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LIONCOURT HOMES LIMITED (3)

STAPLEFORD ASSOCIATES LLP (4)

CENTRAL AND COUNTRY DEVELOPMENTS LIMITED (5)

LIONCOURT HOMES (DEVELOPMENT NO. 1) LIMITED (6)

BANK OF SCOTLAND (7)

IN FAVOUR OF

EAST STAFFORDSHIRE BOROUGH COUNCIL (1)

STAFFORDSHIRE COUNTY COUNCIL (2)

**SECTION 106 UNILATERAL UNDERTAKING
TOWN AND COUNTRY PLANNING ACT 1990
(as amended)**

RELATING TO:

**LAND AT TATENHILL LANE, BRANSTON, BURTON UPON TRENT,
IN THE COUNTY OF STAFFORDSHIRE**

File Ref.

Planning Application Ref.

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THIS DEED is made the _____ day of _____ 2017

BY

- (1) **PETER THOMAS MELLOR** of The Leasowes, 31 Cherry Hill Road, Barnt Green, Birmingham, B45 8LB (“**the First Owner**”).
- (2) **NICHOLAS RODERICK LAIGHT** of Waterstone, Yew Tree Farm, Brookhouse Road, Blackwell, Bromsgrove, Worcestershire, B60 1QP (“**the Second Owner**”)
- (3) **LIONCOURT HOMES LIMITED** whose registered office is situate at 3 Apex Park, Wainwright Road, Warndon, Worcester WR4 9FN (Company Registration Number 05733989) (“**Lioncourt**”)
- (4) **STAPLEFORD ASSOCIATES LLP** of Unit 19, Empire Industrial Park, Empire Close, Aldridge, Walsall, West Midlands WS9 8UQ (Company Registration Number OC345232) (“**the First Chargee**”).
- (5) **CENTRAL AND COUNTRY DEVELOPMENTS LIMITED** whose registered office is situate at 16 Heritage Park, Hayes Way, Cannock, Staffordshire, WS11 7LT (Company Registration Number 04373901) (“**the Third Chargee**”)
- (6) **LIONCOURT HOMES (DEVELOPMENT NO. 1) LIMITED** whose registered office is situate at 3 Apex Park, Wainwright Road, Warndon, Worcester WR4 9FN (Company Registration Number 05881479) (“**the Fourth Chargee**”)
- (7) **BANK OF SCOTLAND PLC** whose registered office is situate at The Mound, Edinburgh. EH1 1YZ (Company Registration Number SC327000) (“**the Second Chargee**”)

IN FAVOUR OF

- (1) **EAST STAFFORDSHIRE BOROUGH COUNCIL** whose principal office is at The Maltsters, Wetmore Road, Burton upon Trent, Staffordshire. DE14 1LS (“**the Council**”).

- (2) **STAFFORDSHIRE COUNTY COUNCIL** whose principal office is at County Buildings, Martin Street, Stafford (“**the County**”).

1 DEFINITIONS

In this Deed (except where the context otherwise requires):

- 1.1 “**the Act**” means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).
- 1.2 “**the Application**” means the application in outline only numbered _____ dated _____ and made by the Owners and Lioncourt.
- 1.3 “**the Application Land**” means the land shown for the purposes of identification only edged red on Plan Number 1 and showing the land to be developed by way of the Application.
- 1.4 “**the Green Land**” means the land shown edged green on Plan Number 2
- 1.5 “**the Blue Land**” means the land should edged blue on Plan Number 2
- 1.6 “**the Brown Land**” means the land shown edged brown on Plan Number 2
- 1.7 “**the First Charge**” means the Legal Charge dated 3rd December 2012 made between the First Owner (1) and the First Chargee (2) by which the Green Land became charged with the repayment of certain monies to the First Chargee.
- 1.8 “**the Second Charge**” means the Legal Charge dated 21st October 2011 made between the Second Owner (1) and the Second Chargee (2) by which the Blue Land became charged with the repayment of certain monies to the Second Chargee.
- 1.9 “**the Third Charge**” means the Legal Charge dated 18th March 2014 made between the Second Owner (1) and the Second Chargee (2) by which the Brown Land became charged with the repayment of certain monies to the Second Chargee.
- 1.10 “**Commencement of the Development**” means the earliest date upon which any material operations are begun in accordance with the provisions of Section

56(4) of the Act save for the purposes of this Deed none of the following operations shall constitute a material operation:

- 1.10.1 site clearance works;
- 1.10.2 archaeological investigations;
- 1.10.3 investigations for the purpose of assessing ground conditions;
- 1.10.4 remedial work in respect of any contamination or other adverse ground conditions;
- 1.10.5 diversion and laying of services;
- 1.10.6 erection of any temporary means of enclosure;
- 1.10.7 temporary display of site notices or advertisements;

and “**Commence the Development**” shall be construed accordingly.

