

DATED

17th April

2019

(1) MONMOUTHSHIRE COUNTY COUNCIL

(2) HARVINGTON PROPERTIES LIMITED

(3) CHARLES LEWIS HEAVEN, CLAIRE HEAVEN-ROBERTS AND MELANIE JAYNE WORGAN

AGREEMENT

under section 106 Town and Country Planning Act 1990

relating to land at

Church Farm, Church Road, Caldicot

THIS AGREEMENT is made the 17th day of April
BETWEEN

2019

- (1) MONMOUTHSHIRE COUNTY COUNCIL of County Hall, The Rhadry, Usk NP15 1GA ("the Council");
- (2) HARVINGTON PROPERTIES LIMITED (company number 02069071) whose registered address is 417 Finchley Road, Hampstead, London, NW3 6HU (the "First Owner"); and
- (3) CHARLES LEWIN HEAVEN of Hawthorn House, Blackrock Road, Portskewett, Monmouthshire NP26 5TW, CLAIRE HEAVEN-ROBERTS of 1 Southbrook Cottage, Silver Street, Thorverton, Devon, EX5 5LT, and MELANIE JAYNE WORGAN of Croptorne Farm, Main Road, Portskewett, Monmouthshire NP26 5TR (together, the "Second Owner").

RECITALS

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated and the authority entitled to enforce the obligations contained in this Agreement.
- (B) The First Owner is the freehold owner of that part of the Land registered at the Land Registry under title number WA697340.
- (C) The Second Owner is the freehold owner of that part of the Land registered at the Land Registry under title numbers WA550306 and CYM449939. The Second Owner is also the freehold owner of the Adjacent Fields registered at the Land Registry under title numbers WA550306 and CYM449939. Claire Heaven-Roberts of the Second Owner was formerly known as Claire Louise Heaven-Ince, which name is listed on the title numbers WA550306 and CYM449939.
- (D) The First Owner submitted the Application to the Council and the Council resolved at a development committee meeting on 5 March 2019 to grant the Permission subject to the First Owner and Second Owner entering into this Agreement.
- (E) The Council is satisfied that the planning obligations contained in this Agreement are necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably relate in scale and kind to the Development.

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, the following words and expressions have the following meanings:

Acceptable Costs Guidance means the Acceptable Cost Guidance issued by the Welsh Government to RSLs as guidance on the acceptability of total scheme costs for grant purposes as at the date of a binding contract between the Owner and the RSL (or Council as appropriate);

Act means the Town and Country Planning Act 1990 (as amended);

Adjacent Fields means the land owned by the Second Owner shown edged yellow on Plan 1;

Affordable Housing means subsidised housing that will be available to people who cannot afford to occupy dwellings generally available on the open

	market, including housing available for rent at levels set by the Welsh Government;
Affordable Housing Dwellings	means the Dwellings constructed as part of the Development for Affordable Housing;
Agreement	means this agreement;
Application	means the application for planning permission registered by the Council under reference number DM/2018/00880;
Approved Affordable Housing Mix	means the approved mix of Affordable Housing Dwellings as set out in Schedule 4 of this Agreement;
Community Park	means the 4.68 hectares of land including existing woodland shown edged purple on Plan 1;
Community Park and Green Infrastructure Maintenance Contribution	means the sum of £233,152.61 (not indexed) as a contribution towards the maintenance of the Community Park and the Green Infrastructure over a period of 20 years;
Development	means the development of the Land in accordance with the Permission;
DQR	means the Development Quality Requirements guidance published by the Welsh Government as at the date of this Agreement;
Dwelling	means a residential unit constructed as part of the Development;
Education Contribution	means the sum of £345,140 indexed (calculated on the basis of a shortfall of 20 primary school spaces) as a contribution towards educational facilities at Castle Primary School, Church Road or other primary schools in the vicinity;
Hornet Robberfly Management Plan	means a plan setting out measures to be implemented over a period of 10 years on the Adjacent Fields to safeguard and protect the habitat of the hornet robberfly, which shall include details of cattle grazing, stocking densities and habitat improvements that will be undertaken;
Green Infrastructure	means those parts of the Land, together comprising no less than 1.03 hectares (but not including the Community Park or the Net Developable Area), which are to be laid out as green spaces (e.g. grass verges, planting, trees, hedgerows, wildflower meadow, mown paths), the precise location of which is to be agreed pursuant to condition 1 of the Permission;
Green Infrastructure Plan	means a plan setting out the timescales for delivery of the Green Infrastructure, and any amendment to such plan as may be agreed by the Council from time to time;

Implementation	<p>means the carrying out pursuant to the Permission of a material operation as defined in section 56(4) of the Act save that for the purposes of this Agreement none of the following operations shall constitute a material operation:</p> <ul style="list-style-type: none"> (a) archaeological investigations or site inspections or investigations; (b) site or soil surveys; (c) decontamination or remedial works; (d) demolition or site clearance; (e) the laying or diversion of services; (f) the erection of a site compound; (g) the erection of temporary fences or hoardings; (h) the display of advertisements including the erection of advertisement hoardings; (i) interim landscaping work; (j) any works associated with temporary access; (k) any works associated with access to the Adjacent Fields or Retained Land; and (l) works in connection with the prevention of harm to protected species, <p>(and "Implement", "Implemented" and "Implementation Date" shall be construed accordingly);</p>
Indexed	means Indexed linked in accordance with clause 6;
Land	means the land at Church Farm, Caldicot, shown edged red on Plan 2;
Local Highways and Sustainable Transport Contribution	means the sum of £130,000 Indexed as a contribution towards sustainable transport initiatives and highway improvements in Caldicot;
Market Dwellings	means the Dwellings constructed as part of the Development which are not Affordable Housing Dwellings;
Neutral Tenure	means a tenure of Affordable Housing which is not fixed but can vary according to needs, means and preferences of households to whom it is offered;
Net Developable Area	means those parts of the Land, together comprising 3.8 hectares, available for the development of Dwellings;

