Incidental Open Space in accordance with the Landscaping Scheme and shall not be required to transfer the Open Space and Incidental Open Space or to pay the Commuted Sum but at all times until such time as the Open Spaces are transferred to the Management Company the Developer shall maintain the Open Spaces to the satisfaction of the Council*
- 14.21 *paragraph 1.21.11 The Developer shall ensure that on the date of incorporation of the Management Company (or as soon as reasonably practicable thereafter) the Management Company shall enter into direct covenants with the Council to observe and perform the requirements of this Schedule*
- 14.22 *paragraph 1.21.12 The Management Company shall provide to the Council on request a copy of its accounts and a report of its actions taken to comply with the Management Brief(s) for the current year and proposed activity for the following year and shall take into account any recommendations made by the Council in respect thereof*
- 14.23 *For the avoidance of any doubt it is hereby declared that the terms of Schedule 11 of the Principal Agreement shall remain in full force and effect in relation to those parts of the Land which are not also the Developer's Land*

15 Variation of the Principal Agreement in relation to the Contribution to Primary School Provision (Schedule 14)

- 15.1 Part 2 paragraph 2.3 the following wording shall be deleted in its entirety "The Primary School Contribution and such sum as provided for in paragraph 2.2 of Part 2 of this Schedule have been calculated on the basis that 2,200 Dwellings will be constructed on the Application Land and in the event it is proposed that more than 2,200 Dwellings will be constructed on the Application Land the Developer will (subject to the provisions in paragraph 2.4 below) pay the Council the Primary School Additional Contribution in accordance with the following formula:

$(A+B) \times C$

Where:

A = where number of Dwellings exceed 2,200 to be actually constructed on the Application Land

B = 2,200 Dwellings proposed to be constructed

C = £4,935,991.00 (or such other sum calculated on the basis of the prevailing DCSF costs calculator at the time of such payment to be used by the Council for the provision of the Primary School) or such other sum as provided in paragraph 2.2 of Part 2 of this Schedule as appropriate"

- 15.2 Part 2 paragraph 2.4 the following wording shall be deleted in its entirety "It shall be a precondition to any obligation of the Developer to pay the Primary School Additional Contribution that the Council demonstrates to the reasonable satisfaction of the Developer (such approval not to be unreasonably delayed or withheld) that the construction of Dwellings on the Application Land in excess of 2,200 shall result in the need for additional primary school facilities which cannot be met from the facilities provided pursuant to the Primary School Contribution"
- 16 It is hereby agreed by the parties to vary the terms of Principal Agreement by inserting a new Schedule 18A in respect of Affordable Housing on the Land excluding that part of the Land shown on Plan Number 4 which shall from the date hereof be amended by inserting the provisions as set out below:
- 16.1 **"Schedule 18A"**
- 16.2 For the avoidance of doubt it is hereby agreed between the parties hereto that nothing in the Principal Agreement shall require the Developer to provide more than 25% of the Dwellings as Affordable Housing on the land shown coloured red on Plan Number 5 without Grant
- 16.3 *"In this Schedule 18A the words and expressions below shall mean as follows:*
- 16.4 *Part 1 paragraph 1.1 "1985 Act" means the Housing Associations Act 1985*
- 16.5 *Part 1 paragraph 1.2 "1996 Act" means the Housing Act 1996*
- 16.6 *Part 1 paragraph 1.3 "Actual Market Value" means the market value of an Affordable Dwelling assessed in a Staircasing Event*
- 16.7 *Part 1 paragraph 1.4 "Additional Affordable Housing" means any new replacement or additional Affordable Housing provided within the District of South Gloucestershire in a scheme that shall first have been agreed in writing (unless the Affordable Housing Provider is an Approved RP in which case a scheme shall need only be the subject of a notification to the Director of Community Care and Housing) with the Director of Community Care and Housing (such agreement not to be unreasonably withheld or delayed) to meet identified housing need at the time of the provision which for the avoidance of doubt excludes any Affordable Housing provided pursuant to Part 2 of this Schedule or any other Affordable Housing brought forward as part of the Council's prevailing adopted development plan Affordable Housing requirement in pursuance of Section 106 of the 1990 Planning Act or subsequent legislation*
- 16.8 *Part 1 paragraph 1.5 "Affordable Dwelling" shall mean an individual unit of Affordable Housing identified as such in accordance with this Schedule*
- 16.9 *Part 1 paragraph 1.6 " Affordable Housing" shall mean those Dwellings constructed on Land (but for the avoidance of doubt shall exclude those Dwellings on the land shown on Plan Number 4) which shall be affordable housing as described and defined in Annex B of Planning Policy Statement 3: Housing (2006) dated November 2006 and in Annex B of the document entitled: "Delivering Affordable Housing" dated November 2006 consisting of social rented housing and intermediate housing of any of the types so referred to in those documents or such amendments thereto as may be in force from time to time*

- 16.10 *Part 1 paragraph 1.7 "Affordable Housing Contract" means: a binding contract with an Affordable Housing Provider for the sale or an agreement for lease of the relevant part of the Affordable Housing Land; or a contract for sale or agreement for lease for the sale or long lease (here meaning a lease of no less than 99 years) of completed Affordable Dwellings or a binding contract for sale or agreement for lease combining the sale or long lease of the relevant part of the Affordable Housing Land with a contract for the construction of the Affordable Dwellings on that land which contract for sale or agreement for lease in each such case includes:*
- 16.11 *(a) terms requiring the Affordable Housing Provider and Affordable Housing Manager to offer to the Council and to the Homebuy Zone Agent the opportunity to refer potential occupants for the Affordable Dwellings*
- 16.12 *(b) full and free rights of access both pedestrian and vehicular from a public highway to the relevant part of Affordable Housing Land subject to any standard conveyancing requirements in respect of pro rata payments relating to the repair and maintenance of such accessways pending adoption*
- 16.13 *(c) full and free rights for the passage of water soil electricity gas and other services through the pipes drains channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the relevant part of the Affordable Housing Land subject to any standard conveyancing requirements in respect of pro rata payments relating to the repair and maintenance of such accessways pending adoption; and*
- 16.14 *(d) such other commercial terms and conditions as may be reasonably required by the Developer and/or the Affordable Housing Provider and Affordable Housing Manager*
- 16.15 *Part 1 paragraph 1.8 "Affordable Housing Distribution Plan" means together the Target Plan and the Base Plan (and their respective schedules) submitted to and approved in writing by the Council from time to time under the terms of Part 2 below and Condition 9*
- 16.16 *Part 1 paragraph 1.9 "Affordable Housing Land" means the land on which the Affordable Dwellings identified as such under Part 2 of this Schedule are proposed to be constructed;*
- 16.17 *Part 1 paragraph 1.10 "Affordable Housing Manager" means an affordable housing management organisation accredited for such purposes via the Housing Management Accreditation Scheme dated March 2006 (or subsequent scheme) by the Housing Corporation*
- 16.18 *Part 1 paragraph 1.11 "Affordable Housing Provider" means:*
- 16.19 *(a) a housing association as defined in the Housing Associations Act 1985 or*
- 16.20 *(b) a social landlord as defined in Section 2 of the Housing Act 1996 or*
- 16.21 *(c) an accredited partner of the HCA for the provision of Affordable Housing or*
- 16.22 *(d) a registered provider as defined by the Housing and Regeneration Act 2008*
- 16.23 *who shall be required to enter into an agreement with an Affordable Housing Manager where not an accredited Affordable Housing Manager for the management of the Affordable Dwellings*

