

DATED

17th June

2016

BY

(1) 3H INVESTMENTS LIMITED

TO

(2) WEST DEVON BOROUGH COUNCIL

AND

(3) DEVON COUNTY COUNCIL

**PLANNING OBLIGATION BY
UNILATERAL UNDERTAKING under
Section 106 of the Town and
Country Planning Act 1990**

Relating to land at Butcher Park Hill

Tavistock Devon

LPA Planning Ref:0610/2015

PINS Ref: APP/Q1153/W/15/3138936

Wollen Michelmore LLP

Solicitors

DARTMOUTH

(Ref: SW/AME3205/0002)

11/05/2016

Contributions:

① 145000

② 5000

147 752 ✓

51791

57939.20

£ 457482.20

Education 66560

824042

THIS UNDERTAKING is given this 17th day of June, 2016

BY

- (1) **3H INVESTMENTS LIMITED** incorporated and registered in Scotland (Company Registration Number SC230708) whose registered office is situated C/O The Commercial Law Practice, Commercial House, 2 Rubislaw Terrace, Aberdeen, AB10 1XE. (hereinafter called "the Owner")

TO

- (2) **WEST DEVON BOROUGH COUNCIL** of the council Offices Kilworthy House Tavistock Devon PL19 0BZ (hereinafter called "the Council")
- (3) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, Devon. EX2 4QD (hereinafter called "the County Council")

WHEREAS:

1. The Council is the district local planning authority for the purposes of this Deed for the area within which the Property is situated and by whom the relevant Obligations contained in this Deed are enforceable.
2. The County Council is the county planning authority for the purposes of this Deed for the area within which the Property is situated and also the local education authority and the local highway authority and by whom the relevant Obligations contained in this Deed are enforceable.
3. The Owner owns the Property
4. The Owner has applied to the Council for the Planning Permission for the Development on the Property on the 15th June 2015.
5. On the 9th December 2015 the Owner appealed under section 78 of the 1990 Act to the Secretary of State against the refusal of the Application.
6. The appeal is to be determined by an Inspector under PINS reference APP/Q1153/W/15/3138936 following consideration under the Inquiry procedure.
7. In accordance with the Council's Development Plan on planning contributions the Owner gives their Undertaking to perform the obligation set out in this deed and

requests that the Inspector has regard to the planning obligations set out in this Undertaking as considerations material to the determination of the appeal.

NOW THIS DEED is made in pursuance of Section 106 of the 1990 Act and is a planning obligation for the purposes of that Section and **WITNESSES** as follows:-

1. DEFINITIONS

It is agreed and declared as follows for the purposes of this Deed the following expressions shall have the following meanings:

1.1 **"1990 Act"** means the Town & Country Planning Act 1990 (as amended)

"1999 Act" means The Contracts (Rights of Third Parties) Act 1999 as maybe amended from time to time

"Application" means the application for outline planning permission to carry out the Development allocated planning reference 00610/2015

"Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out pursuant to the Planning Permission other than (for the purposes of this Deed and for no other purpose) the following operations:

- (a) site clearance;
- (b) demolition work;
- (c) archaeological investigations;
- (d) site investigations for the purpose of assessing ground conditions;
- (e) remedial work in respect of any contamination or other adverse ground conditions;
- (f) erection of any temporary means of enclosure;
- (g) the temporary display of site notices or advertisements,

and **Commenced and Commences**, shall be construed accordingly

"Commencement Date" the date of Commencement of the Development.

"Chief Executive of the Council" means the Chief Executive of the Council.

"Contribution" shall mean the respective Planning obligations and payments as set out respectively in the Second Schedule, Third Schedule, Fourth Schedule, Fifth Schedule and Sixth Schedule of this Deed **PROVIDED ALWAYS** such contribution shall only relate to such obligations and payments as are determined by the Inspector as a Material Consideration in accordance with Clause 4.1 of this Deed.

"Council's Development Plan" means the West Devon Borough Council Local Development and Framework Core Strategy Development Plan Document 2006-2026 and the saved policies of the West Devon Borough Council Local Plan Review (as amended by the said Core Strategy). **"Development"** means the construction of up to 110 units (including 40% affordable housing) associated access, parking, open space, play space and associated infrastructure on the Property.

"Dwelling" means any dwelling permitted pursuant to the Planning Permission and the term "Dwellings" shall mean all of them.

"Expert" means a person having appropriate qualifications and local knowledge and experience in the matters in dispute as agreed by the Relevant Parties or failing agreement such person as is nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Relevant Parties.

"Index Linked" increased in accordance with the following formula:

Amount payable = the Contribution x (A/B) where:

A = the figure for the BCIS All in Tender Price Index (the BCIS Index that applied immediately preceding the date of actual payment.