Occupation	means occupation for the purposes permitted by the Permission other than occupation for the purposes of construction, fitting out, decoration, marketing or site security and "Occupy" shall be construed accordingly;
Owner	means the First Owner and the Second Owner;
Permission	means the planning permission to be granted by the Council for the development of the Land to be issued pursuant to the Application substantially in the form attached at Annexure 2;
Plan 1	means the plan labelled "Plan 1" attached at Annexure 1;
Plan 2	means the plan labelled "Plan 2" attached at Annexure 1;
Price	means 42% of the Acceptable Cost Guidance attributable to the relevant Dwelling transferred as at the date of a binding contract between the Owner and the RSL (or Council as appropriate);
Retained Land	means the land hatched green on Plan 1;
Retail Prices Index	means the all items index of retail prices issued by the Office for National Statistics;
RSL	means a social landlord registered by the Welsh Ministers under part 1 of the Housing (Wales) Act 2014; and
Working Day	means a day other than a Saturday, Sunday or public holiday in Wales.

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.7 A reference to any party shall include that party's successors in title subject to the terms of this Agreement and in the case of the Council the successors to its respective statutory functions.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time PROVIDED THAT, as between the parties, no such amendment, extension or re-enactment shall apply to the Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

- 1.10 A reference to writing or written does not include faxes or e-mail.
- 1.11 References to clauses, schedules and plans are to the clauses, schedules and plans of this Agreement.
- 1.12 Any phrase introduced by the terms including, include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.13 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

- 2.1 This Agreement constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The obligations contained in this Agreement are planning obligations for the purposes of section 106 of the Act and, subject to clause 2.3, are entered into by the Owner with the intention that they bind the interests held by those persons in the Land and their respective successors in title subject to the terms of this Agreement.
- 2.3 The planning obligations contained in Schedule 2 to this Agreement are entered into by the Second Owner only with the intention that they bind the interest held by the Second Owner in the Adjacent Fields and their successors in title subject to the terms of this Agreement.
- 2.4 The obligations contained in this Agreement are enforceable by the Council in accordance with section 106 of the Act.

3. CONDITIONALITY

The obligations in this Agreement take effect on the date of this Agreement unless otherwise specified save for clauses 4.2, 4.3 and 4.4 which are conditional upon:

- (a) the grant of the Permission by the Council; and
- (b) Implementation.

4. COVENANTS BY THE OWNER

- 4.1 The First Owner shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation, preparation and creation of this Agreement.
- 4.2 The Owner shall pay to the Council on or before Implementation the sum of £1,200 indexed as a contribution towards the Council's costs of monitoring the Implementation of this Agreement.
- 4.3 The Owner so as to bind the Land covenants with the Council to observe and perform the obligations contained in Schedule 1.
- 4.4 The Second Owner covenants with the Council so as to bind the Adjoining Fields to observe and perform the obligations contained in Schedule 2 and for the avoidance of doubt no other obligations other than the obligations in Schedule 2 shall be binding and enforceable against the owner or mortgagee from time to time of the Adjoining Fields.

5. COVENANTS BY THE COUNCIL

The Council covenants with the Owner to comply with the obligations on its part contained in this Agreement at the times and in the manner provided herein.

6. INDEXATION

Any sum required to be paid to the Council under this Agreement which it is stated shall be indexed shall be increased by an amount equivalent to the increase in the Retail Prices Index from the date of this Agreement until the date on which such sum is paid. If the Retail Prices Index ceases to exist, the Council and the Owner shall agree in writing (acting reasonably) an alternative index to use instead of the Retail Prices Index.

7. LIABILITY AND ENFORCEMENT

7.1 No person shall be liable for any breach of this Agreement after parting with all of its interest in the Land or Adjoining Fields or the part of the Land or Adjoining Fields in respect of which the breach relates, except in respect of any breach subsisting prior to parting with such interest.

7.2 This Agreement shall not be enforceable against:

- (a) individual owners or occupiers of any Dwellings constructed on the Land pursuant to the Permission or their individual mortgagees;
- (b) a statutory undertaker or any other person who acquires any part of the Land or Adjoining Fields or interest therein solely for the purpose of supply of electricity, gas, water, drainage, telecommunications services or public transport services; or
- (c) any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part or parts of the Land or Adjoining Fields or any receiver or security agent appointed by such chargee or mortgagee or any person deriving title through such chargee, mortgagee, receiver or security agent unless and until such chargee, mortgagee, receiver, security agent or person has entered into possession of the Land or Adjoining Fields or part thereof to which such obligation relates.

8. TERMINATION OF THIS AGREEMENT

This Agreement shall be determined and have no further effect if the Permission:

- (a) expires without having been implemented;
- (b) is modified or revoked other than with the consent of the Owner; or
- (c) is quashed following a successful legal challenge.

9. LOCAL LAND CHARGE

9.1 This Agreement is a local land charge and may be registered as such by the Council.

9.2 Following the performance and full satisfaction of all the terms of this Agreement or if this Agreement is determined pursuant to clause 8 the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of the Agreement.

10. INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at 5 per cent above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

11. NOTICES

11.1 Any notice or other communication required to be given under this Agreement shall be in writing and shall be sent by pre-paid first class post or recorded delivery or by commercial courier, to any

person required to receive the notice or other communication at its address as set out in this Agreement or as otherwise specified by the relevant person by notice in writing to each other person.

11.2 Any notice or other communication shall be deemed to have been duly received:

- (a) If sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
- (b) If delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

11.3 The Owner shall notify the Council in writing at least 10 Working Days prior to the following events occurring:

- (a) Implementation;
- (b) first Occupation;
- (c) Occupation of 50% of the Market Dwellings; and
- (d) Occupation of 80% of the Market Dwellings.

12. DUTY TO ACT REASONABLY AND IN GOOD FAITH

The parties agree with one another to act reasonably and in good faith in the fulfilment of the obligations in this Agreement.

13. DISPUTE RESOLUTION

Any dispute, controversy or claim arising out of or relating to this Agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this Agreement, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- (a) the tribunal shall consist of one arbitrator appointed jointly by the parties;
- (b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;
- (c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and
- (d) the seat of the arbitration shall be Wales.

14. WAIVER

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

15. SEVERANCE

- 15.1** If any court or other competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

- 15.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, subject to agreement between the parties the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16. FUTURE PERMISSIONS

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land or Adjacent Fields in accordance with any planning permission (other than the Permission or modification, variation or amendment thereof) granted after the date of the Permission.

17. THIRD PARTY RIGHTS

No person other than a contracting party may enforce any provision of this Agreement by virtue solely of the Contracts (Rights of Third Parties) Act 1999.

18. VALUE ADDED TAX

- 18.1 Each amount stated to be payable by the the Council or the Owner to the other under or pursuant to this Agreement is exclusive of VAT (if any).

- 18.2 If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this Agreement, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT Invoice.

19. GOVERNING LAW

This Agreement is governed by and shall be interpreted in accordance with the laws of England and Wales as they apply in Wales

This Agreement has been executed as a deed and is delivered and takes effect on the date stated set out above.

SCHEDULE 1

OWNER'S COVENANTS WITH THE COUNCIL

The Owner covenants with the Council as follows:

1. AFFORDABLE HOUSING

1.1 To provide 35% of the total number of Dwellings as Affordable Housing subject to the provisions of this paragraph 1 of Schedule 1.

1.2 To provide, design and construct the Affordable Housing Dwellings:

- (a) In accordance with the DQR;
- (b) unless otherwise agreed by the Council, in accordance with the Approved Affordable Housing Mix; and
- (c) unless otherwise agreed by the Council, in three separate areas so as to ensure that the Affordable Housing Dwellings are pepper-potted across the Development.

1.3 To procure that the Affordable Housing Dwellings are transferred to an RSL or the Council using the following procedure:

- (a) prior to Implementation the Owner shall serve a notice on an RSL ("the First Sale Notice") offering to sell the Affordable Housing Dwellings to the RSL at the Price and at the same time a copy of such notice shall be sent to the Council;
- (b) If the RSL accepts the Owner's offer in the First Sale Notice to acquire the Affordable Housing Dwellings, the Owner shall use reasonable endeavours to exchange contracts as soon as possible;
- (c) If by the expiry of the period of 6 (six) months from the service of the First Sale Notice on an RSL, the RSL:
 - (i) has declined the offer; or
 - (ii) failed to accept or refuse the offer; or
 - (iii) accepted the offer but failed to exchange contracts (save that this shall not operate if the Owner has caused material delay in replying to reasonable enquiries or providing reasonable necessary information so as to make exchange of contracts possible),

then, unless otherwise agreed by the Owner and Council, the RSL will be deemed to have rejected the Owner's offer to acquire the relevant Affordable Housing Dwellings pursuant to the First Sale Notice;

- (d) upon the actual or deemed rejection of the offer pursuant to the First Sale Notice by an RSL, the Owner shall serve a notice upon the Council giving a period of 3 (three) months for the Council to identify another RSL ("the second RSL") or the Council itself to acquire the Affordable Housing Dwellings at the Price ("the Second Sale Notice");
- (e) If by the expiry of the period of 6 (six) months following the service of the Second Sale Notice, the second RSL and the Council have:
 - (i) declined the offer; or
 - (ii) failed to accept or refuse the offer; or

- (iii) accepted the offer but failed to exchange contracts (save that this shall not operate if the Owner has caused material delay in replying to reasonable enquiries or providing reasonable necessary information so as to make exchange of contracts possible),

then, unless otherwise agreed by the Owner and the Council, the second RSL and the Council will be deemed to have rejected the Owner's offer pursuant to the Second Sale Notice to acquire the relevant Affordable Housing Dwellings and the Owner shall be required to pay a contribution in lieu of providing the Affordable Housing Dwellings ("the Affordable Housing Contribution") in accordance with paragraphs 1.4 and 1.5 of this Schedule 1.

1.4 The Affordable Housing Contribution shall be calculated as follows:

$$FC = [OMV \times (1-DRM)] - (ACG \times DP) \times N$$

FC = Financial Contribution

OMV = Open Market Value

DRM = Developer Return and Marketing (0.23)

ACG = Acceptable Cost Guidance

DP = Default percentage of ACG (0.42)

N = Number of Affordable Housing Dwellings (0.35)

Worked Example:

3 bed house in a band 5 area

$$FC = [(228,995 \times (1-DRM)) - (212,100 \times 42\%)] \times 0.35$$

$$228,995 \times 0.77 = 176,326$$

$$212,100 \times 0.44 = 89,082$$

$$176,326 - 89,082 = 87,244$$

$$87,244 \times 0.35 = 30,535$$

1.5 The Affordable Housing Contribution shall be paid to the Council in two equal instalments as follows:

- (a) the first instalment prior to Occupation of 50% of the Market Dwellings; and
- (b) the second instalment prior to Occupation of 80% of the Market Dwellings.