- 16.24 Part 1 paragraph 1.12 "Affordable Housing Provider Contribution" shall mean a sum to be assessed and agreed by the Council as the actual sum (excluding Grant) to be paid to the Developer for the Affordable Housing in any Sub Phase where the Affordable Housing Provider is an Approved RP or a sum derived from the market testing of such transactions with Approved RPs undertaken by the Council if the Affordable Housing is provided by an Affordable Housing Provider which is not an Approved RP
- 16.25 Part 1 paragraph 1.13 "Approved RP" means a Registered Provider being a social housing provider registered under the Housing and Regeneration Act 2008 with the HCA (or any successors in function) which shall include any organisation accredited by the HCA for the purposes of managing Affordable Housing and which at the date of exchange of contracts to acquire the Affordable Housing Land is on the Council's approved list which may be obtained from the Director of Community Care and Housing - The current list being that contained as Annex 12 which may be replaced by the Council from time to time in any updated approved list
- 16.26 Part 1 paragraph 1.14 "Assured Tenancy" means an assured tenancy approved by the TSA or such other tenancy agreement as may be approved by the Council
- 16.27 Part 1 paragraph 1.15 "Base Plan" shall mean the plan and accompanying Base Schedule identifying the number and type of Affordable Dwellings to be provided without Grant to be submitted to and approved of in writing by the Council under the terms of condition 9 of the Planning Permission which shall comply with the requirements set down in Part 2 of this Schedule
- 16.28 Part 1 paragraph 1.16 "Base Schedule" shall mean the schedule identifying 25% of the Dwellings constructed on the land shown coloured red on Plan Number 5 as Affordable Dwellings and showing the number and type of units to be provided without Grant which shall be submitted together with the Base Plan to be submitted to and approved of in writing by the Council under the terms of condition 9 of the Planning Permission and which may be varied in accordance with Part 2 paragraph 1.2.2
- 16.29 Part 1 paragraph 1.17 "Cluster" shall mean a group of Affordable Dwellings which do not have contiguous boundaries with another group of Affordable Dwellings the distribution of which Clusters within Phases are to be identified on the Affordable Housing Distribution Plan
- 16.30 Part 1 paragraph 1.18 "Grant" shall mean any capital funding provided by the HCA or any other public body for the delivery of Affordable Housing in excess of that Affordable Housing required to deliver the Base Schedule and Base Plan and shall be included in the Subsidy for the purposes of application of the Staircasing Receipts provisions set out in paragraph 1.24 of Part 2 of this Schedule
- 16.31 Part 1 paragraph 1.19 "HomeBuy Zone Agents" means a body appointed or approved by the HCA to act as agents for the allocation of affordable dwellings disposed of by way of intermediate affordable housing (including Shared Ownership Units)
- 16.32 Part 1 paragraph 1.20 "HCA" shall mean the Homes and Communities Agency which is the Government's agency for the administration of affordable housing subsidy and is the successor body to the Housing Corporation as from April 2009 and reference to the HCA shall include reference to any successor body or agency

- 16.33 *Part 1 paragraph 1.21 "Index" shall mean RPI*
- 16.34 *Part 1 paragraph 1.22 "Infrastructure" means all sewerage plant machinery apparatus and equipment and sewerage works drains rising mains and associated manholes mains inspection chambers headwalls public utilities bridges (including any railway and/or river crossings) tunnels and underpasses culverts lagoons balancing ponds flood storage areas pumping stations or pumping apparatus flood plains sound barriers noise attenuation works screens or bunds strategic planting and landscaping open space and other main amenities and accommodation works and all other works services and service media apparatus and equipment that may be required pursuant to this Agreement or pursuant to any other planning or infrastructure agreement or otherwise needed in order to commence construct complete sell use and occupy the Development and/or to market and sell all or any of any of the Dwellings comprised in the Development or any variation amendment or substitution thereof or any Reserved Matter Permission pursuant thereto together with and including (for the avoidance of doubt) sewers and drains gas and water mains estate telephone television telecommunications and electricity cables services pipes wires cables fibres conduits mains and any other service and conducting media*
- 16.35 *Part 1 paragraph 1.23 "Market Dwelling" means any dwelling other than an Affordable Dwelling*
- 16.36 *Part 1 paragraph 1.24 "Market Value" means (in relation to the initial calculation of the Subsidy only) the market value as assessed by a Valuer of a Dwelling as confirmed to the Council by the relevant Affordable Housing Provider (such value being calculated in accordance with the RICS Appraisal and Valuation Standards (5th Edition)) and being the estimated amount for which in the absence of this Agreement residential units of equivalent location specification size state of repair and condition and which are not restricted to use as affordable housing should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably prudently and without compulsion and on the following assumptions:*
- 16.37 (a) *no discount is to be allowed for bulk sales or on the basis that more than one property is being sold to the same purchaser*
- 16.38 (b) *it is sold with vacant possession and with good and marketable title*
- 16.39 (c) *the title is free from encumbrances*
- 16.40 (d) *the valuation is for the unrestricted freehold or as appropriate leasehold (of an initial minimum 99 year term) with vacant possession which for the avoidance of doubt ignores any use as Affordable Housing*
- 16.41 (e) *that the property is newly built decorated fully equipped for sale and serviced and fit for immediate occupation*
- 16.42 (f) *that the valuation is for sale of an individual unit and not part of a larger sale*
- 16.43 (g) *all roads footpaths landscaping and open space have been laid out and completed and all other Dwellings have been built sold and occupied*