B = the figure for the BCIS Index that applied when the index was last published prior to the date of this deed.

"Material Consideration" pursuant to Regulation 122 of the Community Infrastructure Levy regulations 2010.

"Occupation" means occupation for the purposes of residential use permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or

occupation in relation to security operations and the terms "Occupied" and "Occupy" shall be interpreted accordingly.

"Plan No1" means the plan annexed hereto and marked "Plan No. 1"

"Planning Permission" means the planning permission granted pursuant as a result of the appeal.

"Property" means the land described in the First Schedule.

"Relevant Parties" means the Parties to this Deed.

"Working Day(s)" means any day(s) of the calendar week except a Saturday a Sunday a Bank Holiday or other public holiday.

- 1.2 The expressions "the Council" "the County Council" and "the Owner" shall include their successors in title and assigns and reference to the Council or the County Council shall also include the successors to its respective statutory functions.
- 1.3 Words importing the masculine gender only shall include all other genders and vice versa;
- 1.4 Words importing the singular shall include the plural and vice versa;
- 1.5 Words importing persons shall include companies and corporations and vice versa;
- 1.6 Where any party consists of two or more persons companies or corporations the obligation expressed to be made by that party and the conditions and provisions contained in this Deed shall be deemed to have been made jointly and severally by the persons named as that party;
- 1.7 No person shall be liable for breach of a covenant contained in this Deed after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenants prior to parting with such interests;

- 1.8 A person who is not a party to this Deed shall have no right under the 1999 Act to enforce any of its terms but, for the avoidance of doubt, it is agreed that the exclusion of the application of the 1999 Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the provisions in this Deed;
- 1.9 Save where a contrary intention is expressed a reference herein to a clause or Schedule shall be deemed to be a reference to a clause or Schedule of this Deed and reference to a sub-clause paragraph or Part shall be deemed to be a reference to a sub-clause or paragraph or Part of the clause or Schedule in which such reference appears;
- 1.10 Nothing in this Deed shall restrict or regulate the carrying out of any development of the Land pursuant to a planning permission granted after the date of this Deed, other than the Planning Permission;
- 1.11 The clause and headings herein are for ease of reference only and shall not affect the interpretation of this Deed.

2 COVENANTS

- 2.1 This Deed is made pursuant to Section 106 of the 1990 Act and all other enabling powers and enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Owner's interest in the Land and to the intent that the obligations on the part of the Owner herein contained falling within the provisions of Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and any other enabling powers, shall be planning obligations for the purposes of Section 106 of the 1990 Act and are entered into by the Owner with the intention that they bind the interest held by those persons in the Property and their respective successors and assigns and are enforceable by the Council and the County Council as local planning authorities in accordance therewith but subject as hereinafter provided.

- 2.2 The Owner covenants with the Council to fulfil the obligations on its part set out in the Second, Third, Fourth, Fifth, Sixth and Seventh Schedules and pay the Contribution to the Council specified in this Deed
- 2.3 The Owner Covenants with the County Council to fulfil the obligations on its part set out in the Third, Fourth and Sixth Schedules
- 2.4 The Owner Covenants to give at least 15 Working Day's written notice to the Council and the County Council of the Commencement Date

3. INDEXATION OF CONTRIBUTION

- 3.1 All financial contributions payable to the Council and the County Council shall be Index Linked.
- 3.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council or the County Council (as applicable) shall advise the Owner in writing

4. CONDITIONALITY

This deed and the planning obligations given by the Owner is conditional on

- 4.1 The Inspector being satisfied and determining that each of the obligations complies with regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 whether in whole or in part and states that in her opinion the requirement for each of:-
 - (a) the Affordable Housing as set out in the Second Schedule
 - (b) the Education Contribution as set out in the Third Schedule
 - (c) The Off Site Play Contribution as set out in the Fifth Schedule
 - (d) The Off Site Playing Pitch Contribution as set out in the Fifth Schedule
 - (e) The Off Site Highway Works and Bus Services Contribution as set out in the Fourth Schedule
 - (f) The Landscape and Ecology Obligations as set out in the Seventh Schedule

(f) The Railway Contribution as set out in the Sixth Schedule is a Material Consideration and setting out that it is:-

- (i) necessary to make the Development acceptable in planning terms;
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably related in scale and kind to the Development.
- and

4.2 The grant and issue of the Planning Permission
and

4.3 The Commencement of the Development.

4.4 To the extent that the Inspector does not state that she is so satisfied in respect of any one of more of the obligations referred to in sub-clause 4.1 above then the obligations in question shall not be enforceable to any extent and the remainder of this Deed shall have effect as if that obligation or those obligations were not part of it.