1.6 For the avoidance of doubt:

- (a) paragraphs 1.4 and 1.5 of this Schedule 1 shall not apply unless an Affordable Housing Contribution is required pursuant to paragraph 1.3 of this Schedule 1; and

- (b) following payment of the Affordable Housing Contribution, if required pursuant to paragraph 1.3 of this Schedule 1, the Owner shall be released from any further obligations under paragraph 1 of Schedule 1.
- 1.7 Following a written request from the Council, to provide to the Council such information concerning the progress of negotiations for the disposal of the Affordable Housing Dwellings as shall be reasonably required by the Council.
- 1.8 Not to Occupy or permit Occupation of more than:
 - (a) 50% of the Market Dwellings until such time as 50% of the Affordable Housing Dwellings have been constructed and are ready for Occupation; and
 - (b) 80% of the Market Dwellings until such time as all of the Affordable Housing Dwellings have been constructed and are ready for Occupation.
- 1.9 The Affordable Housing Dwellings shall remain in Neutral Tenure in perpetuity.
- 1.10 To keep such full and proper records as are reasonably required to demonstrate to the Council compliance with the Affordable Housing obligations contained in this Agreement.
- 1.11 Not to impose any management and/or maintenance charges whatsoever upon the RSL or the subsequent occupants of the affordable units.
- 1.12 To procure that on the first disposal of each Affordable Housing Dwelling as an Affordable Housing Dwelling a restriction is entered in the Proprietorship Register of the title of the Affordable Housing Dwelling in the following terms:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of Schedule 1 to the Agreement dated [2019] made by (1) Monmouthshire County Council (2) Harvington Properties Limited and (3) Charles Lewis Heaven, Claire Heaven-Roberts and Melanie Jayne Worgan pursuant to Section 106 of the Town and Country Planning Act 1990 have been complied with".
- 1.13 Notwithstanding the provisions of this Agreement, any mortgagee, chargee, receiver or administrative receiver of an Affordable Housing Dwelling and having a mortgage or charge over it may dispose of the estate or interest mortgaged to it on the open market in exercise of its statutory power of sale under the terms of the mortgage or charge, or a receiver appointed by such mortgagee may do so, and the covenants, restrictions and obligations contained in this Agreement shall not apply to that sale and the Affordable Housing Unit shall thereafter cease to be subject to the said covenants, restrictions and obligations and to this Agreement.
- 2. **EDUCATION**
- 2.1 Subject to paragraph 2.2, to pay the Education Contribution to the Council in two instalments:
 - (a) the first Instalment of £172,500 indexed prior to Occupation of 50% of the Market Dwellings; and
 - (b) the second Instalment of £172,500 indexed prior to Occupation of 80% of the Market Dwellings.
- 2.2 If approval is sought for less than 130 Dwellings as part of the reserved matters application, then the second instalment of the Education Contribution shall be reduced so that the total amount paid equals £17,257 indexed per primary school place required.

3. LOCAL HIGHWAYS AND SUSTAINABLE TRANSPORT

- 3.1 To pay the Local Highways and Sustainable Transport Contribution to the Council in two instalments:
- (a) the first instalment of £52,000 prior to Occupation of 50% of the Market Dwellings; and
 - (b) the second Instalment of £78,000 prior to Occupation of 80% of the Market Dwellings.
- 3.2 Prior to Occupation of 80% of the Dwellings, to design and construct and make available for use the Internal road network for the Development to the boundary of the Land at point B on Plan 1, engineered in such a way as to make a future connection by the Council possible from Heol Telfl.

4. COMMUNITY PARK

- 4.1 To complete the landscaping works to the Community Park in accordance with the details approved pursuant to conditions 1 and 6 of the Permission no later than Occupation of 80% of the Market Dwellings.
- 4.2 Prior to Occupation of 80% of the Market Dwellings, to provide an informal wild play area in the Community Park in accordance with a design and in a location to be agreed with the Council, or in lieu of providing such informal play area to pay the sum of £25,000 indexed to the Council at the same time as the transfer in accordance with paragraph 4.3 below to enable the Council to deliver the informal wild play area in the Community Park.
- 4.3 Following completion of the landscaping works to the Community Park in accordance with the details approved pursuant to conditions 1 and 6 of the Permission, to transfer the freehold of the Community Park to the Council for a consideration of £1, provided that the transfer shall be subject to the following:
- (a) a restriction that the Community Park shall only be utilised for the purposes of public recreation and for no other purpose whatsoever;
 - (b) the reservation of rights of access for the owners and occupiers from time to time of the Adjacent Fields across the access track at point A on Plan 1;
 - (c) the reservation of rights of access across the Community Park for the owners and occupiers from time to time of the Retained Land;
 - (d) the grant of sufficient access for the Council to the Adjacent Fields to enable the Council to carry out maintenance of the Community Park; and
 - (e) the grant and reservation of such other rights of access and passages of services reasonably necessary for the beneficial enjoyment of the Development, the Retained Land, the Adjacent Fields and the use of the Community Park.