- 16.44 (h) assuming the Application Land is free from contamination
- 16.45 Part 1 paragraph 1.25 "Mobility Dwellings" shall mean Affordable Dwellings built to the mobility standard as set out in Annex 14
- 16.46 Part 1 paragraph 1.26 "New Build HomeBuy" means the Government initiative known as "New Build HomeBuy" as set out in the document entitled "Delivering Affordable Housing" dated November 2006
- 16.47 Part 1 paragraph 1.27 "Service Level Agreement" shall mean the service level agreement then in force made between the Approved RP or RP or Affordable Housing Provider and either the HomeBuy Zone Agent for intermediate affordable housing or the Council for Social Rented Affordable Housing Units which complies with the Council's HomeChoice Lettings Policy and Procedure
- 16.48 Part 1 paragraph 1.28 "Occupation" means first residential occupation save for the purpose of fitting out or marketing and the expressions "Occupy" and "Occupied" shall be construed accordingly
- 16.49 Part 1 paragraph 1.29 "On Costs" means any costs incurred by an Affordable Housing Provider and Affordable Housing Manager in relation to any transaction regarding Staircasing Receipts as described in sub-paragraph 2.5 of Schedule 5 of the Housing Corporation Shared Ownership Lease appended in Annex 11 which are not to be reimbursed by any other person
- 16.50 Part 1 paragraph 1.30 "Phase" means one of the three parcels of land identified on the Phasing Plan or as may be designated by the Developers from time to time by reference to an appropriate scale plan submitted to the Council for its approval (such approval not to be unreasonably withheld or delayed)
- 16.51 Part 1 paragraph 1.31 "Phasing Plan" shall mean the plan identified as Phasing Plan in the Design and Access Statement or as may be amended from time to time by the Developers submitted to the Council for its approval (such approval not to be unreasonably withheld or delayed)
- 16.52 Part 1 paragraph 1.33 "RPI" means the General Index of Retail Prices compiled and published by the Office of National Statistics or any other such index that substitutes the General Index of Retail Prices for the avoidance of doubt which shall be used as the baseline index for each annual change where relevant
- 16.53 Part 1 paragraph 1.34 "RP" means any registered affordable housing provider as defined in the Housing and Regeneration Act 2008
- 16.54 Part 1 paragraph 1.35 "Rental Agreement" means a rental tenancy or letting agreement under which the rental payments are in accordance with the Target Rents and the relevant Social Rented Affordable Housing Unit is to be let on an Assured Tenancy
- 16.55 Part 1 paragraph 1.36 "Right to Acquire" shall mean a scheme giving eligible tenants of RPs a statutory right to buy the home they currently rent at a discount and only applies to Social Rented Affordable Housing Units built with public subsidy after 1st April 1997

- 16.56 *Part 1 paragraph 1.37 "Services" shall mean the supply of water electricity gas and the disposal of foul and surface water (including drainage of any category 1 sports provision (as that term is defined in policy LC8 of the South Gloucestershire Local Plan adopted 2006))*
- 16.57 *Part 1 paragraph 1.38 "Service Media" shall mean all pipes sewers mains ducts conduits gutters watercourses wires cables channels flues and any other apparatus*
- 16.58 *Part 1 paragraph 1.39 "Shared Ownership Lease" shall mean a lease in accordance with the guidance issued by the HCA in March 2009 in Shared Ownership: Joint guidance for England or any superseding guidance under which a Shared Ownership Unit may be disposed of by way of shared ownership lease granted at a premium of no more than 40% to be paid by the shared ownership lessee upon completion or raised by way of mortgage or charge and under which the provisions of the lease enable the shared ownership lessee to acquire the balance of the equity interest in the relevant Shared Ownership Unit via a Staircasing Event and the annual rental element of the shared ownership lease shall be no more than 1% of the Actual Market Value of the unsold equity as at the date of the grant of the lease*
- 16.59 *Part 1 paragraph 1.40 "Shared Ownership Unit(s)" means an Affordable Dwelling(s) which are identified as such in accordance with Part 2 of this Schedule and which are intended to be disposed of by way of Shared Ownership Lease (including New Build HomeBuy) to persons unable to afford to meet their housing needs in the open market*
- 16.60 *Part 1 paragraph 1.41 "Social Rented Affordable Housing Unit" shall mean an Affordable Dwelling identified as such in accordance with Part 2 to this Schedule and which is to be reserved and set aside for initial and future letting on an Assured Tenancy at Target Rents to people in housing need who cannot afford to meet their needs in the open market*
- 16.61 *Part 1 paragraph 1.42 "Staircasing Event" means any occasion on which a shared ownership lessee acquires additional equity in a Dwelling pursuant to a Shared Ownership Lease or tenant of a Social Rented Affordable Housing Unit acquires a share or the whole equity in their property under any current or future legislation that applies to Affordable Housing granting tenants the right to acquire the property or where the property is sold for any other reason*
- 16.62 *Part 1 paragraph 1.43 "Staircasing Receipts" means payments made to the Affordable Housing Provider (less On Costs) as a result of a Staircasing Event by a shared ownership lessee tenant or any other person for the acquisition of equity in a Dwelling pursuant to a Staircasing Event*
- 16.63 *Part 1 paragraph 1.44 "Sub-Phase" means any discreet parcel of land forming part of a Phase identified as such by the Owners or Developers from time to time by reference to a Phasing Plan submitted to the Council from time to time and which contains one or more Clusters of Affordable Housing*
- 16.64 *Part 1 paragraph 1.45 "Subsidy" means any Grant plus the amount expressed in pounds of the difference between:*
- 16.65 (a) *the price (including land) attributable to the disposal of Affordable Dwelling to an Affordable Housing Provider (being for the avoidance of doubt the price to be received from the Affordable Housing Provider pursuant to an Affordable Housing Contract by the Developer pursuant to an Affordable Housing Contract in respect of the disposal of that Dwelling being*

the price (including land) as agreed between the Developer as at the date of exchange of contracts of the Affordable Housing Contract and notified to the Council in writing) and the relevant Affordable Housing Provider and

- 16.66 (b) *the Market Value attributable to that Affordable Dwelling (including land) as at the date of exchange of contracts for the sale and purchase of that Affordable Dwelling to an Affordable Housing Provider as agreed between the relevant owner and the relevant Affordable Housing Provider pursuant to an Affordable Housing Contract to whom the Affordable Dwelling is to be disposed assuming it to have been completed and ready for residential occupation as at that date and notified to the Council in writing (such Market Value to have been certified by a Valuer)*

Or in the case of paragraph 1.1.3 of Part 2 of this Schedule such valuation shall have been carried out at the date of assessment of the Grant and

