

DATED

19th April

2005

KERRIER DISTRICT COUNCIL (1)

AFFORDABLE HOMES OF CORNWALL (2004) LIMITED (2)

THE CORNWALL COUNTY COUNCIL (3)

PENWITH HOUSING ASSOCIATION (4)

PLANNING OBLIGATION

under Section 106, Town and Country Planning Act, 1990, as amended,
for development at North Roskear, Camborne
in the County of Cornwall.

Council Offices,
Camborne,
Cornwall.

THIS DEED is made the 19th day of April Two thousand and five
B E T W E E N: - KERRIER DISTRICT COUNCIL of Council Offices, Camborne, Cornwall ("the Council") of the first part AFFORDABLE HOMES OF CORNWALL (2004) LIMITED (Co. regn. no. 04880837) whose registered office is situate at Chy Nyverow, Newham Road, Truro, Cornwall ("the Owner") of the second part THE CORNWALL COUNTY COUNCIL of County Hall, Truro, Cornwall, TR1 3AY ("the Education Authority") of the third part and PENWITH HOUSING ASSOCIATION of 67 Morrab Road, Penzance, Cornwall TR18 2QJ ("the Association") of the fourth part

WHEREAS: -

(1) The Council is the Local Planning Authority for the purpose of the Town and Country Planning Act 1990 as amended ("the Act") for the area within which the property described in the First Schedule hereto ("the Development Site") is situated

(2) The Education Authority is the education authority for the purposes of the Education Acts, 1962 to 1997 and a local planning authority for the area within which the Development Site is situated

(3) The Owner is registered at HM Land Registry as proprietor of the freehold or that part of the Development Site shown edged red on the plan attached hereto ("the Plan") with title absolute under title number CL148765

(4) The Association is registered at HM Land Registry as proprietor of the freehold of those parts of the Development Site as are shown edged green on the Plan ("the Open Space") and shown edged blue on the Site Plan with title absolute under title number CL176174

(5) The Owner has by written application registered by the Council as a valid application on 18th January, 2005 ("the Application") applied to the Council for permission to carry out development within the meaning of the Act on the Development Site in the manner and for the uses set out in the said application and the plans specifications and particulars deposited therewith and any plans specifications and particulars which may subsequently be or have been deposited with the Council in connection with the said application ("the Development") brief particulars of the Development being set out in the Second Schedule hereto

(6) The Council is satisfied that the Development disclosed by the said plans specifications and particulars is such as may be approved by the Council under the Act subject to conditions including the completion of this Deed

(7) The Association has agreed to enter into this Deed to secure improvements to and the future maintenance of the Open Space

(8) The Owner is willing to make a contribution ("the Amenity Contribution") towards the cost of the improvement and maintenance of the Open Space but if the provisions of this Deed relating to the improvement and maintenance of the Open Space are not complied with the Council may use such contribution towards the provision, maintenance or improvement of off site play equipment, open space or other amenity for recreational use provided by the Council for the benefit of the community in the area of the Development Site which area shall be reasonably determined by the Council ("the Amenity Facilities")

(9) The Owner and the Council have agreed that the Amenity Contribution shall be SIXTY THOUSAND FIVE HUNDRED AND FORTY-FIVE POUNDS (£60,545) subject to variation as hereinafter set out

(10) This instrument is intended and shall be accepted as a Deed for all or any purposes so required by Section 1 of the Law of Property (Miscellaneous Provisions) Act 1989

NOW THIS DEED WITNESSETH as follows: -

1. THIS Deed is made in pursuance of Section 106 of the Act Section 111 of the Local Government Act 1972 and in consideration of the covenants on the part of the Owner and the Association hereinafter contained and is a Planning Obligation for the purposes of Section 106 of the Act enforceable by the Council and the Education Authority in accordance therewith

2. THIS Deed shall not operate as a grant of Planning Permission

3. THE Owner and the Association with the object and intent of binding the Development Site in perpetuity into whosoever hands the same may come (as to those parts of the Development Site as are in their respective ownerships) hereby covenant with the Council and the Education Authority that the Development Site shall be permanently subject to the stipulations and provisions restricting or regulating the Development and the use of the Development Site specified in the Third Schedule hereto

4. THE Owner and the Association (as to those parts of the Development Site as are in their respective ownerships) hereby covenant to carry out the Development in strict conformity with the said plans specifications and particulars and to develop and use the Development Site and all

buildings erected or to be erected thereon in strict accordance with this Deed and not otherwise

5. THE provisions of this Deed shall take effect immediately upon its completion provided that if the planning permission to be granted by the Council for the Application details of which are set out in the Second Schedule hereto is revoked or expires by effluxion of time then this Deed shall cease to have any effect providing always that at the time of the said revocation or expiry no development has begun within the meaning of Section 56 of the Act

6. BEFORE the issue of the planning permission relating to the Application (or within such reasonable period as the Council may reasonable agree) a Bond from a Bank or Insurance Company approved by the Council and the Education Authority (such approval not to be unreasonably withheld or delayed) shall be provided by the Owner in or substantially in the form and terms set out in the Fourth Schedule hereto to secure the performance of the covenants on the part of the Owner specified in Parts I and II of the Third Schedule hereto ("the Covenants") in an initial sum equivalent to the total of the following sums all of which have been reasonably determined by the Council and the Education Authority as appropriate (subject to variation by reference to the Retail Prices Index in accordance with the terms of the Bond):

- (i) the sum of FIFTY THOUSAND FIVE HUNDRED AND FORTY-FIVE POUNDS (£50,545) on account of the balance of the Amenity Contribution as a result of the payment due in accordance with paragraph 1 of Part I of the Third Schedule to this Deed;
- (ii) the sum of THIRTEEN THOUSAND TWO HUNDRED POUNDS (£13,200) on account of the education contribution required as a result of the Development ("the Education Contribution")