5. COVENANTS TO BE GIVEN BY THE COUNCIL

The Owners obligations to pay any Contributions to the Council shall not apply until the Council covenants with the Owner that it will:-

- 5.1 Apply the contribution to the purpose for which it is given, and to no other purpose
and
- 5.2 To repay any part of any contribution to the person by whom the contribution was paid (with interest at the Bank of England Base Rate) if it has not been applied to the appropriate purpose within 5 years of the date it was received by the Council. .
- 5.3 For the avoidance of doubt such covenants may be given by letter signed by the Council's Chief Executive or Executive Director

6. OWNER'S FURTHER AGREEMENT

The Owner further agrees as follows:

- 6.1 To supply to the Council (within 15 working days of the Council's written request to do so) such information as the Council within its reasonable discretion considers that it requires in order to determine whether the terms and conditions of this Deed are being observed;

- 6.2 To pay the Council's and County Council's reasonable and proper legal fees in the preparation of this Deed on Commencement of Development;

7 REGISTRATION

- 7.1 The parties hereby consent to the registration of

- (a) This Deed as a Local Land Charge by the Council;
- (b) This Deed on the Charges Register of Title Number DN569138 at the Land Registry (if necessary).

8 NOTICES

Any notice consent or approval required to be given under this Deed to any Party to this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class post to the address of the Party aforesaid or such other address for service as shall have been previously notified by the Party to the other Parties.

9 SETTLEMENT OF DISPUTES

9.1 Any dispute arising out of the provisions of this Deed shall be referred to the Expert for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to this Deed by the courts and / or in accordance with Section 106(6) of the 1990 Act.

9.2 The Expert shall be appointed jointly by the Relevant Parties to the dispute.

9.3 The decision of the Expert shall be final and binding upon the Relevant Parties and subject to the following provisions:-

- (a) the charges and expenses of the Expert shall be borne equally between the Relevant Parties unless the Expert shall otherwise direct;
- (b) the Expert shall give the Relevant Parties an opportunity to make representations and counter representations to him before making his decision;

- (c) the Expert shall make his decision within the range of any representations made by the Relevant Parties themselves;
- (d) where there is a dispute as to the amount of any Contribution the Owner shall pay its estimate of such contribution to the Council at the time specified in this Deed and shall pay any difference between that figure and the amount determined by the Expert within 20 Working Days of the Expert's decision together with Interest thereon calculated (in accordance with this Deed) from the date the payment was required until the date it is made.

10 DETERMINATION OF DEED

This deed shall be determined if the Planning Permission:-

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge

11. OWNERSHIP

11.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.

11.2. Until the obligations in clause 3 have been complied with the Owner will give to the Council and the County Council within 28 Working days the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

12. NOTICES

12.1 A notice or other communication to be given under or in connection with this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by prepaid first class post or other next working day delivery service.

12.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

(a) to the Council at West Devon Borough Council, Kilworthy House, Tavistock. Devon. PL19 0BZ marked for the attention of Community of Practice Lead Specialist Development Control:

(b) to the Owner at 3H Investments Limited C/O Gowling WLG, Two Snowhill, Birmingham. B4 6WR marked for the attention of Mr Ian Strudwick.

(c) to the County Council at County Hall, Topsham Road, Exeter. EX2 4DQ marked for the attention of the Head of Planning Transportation and Environment.

Or as otherwise specified by the relevant person by notice in writing to each other person

12.3 Any notice or other communication given in accordance with clause 12.1 and clause 12.2 will be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the address] provided that if delivery occurs before 9.00.am on a Working day, the notice will be deemed to have been received at 9.00.am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00.am on the next Working Day;

(b) if sent by pre-paid first class post or other next working day delivery service at 9.00am on the second Working Day after posting.

12.3 A notice [or other communication] given under this deed shall not be validly given if sent by e-mail.

12.5 This clause does not apply to the service of any proceedings or other documents in any legal action, or where applicable, any arbitration or other method of dispute resolution.

13. JURISDICTION

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

IN WITNESS this document has been executed as a Deed and it is delivered on the day and year first before written.

THE FIRST SCHEDULE before referred to

“the Property”

ALL THAT piece or parcel of land on the East of Butcher Park Hill, North of Tavistock, Devon which is registered at the Land Registry with freehold title absolute under title number DN569138 and shown for identification purposes only edged red on Plan No1

THE SECOND SCHEDULE

"Affordable Housing"

In this Deed and in this Schedule the following expressions shall apply IN ADDITION to the definitions and expressions contained in Clause 1.