Provided That Subsidy shall not include any payment of public funds received by the Developer for a purpose other than specifically for the provision of Affordable Housing in excess of those required to deliver the Base Schedule and Plan

- 16.67 *Part 1 paragraph 1.46 "Target Plan" shall mean the plan accompanying the Target Schedule showing the location number and type of Affordable Dwelling to be provided with Grant submitted to the Council with each Reserved Matters Application (or as otherwise agreed with the Council) and approved in writing by the Council under the terms of condition 9 of the Planning Permission which shall comply with the requirements set down in Part 2 of this Schedule*
- 16.68 *Part 1 paragraph 1.47 "Target Rents" means either:*
- 16.69 (i) *TSA target rents system as published from time to time by the TSA or*
- 16.70 (ii) *such other measure of rental affordability as may be submitted by the Developers and approved by the Council that retains the affordable housing at affordable prices or*
- 16.71 (iii) *if TSA target rent shall cease to operate or shall not have been revised in the year of the date of grant of any such assured tenancy then the last published Target Rent shall be index linked to the increase (if any) in RPI plus 0.5% shall apply instead*
- 16.72 *Part 1 paragraph 1.48 "Target Schedule" shall mean the schedule identifying 33.3% of the Dwellings as Affordable Dwellings and for the avoidance shall mean the total number of Dwellings on the Application Land constructed pursuant to the Planning Permission and showing the number and type of units to be provided with Grant which shall be submitted together with the Target Plan to the Council with each Reserved Matters Application (or as otherwise agreed with the Council) to be approved of in writing by the Council and which may be varied in accordance with Part 2 paragraph 1.2.2*
- 16.73 *Part 1 paragraph 1.49 "TSA" means the Tenants Services Agency or such other body as shall assume the responsibility for setting Target Rents*

- 16.74 *Part 1 paragraph 1.50 "Valuer" shall mean a Member or Fellow or the Royal Institution of Chartered Surveyors, being a chartered valuation surveyor of at least 10 years post qualification experience and appointed by the Affordable Housing Provider and acting in an independent capacity*
- 16.75 *Part 1 paragraph 1.52 "Plan Number 5" shall mean the Plan annexed hereto and numbered 5*
- 16.76 **Part 2 Developer Covenants in Respect of Affordable Housing**
- 16.77 **Quantum**
- 16.78 *Part 2 paragraph 1.1 Prior to the Commencement on any part of the Land shown on Plan Number 5 the Developer shall submit and have approved by the Council the Target Schedule and Target Plan and the Base Schedule and the Base Plan for the land shown on Plan Number 5*
- 16.78.1 *Part 2 paragraph 1.1.1. The Developer hereby covenants with the Council that within one month of approval in writing by the Council of a Reserved Matters Application the Developer shall apply or require the Affordable Housing Provider to apply (unless such application has already been made or as may otherwise be agreed with the Council) for Grant sufficient to deliver Affordable Housing at the level set out in the Target Plan within that part of the Site encompassed within the said Reserved Matters Application PROVIDED ALWAYS that the amount of Grant used to replace Market Dwellings with Affordable Dwellings does not adversely affect or improve the viability position of the Development that would pertain if the Market Dwellings were not replaced and there shall be no financial benefit or detriment to the Owner*
- 16.78.2 *Part 2 paragraph 1.1.2 Unless the provisions of paragraph 1.1.3 below apply the Developer shall provide the Affordable Housing in accordance with the Base Schedule and the Base Plan*
- 16.78.3 *Part 2 paragraph 1.1.3 If Grant is provided in relation to a Sub-Phase the Developer shall use such Grant as is paid to increase the number of Affordable Dwellings so as to provide the Affordable Dwellings in accordance with the Target Plan and the Target Schedule whether by increasing the Affordable Dwellings in the Sub-Phase for which Grant has been provided or in later Sub-Phase(s) by the same number of Affordable Dwellings as have been provided through the payment of Grant The amount of Grant required to increase the affordable housing percentage will be assessed by an independent valuation of the Market Dwellings to be assessed (at the time the Grant is assessed) by a Valuer less a deduction for the Affordable Housing Provider Contribution as agreed in writing by the Council and For the Avoidance of Doubt the Developer shall only be required to provide additional Affordable Dwellings to the extent of the Grant as set out above*
- 16.78.4 *Part 2 paragraph 1.1.4 In carrying out the independent valuation referred to in paragraph 1.1.3 above the Valuer shall where possible calculate the Grant*

required to deliver the Affordable Housing by deducting the Affordable Housing Provider Contribution from the price of Market Dwellings (of the same type) on a pounds per square metre basis from within the Sub Phase giving rise to the grant application which has resulted in the payment of Grant

16.79 Distribution

16.80 Part 2 paragraph 1.2.1 If no Grant is received by the Developer in relation to any Sub-Phase the Affordable Housing shall be provided within that Sub-Phase in accordance with the Base Plan and the Base Schedule and prior to the Commencement on that Sub-Phase the Developer shall obtain the approval of the Council to a revised Target Plan and Target Schedule demonstrating how the shortfall in Affordable Dwellings could be addressed on the remaining parts of the Land within Plan Number 5 by the allocation of additional numbers of Affordable Dwellings up to a maximum of 33.3% over the land shown on Plan Number 5 and Provided That nothing in this Agreement shall require the Developer to provide more than 45% of the Dwellings on any Sub-Phase as Affordable Dwellings

16.81 Part 2 paragraph 1.2.2 If Grant is received by the Developer in relation to any Sub-Phase and therefore additional Affordable Housing is provided in relation to such Sub-Phase (or is to be provided in relation to a later Sub-Phase or Sub-Phases) in excess of the provision set out in the Base Plan and the Base Schedule the Developer shall obtain the Council's approval to

- (a) a revised Target Plan and Target Schedule if necessary to demonstrate how any shortfall in Affordable Dwellings could be provided on the remaining parts of the Land within Plan Number 5 by the allocation of additional numbers of Affordable Dwellings and
- (b) revised the Base Plan and Base Schedule to demonstrate how the Affordable Housing may be provided at 25% across the Land shown on Plan Number 5
- (c) Revise the Affordable Housing Distribution Plan accordingly

Provided That nothing in this Agreement shall require the Developer to provide more than 45% of the Dwellings on any Sub-Phase as Affordable Dwellings

16.82 Part 2 paragraph 1.2.3 The location of the Affordable Dwellings shall be in substantial accordance with the Target Plan and or Base Plan as appropriate as may be approved from time to time