7. IN the event that the Covenants (insofar as they are contained in Part II of the Third Schedule) are not complied with and the Education Authority has satisfied itself that seventy-five per centum of the Accountable Dwellings (as defined in Part II of the Third Schedule) have been occupied the Education Authority shall be at liberty to proceed as if the Owner had complied with its obligations contained in paragraph 14 of Part II of the Third Schedule and for this purpose the Education Authority shall be at liberty to apply the cash deposit relating to the Education Contribution paid to the Education Authority in accordance with Clause 8 or the sum recovered from the Surety in accordance with the terms of the Bond, as appropriate, in remedying the

Owner's default (subject to the Education Authority having complied with paragraph 15 of Part II of the Third Schedule)

8. IF the Owner wishes to provide the Council and the Education Authority with security for the performance of the Covenants by way of cash deposit rather than a Bond the Owner shall before the issue of the planning permission relating to the Development (or within such reasonable period as the Council may reasonable agree) deposit with the Council and the Education Authority on the terms and conditions set out in the Fifth Schedule the Amenity Contribution and the Education Contribution

9. IF the Owner wishes to provide a Bond for one or more of the payments required by this Deed in relation to the Covenants and a cash deposit or cash deposits for the remainder of those payments the relevant parts of Clauses 6 and 8 and the Fourth and Fifth Schedules of this Deed shall apply to the Bond(s) and deposit(s) as appropriate PROVIDED ALWAYS that if the Owner provides a Bond for one or more of the payments required by this Deed in relation to the covenants and shall subsequently pay to the Council or the Education Authority as appropriate the cash sum the Council or the Education Authority as appropriate will on receipt of the cash sum release the Bond to which the cash sum relates

10. THE Council, the Owner and the Association hereby covenant to observe and perform their respective obligations set out in Parts I and III (as appropriate) of the Third Schedule to this Deed

11. THE Owner and the Education Authority hereby covenant to observe and perform their respective obligations set out in Part II of the Third Schedule to this Deed

12. NO person shall be liable for any breach of a covenant contained in this Deed unless he or she or it holds an interest in the part of the Development Site in respect of which such breach occurs or held such an interest at the date of the breach PROVIDED THAT this provision shall not relieve the Owner or their surety from any liability under the bond referred to in Clause 6 of this Deed nor shall it entitle the Owner to the repayment of any sums deposited in accordance with Clause 8 of this Deed

13. NO person who is not a party to this Deed shall have any right under the Contracts (Rights of Third Parties) Act, 1999 ("the 1999 Act") to enforce any of its terms but for the avoidance of doubt it is agreed that the exclusion of the application of the 1999 Act shall not prevent all or any

future successors in title to any of the parties to this Deed from being able to benefit from or enforce any of the obligations in this Deed PROVIDED THAT this provision shall not prevent any group, association or other body that has contracted or otherwise agreed with the Association to maintain, repair or improve the Open Space from enforcing the obligation on the part of the Association hereinafter contained to apply or make available the income from that part of the Amenity Contribution that is to be invested for the purposes of providing monies towards the cost of maintaining, repairing or improving the Open Space as hereinafter set out

14. THE parties to this Deed hereby agree for themselves and their successors that they shall attempt in good faith and prior to invoking clause 15 of this Deed to resolve any dispute, question or claim arising out of or relating to this Deed promptly through negotiations between senior executives or officers of the parties to this Deed or their successors who have authority to settle the same

15. THE parties to this Deed hereby agree for themselves and their successors that in default of resolution of any dispute, claim or question in accordance with clause 14 of this Deed within three months of the same arising any dispute, claim or question arising out of or relating to this Deed shall be referred for determination in accordance with the following provisions: -

- (i) where such dispute relates to the construction of this Deed it shall be referred to a solicitor or barrister agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Law Society; and
- (ii) where such dispute relates to engineering, construction or highway works it shall be referred to a Chartered Civil Engineer agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Institution of Civil Engineers; and
- (iii) where such dispute relates to the valuation of property it shall be referred to a Chartered Surveyor agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Royal Institution of Chartered Surveyors.
- (iv) in any reference to an independent person under this clause such person shall, unless the parties otherwise agree, act as expert and not as arbitrator;

- (v) each party shall be responsible for payment of their own costs in connection with such dispute or resolution
16. IT is hereby agreed and declared as follows:-
- (i) this Deed shall be registered by the Council in the Register of Local Land Charges that it maintains;
 - (ii) before the inspection of the Open Space by the Council in accordance with Part I of the Third Schedule to this Deed the Council may deduct from that part of the Amenity Contribution that it has received the sum of £250 (on which no VAT is payable) towards the Council's costs of inspecting and approving the Improvements (as defined in the Third Schedule) PROVIDED THAT if the actual costs incurred by the Council in inspecting and approving the Improvements exceed this sum then the Council shall be entitled to deduct from the Amenity Contribution the actual costs of inspecting and approving the Improvements on a time spent basis at the rate of £30 per hour adjusted by the Percentage as defined in Part II of the Third Schedule to this Deed;
 - (iii) that the Owner will pay the Education Authority's reasonable legal costs for the preparation and completion of this Deed;
 - (iv) if any provision of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality or enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected;
 - (v) for the purposes of interpreting this Deed words importing one gender include all other genders, words importing the singular include the plural and vice versa, reference to a person includes a reference to a company, authority, board, department or other body, and where any party at any time comprises two or more persons the obligations of that party are to be joint and several obligations of those persons;
 - (vi) references in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending, consolidating or replacing them respectively from time to time and for the time being in force;
 - (vii) save where otherwise herein expressly provided this Deed shall confer no benefit upon any person not a party to it

17. THE expressions "the Council", "the Owner", "the Education Authority" and "the Association" shall include their respective successors in title and assigns

IN WITNESS whereof the Parties hereto have executed this Deed the day and year first before written

FIRST SCHEDULE
(Description of the Development Site)

ALL THAT piece or parcel of land situate at North Roskear, Camborne, Cornwall TOGETHER with the building or buildings erected or to be erected thereon or on some part or parts thereof and which is shown for the purpose of identification only part edged red, part edged blue and part edged green on the Plan

SECOND SCHEDULE
(Details of the Development and the Application)