- 1.11 “**the County Monitoring Fee**” shall mean the sum of **Four Hundred and Thirty-Seven Pounds and Fifty Pence (£437.50)** payable to the County towards the cost of monitoring the planning obligations contained in this Deed
- 1.12 “**the Development**” means the development authorised by the Planning Permission.
- 1.13 “**Dwellings**” means all houses, maisonettes, flats, bungalows and all other varieties of accommodation which may be built or are intended to be built on the Land to be used as individual units of accommodation for independent occupation by one or more people.
- 1.14 “**the Head of Regulatory Services**” means the person the Council shall appoint as the Head of the Department responsible for Planning Services for the time being.
- 1.15 “**the Index**” means the All Items Group (item reference CHAW) of the Retail Prices Index published by H M Government Office for National Statistics provided that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties or, in default of agreement, fixed by the President for the time being of the Law Society on the application of any party) shall be used.

- 1.16 “**Index Linked**” means increased (if applicable) in proportion to movements in the Index between the date of this Deed and the date the particular payment is made.
- 1.17 “**the Land**” means the Land shown for the purposes of identification only edged red on Plan Number known as Plan Number 1.
- 1.18 “**Occupation of the Development**” means beneficial occupation of any part of the Development for any purpose other than the carrying out of the Development and “**Occupy the Development**” shall be construed accordingly.
- 1.19 “**the Owners**” shall collectively mean the First Owner and the Second Owner
- 1.20 “**Plan Number**” means the plan annexed to this Deed of that number.
- 1.21 “**Planning Permission**” means the planning permission to be granted by the Council pursuant to the Application in substantially the form of the draft annexed to this Deed.
- 1.22 “**Satisfaction of the Council**” means to the normal standards of the Council applied elsewhere within their administrative area in respect of similar matters.
- 1.23 “**Satisfaction of the County**” means to the normal standards of the County applied elsewhere within their administrative area in respect of similar matters.

2 INTERPRETATION

- 2.1 References to the masculine, feminine and neuter genders shall include the other genders.
- 2.2 References to the singular include the plural and vice versa unless the contrary intention is expressed.
- 2.3 References to natural persons are to include corporations and vice versa.

- 2.4 Headings in this Deed are for reference purposes only and shall not be taken into account in its construction or interpretation.
- 2.5 The expressions “the First Owner”, “the Second Owner”, “the Owners”, “Lioncourt”, “the First Chargee”, “the Second Chargee”, “the Third Chargee”, “the Fourth Chargee” “the County” and “the Council” shall include their respective successors in title and assigns.
- 2.6 A reference to a Clause, Paragraph or Schedule is (unless the context otherwise requires) a reference to a Clause, Paragraph or Schedule of this Deed.
- 2.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.
- 2.8 Where in this Deed a party includes more than one person any obligations of that party shall be joint and several.
- 2.9 Any reference in this Deed to any statute, or to any section of a statute, includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

3 INFORMATION

- 3.1 The First Owner owns the freehold interest in the Green Land as shown edged green on Plan Number 2 and is registered as proprietor of it with Title Absolute at the Land Registry free from incumbrances other than those matters contained or referred to in the Property and Charges Registers of Title Number SF402066 at the date of this Deed.
- 3.2 The Second Owner owns the freehold interest in the Blue Land as shown edged blue on Plan Number 2 and is registered as proprietor of it with Title Absolute at the Land Registry free from incumbrances other than those matters contained or

referred to in the Property and Charges Registers of Title Number SF576041 and further the freehold interest in the Brown Land as shown edged brown on Plan Number 2 and is registered as proprietor of it with Title Absolute at the Land Registry free from incumbrances other than those matters contained or referred to in the Property and Charges Registers of Title Number SF597063 at the date of this Deed.