16.83 Clustering

16.84 Part 2 paragraph 1.3 Each Cluster of Affordable Housing shall be physically separate from and discontinuous with any other Cluster and no Cluster shall contain more than 10 Affordable Dwellings unless otherwise agreed in writing with the Council and shall be shown on the relevant Target Plan to be agreed between the Developer and the Council for each Sub Phase in accordance with condition 10 of the Planning Permission

16.85 Tenure

- 16.86 *Part 2 paragraph 1.4 84.5% of the Affordable Dwellings shall be Social Rented Affordable Housing Units (rounded up or down to the nearest whole Dwelling or as otherwise agreed in writing by the Council and*
- 16.87 *Part 2 paragraph 1.5 15.5% of the Affordable Dwellings shall be Shared Ownership Units (rounded up or down to the nearest whole Dwelling) or as otherwise agreed in writing by the Council*
- 16.88 **Tenure and Type**
- 16.89 *Part 2 paragraph 1.6 The mix of Affordable Dwellings rounded up or down to the relevant whole number shall unless otherwise agreed in writing by the Council be as follows:*
- 16.90 *Part 2 paragraph 1.6.1 Social Rented Affordable Housing Units (being 84.5% of the Affordable Dwellings) consisting of:*
- 20% 1 bed flats at minimum 46m2 Gross Internal Areas "(GIA)"as measured in accordance with the RICS code of measuring*
 - 9.5% 2 bed flats at minimum 56m2 GIA*
 - 15% 2 bed houses at minimum 72m2 GIA*
 - 30% 3 bed houses at minimum 86m2 GIA*
 - 10% 4 bed houses at Minimum 106m2 GIA*
- 16.91 *Part 2 paragraph 1.6.2 Affordable Dwellings intended to be disposed of by Shared Ownership Lease (being 15.5% of the Affordable Dwellings) consisting of:*
- 10.5% 2 bed flats not less than 56m2 GIA*
 - 5% 2 bed houses not less than 71m2 GIA*
- 16.92 **Identification**
- 16.93 *Part 2 paragraph 1.7. With each Reserved Matters Application for any Phase or Sub-Phase which includes Affordable Housing Land the Developer shall identify the Affordable Dwellings in that Phase or Sub-Phase (together with a Schedule identifying the make up of the balance of the Affordable Dwellings contained in the remainder of that Phase) in substantial accordance with the details contained in an approved Affordable Housing Distribution Plan as agreed by the Council from time to time in writing in accordance with clauses 1.2.1 and 1.2.2 above and where there is any discrepancy between an approved Affordable Housing Distribution Plan detailed master plan and Reserved Matters Permission the precise location mix type and tenure of Affordable Dwellings shall be governed by reference to Reserved Matters Permission provided the proportion mix type and tenure of Affordable Dwellings for that Phase is consistent with the overall provision for that Phase as identified in the information supplied to the Council under conditions 9 and 10 of the Planning Permission*
- 16.94 **Detailed identification at Reserved Matters Permission Stage**

- 16.95 *Part 2 paragraph 1.8 When submitting details of the nature and type of Affordable Dwellings in any Cluster as part of Reserved Matters Applications the Developer shall at the same time indicate the mix type and tenure of Affordable Dwellings proposed in the other Clusters in the same Phase*
- 16.96 **Wheelchair Units**
- 16.97 *Part 2 paragraph 1.9 3% of the Affordable Dwellings shall be designed to accommodate wheelchair users and 3% shall be designated as Mobility Dwellings - such Affordable Dwellings to be contained within the two and three bed Social Rented Affordable Housing Units to be agreed with the Council as part of the Affordable Housing Distribution Plan*
- 16.98 **Delivery Mechanism**
- 16.99 *Part 2 paragraph 1.10 No more than 30% of the Market Dwellings in any Sub-Phase of the Development shall be Occupied until an Affordable Housing Contract shall have been entered into in relation to any Affordable Housing within that Sub-Phase*
- 16.100 *Part 2 paragraph 1.11.1 The Affordable Dwellings in any Phase or Sub-Phase shown on the Base Plan and Base Schedule shall be provided without recourse to Grant PROVIDED ALWAYS that the Affordable Housing Provider may use its own resources borrowings rental income receipts from sales to persons exercising any Right to Acquire under the 1996 Act or to staircase (other than receipts from the right to acquire under the 1996 Act or a Staircasing Event in respect of the other Affordable Dwellings as described in this Schedule) or other sources of finance to fund the acquisition of Affordable Dwellings and may use any available public subsidy to fund the acquisition of Additional Affordable Housing in combination with the Staircasing Receipts reserved and set aside pursuant to this Agreement As far as is legally possible the Affordable Housing Provider and Affordable Housing Manager shall ensure that Social Rented Affordable Housing Units provided in accordance with the Base Plan shall be excluded from the Right to Acquire and shall ensure no public subsidy is used for their acquisition which would bring them under the relevant legislation*
- 16.101 *Part 2 paragraph 1.11.2 Paragraph 1.11.1 shall not apply to any Affordable Dwellings in excess of those shown on the Base Plan and Base Schedule*
- 16.102 *Part 2 paragraph 1.11.3 All Affordable Dwellings shall be managed by an Affordable Housing Manager*
- 16.103 *Part 2 paragraph 1.12 The Developer will give written notice to the Council when the legal transfer of 30% and 60% of the total number of Market Dwellings in each Sub-Phase containing Affordable Dwellings rounded to the nearest whole number shall have been Occupied*
- 16.104 *Part 2 paragraph 1.13 No more than 60% of the Market Dwellings in any Sub-Phase shall be Occupied in that Sub-Phase until all of the Affordable Dwellings in that Sub-Phase shall have achieved practical completion and shall have been transferred (whether leasehold or freehold) to an Affordable Housing Provider except in the circumstances set out in condition 47 or any condition that may replace it in any subsequent planning permission granted following a successful application for variation or appeal and if there is a delay in the transfer of the Affordable Dwellings to and Affordable Housing Provider in the circumstances as provided for*

in the said condition the Developer shall use all reasonable endeavours to complete and transfer the Affordable Dwellings to the Affordable Housing Provider as soon as practicable

16.105 Rent Levels

16.106 *Part 2 paragraph 1.14 The rent payable by the occupant of any Social Rented Affordable Housing Units shall be in accordance with Target Rents*

16.107 Shared Ownership Units

16.108 *Part 2 paragraph 1.15 The Shared Ownership Units shall not be disposed of on their initial sale other than by way of Shared Ownership Lease unless otherwise agreed in writing by the Council or such sale is to an Affordable Housing Provider*