<u>Application No.</u>	<u>Date</u>	<u>Particulars of the Development</u>
PA04/01490/F and the plans specifications and particulars (if any) accompanying it	Registered as valid on 13 th January, 2005	Residential development

THIRD SCHEDULE
(Stipulations and Provisions)

Part I – The Amenity Contribution provisions

1. Within two months of the completion of this Deed the Association shall submit to the Council a scheme detailing the Improvements for approval by the Council (such approval not to be unreasonably withheld or delayed) ("the Scheme") together with the Association's detailed calculations of the estimated cost of carrying out the Improvements and the cost of the ongoing maintenance of the Open Space following the completion of the Improvements and within 14 days of receiving written confirmation from the Council that the Scheme has been submitted for approval the Owner will deposit TEN THOUSAND POUNDS (£10,000) of the Amenity Contribution with the Council to meet the costs referred to in Clause 16(ii) of this Deed and the costs incurred by or on behalf of the Association in complying with its obligations contained in this paragraph and the following paragraph of this Part I of this Third Schedule.

2. The Association and the Council (subject to the other provisions of this Deed) shall agree

the amount of the Amenity Contribution that is to be used towards the cost of carrying out the Improvements including the cost of designing the Scheme ("the Capital Sum") and the amount of the Amenity Contribution that is to be paid to the Association to be invested for the purposes of providing income that can be used towards the cost of maintaining the Open Space in perpetuity ("the Maintenance Sum") and in default of agreement the Capital Sum and the Maintenance Sum shall be reasonably determined by the Council by reference to the Scheme, the rates used by the Council to calculate the cost of providing and maintaining amenity facilities similar to that detailed in the Scheme and the maintenance costs incurred by the Association prior to the submission and approval of the Scheme which maintenance costs are to be confirmed in writing to the Council by the Association when requested to do so and upon the Capital Sum being agreed or determined in accordance with the foregoing provisions the Council will release to the Association such part of the Capital Sum as is attributable to the cost of preparing and agreeing the Scheme and the Capital Sum and the Maintenance Sum.

3. Within a period of six months from the substantial completion of forty-two of the dwellings comprising the Development the Association shall carry out the works to the Open Space detailed in the Scheme and in accordance with the Specification set out in the Sixth Schedule hereto and any amendments thereto which may be agreed in writing by the Council ("the Improvements") and where there is conflict between the Scheme and the Specification set out in the Sixth Schedule to this Deed the Scheme shall prevail and all to the satisfaction of the Council's Head of Engineering ("the Engineer").

4. The Association shall provide to the Council and to the satisfaction of the Engineer access to the Open Space for the purpose of inspecting the Improvements at all reasonable times.

5. Upon completion of the Improvements the Association shall request the Engineer in writing (addressed to the Head of Engineering, Kerrier District Council, Dolcoath Avenue, Camborne, TR14 8SX reference NOD/RAS) to inspect the Improvements and the Engineer shall carry out such inspection as soon as reasonably practicable following the receipt of such request and if necessary the Engineer shall produce a list of defects to be rectified within a reasonable period determined by the Engineer and once such defects have been rectified the Engineer shall again be requested in writing as above to inspect the Improvements PROVIDED THAT such

inspections shall only be for the purpose of the Engineer satisfying himself that payment of the Capital Sum and the Maintenance Sum should be made to the Association and neither the Engineer nor the Council will owe the Association or any other person or body a duty of care in relation to the inspection of the Improvements or the standard of materials or workmanship.

6. Upon the Engineer confirming to the Owner in writing that the Engineer is satisfied that the improvements have been carried out in accordance with or largely in accordance with the Scheme the Owner shall pay the balance of the Amenity Contribution to the Council or release the Amenity Contribution to the Council if a deposit has been made relating to the Amenity Contribution in accordance with Clause 8 of this Deed.

7. Subject to the following provisions of this Part of this Schedule upon payment of the Amenity Contribution to the Council the Council shall on receipt of written confirmation from the Association of the cost of carrying out the scheme pay the Capital Sum and the Maintenance Sum to the Association (less any sums due to or to be retained by the Council in accordance with the other provisions of this Deed) up to the amount of the Amenity Contribution PROVIDED THAT if the actual cost of carrying out the Scheme is less than the Capital Sum then the lesser amount shall be paid and any part of the Amenity Contribution remaining unspent shall be used by the Council in accordance with paragraph 11 of this Part of this Third Schedule.

8. Following completion of the Improvements and the payment of the Capital Sum and the Maintenance Sum to the Association the Association will maintain and repair or will procure the maintenance and repair of the Open Space and all features and equipment installed on the Open Space in accordance with the Scheme and for the avoidance of doubt all materials, equipment and other items upon the Open Space will be the property of the Association notwithstanding that some or all of the cost of the same will have been funded from the Amenity Contribution.

9. The Association will invest the Maintenance Sum in order that it may generate an income that can be used towards the maintenance of the Open Space and if the Association enters into any contractual or other arrangement with some other group, association or other body to maintain, repair or improve the Open Space the Association will pay such income annually (or on an appropriate proportionate basis) to such group, association or other body for the purposes of meeting the costs of maintaining, repairing or improving the Open Space.

10. If the Association does not comply with either paragraph 1, paragraph 3 or paragraph 5 of this Part of this Third Schedule or if the Association gives notice to the Council in accordance with paragraph 12.2 of this Part of this Third Schedule then the Owner shall within 28 days of receiving a written request from the Council pay the Amenity Contribution to the Council following which the Amenity Contribution shall become the property of the Council PROVIDED THAT the payment to the Council of the Amenity Contribution shall not be required prior to the substantial completion of the forty-second dwelling within the Development.

11. The Council may apply such part of the Amenity Contribution that it receives as the Council shall in its absolute discretion reasonably determine towards the cost of providing, improving or maintaining the Amenity Facilities.

12.1. There shall be no obligation on the part of the Council to make any payment to the Association if the Council is unable to secure payment of the Amenity Contribution from either the Owner or the Owner's surety and there will be no obligation on the part of the Council to commit any resources to or any expenditure on enforcing the provisions of any bond provided in accordance with this Deed PROVIDED THAT if the Council does incur any expenditure in securing payment of the Amenity Contribution it shall be entitled to retain from the Amenity Contribution its reasonable costs in so doing.