- 3.3 The Council is the local planning authority for the purposes of the Act for the Application Land.
- 3.4 The County is the Local Education Authority within the meaning of S12 Education Act 1996 for Staffordshire (and considers that the Development will necessitate a requirement for a contribution towards the provision of educational facilities in the vicinity of the Development).
- 3.5 The Owners and Lioncourt have by the Application applied to the Council for approval to carry out development on the Application Land.
- 3.6 The Council is satisfied that the Development is such as may be approved by the Council under the Act and planning permission granted (subject to conditions) subject to the Owners and/or Lioncourt covenanting in the terms of this Deed.

4 STATUTORY AUTHORITY AND LEGAL EFFECT

- 4.1 This Deed is made pursuant to Section 106 of the Act and all other enabling powers and enactments which may be relevant for the purpose of giving validity to this Deed.
- 4.2 The obligations of the Owners and/or Lioncourt in this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority.
- 4.3 The Owners and/or Lioncourt covenant with the Council to the intent that this Deed shall be enforceable without limit of time (other than as expressly mentioned in this Deed) against the Owners and/or Lioncourt and any person deriving title through or under it to the Land or any part or parts of it as if that

person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.

- 4.4 No person shall be bound by any obligations, rights and duties contained in this Deed and/or be liable for any breach of a covenant and/or obligation contained in this Deed after they shall have parted with all interest in the Land or the part in respect of which such obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.
- 4.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this Deed and/or be liable for any breach of a covenant and/or obligation contained in this Deed in respect of any site used only as an electricity substation, gas governor or pumping station.
- 4.6 If the Planning Permission expires (within the meaning of Sections 91, 92 or 93 of the Act) or is revoked or otherwise withdrawn before Commencement of the Development, this Deed shall forthwith determine and cease to have effect.
- 4.7 Nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 4.8 Nothing in this Deed shall be construed as restricting the exercise by the Council or the County of any powers exercisable by them under the Act or under any other Act or any statutory instrument, order or byelaw in the exercise of their functions as a local authority.

5 WAIVER

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

6 CONDITION PRECEDENT

The planning obligations contained in this Deed shall be enforceable by the Council following the grant of the Planning Permission by the Council.

7 OBLIGATIONS

- 7.1 The Owners and/or Lioncourt covenant, agree and declare in respect of the Land as set out in the Schedules.

8 THE CHARGE

- 8.1 The First Chargee for itself and its successors in title consents to the First Owner entering into this Deed and covenants with the Council (and the County) that in the event that the Chargee takes possession of the Land or any part of it and/or exercising its power of sale under the provisions of the Charge then the First Chargee and its successors in title will observe and perform and be bound by the terms and conditions of this Deed so far as the same remain to be observed and performed.
- 8.2 The Second Chargee for itself and its successors in title consents to the Second Owner entering into this Deed and covenants with the Council (and the County) that in the event that the Chargee takes possession of the Land or any part of it and/or exercising its power of sale under the provisions of the Charge then the Second Chargee and its successors in title will observe and perform and be bound by the terms and conditions of this Deed so far as the same remain to be observed and performed.

8.3 The Third Chargee has entered into a contract for sale with the First Owner for the Green Land dated 7th August 2013 and further a contract for sale with the Second Owner for the Brown Land dated 7th August 2013 together with a contract for sale with the Second Owner for the Blue Land dated 23rd December 2016 and for itself and its successors in title it hereby consents to the First Owner and the Second Owner entering into this Deed and covenants with the Council (and the County) that in the event that the Third Chargee takes possession of the Land or any part of it and/or exercising its power of sale under the provisions of the Charge then the Third Chargee and its successors in title will observe and perform and be bound by the terms and conditions of this Deed so far as the same remain to be observed and performed.

8.4 The Fourth Chargee has entered into a contract for sale with the First Owner for the Green Land dated 23rd December 2016 and further a contract for sale with the Second Owner for the Blue Land and the Brown Land also dated 23rd December 2016 and for itself and its successors in title it hereby consent to the First Owner and the Second Owner entering into this Deed and covenants with the Council (and the County) that in the event that the Fourth Chargee takes possession of the Land or any part of it and/or exercising its power of sale under the provisions of the Charge then the Fourth Chargee and its successors in title will observe and perform and be bound by the terms and conditions of this Deed so far as the same remain to be observed and performed.