5. GREEN INFRASTRUCTURE

- 5.1 Not to implement until the Green Infrastructure Plan has been submitted to and approved in writing by the Council.
- 5.2 To deliver the Green Infrastructure in accordance with the timescales set out in the approved Green Infrastructure Plan and in accordance with the details approved pursuant to conditions 1 and 6 of the Permission.
- 5.3 Following completion of the Green Infrastructure, to transfer the freehold of the Green Infrastructure to the Council for a consideration of £1, provided that the transfer shall be subject to the following:

- (a) a restriction that the Green Infrastructure shall only be utilised for the purposes of public amenity and for no other purpose whatsoever; and
- (b) the grant and reservation of such rights of access and passages of services reasonably necessary for the beneficial enjoyment of the Development, the Retained Land, the Adjacent Fields and the use of the Community Park.

6. COMMUNITY PARK AND GREEN INFRASTRUCTURE MAINTENANCE

- 6.1 On completion of the transfer of the Community Park or Green Infrastructure to the Council pursuant to paragraphs 4.3 or 5.3 above, whichever is the earlier, to pay to the Council the Community Park and Green Infrastructure Maintenance Contribution.
- 6.2 On completion of the transfer of the Green Infrastructure to the Council pursuant to paragraph 5.3 above, to pay to the Council the sum of £5,000 indexed to be used by the Council to prepare a maintenance plan for the Green Infrastructure.

7. OFF-SITE RECREATION FACILITIES

- 7.1 To pay a sum of £1566 indexed in respect of each Market Dwelling constructed at the Development (the "Off-Site Recreation Facilities Contribution") to be used by the Council to support and develop off-site recreational facilities in the vicinity of the Development, which shall include one or more of the following: the Caldicot Greenway Scheme; Caldicot Castle Country Park; Hall Park Open Space; and the Caldicot Town Centre Regeneration Project.
- 7.2 The Off-Site Recreation Facilities Contribution shall be payable in two equal instalments:
 - (a) the first instalment shall be payable prior to Occupation of 50% of the Market Dwellings;
 - (b) the second instalment shall be payable prior to Occupation of 80% of the Market Dwellings.

8. ECOLOGY

Not to implement until a Hornet Robberfly Management Plan has been submitted to and approved in writing by the Council.

SCHEDULE 2

SECOND OWNER'S COVENANTS WITH THE COUNCIL IN RESPECT OF THE ADJACENT FIELDS

The Second Owner covenants with the Council as follows:

1. ECOLOGY

For a period of 10 years from the Implementation Date, not to Occupy the Adjacent Fields otherwise than in compliance with the approved Hornet Robberfly Management Plan.

2. ACCESS

At all times following transfer of the freehold of the Community Park to the Council, at no cost to the Council, to ensure that the Council is provided with sufficient access to the Adjacent Fields to carry out maintenance of the Community Park.

SCHEDULE 3

COUNCIL'S COVENANTS

1. APPLICATION OF FUNDS

- 1.1** Where the Council receive any financial contribution from the Owner in respect of any obligations in this Agreement, the Council shall use the financial contribution only for the purpose for which it was paid.
- 1.2** In the event that any financial contribution received from the Owner in respect of any obligations in this Agreement has not been spent or committed for expenditure by the Council within 5 years following the date of receipt the Council shall refund to the Owner any part which has not been spent or committed for expenditure, together with any accrued interest.

SCHEDULE 4
APPROVED AFFORDABLE HOUSING MIX

General Needs	Number of Dwellings
2 person 1 bed flats	12 (3 x 4 blocks of walk up flats)
4 person 2 bed houses	16
5 person 3 bed houses	4
6 person 4 bed houses	2
OAP and Disabled	Number of Dwellings
2 person 1 bed flats	8 (with a lift)
3 person 2 bed bungalows	2
Adapted bungalow (2 or 3 bed)	1

Notes:

The above mix is based on the delivery of 130 Dwellings as part of the Development. If approval is sought for less than 130 Dwellings as part of the reserved matters application, the above mix shall be pro-rated downwards accordingly.

The delivery of an adapted bungalow (2 or 3 bed) is considered to be the equivalent of 2 Affordable Housing Dwellings.

Executed as a deed by affixing the common
seal of **MONMOUTHSHIRE COUNTY**
COUNCIL in the presence of:

Member of the Council

Authorised Officer

Head of Law

Executed as a deed by **HARVINGTON**
PROPERTIES LIMITED acting by:

Director

In the presence of:

Witness signature:

Witness name: C. FREEMAN

Occupation: SECRETARY

Address:

Signed as a deed by **CHARLES LEWIN**
HEAVEN in the presence of:

Witness signature:

Witness name: SANDRA ELAINE PRICE

Occupation: ACCOUNTANT

Address:



Signed as a deed by **CLAIRE HEAVEN-ROBERTS** In the presence of:

Witness signature:

Witness name:

Louise Trump

Occupation:

Housewife

Address:

Signed as a deed by **MELANIE JAYNE WORGAN** In the presence of:

Witness signature:

Witness name:

Allan Rae

Occupation:

Butcher

Address:

ANNEXURE 1

PLANS

ANNEXURE 2
DRAFT PLANNING PERMISSION



Working with the citizens of Monmouthshire

Cymeradwyo /Approval of Planning Permission

**Deddf Cynllunio Tref a Gwlad 1990
Gorchymyn Cynllunio Tref a Gwlad (Gweithdrefn Rheoli Datblygu) Cymru 2012
Town and Country Planning Act 1990
The Town and Country Planning (Development Management Procedure) (Wales)
Order 2012**

Cais Rhif/ Application No: DM/2018/00880

Ymgelyydd/ Applicant:	Harvington Properties Ltd	Asiant/Agent	Mr Roger Hephner 45 Welbeck Street Marylebone London W1G 8DZ United Kingdom
----------------------------------	---------------------------	---------------------	--

Mae CYNGOR SIR FYNWY fel yr Awdurdod Cynllunio Lleol drwy hyn yn caniatáu'r datblygiad dilynol yn unol â'r cynlluniau a'r cais a gyflwynwyd i'r Cyngor, yn ddarostyngedig i unrhyw amodau.