12.2 Without prejudice to paragraph 10 of this Part of this Third Schedule the Association may at any time prior to the payment to it of the Amenity Contribution give written notice to the Council that the Association does not wish to proceed with the Improvements and that the Association does not wish to have the Amenity Contribution or any part of it paid to the Association which notice shall be irrevocable.

Part II – The Education Contribution provisions

13. Definitions

13.1 "The Education Contribution" means the sum of THIRTEEN THOUSAND TWO HUNDRED POUNDS (£13,200.00) increased by the Percentage as defined in Paragraph 13.3 of this Schedule.

13.2 "The Education Facility" means the construction or extension of education infrastructure facilities at a location or locations to be reasonably determined by the Education Authority

within the catchment area of the Development Site.

13.3 **"The Percentage"** means the increase in the percentage rise in the Index of Retail Prices when the last published index figure before the date of payment is compared with the last published index figure before the date of this Agreement but if the basis for calculation of the Index of Retail Prices has changed and any method of calculation between the new and the old figures is officially published that method shall be used for the purposes of comparison under this provision.

13.4 **"The Accountable Dwellings"** for the purposes of this Schedule means the twelve dwellings in the Development that have two bedrooms.

14. **The Obligations of the Owner**

14.1 The Owner shall inform the Education Authority by notice in writing addressed to County Legal Services, County Hall, Truro, Cornwall, TR1 3AY (reference JYB/0137X421/96) when a material operation is carried out on the Development Site and shall inform the Education Authority by notice in writing addressed as aforesaid when seventy-five per centum of the Accountable Dwellings have been occupied.

14.2 The Owner shall pay the Education Contribution increased by the Percentage to the Education Authority on completion of seventy-five per centum of the Accountable Dwellings.

15. **The Obligations of the Education Authority**

15.1 The Education Contribution shall be released to the Education Authority once the Education Authority has let the contract or contracts for the Education Facility notwithstanding that such contract may have been let before the date of this Agreement.

15.2 If a contract for the construction of the Education Facility has not been let by the Education Authority within 5 years from the date of receipt of the whole of the Education Contribution then the Education Authority shall repay the Education Contribution at that date to the Owner together with such interest which may have accrued thereon at a rate reasonably determined by the Education Authority.

15.3 The Education Authority shall notify the Owner by notice in writing as aforesaid when it has let the contract or contracts for the Education Facility.

15.4 The Education Authority shall apply the Education Contribution when received by the

Education Authority to the provision of the Education Facility and for no other purpose whatsoever.

Part III – The affordable housing provisions

16. Definitions

- 16.1 "Affordable Dwelling" means the fourteen dwellings referred to in the Application which are intended to be affordable housing and which form part of the Development Site and includes houses, bungalows, flats, maisonettes, any other unit of residential accommodation, any land forming the curtilage of such unit of accommodation and any garage or other structure which may be attached to or sold with such unit of accommodation and for the avoidance of doubt includes the land upon which the dwellings referred to in the Application and which are to be affordable housing are to be constructed.
- 16.2 "the Kerrier District" means the administrative area of the Council including any later variation to such area by any alteration of the administrative boundaries of the Council.
- 16.3 "Strong Local Connections" means a person's connections with the Kerrier District evidenced by either birth, education whilst under the age of eighteen years and resident in the Kerrier District, current employment or previous period of residence of at least five years duration which is in the reasonable opinion of the Council sufficiently significant to make such person a Qualifying Person.
- 16.4 "Housing Need" means being homeless or threatened with homelessness or living in accommodation which is insecure or unsuitable and in the reasonable determination of the Council unable to purchase or otherwise secure reasonably suitable accommodation in the normal open market for property in the Kerrier District taking into account the person's income and capital and such other matters as the Council shall consider to be relevant to such determination. Accommodation may be unsuitable on the grounds of cost, overcrowding, unfitness or lack of basic amenities or because of a person's infirmity, physical disability, mental disability or specific social or care needs.
- 16.5 "Qualifying Person" means a person who is considered in the reasonable opinion of the Council to be in Housing Need and who has not either solely or with another held a lease in excess of twenty-one years of or owned the freehold of a residential dwelling; and either

- (i) for the period of five years prior to either the offer of a tenancy or their purchase of an Affordable Dwelling (as appropriate) has been continuously resident in the Kerrier District; or
- (ii) has Strong Local Connections with the Kerrier District.

16.6 **"Family Member"** means a member of the family of a Qualifying Person who is entitled by virtue of the terms of this Deed to occupy a Dwelling and is either:

- (i) the spouse of the Qualifying Person, or that person and the Qualifying Person live together as husband and wife; or
- (ii) the Qualifying Person's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece and is dependent on the Qualifying Person

and for the purposes of this definition a relationship by marriage shall be treated as a relationship by blood, a relationship of the half-blood shall be treated as a relationship of the whole-blood, the stepchild of a Qualifying Person shall be treated as their child and an illegitimate child shall be treated as the legitimate child of their mother and reputed father.

17. Sales or lettings by the Owner

17.1 Subject to the provisions of paragraphs 20.1, 20.3 and 20.5 of this Schedule the Owner shall not dispose of any Affordable Dwelling whether by the sale or gift of the freehold or by letting (whether by the grant of a lease or otherwise) or otherwise permit a change in the occupation of an Affordable Dwelling other than to a Qualifying Person, except as is hereinafter provided, or to a person who is currently occupying an Affordable Dwelling in accordance with the terms of this Deed.

17.2 Subject to the provisions of paragraphs 20.1, 20.3 and 20.5 of this Schedule there shall be no assignment of any lease of any Affordable Dwelling nor shall there be any transfer of the equitable interest in any Affordable Dwelling other than to a Qualifying Person, except as is hereinafter provided, or to a person who is currently occupying an Affordable Dwelling in accordance with the terms of this Deed.