9 INVALIDITY

It is agreed and declared that if any clause or sub-clause of this Deed shall be deemed to be unenforceable or ultra vires the remainder of this Deed shall remain in full force and effect provided severance from this Deed is possible.

10 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing contained in this Deed shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council, the County and to the specific person executing this Deed as the Owners and/or Lioncourt and their successors (if any) as defined in this Deed and the provisions of the Contracts

(Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Deed.

11 OTHER MATTERS

- 11.1 In the event of a breach by the of any obligations contained in this Deed the Owners and/or Lioncourt shall keep the Council (and the County) fully indemnified against all liability, proceedings, costs, claims, demands and expenses incurred or arising under this Deed.
- 11.2 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval to be served under or in connection with this Deed and any such notice or approval shall be in writing and shall specifically refer to the name, date and parties to this Deed and shall cite the number and clause of this Deed to which it relates.
- 11.3 Payment of any money under this Deed shall be made by the Owners and/or Lioncourt sending the full amount payable in the form of a Banker's Draft or Solicitors' client account cheque within the time specified in this Deed together with a letter specifically referring the name, date and parties to this Deed and citing the number and clause of this Deed to which the relevant sum relates and identifying which portion of the amount relates to any sum calculated to take account of Index Linking.
- 11.4 This Deed shall be registered as a Local Land Charge.
- 11.5 The Owners and/or Lioncourt agree with the Council to give the Council (and County) immediate written notice of any change in ownership of any of their interest in the land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Development or unit of occupation purchased by reference to a plan.

IN WITNESS of which the Parties have executed this Deed as a deed and have delivered it upon dating the day and year first before written.

SCHEDULE 1
General Obligations

The Owners and/or Lioncourt covenant with the Council and the County with the intent that these are planning obligations for the purposes of Section 106 of the Act:

1. To permit the Head of Regulatory Services and any person or persons authorised by him access to the Land or any part of it at all reasonable times, on reasonable notice and in compliance with the Owners' and/or Lioncourt's reasonable requirements, and to permit him or them to inspect the Development and all materials intended for use in it.
2. To give the Council and the County notice in writing no later than seven (7) days prior to the anticipated Commencement of the Development.
3. To give the Council and the County notice in writing of the Commencement of the Development within seven (7) days of Commencement of the Development.
4. To give the Council and the County notice in writing no later than seven (7) days prior to the anticipated Occupation of the Development.
5. To give the Council and the County notice in writing of the Occupation of the Development within seven (7) days of Occupation of the Development.

Schedule 2
Affordable Housing

1. DEFINITIONS

- 1.1 “**Affordable Housing**” means housing built for use as Rented Social Housing Units
- 1.2 “**Affordable Housing Chargee**” any mortgagee or chargee of the Registered Provider of Social Housing to which Affordable Housing is transferred or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 in respect of that Registered Provider of Social Housing
- 1.3 “**Affordable Housing Chargee’s Duty**” the tasks and duties set out in section 4 of this Schedule 2
- 1.4 “**Affordable Housing Unit**” means a Rented Social Housing Unit and reference to “**Affordable Housing Units**” shall be construed accordingly
- 1.5 “**Allocations Policy**” means the Council’s policy for the time being for the allocation of rented housing owned by Registered Providers of Social Housing
- 1.6 “**Market Housing Unit**” that part of the Residential Development which is housing for sale on the open market and which is not Affordable Housing and “**Market Housing Units**” shall be construed accordingly
- 1.7 “**Market Rent**” is what a willing landlord might reasonably expect to receive and what a willing tenant might reasonably expect to pay for an assured shorthold tenancy of the relevant Affordable Housing Unit, in comparison with similar properties in Burton upon Trent
- 1.8 “**Practical Completion**” means the issue of a certificate of practical completion by the Owner’s architect or in the event that the Residential Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect

- 1.9 **“Protected Tenant”** any tenant who:
- (i) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Rented Social Housing Unit or
 - (ii) was granted a shared ownership lease by the freeholder in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the freeholder all the remaining shares so that the tenant owns the entire Unit