MONMOUTHSHIRE COUNTY COUNCIL as Local Planning Authority hereby Approved Subject To S106 the following development in accordance with the plans and application submitted to the Council, subject to any conditions.

Lleoliad/Location:	Land To East Of Church Road Caldicot Monmouthshire
Disgrifiad o'r Cynnig/Description of Proposal:	Outline application (with all matters other than access reserved for future determination) for the erection of up to 130 dwellings (Use Class C3), provision of new open space including a new community park and other amenity space, engineering and landscaping works including sustainable urban drainage system and enabling works.

**DARLLENWCH Y NODIADAU A ATODIR OS GWELWCH YN DDA
PLEASE READ THE ATTACHED NOTES**

**MAE'N BWYSIG EICH BOD YN CYDYMFFURFIO GYDA'R CYNLLUNIAU A
GYMERADWYFYD A'R CANIATÂD CYNLLUNIO, YN CYNNWYS AMODAU. DARLLENWCH Y
NODIADAU SY'N CYD-FYND Â'R PENDERFYNIAD HWN OS GWELWCH YN DDA.**

PWYSIG: MAE'R CYFATHREBIAD YMA'N EFFEITHIO AR EICH EIDDO

**IT IS IMPORTANT THAT YOU COMPLY WITH THE APPROVED PLANS AND THE PLANNING
PERMISSION, INCLUDING CONDITIONS. PLEASE READ THE NOTES ACCOMPANYING
THIS DECISION.**

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

Amodau a Rhesymau/Conditions and Reasons

DRAFT

- 1 Approval of the details of the layout, scale and appearance of the building(s) and the landscaping of the site (hereinafter called the reserved matters) shall be obtained from the Local Planning Authority prior to any works commencing on site.

REASON: The application is in outline only.

- 2 (a) Application for approval of all the reserved matters shall be made to the Local Planning Authority before the expiration of 12 months from the date of this permission.
- b) The development hereby approved must be begun either before the expiration of two years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

REASON: In order to comply with Section 82 of the Town and Country Planning Act 1990 and to adhere to the ground rules set out in "Addressing our lack of 5 year land supply: Monmouthshire's Approach to Unallocated Sites".

- 3 No development shall take place until the applicant or his agent or successor in title has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

REASON:

To identify and record any features of archaeological interest discovered during the works, in order to mitigate the impact of the works on the archaeological resource.

- 4 No development shall take place until a drainage scheme has been submitted to, and approved by, the Local Planning Authority. The scheme shall provide for the disposal of foul, surface and land water and shall include an assessment of the potential to dispose of surface and land water by sustainable means. Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no foul water, surface water or land drainage shall be allowed to connect directly or indirectly with the public sewerage system.

REASON: To ensure satisfactory facilities are available for disposal of foul and surface water.

- 5 The Reserved Matters pursuant to the layout of the proposed development shall ensure that the internal estate roads and footways shall be designed and laid out to facilitate the future connection of the desirable secondary means of access if so required by the Highway Authority at a future date.

Reason: To provide for a secondary vehicle access at some time in the future.

- 6 The details submitted pursuant to the Reserved Matter for landscaping shall reflect the guidelines set out in the Land Budget Plan (ref: edp4019_d065b), Indicative Green Infrastructure Plan (ref: edp4019_d066c) and Indicative Green Infrastructure Masterplan (ref: edp4019_d062d) in addition to providing details of all strategic planting and open space and design principles in addition to providing details incorporating;

- proposed finished levels or contours;
- means of enclosure;
- Hard surfacing materials;
- Soft landscape details including planting plans, specifications including cultivation and other operations associated with plant and grass establishment, schedules of plants, noting species, sizes, numbers and densities;

REASON: To ensure the provision afforded by appropriate landscape design and Green Infrastructure in accordance with policies LC5, S13, and G11 and NE1.6.

- 7 The details submitted pursuant to the Reserved Matter for layout shall include the proposed and existing functional services above and below ground (e.g. drainage details, power etc);

- Water Features (including SUDS details);
- Clarification of access connections beyond the site.

REASON: To ensure the provision afforded by appropriate landscape design and Green Infrastructure in accordance with policies LC5, S13, and G11 and NE1.6.

- 8 All hard and soft landscape works shall be carried out in accordance with the relevant recommendations of appropriate British Standards or other recognised Codes of Good Practice. A time table for these works shall be submitted as part of the reserved matters submission and all works shall be carried out in accordance with the timetable agreed with the Local Planning Authority. The planted areas shall be kept clear of underground utilities. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved, unless the Local Planning Authority gives its written consent to any variation.

REASON: To ensure the provision, establishment and maintenance of a reasonable standard of landscape in accordance with the approved designs.

- 9 A schedule of landscape maintenance for a minimum period of five years or until the areas are passed to the council for adoption, whichever is the sooner, shall be submitted to and approved by the Local Planning Authority and shall include details of the arrangements for its implementation this shall be integrated into the GI management Plan.

Reason: To ensure the provision of amenity afforded by the proper maintenance of existing and / or new landscape features.