18. Sales or lettings by Mortgagees

18.1 No mortgagee of any Affordable Dwelling or any receiver appointed by any mortgagee of any Affordable Dwelling shall sell the freehold of or let (whether by way of lease or otherwise) any

Affordable Dwelling other than to a person who:

- (i) has been or will have been resident in the Kerrier District for the period of five years preceding the sale of the freehold or letting to them; and
- (ii) has Strong Local Connections with the Kerrier District.

18.2 For the avoidance of doubt the provisions of this Deed shall bind all successors of any mortgagee of any Affordable Dwelling and no Affordable Dwelling shall be permanently released from the provisions of this Deed by virtue of any sale, lease or tenancy of any Affordable Dwelling by a mortgagee exercising the rights set out in paragraph 18.1 of this Schedule.

19. The Owner's Management Responsibilities

19.1 To provide at its own cost such information and documentation as the Council shall reasonably require evidencing that the occupiers of any Affordable Dwelling comply with the requirements of this Deed.

19.2 The obligations imposed on the Owner in paragraph 19.1 of this Schedule shall not apply to any Affordable Dwelling in respect of which the Owner has sold the freehold or in respect of which a lease has been granted which relieves the Owner of such obligations by making the lessee responsible for them.

19.3 To confirm in writing (with accompanying plans if necessary) not later than the completion of the Development which of the dwellings within the Development are Affordable Dwellings.

20. Provisos

20.1 Nothing in this Deed shall interfere with or prevent the lawful operation of any statutory right (whether under the Housing Act, 1996 or otherwise) of any person who is a Qualifying Person to acquire the Affordable Dwelling which they occupy provided such occupation is in accordance with this Deed.

20.2 Nothing in this Deed shall prevent the occupation of an Affordable Dwelling by a Family Member of a person who is entitled by virtue of the terms of this Deed to occupy such Affordable Dwelling.

20.3 Nothing in this Deed shall prevent the continued occupation of an Affordable Dwelling by a person who at the time they commenced occupation of that Affordable Dwelling was a Family

Member of a person who was entitled by virtue of the terms of this Deed to occupy such Affordable Dwelling.

20.4 Subject to the provisions of paragraph 20.5 of this Schedule nothing contained in this Deed shall prevent the sale of the freehold or the grant of a lease of any Affordable Dwelling to a registered social landlord (within the meaning given in the Housing Act, 1996) or to other organisations who can be considered to be providers of affordable housing within PPG3: Housing (2000) and DETR Circular 06/98: Planning and Affordable Housing subject to the terms of this Deed.

20.5 Before the sale or other transfer of the freehold or the letting (whether by the grant of a lease or otherwise) or the assignment of any lease of any Affordable Dwelling or any other change in occupation of any Affordable Dwelling the written consent of the Council to such sale transfer letting assignment or other change in occupation of the Affordable Dwelling shall be obtained which consent shall (i) not be unreasonably withheld or delayed; (ii) not be given if the Council has reasonably determined that the proposed donee purchaser tenant assignee or occupant is not a person who is entitled by virtue of the terms of this Deed to own or occupy an Affordable Dwelling or that the other provisions of this Deed have not been complied with in respect of the Affordable Dwelling in question; and (iii) in any case where the Council has been asked to grant consents to the disposal or occupation of any Affordable Dwelling or Affordable Dwellings and there are more Qualifying Persons than there are Affordable Dwellings available for disposal or occupation (for which purpose couples or family units wishing to reside together in the same Affordable Dwelling shall be treated as one prospective purchaser or tenant as the case may be) then the Council shall not issue more consents than there are Affordable Dwellings available for disposal or occupation and the Council shall issue consents only to those Qualifying Persons who in the reasonable determination of the Council are likely to be the most appropriate occupants of the Affordable Dwelling or Affordable Dwellings and in making such determination the Council shall have regard to, inter alia, the information provided in support of the applications for consent, the accommodation provided by the Affordable Dwelling or Affordable Dwellings (including the number of bedrooms) and the number of proposed

occupants of the Affordable Dwelling or Affordable Dwellings PROVIDED THAT this provision shall not prevent the Council from issuing more consents than there are Affordable Dwellings available if the Council is not in its reasonable determination able to differentiate between applicants for consent as to who might be the most appropriate occupant of an Affordable Dwelling.

21. Restriction on Further Development

21.1 Other than the Development there shall be no further development (as defined in the Act) on the Affordable Dwellings without the prior written consent of the Council.

21.2 For the avoidance of doubt the restriction on development in paragraph 21.1 of this Schedule shall extend to permitted development as defined in the Act and the Town and Country Planning (General Permitted Development) Order, 1995.

22. Phasing of the Development

22.1 For the purposes of this Part of this Third Schedule 'Open Market Dwellings' means those dwellings comprising part of the Development that do not come within the definition of Affordable Dwelling in paragraph 16.1 of this Third Schedule.

22.2 Of the first thirty dwellings completed ready for occupation not more than twenty-two shall be Open Market Dwellings and not less than eight shall be Affordable Dwellings and of the next twenty dwellings completed ready for occupation not more than fifteen shall be Open Market Dwellings and not less than five shall be Affordable Dwellings and the Owner shall complete ready for occupation all of the Affordable Dwellings prior to the occupation of the last of the Open Market Dwellings.