- "Advertising"** Means the advertising for disposal or rent of any interest in an Affordable Dwelling on the Council's website in Council marketing media and on the website of Help to Buy South West and / or Devon Home Choice or any other similar organisation promoting Intermediate Housing
- "Affordable Dwelling"** Means a Dwelling (whether under construction or completed) which is intended to be or is let or sold as Intermediate Housing let as Affordable Rented Home or sold as a Shared Ownership Home or other affordable home ownership dwelling to Qualifying Persons in Housing Need and the **"Affordable Dwellings"** shall be construed accordingly
- "Affordable Housing"** Means housing which is available to persons who have a Housing Need or are on a low income insufficient to meet their Housing Need in the open market either to rent or purchase
- "Affordable Housing Provider"** Means a body whose function or aim is to provide and manage Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) including a housing association or associations or housing company or companies or a trust or trusts registered as a

registered social landlord (pursuant to the Housing Act 1996) with the Homes and Communities Agency

“Affordable Housing Scheme”

Means a scheme for the provision for the Affordable Dwellings to Qualifying Persons in Housing Need which shall include (unless otherwise agreed in writing with the Council):

- Arrangements for the provision of all Affordable Dwellings to be built prior to completion of 90% of Dwellings
- Location, plot, size and number of bedrooms of the Affordable Dwellings
- The tenure of the Affordable Dwellings which shall be

80% Affordable Rented Homes comprising of:

9 x 1 bed 2 person flats @ 47 sq m

17 x 2 bed 4 person flats @ 67 sq m

9 x 3 bed 5 person houses @ 90 sq m

20% Shared Ownership Homes comprising of:

9 x 2 bed 4 person houses @ 80 sq m

Unless otherwise agreed with the Council

- The name of the Affordable Housing Provider(s) (if appropriate)

- Details of the price or rent of the Affordable Dwellings
- Arrangements for the transfer of the Affordable Dwellings
- Details of the design and quality standards to be applied to the Affordable Dwellings

“Affordable Rent”

Means a rent which is 80% of local market rent (including service charge) which rent shall not exceed the Local Housing Allowance Rates applicable when the unit is first let and on subsequent lettings.

“Affordable Rented Home”

Means an Affordable Dwelling let by an Affordable Housing Provider pursuant to prevailing guidance from the Department for Communities and Local Government and / or the Homes and Communities Agency at a rent (including any Service Charge) not to exceed an Affordable Rent

“Area Local Connection”

Means a local connection to the administrative area of the Council having regard to the local connection criteria set out in the Local Allocations Policy applicable at the date when the relevant affordable Housing Unit(s) are being allocated (or in the event of there being no Local Allocations Policy in force such other criteria as may be agreed by the Council in writing).

“Chargee”

Means any mortgagee or charge of the Affordable Dwellings (or any Affordable Dwelling or any part thereof as may be affected) (hereinafter referred to as “the Affordable Dwelling(s)” (or any receiver (including any administrator appointed under the Law of Property Act 1925 or administrative receiver) or other person appointed under any security documentation to enable such mortgagee or charge to realise its security (each hereinafter referred to as a “Receiver”)

“Chargee’s Duty”

Means the tasks and duties set out in Paragraph 16 of this Schedule

“Exempt Person”

Means any person who:

- Has exercised the right to acquire pursuant to the Housing Act 1969 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling or
- Has exercised any statutory right to buy (or equivalent contractual right) in respect of a particular Affordable Dwelling or
- Has been granted a Shared Ownership Lease by an Affordable Housing Provider in respect of a particular Affordable Dwelling and the person has subsequently purchased one hundred percent (100% of the equity of

the said Affordable Dwelling on final staircasing

And in each case such person successors in title and assigns

“Homes and Communities Agency” Means the body of that name or the body for the time being having or being responsible for providing financial assistance to bodies including Affordable Housing Providers under the Housing and Regeneration Act 2008

“Household” Means anyone who may reasonably be expected to reside with the Qualifying Person

“Housing Need” Means being homeless or threatened with homelessness or living in accommodation which in the opinion of the Council is insecure or unsuitable and / or being unable to purchase or rent reasonably suitable accommodation in the open market for property in the locality where the Affordable Dwelling is situated taking into account the person's income and capital and other financial circumstances. Accommodation may be unsuitable on the grounds of cost overcrowding unfitness lack of basic amenities or because of a person's infirmity physical or mental disability or specific social or care needs

“Intermediate Housing” Shall have the same definition as that contained within Annex 2 of the National Planning Policy Framework published in March 2012

“Letting Notice” Means a written notice which contains details of the property to be let and which shall include (unless otherwise agreed in writing with the Council):

- Charges
- Any age or other the name and address of the Landlord
- Address of the property
- Weekly or monthly rent
- Amount and breakdown of any service charge per week month or annum
- Details of any additional occupancy restrictions
- Property type
- Property size
- Heating type
- Details of mains services in the property
- Availability of parking space / garage
- Any disable adaptations
- Provision of any support services

And which is delivered to the council, addressed and marked for the urgent attention of the Head of Housing Services

“Local Allocations Policy”

Means the Local Allocations Policy adopted by the Council In MAY 2013 to ensure locally based allocations for Affordable Dwellings pursuant to Section 167(2E) of the Housing Act 1996 together with any revision thereof.