- 10 No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:

- a) Risk assessment of potentially damaging construction activities;
- b) Identification of "biodiversity protection zones";
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- d) The location and timing of sensitive works to avoid harm to biodiversity features;
- e) The times during construction when specialist ecologists need to be present on site to oversee works;
- f) Responsible persons and lines of communication;
- g) The role and responsibilities on site of an ecological clerk of works (ECOW) or similarly competent person; and
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

NOTE: See BS 42020:2013, Clause 10, for a comprehensive list of issues and activities that may be considered and included within a CEMP.

REASON: To safeguard habitats and species protected under the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981 (as amended), and Environment (Wales) Act 2016.

- 11 Prior to any works commencing on site a Construction Traffic Management Plan (CTMP) shall be submitted to and approved by the local planning authority, which shall include traffic management measures, hours of working, measures to control dust, noise and related nuisances, and measures to protect adjoining users from construction works. The development shall be carried out in accordance with the approved CTMP.

REASON: To ensure a satisfactory form of development takes place.

- 12 There shall be no built form of development within either side of a 15 metre easement from the centre line of the high pressure gas main that crosses the site.

REASON: In the interests of public safety.

- 13 No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and Maintenance Company has been established.

REASON: In the Interest of highway safety and to ensure compliance with Policy MV1 of the Local Development Plan.

Condition Updates (If any)

Gwybodaeth/Informatives :-

- 1 Wales and West Utilities has pipes in the area, the apparatus may be affected and at risk during construction works. Should planning permission be approved the developer should contact Wales and West Utilities directly on any plant or enclosure apparatus. to discuss details of their requirements before any works commence on site. Development will not be allowed on any plant or enclosure apparatus.

Polisiau Cynllun Datblygu Lleol Sir Fynwy Monmouthshire Local Development Plan Policies :-

S1 LDP The Spatial Distribution of New Housing Provision

S2 LDP Housing Provision

S4 LDP Affordable Housing Provision

S5 LDP Community and Recreation Facilities

S12 LDP Efficient Resource Use and Flood Risk

S13 LDP Landscape, Green Infrastructure and the Natural Environment

S15 LDP Minerals

S16 LDP Transport

S17 LDP Place Making and Design

H1 LDP Residential Development in Main Towns, Severnside Settlements and Rural Secondary Settlements

CRF2 LDP Outdoor Recreation/Public Open Space/Allotment Standards and Provision

SD3 LDP Flood Risk

SD4 LDP Sustainable Drainage

LC1 LDP New Built Development in the Open Countryside

LC5 LDP Protection and Enhancement of Landscape Character

NE1 LDP Nature Conservation and Development

EP1 LDP Amenity and Environmental Protection

M2 LDP Minerals Safeguarding Areas

MV1 LDP Proposed Developments and Highway Considerations

MV3 LDP Public Rights of Way

DES1 LDP General Design Considerations

Y Cynlluniau a gymeradwywyd gyda'r caniatâd hwn yw:
The Plans approved with this permission are:

Cyfeirnod Cynllun /Plan Ref. No.	Fersiwn Rhif/Version No.
edp4019_d036b	Maximum Building Heights
edp4019_d017d	Site Location Plan
edp4019_roo56	DAS
17147 TA 01	Transport Assessment
edp4019_roo4d	Ecological Appraisal
edp 4019 roo2d	LVIA
1366/1	Soils and Agricultural Q
Building Parameters	

epd 4019 roo16	Arboricultural Impact Ass
17147 FTP 01	Framework Travel Plan
17147 FCA v3	FCA
PAC Repoert	PAC Report
Planning Statement	Planning Statement
4019 d066 C	Indicative GI Plan
4019 d062 D	Indicative GI Master Pla
4019 d064 G	Section 106 Plan 1
4019 d065 B	Land Budget Plan
17147	TA Additional Modelling
17147 ATA 01	Travel Audit

HYSBYSIAD PWYSIG

RHODDWDYD EICH CANIATÂD CYNLLUNIO

DARLLENWCH YR WYBODAETH DDILYNOL YN OFALUS OS GWELWCH YN DDA

Os ydych yn asiant rhwch yr Hysbysiad hwn i'ch cleient gyda'r Caniatâd Cynllunio os gwelwch yn dda

Gall sut y symudwch ymlaen gyda'ch datblygliad effeithio ar eich eiddo, ar enghraifft ei werth neu werthiant ac arwain at gamau gorfodaeth os nad ydych yn dilyn y cyngor yma.

Amodau

Darllenwch yr amodau'n ofalus os gwelwch yn dda. Eich cyfrifoldeb chi yw cydymffurfio â nhw.

- Gall rhai amodau olygu fod angen cyflwyno manylion, se deunyddiau neu ddiunio, cyn i'r gwaith ddechrau neu cyn y gwneir newid defnydd. Mae'n rhaid i chi sicrhau eich bod yn cydymffurfio gyda holl amodau o'r math yma cyn i'r gwaith ddechrau neu o fewn y cyfnod a nodwyd.
- Bydd methiant i gyflwyno materion sydd eu hangen gan amod yn gwneud eich caniatâd cynllunio yn annlys a gall arwain at gamau gorfodaeth yn eich arbyn.

Cydymffurfio gyda Chynlluniau Cymeradwy

Mae'n rhaid i chi wneud y datblygliad fel y'i cymeradwywyd neu gytuno ar newidiadau. Bydd eich caniatâd yn annlys os nad ydych yn gwneud y datblygliad yn llwyr yn unol â chynlluniau cymeradwy.

- Bydd angen i chi wneud cais newydd os dymunwch amrywio eich cynllun neu newidiadau yn ganlynol gofynion eraill.