FOURTH SCHEDULE
(The Bond)

BY THIS BOND DATED

2005

We

(hereinafter called "the Owner") and

(hereinafter called "the Surety") are held and firmly

bound unto KERRIER DISTRICT COUNCIL of Council Offices, Dolcoath Avenue, Camborne, Cornwall (hereinafter called "the Council") and THE CORNWALL COUNTY COUNCIL of County

Hall, Truro, Cornwall, TR1 3AY ("the Education Authority") in the initial sum of SIXTY-THREE THOUSAND SEVEN HUNDRED AND FORTY-FIVE POUNDS (£63,745.00) as may be varied by reference to the Retail Prices Index as calculated and defined in accordance with Clause 7 hereof ("the Bonded Sum") for the payment of which sum the Owner binds itself and its successors and assigns and the Surety binds itself and its successors and assigns jointly and severally by these presents

WHEREAS

1. The Owner proposes to develop land at North Roskear, Camborne, Cornwall ("the Development")
2. The Owner is desirous of commencing the Development and in pursuance of a Planning Obligation ("the Obligation") dated _____ 2005 and made between the Council (1) the Owner (2) the Education Authority (3) and Penwith Housing Association (4) before the reserved matters relating to the Development are approved a Bond from a Bank or Insurance Company approved by the Council (such approval not to be unreasonably withheld or delayed) must be provided in the terms hereof to secure the performance of the covenants on the part of the Owner set out in Parts I and II of the Third Schedule of the Obligation ("the Covenants")
3. The Bonded Sum comprises: -
 - (i) the sum of FIFTY THOUSAND FIVE HUNDRED AND FORTY-FIVE POUNDS (£60,545.00) relating to the payment of the balance of the amenity contribution as required in Paragraph 6 of Part I of the Third Schedule to the Obligation ("the Amenity Contribution");
 - (ii) the sum of THIRTEEN THOUSAND TWO HUNDRED POUNDS (£13,200.00) relating to the Education Contribution to be paid to the Education Authority in accordance with Paragraph 14 of Part II of the Third Schedule to the Obligation ("the Education Contribution")

NOW THE CONDITIONS of the above-written Bond are that:-

1. If the Owner shall fully comply with the Covenants then this Bond shall be null and void but otherwise shall be and remain in full force and effect

2. If the Owner fails to comply with the covenant relating to the payment of the Amenity Contribution as required by Paragraph 6 of Part I of the Third Schedule to the Obligation the Surety on receipt of a written demand in accordance with Clause 6 hereof shall pay to the Council the Amenity Contribution as adjusted in accordance with Clause 7 hereof
3. If the Owner fails to comply with the covenant relating to the payment of the Education Contribution as required by Paragraph 14 of Part II of the Third Schedule to the Obligation the Surety on receipt of a written demand in accordance with Clause 6 hereof shall pay to the Education Authority the Education Contribution as adjusted in accordance with Clause 7 hereof
4. If the Owner complies with the covenant relating to the payment of the Amenity Contribution as required by Paragraph 6 of Part I of the Third Schedule to the Obligation the Council shall on being requested in writing so to do by the Owner or the Surety and within fourteen days of receipt of such request release the Owner and the Surety from their obligations under this Bond in respect of the Amenity Contribution
5. If the Owner complies with the covenant relating to the payment of the Education Contribution as required by Paragraph 14 of Part II of the Third Schedule to the Obligation the Education Authority shall on being requested in writing so to do by the Owner or the Surety and within fourteen days of receipt of such request release the Owner and the Surety from their obligations under this Bond in respect of the Education Contribution
6. Any demand from the Council or the Education Authority for payment under this Bond shall be in writing and served on the Surety by registered post at its registered office or such other address for service as the Surety shall notify to the Council and the Education Authority in writing and shall: -
 - (1) specify the nature of the breach of the Covenant or Covenants complained of;
 - (2) confirm that the Council or the Education Authority as appropriate has notified the Owner in writing that it is in breach;
 - (3) specify the amount payable including any adjustment in accordance with Clause 7 hereof; and
 - (4) specify whether the payment demanded relates to the Amenity Contribution or the

time provided in Paragraph 3 of Part I of the Third Schedule to the Obligation for the carrying out of the improvements to the Open Space being six months from the substantial completion of forty-two of the dwellings comprising the Development provided that the Surety shall not be released from its obligation to pay to the Council or the Education Authority any sum or sums demanded where it has received the demand or demands prior to the determination of this Bond

FIFTH SCHEDULE
(Clause 8 Terms and Conditions)

1. If the Owner fails to comply with the Covenant relating to the payment of the Amenity Contribution the Council shall be at liberty to apply the sum paid to it in accordance with Clause 8 of this Deed in remedying the Owner's failure to comply with such covenant and such sum shall be forfeited to the Council to the extent reasonably determined by the Council.
2. If the Owner fails to comply with the Covenants relating to the Education Contribution the Education Authority shall be at liberty to apply the sum paid to it in accordance with Clause 8 of this Deed in remedying the Owner's failure to comply with the Covenant relating to the Education Contribution and such sum shall be forfeited to the Education Authority.
3. The Council and the Education Authority as appropriate shall notify the Owner in writing that the provisions of this Schedule are being invoked but there shall be no obligation on the Council or the Education Authority to give the Owner such notification prior to invoking the provisions of this Schedule PROVIDED THAT the Council or the Education Authority as appropriate have reasonably determined that the Owner has failed to comply with the relevant Covenants.

SIXTH SCHEDULE
(The Specification)

LANDSCAPING

All landscaping works shall be undertaken in accordance with BS 4428 Recommendations for General Landscape Operations unless otherwise stated. All trees and plants shall conform to BS 3936 Nursery Stock.

TOPSOIL

Topsoil shall fully accord with BS3882: 1994 Grades of Topsoil, BS4428: 1969(1979) AMD938 Recommendations for Ground Works, SPON'S Landscape Handbook (1997), D20 Excavation,

Filling and Groundwork - General Guidance and must comply with the latest government guidelines regarding contamination. Topsoil shall be a good quality loam with a low stone content, free of stones exceeding 37mm diameter, pests, diseases, noxious weeds, roots of perennial weeds, subsoil and other extraneous matter. It shall be capable of being broken down to a fine tilth. The pH value shall be between 6.5 and 7.5. The topsoil shall be fertile with good humus and fibre content, be of medium texture and shall contain not less than 4% organic material.

Where topsoil is imported it shall be from a source approved in writing by the Council and shall have been excavated from the top 150mm of ground. Details of the source of supply shall be provided for inspection, prior to bulk deliveries being commenced, if required by the Engineer.

The topsoil must be free of all Scheduled Weeds as defined in the Weeds Act 1959 and the Wildlife and Countryside Act 1981. Specifically, any Japanese Knotweed (*Fallopia japonica* *Houtt. Renes Decraene*) found to be in the topsoil must be eradicated prior to the Open Spaces being transferred to the Council.