“Open Market Value”

Means the price which the freehold interest in an Affordable Dwelling affected would be expected to achieve if sold on the open market by a willing vendor

and disregarding the obligations and restrictions contained in this Deed

“Qualifying Person(s)”

Means person(s) who (unless otherwise agreed in writing with the Council) has / have an Area Local Connection. PROVIDED THAT the Council reserves the right not to allow the sale or letting of an Affordable Dwelling to a Qualifying Person should the sale or letting result in an under occupancy of the Affordable Dwelling by more than 1 bedroom OR result in a Dwelling which has been constructed or adapted to meet the needs of a disabled person being occupied by person without disabilities unless no appropriate qualifying Person becomes available within 3 months of Advertising the Affordable Dwelling

“Red Book Valuation”

Means a valuation undertaken pursuant to the guidance contained in the latest version of the Valuation Standards published by the Royal Institution of Chartered Surveyors at the date of the valuation

“Service Charge”

Means a sum that covers the contributions required from time to time for those services and facilities which are of a nature and to a standard reasonably required in connection with the Affordable Dwelling such as maintaining repairing and keeping secure the relevant Affordable Dwelling and its common parts the cleaning and lighting of common parts and the maintenance of any communal gardens or landscaping areas that directly benefit the Affordable Dwelling

“Shared Ownership Homes”

Means Affordable Dwellings which are owned and managed by or in partnership with an Affordable Housing Provider and sold subject to a Shared Ownership Lease and a “Shared Ownership Home” shall mean any of the said Affordable Dwellings

“Shared Ownership Lease”

Means a lease substantially in the form approved or published by the Homes and Communities Agency whereby the tenant having paid a premium calculated by reference to a maximum of 75% of the Open Market Value of the particular unit pays a rent in respect of the remaining equity held by the landlord plus (if appropriate) a Service Charge and whereby the tenant (after a period of 12 months has expired from the date of entering into the lease) may in successive tranches purchase a proportion of the remaining equity held by the landlord PROVIDED THAT such rent per annum shall:

- Initially be at a level not exceeding 2.75% of the full Open Market Value of the Affordable Housing Provider's retained share of the relevant Affordable Dwelling and
- Not be at a level which is in conflict with any applicable Homes and Communities Agency restrictions relating to charges payable by the tenant

COVENANTS

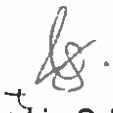
The Owners covenant as follows:

1. Not to permit or otherwise allow the Commencement of Development until the Affordable Housing scheme has been submitted to and approved by the Council in writing (such approval not to be unreasonably withheld or delayed by the Council (and thereafter to comply with the terms of such approved Affordable Housing Scheme.
2. To provide the Affordable Dwellings in accordance with the Affordable Housing Scheme
3. All Affordable Dwellings shall be sold or let to Qualifying Persons PROVIDED THAT the Council reserves the right not to allow the sale or letting of an Affordable Dwelling to a Qualifying Person should the sale or letting result in an under occupancy of the Affordable Dwelling by more than 1 bedroom OR result in a Dwelling which has been constructed or adapted to meet the needs of a disabled person being occupied by persons without disabilities unless no appropriate qualifying Person becomes available within 3 months of Advertising the Affordable Dwelling
4. The Affordable Dwellings shall not be built in groups or clusters greater than 12 in number without the written consent of the Council
5. To serve upon the Council a Letting Notice each time an Affordable Rented Home becomes available for letting
6. The external materials colour of the Affordable Dwellings shall be the same as and the elevations shall be compatible with the Market Dwellings

7. Subject to the other provisions of this Deed not to cause or permit the Affordable Dwellings to be used or occupied otherwise than as Affordable Housing unless otherwise agreed by the Council in writing in accordance with the approved Affordable Housing Scheme to persons in need with an Area Local Connection and to ensure that the Affordable Housing scheme remain used as such in perpetuity so far as this is legally possible

EXEMPTIONS

8. This Schedule 2 of this Deed shall not be binding on
 - 8.1 An Exempt Person or any mortgagee or an Exempt Person or any person deriving title from the Exempt Person
 - 8.2 Any Chargee or Receiver provided that the Chargee shall have first complied with the Chargee's Duty
 - 8.3 Any purchaser from the Chargee subject to the Chargee having complied with the Chargee's Duty; and
9. Only the obligations contained in this Schedule 3 to this Deed shall apply to or be enforceable against any Affordable Housing Provider or its tenants or any mortgagees or Chargee with a legal interest in the Affordable Dwellings or any person deriving title from any of them PROVIDED THAT if the Affordable Housing Provider disposes of its leasehold including the Affordable Dwellings (other than disposal of individual Affordable Dwellings to sole or joint occupiers) by way of a lease to and leaseback from a financial provider the financial provider shall not be bound by the terms of this Deed
10. No Affordable Housing Provider (which for the avoidance of doubt includes an Affordable Housing Provider's Chargee (including any administrative receiver appointed by such mortgagee or charge pursuant to the Law of Property Act 1925 or otherwise) shall be