1.10 **“Registered Provider of Social Housing”** means a registered landlord as defined in Part 1 of the Housing and Regeneration Act 2008 who is registered with the regulator pursuant to Section 116 of that Act and has not been removed from the register pursuant to Section 118 or Section 119 of that Act provided that if there is no statutory definition of registered provider of social housing then **“Registered Provider of Social Housing”** shall mean a provider of social housing approved by the Council (such approval not to be unreasonably withheld or delayed on application to the Council for approval)

1.11 **“Rented Social Housing Unit”** means a Dwelling which shall be let by a Registered Provider of Social Housing to a person allocated that Dwelling in accordance with the Council’s Allocations Policy (unless the Council does not have an Allocations Policy), and reference to **“Rented Social Housing Units”** shall be construed accordingly

2. **PLANNING OBLIGATIONS**

2.1 The Owner covenants with the Council with the intent that these are planning obligations for the purpose of Section 106 of the Act:

2.2 **Affordable Housing Contribution**

2.2.1 To designate the following Dwellings to be constructed on plot numbers 16 to 23 inclusively as part of the Residential Development for use as Rented Social Housing Units:

4 x 1 bedroom house

2 x 2 bedroom house

2 x 4 bedroom house

- 2.2.2 To designate in the Reserved Matters Application for approval of the design and location of the Dwellings which of those Dwellings shall be Rented Social Housing Units by type, size and plot in accordance with paragraphs 2.2.1.

2.3 **Construction and Standard of Affordable Housing**

- 2.3.1 To construct the Affordable Housing in a good and workmanlike manner
- 2.3.2 To construct the Affordable Housing so that it meets the standards applicable to New Build General Needs rented units in the Housing Corporation's 'Design & Quality Standards April 07' document
- 2.3.3 To provide fixtures and fittings within the Affordable Housing to the standard normally expected by Registered Providers of Social Housing
- 2.3.4 Not to construct more than fifty percent (50%) of the Market Housing Units unless the Affordable Housing Units have been constructed to practical completion.

2.4 **Occupation of Housing**

- 2.4.1 Not to permit the beneficial occupation of more than fifty percent (50%) of the Market Housing Units unless all the Affordable Housing Units have been transferred to a Registered Provider of Social Housing in accordance with this schedule and written notification of such has been received by the Council.
- 2.4.2 Subject to paragraph 3 of this Schedule 2 not to permit the beneficial occupation of any Affordable Housing Unit unless it has been let as a Rented Social Housing Unit.

2.5 **Rented Social Housing Units**

- 2.5.1 Not to permit the occupation of a Rented Social Housing Unit other than at a rent determined through the national rent regime (Rent Influencing Regime guidance) unless the Council has agreed with the Registered Provider owning the Rented Social Housing Unit that it may, subject to the approval of the Homes and Communities Agency, let it at an Affordable Rent of up to eighty percent (80%) of Market Rent, which the Council will agree provided that the additional income is used by the Registered Provider of Social Housing to fund investment in providing additional affordable housing in East Staffordshire.

3. **PROVISOS**

- 3.1 The obligations contained in this Schedule 2 shall not be binding on a mortgagee or chargee in possession of the Market Housing Units or a receiver appointed by such mortgagee or chargee or a bona fide purchaser for value thereof from such a mortgagee or chargee in possession or receiver appointed (except in the case of a purchaser which is a Registered Provider of Social Housing) or the successors in title of such purchaser with the intent that the clauses in this Deed relating to Affordable Housing shall cease to bind the Market Housing Units in perpetuity.
- 3.2 The obligations contained in this Schedule 2 shall not be binding upon
- 3.2.1 Any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
- 3.2.2 Any Affordable Housing Chargee who shall have first complied with the Affordable Housing Chargee's Duty
- 3.2.3 Any purchaser from an Affordable Housing Chargee who has complied with the Affordable Housing Chargee's Duty or any

successor in title thereto

3.3 The obligations contained in paragraph 2.5.1 of this Schedule 2 shall not be binding upon the Owner in relation to an individual Rented Social Housing Unit if he has satisfied the Head of Regulatory Services that he is unable to secure a sale of that Unit to a Registered Provider of Social Housing after making reasonable efforts to secure such a sale as follows:

3.3.1 advertising the Rented Social Housing Units for sale to Registered Providers of Social Housing for at least three months following their completion;

3.3.2 actively attempting to enter into serious negotiations with Registered Providers of Social Housing who operate in the borough of East Staffordshire and neighbouring districts to secure sale of the Rented Social Housing Units;

3.3.3 reducing the price of Rented Social Housing Units to a price which reflects the rental income which will accrue to a Registered Provider of Social Housing.