Topsoil shall be spread evenly on subsoil formation to specified levels in layers not exceeding 150mm to the following depths and lightly consolidated:

- (1) Banks: 100mm thick below finished levels
- (2) Grass Areas: 150mm minimum thick below finished levels
- (3) Open Spaces and Sports Fields: 150mm minimum thick below finished levels
- (4) Shrub Areas: 450mm minimum thick below finished levels
- (5) Tree Planting Pits in grass and areas planted with trees: 600mm minimum thick below finished levels

TREES

All trees shall be of varieties agreed in writing with the Engineer, and shall be well rooted, properly planted, staked and tied. Trees planted into grass seeded areas shall be so sited that a 2250mm wide mowing machine can pass all round without striking the trees, buildings, lamp posts or other objects. Trees planted in grass must be also be provided with strimmer guards.

EXISTING TREES – PROTECTION

Where there are existing trees to be retained it is required that effective protective fencing be provided for the duration of the proposed works to ensure that the trees are maintained free from

injury or damage in accordance with BS 5837. This may be subject to inspection by the Engineer or his duly authorised Officer at the Engineer's discretion and access will be given to facilitate this. Plans detailing this protection should also be submitted to the Engineer for approval. It is recommended that a tree survey report be commissioned from the County Forester detailing the condition of and recommendations for the management of such trees. Soil levels must not be changed within the root spread of existing trees and their vicinity without the express written approval of the County Forester. This is because changing soil levels, including raising soil levels, around trees can adversely affect trees and has been shown to be fatal for some species e.g. Fagus sp. All necessary precautions and care must be taken.

SHRUB PLANTING AND LIVE HEDGES

Shrub beds shall have a depth of 450mm below finished levels of good topsoil, cleared of all perennial weeds before shrubs are planted. Where new soil is brought onto site the existing ground shall be broken to allow for drainage prior to soiling. Layout details of the shrub beds and plant species or varieties are to be submitted to the Engineer in writing for written approval. The shrubs shall be properly planted and fertilised, sited in accordance with approved detailed plans, well grown and true to type and varieties specified. The shrub beds shall be kept regularly hoed and clear of weeds for at least 12 months, including making good and/or replacing of plant failures from whatever cause. Full details of any mulches, stakes, mats, etc. shall be supplied to the Engineer for approval.

GRASSED AREAS

VERGES

The formation for verges shall be shaped and graded, gradients not to exceed 1 in 4. The verges shall be covered with good quality topsoil in accordance with this specification to an average depth of 100mm and with a minimum depth of 75mm thoroughly cleared of all stones and brought to a fine tilth sown with grass seed certified to be to the following mixture: -

10% Common Bent	5% Smooth stalked meadow grass
25% Chewings Fescue	10% S 23 Ryegrass
10% Hard Fescue	20% Short seeded perennial Ryegrass
20% Creeping Red Fescue	

This seed is to be sown evenly at not less than 35 grams/metre square. The grass to be cut and maintained for at least 12 months after germination including making good any settlement and/or re-seeding from whatever cause.

All grass areas shall be finished to even falls, ground level to 15mm above kerbs, footpath edgings, manhole covers, etc.

Against all buildings and fences, concrete strips at least 150mm wide, 15mm below ground level are to be provided to facilitate grass cutting. Grass widths to be not less than 750mm wide at any point and shall be finished square.

OPEN SPACES

Open spaces shall be laid out in accordance with the levels shown on the approved plans and graded to even falls not exceeding 1:15 with banks not exceeding 1:4 and if such work would reduce the thickness of topsoil to 100mm or less, the site shall first be stripped of topsoil, the subsoil regraded, drained as necessary to satisfy the Engineer and topsoil respread to a minimum of 150mm thickness. Chemical and mechanical analysis of the soil shall be required to ensure that it is suitable for its purpose and to establish the treatment necessary as appropriate. After any such treatment, a fine tilth shall be prepared, fertilised as required and sown with grass seed as for verges.

PLAY AREAS

The play areas shall follow the LAP, LEAP and NEAP guidance set out by the National Playing Field Association. All equipped play areas must be fenced off from adjacent properties rear or side boundaries with 1.8m high close boarded fencing and enclosed along its public boundaries with a visually permeable dog proof fence such as railing or palisade fence 1.2 m high with two dog-proof points of access (e.g. with self-closing gates). The close-boarded fencing shall where possible be conveyed to the adjacent property owner.

Play equipment shall comply with the latest European Standards BS EN 1176. Details to be supplied to Engineer for approval. All equipment with a critical fall height greater than 600mm must be provided with impact absorbing surfacing and safety surfacing should comply with BS EN 1177. All equipment is to comply with current European standards and be assessed, approved and certified as safe for continued use by a competent play ground installer. Certificate to be supplied to the Engineer.

BOUNDARIES

Details of all boundary structures shall be submitted to the Engineer for approval. Where developments provide an open plan layout the boundary line between private gardens and public open spaces or verges must be defined at ground level by using a concrete edge or similar approved method of demarcation set 15mm below ground level to facilitate grass cutting.

SIGNED AS A DEED BY
~~THE COMMON SEAL~~ of AFFORDABLE)
HOMES OF CORNWALL (2004))
~~LIMITED~~ was hereunto affixed in the)
~~presence of-~~ acting by:)

Director

Director/Secretary

THE COMMON SEAL of THE)
CORNWALL COUNTY COUNCIL was)
hereunto affixed in the presence of:-)

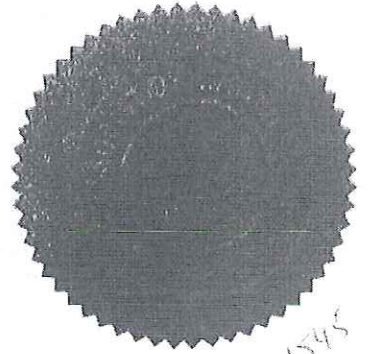
Authorised Officer

R. WILLIAMS
HEAD OF LEGAL SERVICES

THE COMMON SEAL of PENWITH)
HOUSING ASSOCIATION was)
hereunto affixed in the presence of:-)