Gall y Cyngor gymryd camau gorfodaeth a all arwain at erlyniad yn y Llys Ynadon lle meddir gosod cosb o hyd at £20,000. Er mwyn sicrhau eich bod yn osgoi unrhyw un o'r canlyniadau uchod, gofynnir i chi sicrhau eich bod yn cydymffurfio gyda phob agwedd o'ch caniatâd a chynlluniau.

**Cadwch yr Hysbysiad yma gyda'ch Caniatâd Cynllunio os gwelwch yn dda
Gwnewch yn siŵr fod gan eich Adeiladwr gopl o'r Cynlluniau a Gymeradwywyd.**

NODIADAU

Apelladau i Lywodraeth Cymru

- Os ydych wedi elch tramgwyddo gan benderfyniad yr Awdurdod Cynllunio Lleol i roi caniatâd cynllunio yn ddarostyngedig i amodau, yna gallwch apelio at Lywodraeth Cymru yn unol ag Adran 78 Deddf Cynllunio Tref a Gwlad 1980.
- Os ydych eislaau apelio, yna mae'n rhaid i chi wneud hynny o fewn chwe mis o ddyddiad yr hysbysiad hwn yn ddefnyddio ffurflen y gallwch ei chael gan yr Arolygliaeth Cynllunio, Parc Cathays, Caerdydd CF10 3NQ.
- Gall Llywodraeth Cymru ganlatáu cyfnod hirach ar gyfer rhoi hysbysiad apél ond ni fydd fel arfer yn barod i ddefnyddio'r pŵer yma os nad oes amgylchiadau arbennig sy'n eargusodf'r oedl with rol hysbysiad o'r apél.
- Nid yw'n rhaid i Lywodraeth Cymru ystyried apél os yw'n ymddangos na allaf'r Awdurdod Cynllunio Lleol fod wedi rhoi'r caniatâd heb yr amodau y gwneethant eu gosod gan roi ystyrlaeth i ofynion statudol, i ddarpariaethau'r gorchymyn datblygu ac unrhyw gyfarwyddiadau a roddwyd dan y gorchymyn.
- Yn ymarferol nid yw Llywodraeth Cymru yn gwrthod ystyried apelladau yn unig oherwydd bod yr Awdurdod Cynllunio Lleol wedi seilio eu benderfyniad ar gyfarwyddyd a roddwyd gan Lywodraeth Cymru.

Hysbysladau Prynu

- Os yw un af'r Awdurdod Cynllunio Lleol neu Lywodraeth Cymru yn gwrthod caniatâd i ddatblygu tir neu ei roi yn ddarostyngedig i amodau, gall perchennog y tir hawlio na all naill ai wneud ddefnydd rhesymol fuddiol o'r tir yn ei gyflwr presennol na gwneud y tir yn alluog o ddefnydd rhesymol fuddiol drwy wneud unrhyw waith datblygu sydd wedi neu a fyddal'n cael ei ganiatáu.
- Yn yr amgylchiadau hyn gall y perchennog gyflwyno hysbysiad prynu i'r Cyngor lle mae'r tir wedi'i leoli. Bydd yr hysbysiad yn ei gwneud yn ofynnol i'r Cyngor brynu ei ddiddordeb yn y tir yn unol â darpariaethau Rhan VI Deddf Cynllunio Tref a Gwlad 1990.

IMPORTANT NOTICE

YOUR PLANNING PERMISSION HAS BEEN GRANTED

PLEASE READ THE FOLLOWING INFORMATION CAREFULLY

If you are an agent please pass this Notice to your client with the Planning Permission

How you proceed with your development may affect your property, for example its value or sale and lead to enforcement action if you do not follow this advice.

Conditions

Please read the conditions carefully. It is your responsibility to comply with them.

- Some conditions may require the submission of details, eg materials or landscaping, before work starts or a change of use is made. You must ensure that you comply with all conditions of this type before work starts or within the period specified.
- Failure to submit matters required by condition will make your planning permission invalid and may lead to enforcement action being taken against you.

Compliance With Approved Plans

*You must carry out the development as approved or agree changes.
If you do not carry out the development in strict accordance with the approved plans your permission will be invalid.*

- If you wish to vary your scheme or changes result from other requirements you will need to make a new application.

The Council can take enforcement action which may lead to prosecution in the Magistrates Courts where a fine of up to £20,000 can be imposed. In order to ensure that you avoid any of the above consequences please ensure that you comply with all aspects of your permission and plans.

**Please Keep this Notice with Your Planning Permission
Make Sure Your Builder has a Copy of the Approved Plans**

NOTES

Appeals to the Welsh Government

- If you are aggrieved by the decision of the Local Planning Authority to grant planning permission subject to conditions, then you can appeal to the Welsh Government in accordance with Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal, then you must do so within **six months** of the date of this notice using a form which you can get from the Planning Inspectorate, Cathays Park, Cardiff CF10 3NQ.
- The Welsh Government can allow a longer period for the giving of a notice of an appeal but will not normally be prepared to use this power unless there are special circumstances that excuse the delay in giving notice of appeal.
- The Welsh Government need not consider an appeal if it seems that the Local Planning Authority could not have granted the permission without the conditions they imposed having regard to statutory requirements, to the provisions of the development order and to any directions given under the order.
- In practice the Welsh Government does not refuse to consider appeals solely because the Local Planning Authority based their decision on a direction given by the Welsh Government.

Purchase Notices

- If either the Local Planning Authority or the Welsh Government refuse permission to develop land or grant it subject to conditions, the owner of the land may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.