3.4 In the event that the Council is satisfied that the Owner has made reasonable efforts in accordance with paragraph 3.3 of this Schedule 2 to transfer a Rented Social Housing Unit to a Registered Provider of Social Housing and that there are no reasonable prospects of securing the transfer of that Rented Social Housing Unit to a Registered Provider of Social Housing then the Owner shall be permitted to dispose of that Rented Social Housing Unit on the open market free from the restrictions and obligations contained in this Schedule 2.

4. **AFFORDABLE HOUSING CHARGEES DUTY**

4.1 An Affordable Housing Chargee prior to seeking to dispose of an Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge must give not less than three (3) months prior notice to the Head of Regulatory Services of its intention to dispose and the notice must make specific reference to this Deed and:

4.2 If the Head of Regulatory Services responds within three months from

receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit can be made in such a way as to safeguard it as Affordable Housing then the Affordable Housing Chargee shall co-operate with such arrangements and use its best endeavours to secure such transfers, and

4.3 If the Head of Regulatory Services does not serve his/her response to the notice served under paragraph 4.1 within such three (3) months then the Affordable Housing Chargee shall be entitled to dispose free of the restrictions set out in this Schedule 2 and

4.4 If the Council or any other person cannot within three months of the date of service of its response under paragraph 4.2 secure such transfer then provided that the Affordable Housing Chargee shall have complied with its obligations under paragraph 4.1 the Affordable Housing Chargee shall be entitled to dispose of the Affordable Housing unit free of the restrictions set out in this Schedule 2.

4.5 PROVIDED THAT at all times the rights and obligations in this section 4 shall not require the Affordable Housing Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Affordable Housing Chargee in respect of moneys outstanding under the charge or mortgage.

SCHEDULE 3

Bin Provision

1. DEFINITION

“the Bin Contribution” means **Sixty-Five Pounds (£65.00)** per Dwelling Index Linked

2. Planning Obligations

The Owners and/or Lioncourt covenant with the Council with the intent that these are planning obligations for the purposes of S106 of the Act:

either:

to pay the Bin Contribution to the Council for the provision of external refuse and recycling containers for each Dwelling in accordance with the Council's specification such facilities to be provided to each Dwelling by no later than the first (1st) Occupation of the said Dwelling;

or

prior to the first (1st) Occupation of the first (1st) Dwelling to be Occupied to notify the Council in writing of their intention to provide each Dwelling with external refuse and recycling containers prior to the first (1st) Occupation of each Dwelling and to then provide such external refuse and recycling containers accordingly in which case the Bin Contribution will not be payable

SCHEDULE 4
PUBLIC OPEN SPACE CONTRIBUTION

1. DEFINITION

“the Public Open Space Contribution” means **Twenty Thousand Pounds (£20,000.00)** Index Linked

2. Planning Obligations

The Owners and/or Lioncourt covenant with the Council with the intent that these are planning obligations for the purposes of S106 of the Act:

2.1 To pay the Public Open Space Contribution to the Council on or before the Commencement of the Development for improvements to the playground and/or provision of play equipment at Branston Water Park, Branston, Burton upon Trent.

2.2 That no further development of any kind on any part of the Land shall be carried out, commenced and/or continued after a period of twenty-eight (28) days commencing with the date of the Commencement of the Development until the Contribution has been paid to the Council.

SCHEDULE 5
Common Amenity Area Management Scheme

1 DEFINITIONS

1.1 “**Common Amenity Area(s)**” means those parts of the Land to be shown on a Common Amenity Area(s) Plan to be agreed with the Council in accordance with the provisions of paragraph 2.1 of this Schedule 5.

1.2 “**Common Amenity Area Management Scheme**” means the scheme to control the use of the Common Amenity Area(s) by the residents of the Dwellings.

1.3 “**Common Amenity Area(s) Plan**” means a plan identifying the community area(s) to be provided within the Development.

1.4 “**Management Company**” means a private limited company:

1. which is incorporated in England and Wales or Scotland;
2. which has its registered office in England or Wales or Scotland;
3. whose members are limited to owners of the Land or a part of it;
4. whose objects permit the company to implement the Common Amenity Area Management Scheme

which is to be set up by the Owners and/or Lioncourt and shall be responsible for implementing the Common Amenity Area Management Scheme on behalf of the Owners and/or Lioncourt for the lifetime of the Development.