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bound by the terms of this Deed except for his Schedule which contains provisions regarding Affordable Housing and the Council and the County Council hereby confirm that they will not enforce any of the terms of the Deed except this Schedule against any Affordable Housing Provider or its Chargee

THE CHARGEES DUTY

11. The Chargee shall prior to seeking to dispose of the Affordable Dwellings pursuant to any default under the terms of its mortgage or charge shall give prior written notice to the Council or its intention to dispose; and

11.1 In the event that the Council responds within 1 month from the receipt of the written notice in Paragraph 11 of this Schedule indicating that arrangements for the transfer of the Affordable Dwellings can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to complete such transfer; and

11.2 If the Council does not serve its response to the notice served under Paragraph 11 of this Schedule within 1 month then the Chargee shall be entitled to dispose of the Affordable Dwellings affected by the notice above free of the restrictions set out in this Schedule which shall determine absolutely; and

11.3 If the Council or any other person cannot within 2 months of the date of service of its response under Paragraph 11.1 of this Schedule complete such transfer then the Chargee shall be entitled to dispose the Affordable Dwellings affected by the notice free of the restrictions set out in this Schedule which shall determine absolutely

PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the charge in respect of monies outstanding under the charge or mortgage and provided also that the charge shall not be required to dispose of the Affordable Dwellings for a consideration that is less than the amount due under and outstanding under the terms of the relevant security

documentation including all accrued principal monies, interest, costs and expenses in connection with the mortgage or charge (or part of the land subject to the legal charge)

THIRD SCHEDULE

"Education Contribution"

1. In this Schedule the following expressions shall apply IN ADDITION to the expressions contained in Clause 1;

"Education Contribution"

Means a contribution of £366,560 which equates to 27.5 primary places towards the Education Facilities.

"Education Facilities"

Means education facilities at a new single form entry primary school on the south west of Tavistock.

2. The owner covenants with the County Council to pay the Education Contribution in the following instalments:-
 - 2.1 50% of the Education Contribution to be paid prior to first Occupation of 10% of the Dwellings within the Development
 - 2.2 The balance of the Education Contribution to be paid prior to first occupation of 50% of the Dwellings within the Development
3. The owner shall not occupy or permit the occupation of:-
 - 3.1 the 10% of the Dwellings in the Development prior to payment of 50% of the Education Contribution
 - 3.2 the 50% of the Dwellings in the Development prior to payment of all of the Education Contribution.

FOURTH SCHEDULE

The Off-site Highway Works and Bus Services Contribution

1. In this Schedule the following expressions shall apply IN ADDITION to the expressions contained in Clause 1;

“Bus Services Contribution”	Means the sum of £195,000 to be paid to the County Council to provide additional bus services on the 'town bus route 89' or a subsequent local bus service serving the Development
“Highway Access Works”	Means the works to the C464 Butcher Park Hill Road comprising the construction of a priority junction and associated works as shown on drawing Ref: CC 1227/100/I or any subsequent drawing approved in writing by the County Council
“Off Site Highway Works”	Means the following works: <ul style="list-style-type: none">a) Pedestrian footpath from the site pedestrian access including pedestrian crossing point to the west side of Butcher Park Hill to the existing Redmoor Close junction as shown on drawing Ref: CC1227/103/A or any subsequent drawing approved in writing by the County Council together with all necessary street lighting.b) Revisions to the speed restrictions or other traffic management as required for safety or operational reasons on the C464 Butcher Park Hill approach to Tavistock or within the Development.

- c) Such ancillary or associated works required to implement the above such as white lining, kerbing or re-surfacing as shown for illustrative purposes only on Drawing CC1227/103A PROVIDED THAT such works shall only be upon the Land or public highway land unless otherwise agreed in writing between the County Council and the Owners

“Traffic Regulation Orders Contribution”

Means up to a total contribution of £5,000.00 towards the cost of any Traffic Regulation Orders and other similar changes to the C464 Butcher Park Hill as are directly required by the Development (subject to statutory procedures) such as zebra crossings and road humps and amendments to speed limit restrictions but not exhaustively the costs involved in making any such Order including notification procedure pursuant to the relevant legislation current at the time

OFF-SITE HIGHWAY WORKS

2. Prior TO THE Commencement of Development the Owner shall enter into an agreement or agreements with the County Council under Section 278 of the Highways Act 1980 in such form as may reasonably required by the County Council to carry out the Off-Site Highways Works such agreement requiring the Off-Site Highway Works to be completed prior to first Occupation of any Dwelling within the Development