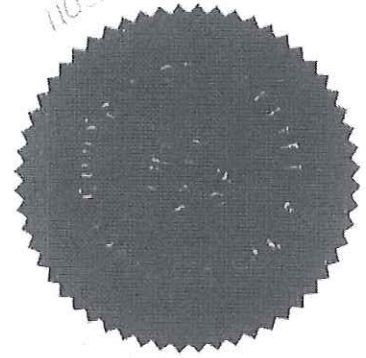
Director

Director/Secretary



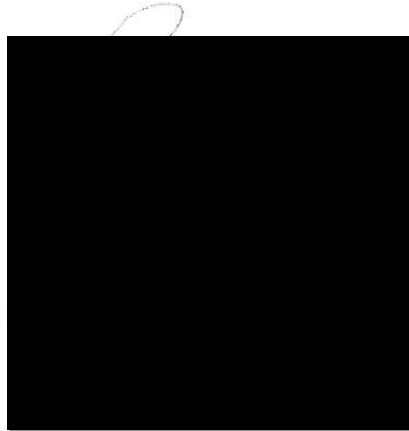
THE COMMON SEAL of KERRIER)
DISTRICT COUNCIL was hereunto)
affixed in the presence of: -)

11033



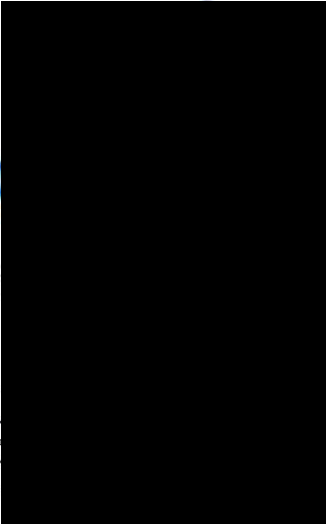
Chairman

Authorised Officer



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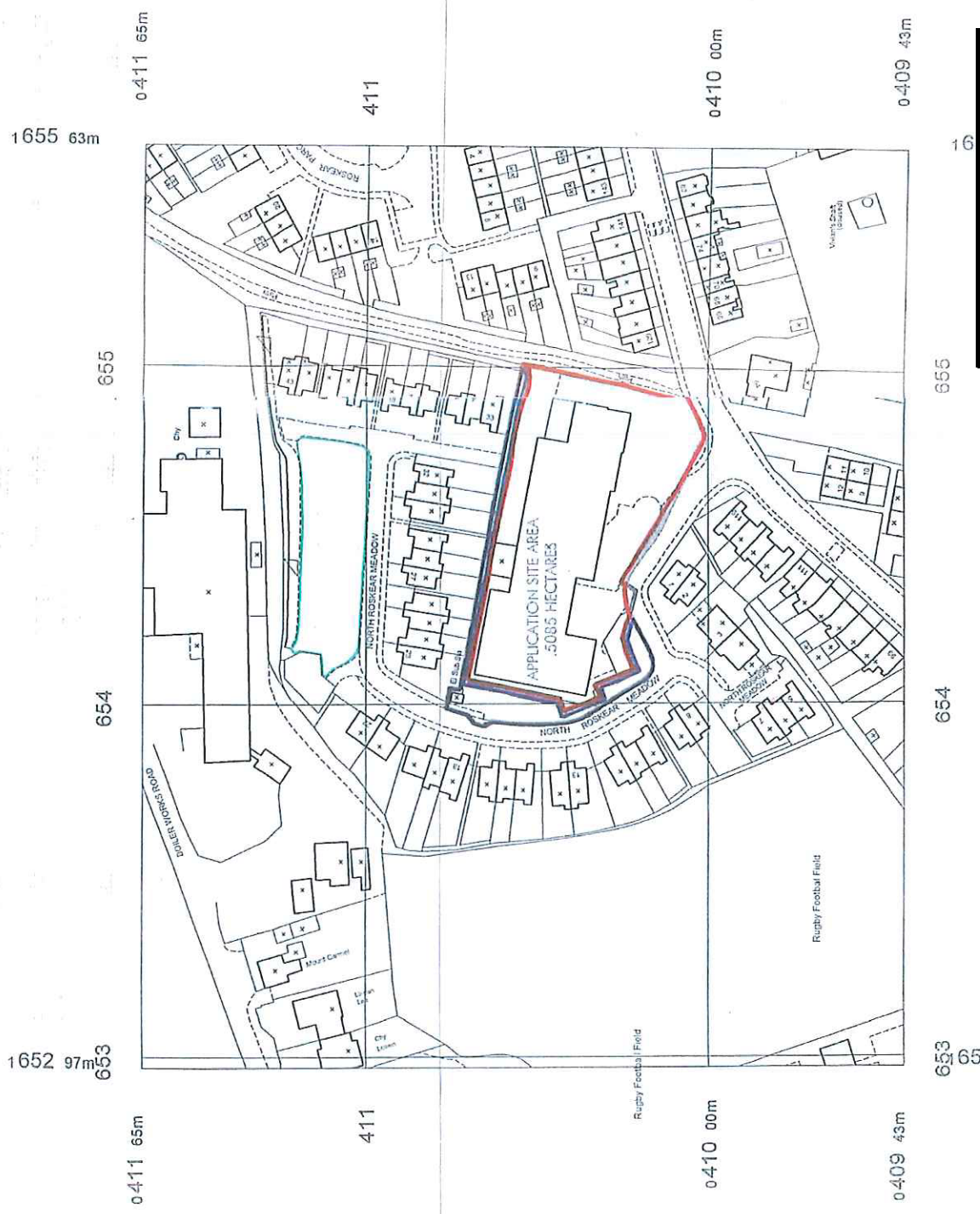


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ECONOMICAL ROAD, CORNWALL, TRURO, TR2 4AG
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PROPOSED RESIDENTIAL DEVELOPMENT
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PLANNING 993-00



R. WILLIAMS
HEAD OF LEGAL SERVICES