16.109 Social Rented Affordable Housing Units

16.110 *Part 2 paragraph 1.16 The Social Rented Affordable Housing Units shall not be disposed of other than by way of Rental Agreement unless otherwise agreed in writing by the Council or such sale is to an Affordable Housing Provider*

16.111 Occupation

16.112 *Part 2 paragraph 1.18.1 The Affordable Housing shall only be occupied by persons in need of Affordable Housing: to buy or to rent (at the point of sale or letting) in accordance with the Council's HomeChoice Lettings Policy and Procedure and Policy H6 of the South Gloucestershire Local Plan (adopted January 2006)*

16.113 *Part 2 paragraph 1.18.2 In respect all first lettings and 75% of subsequent lettings of Social Rented Affordable Housing Units the Council shall refer potential Occupants to the Approved RP or RP or Approved Affordable Housing Provider pursuant to a Service Level Agreement*

16.114 *Part 2 paragraph 1.18.3 In respect of all disposals of intermediate affordable housing the opportunity shall be granted to the HomeBuy Zone Agent to refer potential occupants to the Approved RP or RP or an Approved Affordable Housing Provider pursuant to a Service Level Agreement*

16.115 Standard of Construction

16.116 *Part 2 paragraph 1.19 The Social Rented Affordable Housing Units shall be constructed in accordance with level 3 of the Code for Sustainable Homes*

16.117 Satisfaction of Affordable Housing Requirement

16.118 *Part 2 paragraph 1.20 Once the Affordable Housing approved pursuant to Reserved Matter Permission relating to any Sub-Phase (double counting and overlapping Reserved Matter Permissions excluded) shall have been identified by reference to those permissions then any residual areas of Affordable Housing Land within that Sub Phase may be developed for Market Dwellings*

16.119 *Part 2 paragraph 1.21 The amount of the Grant and the date of any Affordable Housing Contract for disposal to an Affordable Housing Provider in respect of each Affordable Dwelling shall be notified to the Council by the Affordable Housing Provider*

16.120 Service Charges and Exclusion of Liability For Payments Towards Maintenance Of Public Open Space

16.121 Part 2 paragraph 1.22 None of the purchaser's tenants or occupiers of an Affordable Dwelling shall be required to make any contribution towards the maintenance of areas of public open space within the Application Land (whether or not the Developer elects to retain all or any part of the Public Open Spaces or Incidental Open Spaces pursuant to Schedule 11 Part 2 paragraph 2.21.1 hereof) The services charges payable by the occupiers of any Affordable Housing that are developed as flats within a mixed tenure block comprising of Market Dwellings and Affordable Dwellings AND/OR any Affordable Housing that are developed as flats and provided by an Affordable Housing Provider (but not an RP whether an Approved RP or not) shall be capped to no more than £550 (August 2007 base) per annum inflated by RPI + 1% thereafter

16.122 Part 2 paragraph 1.23 Ground rents for the Affordable Housing shall be at a peppercorn

16.123 Application Of Staircasing Receipts

16.124 Part 2 paragraph 1.24 (a) On the occurrence of any Staircasing Event relating to an Affordable Dwelling and subject always to the application of paragraphs (b) (c) and (d) below the Affordable Housing Provider (as successor in title to the Developer) shall (having first deducted an amount equal to X% of the initial outstanding net loan debt attributable to that Affordable Dwelling at the point of first disposal as assessed by the Affordable Housing Provider) (where X equals the additional proportion of the equity in the Affordable Dwelling acquired as a percentage of the unsold equity immediately prior to the Staircasing Event) reserve and set aside the remaining balance of any Staircasing Receipts received in relation to that Affordable Dwelling for the provision of Additional Affordable Housing until an aggregate amount equal to the Subsidy relating to that Affordable Dwelling (as notionally recalculated and carried forward from time to time under paragraph (c) (i) below) shall have been reserved and set aside for such purposes

16.125 (b) The provisions of paragraph (a) above shall not apply where there is a statutory or regulatory requirement to account for Staircasing Receipts to any other body

16.126 (c) On the occasion of the first and any subsequent Staircasing Event the Subsidy shall be notionally recalculated (but only for the purposes of identifying the amount of any Staircasing Receipt to be reserved and set aside for the provision of Additional Affordable Housing) as follows:

(a) On the date of the first Staircasing Event the notional Subsidy shall be notionally increased by the percentage increase (if any) in the Market Value of the relevant Affordable Dwelling from the date as originally notified to the Council by comparing the Market Value so notified by the Affordable Housing Provider at the point of calculating the Subsidy with its Actual Market Value as notified to the Council by the Affordable Housing Provider at the date of the Staircasing Event (AND for the avoidance of doubt the Subsidy as notionally increased under this Sub-Paragraph (i) shall be the result of the following calculation in respect of any relevant Affordable Dwelling

$\frac{AMV \times S}{MV}$

MV

Where:

AMV equals the Actual Market Value of the Affordable Dwelling at the date of the first Staircasing Event

MV equals the Market Value of the Affordable Dwelling as originally notified to the Council at the point of calculating the Subsidy

S equals the Subsidy attributed to that Affordable Dwelling as originally notified to the Council at the point of calculating the Subsidy)

- (ii) The Subsidy (as notionally increased) shall then be notionally reduced by the amount of any Staircasing Receipts and the balance carried forward
 - (iii) On the date of any subsequent Staircasing Event relating to an Affordable Dwelling the Subsidy balance carried forward under (ii) above shall be notionally increased by the percentage increase in the Actual Market Value of the relevant Dwelling from the date of the previous Staircasing Event in (i) and its Actual Market Value as notified to the Council by the Affordable Housing Provider at the date of the subsequent Staircasing Event and the provisions of para 1.23(a) to 1.23(c)(ii) shall be applied (*mutatis mutandis*) to such balances and any remaining notional Subsidy balance carried forward
- (d) Once
- (i) an amount equal to the notional Subsidy as re calculated and carried forward from time to time in accordance with paragraph (c) above shall have been set aside for the provision of Additional Affordable Housing as set out on (a) above; or
 - ii) the final Staircasing Event (leaving the Shared Ownership Lease lessee or Tenant purchaser owning a 100% freehold or leasehold share) has occurred and the Subsidy is recalculated in accordance with the provisions above in (a) and (c) if the final Subsidy balance as recalculated in accordance with Sub-Paragraphs (c) (i) to (c) (iii) is greater than the balance of the Staircasing Receipt to be used reserved and set aside for Additional Affordable Housing identified in a) there will be no requirement to carry forward the Subsidy balances following this final Staircasing Event
- Then in either such case this paragraph 14.126 shall be deemed satisfied and there shall be no requirement to reserve and set aside any further Staircasing Receipts (or part thereof) under paragraph (a) and (c) above
- (e) the Developer shall procure that:

- (i) all Staircasing Receipts are paid into an interest bearing account (including any interest accrued thereon) and shall procure an annual audited account to the Council demonstrating details of all receipts from the sale of any interest in Affordable Housing (including the dates upon which the Staircasing Receipts were received:
- (ii) a record of all Staircasing Receipts are kept
- (iii) that record is made available to the Council on demand
- (iv) any Staircasing Receipts (including accrued interest) shall only be used for the provision of Additional Affordable Housing
- (v) the Affordable Housing Provider and Affordable Housing Manager shall use reasonable endeavours to ensure the Staircasing Receipts are committed on the provision of Additional Affordable Housing within 3 years and spent within 5 years unless otherwise agreed in writing with the Council In the event of any dispute then the Disputes procedure set out in Clause 16 will be entered into by the appropriate parties

16.127 Monitoring

- 16.128 Part 2 paragraph 1.25 The Developer shall procure that the number and type of Affordable Housing will be monitored in order to ensure compliance with this Schedule 18A and the Developers will by the 1st February and 1st August in each calendar year make a written return to the Council for the preceding six months detailing:
- 16.129 Part 2 paragraph 1.25.1 The cumulative total and location of Dwellings Occupied for the whole site but excluding those Dwellings shown on Plan Number 4
- 16.130 Part 2 paragraph 1.25.2 The number of Affordable Housing Dwellings completed with a breakdown specifying the number Affordable Housing Dwellings built and occupied with details of their tenure and unit type and size but excluding those Dwellings shown on Plan Number 4
- 16.131 Part 2 paragraph 1.25.3 The number location and tenure of the Affordable Dwellings with details of the rent and service charges and Market Value and equity sold to the occupier if under a Shared Ownership Lease but excluding those Dwellings shown on Plan Number 4
- 16.132 Part 2 paragraph 1.25.4 The amount of receipts following a Staircasing Event but excluding those Dwellings shown on Plan Number 4
- 16.133 Part 2 paragraph 1.26.1 A mortgagee or chargee of an Affordable Dwelling seeking to transfer the Affordable Dwelling pursuant to any default under the terms of its security by an Affordable Housing Provider or Affordable Housing Manager (as appropriate) shall procure a sale of the Affordable Dwelling to another Affordable Housing Provider or Affordable Housing Manager (as appropriate) nominated in writing by the Council or (at the request of the Council) by the HCA within 56 days of the said mortgagee or chargee notifying the Council in writing of its intention to exercise its power of sale or other remedies and such mortgagee or chargee shall complete the sale not later than six months after such nomination PROVIDED THAT in the event of a nomination not being made or a sale not being completed within the time limit set out in the foregoing provisions of this paragraph such mortgagee or chargee shall sell the Affordable Dwelling to an Affordable Housing Provider or Affordable Housing Manager nominated in writing by the mortgagee or chargee and notified to the Council within 28 days of

the occurrence of the earlier of the said events and approved by the Council within 56 days of such notification whereupon the mortgagee or chargee shall complete the sale not later than six months after such notification PROVIDED FURTHER THAT in the event of any sale not taking place in accordance with the foregoing provisions of this paragraph any mortgagee or chargee (or any receiver appointed by such mortgagee or chargee) shall be entitled to sell the relevant Affordable Dwelling pursuant to its or their power of sale or other remedies under the mortgage or charge in question on the open market and shall not be bound by the provisions of this Schedule 18 A

- 16.134 *Part 2 paragraph 1.26.2 If the Affordable Housing Provider is an Approved RP then 1.26.1 shall not apply but shall be replaced by 1.26.3 below:*
- 16.135 *Part 2 paragraph 1.26.3 Notwithstanding any other provision of this Agreement the covenants and obligations on the part of the Developer contained in this Schedule 18A shall not be binding upon*
- 16.136 *Part 2 paragraph 1.26.3.1 any mortgagee or chargee in possession of the Affordable Housing Land or any part thereof or any Affordable Dwelling or any receiver appointed by any such mortgagee to the intent that any such mortgagee or chargee or receiver may deal with or dispose of the Affordable Housing Land or any part thereof and/or the Affordable Dwelling free from the covenants and obligations set out in this Schedule 18A and*
- 16.137 *Part 2 paragraph 1.26.3.2 any Affordable Dwelling in respect of which a tenant exercises any statutory Right to Acquire or any Shared Ownership Unit in respect of which the leaseholder shall have staircased to 100% equity share and (in either case) the tenant or leaseholder (as the case may be) acquires a freehold or long leasehold interest in the same so that such tenant or leaseholder shall be entitled to dispose of such Affordable Dwelling thereafter free from the covenants and obligations set out in this Schedule 18A and that any person deriving title through or under such tenant or leaseholder shall not be bound by it*
- 17 The whole of **Annex 1** shall be deleted in its entirety
- 18 The whole of **Annex 2** shall be deleted in its entirety
- 19 The whole of **Annex 3** shall be deleted in its entirety and replaced with Annex 1 hereto
- 20 **Additional Provisions**
- 20.1 The Developer agrees to pay the Council's reasonable legal costs in the completion of this Deed
- 21 **Principal Agreement to Continue in Force**
- 21.1 From the date of this Deed the Principal Agreement shall be read as if the wording deleted by clauses in this Deed have been removed from the Principal Agreement and the wording substituted by clauses and paragraphs in this Deed has been incorporated into the Principal Agreement
- 21.2 Save as varied by this Deed the Principal Agreement shall remain in full force and effect

21.3 If any individual clause sub-clause or schedule in this Deed is subsequently held to be unenforceable by a Court the parties agree that the offending clause sub-clause or schedule shall cease to be binding and will be severed from the Deed **PROVIDED THAT** the severing of such a clause sub-clause shall not affect the continuing enforceability of the remainder of the Deed

21.4 The validity construction and performance of this Deed shall be governed by English law

22 Third Party Rights

22.1 It is not intended that any third party shall have the right to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 even if the terms are expressed to be for their benefit and nor shall any third party have the right of veto over any future variations of this Deed

23 Executed as a Deed

23.1 The parties hereto intend this agreement to take effect as a Deed

24 Indemnities

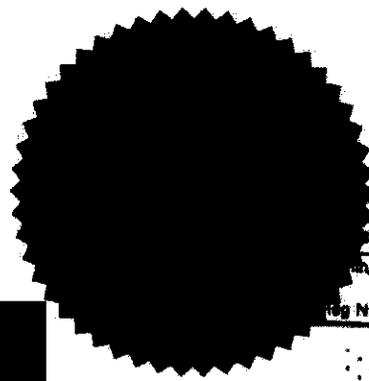
24.1 The Developer hereby indemnifies the Council against any claim made by a person with an interest in the Land subsisting at the date hereof (and who is not a party to this Deed) for loss or damage suffered by such person as (a) a direct result of the Council entering into this Deed or (b) as a direct result of the requirements of the Agreement having been varied by this Deed

IN WITNESS whereof this Deed of Variation was executed and delivered as a deed on the day and year first above written

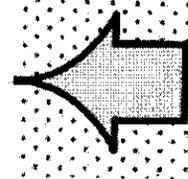
EXECUTED AS A DEED BY AFFIXING.....)
The **COMMON SEAL** of SOUTH)
GLOUCESTERSHIRE DISTRICT COUNCIL)
in the presence of:.....)