TRAFFIC REGULATON ORDER CONTRIBUTION

3. Not later than the Commencement of Development the Owner shall pay to the County Council the Traffic Regulation Order Contribution

BUS SERVICES – CONTRIBUTION AND SHELTER

4. The Owners shall pay to the County Council the Bus Services Contribution as follows:
 - 4.1 £48,750.00 on the Occupation of the 30th dwelling
 - 4.2 £48,750.00 on the Occupation of the 50th Dwelling
 - 4.3 £48,750.00 on the Occupation of the 70th Dwelling
 - 4.4 £48,750.00 on the Occupation of the 90th Dwelling or (if earlier) 12 months after payment of the third instalment of the Bus Services Contribution

5. Not to occupy or permit the occupation of:-
 - 5.1 the 31st Dwelling prior to payment of the first instalment of the Bus Services Contribution
 - 5.2 the 51st Dwelling prior to payment of the second instalment of the Bus Services Contribution
 - 5.3 the 71st Dwelling prior to payment of the third instalment of the Bus Services Contribution
 - 5.4 the 91st Dwelling prior to payment of the fourth instalment of the Bus Services Contribution

6. Prior to the Commencement of Development the Owner shall submit written details of the bus Shelter and associated landing area and its delivery as part of the Development to the County Council for the written approval of the County Council

7. The Owner shall deliver and make functional the Bus Shelter prior to the Occupation of the 30th Dwelling

FIFTH SCHEDULE

"Public Open and Recreational Space"

In this Deed and in this Schedule the following expressions shall apply IN ADDITION to the expressions contained in Clause 1:

"Playing Pitches Contribution" Means a sum of £147,752 towards off-site sports provision at the Crowndale football facilities and/or Tavistock RFC Sandy Lane facilities and/or Tavistock Cricket Club facilities at the Ring.

"Off-Site Play Contribution" Means a sum of up to £51,791 (based upon 110 Dwellings) calculated as to a capital contribution of £40,928 and a commuted sum of £10,863 towards enhancements and maintenance of the Destination Bannawell Street play area.

1. The Owners shall not do anything or permit any user or development within the Land which could constitute a danger to members of the public or could interfere with the legitimate use of paths, cycleways, parks, open space, or play areas within the Land once completed
2. The Off-Site Play Contribution shall be paid on the date of Occupation of the 70th Dwelling of the Development
3. The Owners shall pay the Playing Pitches Contribution to the Council in the following manner:
 - 3.1 £36,938 prior to Occupation of the 30th Dwelling
 - 3.2 £36,938 prior to Occupation of the 50th Dwelling
 - 3.3 £38,938 prior to Occupation of the 70th Dwelling
 - 3.4 £38,838 prior to Occupation of the 90th Dwelling
4. Not to occupy or permit the occupation of:-

- 4.1 the 31st dwelling prior to payment of the first instalment of the Playing Pitches Contribution
- 4.2 the 51st dwelling prior to payment of the first instalment of the Playing Pitches Contribution
- 4.3 the 71st dwelling prior to payment of the first instalment of the Playing Pitches Contribution
- 4.4 the 91st dwelling prior to payment of the first instalment of the Playing Pitches Contribution

SIXTH SCHEDULE

"Railway Contribution"

1. In this Schedule the following expressions shall apply IN ADDITION to the expressions contained in Clause 1:

"Railway Contribution" Means a contribution of £ 526.72 Per dwelling towards the cost of the reinstatement of the Railway Line

"Railway Line" Means the disused railway line between Tavistock and Bere Alston

Railway Contribution

2. The Owners shall pay the Railway Contribution to the council in the following Manner:
 - 2.1 £14,484.75 prior to Occupation of the 30th Dwelling
 - 2.2 £14,484.75 prior to Occupation of the 50th Dwelling
 - 2.3 £14,484.75 prior to Occupation of the 70th Dwelling
 - 2.4 £14,484.75 prior to Occupation of the 90th Dwelling or 12 months after the payment of the third instalment of the Railway Contribution if earlier
- 2.2 The Developer covenants with the County Council as follows:
 - 2.2.1 Not to occupy or permit to be occupied the 30th dwelling until the payment due under paragraph 2.1 of this schedule has been paid
 - 2.2.2 Not to occupy or permit to be occupied the 50th dwelling until the payment due under paragraph 2.2 of this schedule has been paid
 - 2.2.3 Not to occupy or permit to be occupied the 70th dwelling until the payment due under paragraph 2.3 this schedule has been paid
 - 2.2.4 Not to occupy or permit to be occupied the 90th dwelling until the payment due under paragraph 2.4 of this schedule has been paid