2 PLANNING OBLIGATIONS

The Owners and/or Lioncourt covenant with the Council with the intent that these are planning obligations for the purposes of Section 106 of the Act:

2.1 Not to Occupy the Development without having first:

- 2.1.1 submitted a Common Amenity Area(s) Plan and a Common Amenity Area Management Scheme relating to that Phase or Sub-Phase to the Council for approval; and

- 2.1.2 obtained approval in writing by the Head of Regulatory Services on behalf of the Council of the Common Amenity Area(s) Plan and the Common Amenity Area Management Scheme relating to that particular Phase or Sub-Phase.
- 2.2 Not to Occupy each Phase or Sub-Phase of the Development without having first:
 - 2.2.1 formed the Management Company and provided evidence of such formation to the Council (including a certified copy of the Memorandum and Articles of Association of the company); and
 - 2.2.2 produced to the Council a copy of the form of transfer (including the provisions required by sub-clause 2.3 below) which is to be used for the sale of each Dwelling.
- 2.3 Not to Occupy any Dwelling to which a Common Amenity Area(s) relates until a transfer of that Dwelling has been completed with the purchaser of that Dwelling that includes provisions dealing with the following:
 - 2.3.1 an obligation on the purchaser to become a member of the Management Company;
 - 2.3.2 a covenant by the purchaser to pay the required contributions (being a fair proportion of the overall cost) to the Management Company in respect of the Dwelling (or part thereof) so that the Management Company can comply with the obligations contained in this Deed;
 - 2.3.3 an application to the Land Registry for the registration of a restriction in the land register for the Dwelling that any future disposal of the title interest in the Dwelling (or part thereof) shall not be registered unless it is accompanied by a certificate from the Management Company confirming that sub-clauses 2.3.1 and 2.3.2 above have been complied with.
- 2.4 Not to carry out any development (within the meaning of Section 55 of the Act) on the Common Amenity Area(s) and to use such land only as open amenity space and for car parking in accordance with the Planning Permission and any Reserved Matters Approval(s).

- 2.5 Not to build or place any buildings structures or erections in, on, over or under the Common Amenity Area whether temporary or otherwise unless first agreed in writing by the Council.
- 2.6 To implement the Common Amenity Area Management Scheme as approved by the Head of Regulatory Services on behalf of the Council for the lifetime of the Development in accordance with the timescales set out therein and for the avoidance of doubt this liability shall remain with the Owners and/or Lioncourt notwithstanding that the day to day implementation is to be facilitated by the Management Company.
- 2.7 Not to wind up the Management Company without the prior written consent of the Council during the lifetime of the Development.
- 2.8 Not to alter the Memorandum or Articles of Association of the Management Company without the prior written approval of the Council such approval not to be unreasonably withheld or delayed.
- 2.9 Upon completion of the first sale of each Dwelling to which a Common Amenity Area(s) relates, to issue or transfer one share in the Management Company to the purchaser of such Dwelling.

SCHEDULE 6
National Forest Provisions

1. DEFINITIONS

- 1.1 **"the Scheme"** shall mean a scheme for landscaping and planting trees (which shall be mainly a mix of trees which are native to Great Britain) in the Forest Area approved by the Council such approval not to be unreasonably withheld or delayed).
- 1.2 **"the Forest Area"** shall mean the sum of all areas of land within the Land (or elsewhere) that are to be the subject of the Scheme the total area of which shall be 0.20 hectares unless the Council acting reasonably agree that there are exceptional circumstances which prevent this requirement as to area being met.
- 1.3 **"the Works"** shall mean all works required to implement and complete the landscaping and tree planting in accordance with the Scheme.
- 1.4 **"the National Forest Sum"** equals 0.20 hectares minus the Forest Area multiplied by **Fifty Thousand Pounds (£50,000.00)** Index Linked.

2. PLANNING OBLIGATIONS

The Owners and/or Lioncourt covenant with the Council with the intent that these are planning obligations for the purpose of Section 106 of the Act:

- 2.1 Not to Commence the Development without having first:
- 2.1.1 submitted to and obtained the approval of the Council to the Scheme provided that such approval shall not be unreasonably withheld or delayed;
- 2.1.2 if the Forest Area is less than 0.20 hectares the Owner shall pay to the Council the National Forest Sum.