[Redacted signature area]

Group Manager



Stamp: for Sealing
Del. Power
No. 14048



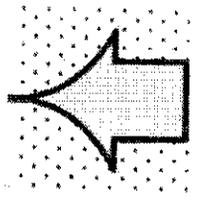
EXECUTED AS A DEED BY AFFIXING.....)
The **COMMON SEAL** of BOVIS HOMES LIMITED)
in the presence of *two authorised*
signatories

[Redacted signature area]

Director



Director/Secretary



HERE

ANNEX 3

DRAFT BOND

THIS BOND dated

is made

BETWEEN:

BAE SYSTEMS PLC whose registered office is at 6 Carlton Gardens London SW1Y 5AD (Company Registration No: 01470151) ("the Owner") **BOVIS HOMES LIMITED** whose registered office is situated at The Manor House North Ash Road New Ash Green Longfield Kent DA3 8HQ (Company Registration No: 00397634) ("the Developer") and • of • ("the Surety")

WHEREAS

- 1 By an Agreement ("the Agreement") dated • made between **SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL** ("the Council") (1) and **BAE SYSTEMS PLC** ("the Owner") (2) and for (as appropriate) **BOVIS HOMES LIMITED** ("the Developer") (3) relating to the development of land at Northfield Filton Aerodrome Patchway in the District of South Gloucestershire the Owner and the Developer are under an obligation to provide various contributions as identified in Annex 3 on the terms and conditions specified in the Agreement
- 2 Paragraph ** of Part ** to Schedule ** of the Agreement contains a covenant for the Owner /Developer to enter into a bond with a surety (approved by the Council) to secure its obligations under the terms of the Agreement

NOW THIS DEED WITNESSES:

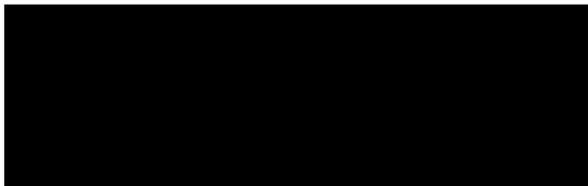
- 1 The Owner and/or (as appropriate) the Developer and the Surety are bound jointly and severally to the Council (subject to clause 4 below and the rest of this clause 1) for the sum of • pounds (£•) ("the Bond Figure") Provided That the Owner and/or Developer shall only be bound to the Council to the extent that the Bond Figure (or any part thereof) relates to land in which the Owner or as the case may be the Developer has an interest (and further Provided That to the extent the Bond Figure or any part thereof relates to the whole Land the Owner and Developer shall only be bound to contribute a proportion of such bond figure pro rata its ownership of the Land by area)
- 2 The Surety shall on receipt of a written demand from the Council certifying breach or non-observance of any of the terms conditions or covenants contained in the agreement pay to the Council within five working days after service on the Surety (at the address given above) of the demand such sum of money as the Council's Director for the time being shall certify to be necessary to make good the relevant default and in the event that the actual cost exceeds this the Surety shall be liable for the excess **PROVIDED THAT** the amount demanded by the Council whether as a single sum or as an aggregate sum shall not exceed the Bond Figure
- 3 It is hereby agreed and declared that the Surety shall not be released or discharged from this Bond by any arrangement which may either with or without the assent or notwithstanding the dissent of the Surety be made between the Owner and the Developer and the Council by any dealing or transaction which may take place between the Owner and the Developer and the Council
- 4 It is hereby agreed and declared that the Council shall seek payment in relation to the Bonded Obligations firstly from the Developer and or the Surety and only after having used reasonable endeavours (which shall not require the Council to institute proceedings in the court) to require payment from the Developer and the Surety shall the Council seek payment from the Owner **PROVIDED THAT** the Council shall not seek payment from the Owner in respect of any Bonded Obligation that relates to the Developer Only Schedules

IN WITNESS of which this Bond has been duly executed as a deed on the date and year first before written

EXECUTION CLAUSES



Section 106 Obligations	Total Contribution	BOND 1 (0-150 units)	BOND 2 (150-750 units)	BOND 3 (750-1,500 units)	BOND 4 (1,500-2,200 units)
Schedule 1: Public Art	£80,000	-	-	-	-
Schedule 2: Off-site POS	£2,942,928	-	£1,324,317	£1,118,312	£500,297
Schedule 3: Community Facilities (Sewer Baiting)	£918	£918			
Schedule 4 Highway Improvements	-	-	-	-	-
Schedule 5: Car Club	-	-	-	-	-
Schedule 6: Highway Infrastructure Improvements	£3,000,294	£1,300,000	£1,000,000	£700,294	-
Schedule 7: Public Transport Provision	£1,820,974	-	£1,200,000	£620,974	-
Schedule 8: New Public Transport Services	-	-			
Schedule 9: Community Development Worker	-	-	-	-	-
Schedule 10: Library	£242,521	-	£242,521	-	-



Schedule 11: POS Commuted Sum	£1,213,207	-	£303,301	£606,605	£303,301
Schedule 12: Nursery		-	-	£336,000	-
Schedule 13: Primary School Site	-	-	-	-	-
Schedule 14: Primary School Provision	£4,935,991	£493,599	£4,442,392	-	-
Schedule 15: Extra Care Housing	-	-	-	-	-
Schedule 16: Community Building	(£2,379,000)	-	£2,379,000	-	-
Schedule 17: Healthcare Space		-	-£1,400,000	-	-
Schedule 18: Affordable Housing	-	-	-	-	-
Schedule 19: M5 Works	-	-	-	-	-
Amount to be Bonded		£1,794,517	£11,211,531	£3,382,185	£803,598

4