2. The above Railway Contribution is not to be used for any other purpose than the reinstatement of the Railway Line (or any purpose ancillary to or designed to assist or bring about such reinstatement including subsidising the cost of running the service of the Railway Line)
 - a. In the event that any part of the Railway Contribution remains unspent within 10 years of receipt of the final instalment under paragraph 1.1 of this Schedule upon the written request of the Developer the County Council or Council (as applicable) shall repay any unspent part or any part of the Railway Contribution with interest PROVIDED THAT in the event that this produces a negative result the interest shall not be payable
 - b. Upon the written request of the developer the County Council or Council (as applicable) shall write to the developer confirming how the Railway Contribution or part has been spent PROVIDED THAT such request shall be made no more than once in a calendar year.

SEVENTH SCHEDULE
“Landscape and Ecology”

Landscape and Ecological Management Plan means written details (including a plan) setting out the management and maintenance arrangements for the Land to be managed for biodiversity, ecology and landscape purposes. For the avoidance of doubt the plan shall include all boundary hedgerows and trees;

Management Company means an existing management company or a management company to be set up by the Owner and which is, or will be, limited by guarantee, or such other management entity or body as may be approved in writing by the Council, and which will fund, manage and maintain the Open Space and the SUDS

“Open Space Specification” means the document referred to in this Schedule and which shall contain details timetable and specifications or the laying out and provision of the Open Space and SUDS including the standard of the maintenance and management to be undertaken including details of the way in which the long term management and maintenance of the Open Space and SUDS shall be secured and triggers for delivery. For the avoidance of doubt this shall include all Open Space and play areas and any areas of incidental open space which fall outside the curtilage of any Dwelling;

“Open Space” means all public open space including any play areas equipped or otherwise and any areas of incidental open space which fall outside the curtilage of any Dwelling, of such size and/or location as may be approved pursuant to Reserved Matters or otherwise agreed in writing between the Council and the Owner

“Open Space Works” means the works required to lay out and deliver the Open Space and the SUDS in accordance with the Open Space Specification

“SUDS” means the sustainable drainage system infrastructure to form part of the Development the detail and specification of which (including details as to future management and maintenance) shall be submitted to and approved as part of the Open Space Specification

and the size and location of the which shall be approved pursuant to the relevant Reserved Matters Approval;

The Owners hereby covenant to the Council as follows:

1 Landscape and Ecological Management Plan:

- 1.1 to submit the Landscape and Ecological Management Plan to the Council prior to the Commencement of Development;
- 1.2 to implement the approved Landscape and Ecological Management Plan in accordance with the details and timescales set out therein and to manage and maintain (or procure the management or maintenance of) the Land in accordance with the LEMP to the reasonable satisfaction of the Council in perpetuity; and
- 1.3 not to cause or permit the Occupation of any Dwelling unless or until the Landscape and Ecological Management Plan has been approved by the Council (such approval not to be unreasonably withheld or delayed);

2 Open Space (and SUDS)

- 2.1 to submit the Open Space Specification to the Council prior to the Commencement of Development;
- 2.2 not to cause or permit the Occupation of any Dwelling unless or until the Open Space Specification has been approved by the Council (such approval not to be unreasonably withheld or delayed);
- 2.3 not to cause or permit the occupation of more than 80% of the dwellings unless or until the Open Space Works have been completed in accordance with the Open Space Specification to the reasonable satisfaction of the Council.
- 2.4 once the Open Space Works have been completed pursuant to paragraph 2.3 above to:
 - 2.4.1 manage and maintain (or procure the management or maintenance of) the Open Space in accordance with the Open Space Specification to the reasonable satisfaction of the Council in perpetuity.

2.4.2 keep the Open Space available for public use (free of charge) in perpetuity (unless otherwise agreed in writing by the Council.

MANAGEMENT COMPANY

2.5 Prior to the occupation of any dwelling and prior to parting with the ownership or possession of any part of the Open Space the Owners shall establish or identify a Management Company which shall first be approved in writing by the Council and the County Council if the SUDS receive or are to receive both highway water and private water and following completion of the Open Space Works to the satisfaction of the Council the freehold ownership of the Open Space shall promptly thereafter be transferred to the Management Company together with the SUDS (and where the freehold transfer of any part of the SUDS is not reasonably practicable then such Transfer shall include sufficient rights over the Land in order to gain access to and to inspect maintain and repair cleanse and renew the SUDS)

SIGNED as a DEED by)
3H INVESTMENTS LIMITED)
and signed by a sole Director)
in the presence of:)



Director

Name of witness:



Name :

SIMON RUSSELL

Address:

30 SALLY HILL
BOTISHEAD
BRISTOL BS20 7SH

Occupation:

DIRECTOR ANESTHYSIST
PLANNING.