- 2.2 Prior to the Occupation of the Development, to make arrangements for the future management and maintenance of the Forest Area (if any) and to obtain the approval of the Head of Planning Services to such arrangements, such approval not to be unreasonably withheld or delayed.
- 2.3 Not to occupy the Development without having first completed the Works (if any) to the Satisfaction of the Council in accordance with the Scheme.
- 2.4 If applicable after completion of the Works, to maintain and manage thereafter the Forest Area in accordance with good woodland management and the arrangements approved by the Head of Regulatory Services to the Satisfaction of the Council.

3. AGREEMENT AND DECLARATION

The Owners and/or Lioncourt agrees and declares pursuant to Section 106 of the Town and Country Planning Act 1990 that:

- 3.1 The Scheme shall show the tree planting and landscaping in detail on a plan at a scale of not less than 1:500 and include necessary lists of proposed works and other schedules of all landscaping and tree planting, fencing, walls, gates and all other necessary works required for the Scheme and shall be in compliance with the technical requirements of the Council contained in the East Staffordshire Local Plan (current at the date hereof).
- 3.2 The Scheme shall contain estimates of the length of time to be taken for the completion of the Works.
- 3.3 The Owners and/or Lioncourt shall inform the Head of Regulatory Services in writing when it considers that the Works have been completed and request that the Head of Regulatory Services inform the Owners and/or Lioncourt in writing within two (2) weeks whether or not the Works have been completed to the Satisfaction of the Council. If he does not inform the Owners and/or Lioncourt within three (3) weeks as aforesaid then the Owners and/or Lioncourt shall be entitled to regard the Works as being completed to the Satisfaction of the

Council. If the Head of Regulatory Services is not satisfied that the Works are completed the Owners and/or Lioncourt shall request further and better particulars in relation to what works are required to complete the Works and the Owners and/or Lioncourt shall carry out such works.

- 3.4 If the Works are not completed within a reasonable time from their commencement, having regard to the time estimates within the Scheme, the planting seasons and weather conditions, the Council may enter the Land and complete the Works and the Council will be entitled to call upon the Owners and/or Lioncourt to pay, on demand the cost of completing the Works reasonably and properly incurred by the Council
- 3.5 Upon completion of the Works to the Satisfaction of the Council, the Owners and/or Lioncourt shall request that the Council confirm that the Works have been so completed

SCHEDULE 7
Education Provisions

1. DEFINITION

“the Education Sum” means **One Hundred and Seventy-Eight Thousand Two Hundred and Three Pounds (£178,203.00)** Index Linked.

2. PLANNING OBLIGATIONS

The Owners and/or Lioncourt covenant with the Council and as a separate covenant with the County with the intent that this is a planning obligation for the purposes of Section 106 of the Act not to Commence the Development without having first:

- 2.1 paid the Education Sum to the County to be used solely for the provision of educational facilities within the vicinity of the Land; and
- 2.2 notified the Council that such payment has been made.

Schedule 8
Plan Number 1

Schedule 9
Plan Number 2

Schedule 10
Draft Planning Decision

SIGNED AND DELIVERED as a)
Deed by **PETER THOMAS MELLOR**)
in the presence of:)

Witness: signature

Name

Address

Occupation

SIGNED AND DELIVERED as a)
Deed by **NICHOLAS RODERICK**)
LAIGHT in the presence of:)

Witness: signature

Name

Address

Occupation

EXECUTED as a Deed on behalf of)
STAPLEFORD ASSOCIATES LLP)
in the presence of:)

Director

Director / Secretary

EXECUTED as a Deed on behalf of)
CENTRAL AND COUNTRY)
DEVELOPMENTS LIMITED in the)
presence of:)

Director

Director / Secretary

EXECUTED as a Deed on behalf of)
LIONCOURT HOMES LIMITED)
in the presence of:)

Director

Director / Secretary

EXECUTED as a Deed on behalf of)
LIONCOURT HOMES (DEVELOPMENT
NO .1) LIMITED in the presence of:)

Director

Director / Secretary

EXECUTED as a Deed for and)
on behalf the **BANK OF SCOTLAND**)
PLC in the presence of:)