

THIS DEED is made the 15th day of May 2017 under Section 106 of the Town and Country Planning Act 1990 (as amended) Section 111 of the Local Government Act 1972 and all other enabling powers

TO: SOUTH HAMS DISTRICT COUNCIL of Follaton House Plymouth Road, Totnes, Devon TQ9 5NE ("the Council"); and DEVON COUNTY COUNCIL of County Hall, Topsham Road, Exeter, Devon EX2 4QD ("the County Council")

[REDACTED]

RECITALS:

- A. South Hams District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- B. Devon County Council is the local planning authority and education authority for the purposes of the Act for the area in which the Land is situated.
- C. The Owner owns the freehold estate with absolute title of the Land forming part of registered Title Number DN511646 subject to the entries disclosed in the Property, Proprietorship and Charges Registers of said Title but otherwise free from encumbrances.
- D. ADPAD Group Limited submitted the Application to the Council on behalf of the Owner.
- E. The Council are minded to grant the Permission provided that the Owner enters into this Agreement.

1. DEFINITIONS

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

"Administrative Area" means the District of South Hams;

"Affordable Housing" means affordable housing available to specific eligible households whose needs are not met by the market as set out within the glossary at Annex 2 of the National Planning Policy Framework and being permanent dwellings either to be let as Affordable Rent Units or disposed of as Intermediate Housing Units through an Affordable Housing Provider pursuant to this Agreement;

"Affordable Housing Provider" or "AHP" means a registered provider as defined in the Housing & Regeneration Act 2008 who is registered with the Homes and Communities Agency or any other provider of Affordable Housing first approved in writing by the Council;

"Affordable Housing Scheme" means a scheme to be submitted to and approved by the Council in writing and which will set out the details of the provision of the Affordable Housing Units including the tenure, size, location, layout and specification of each of the Affordable Housing Units;

"Affordable Housing Unit" means each of those 9 (nine) or 30% of the total Dwellings (rounded to the nearest number) (whichever is the greater) to be specified in the Affordable Housing Scheme as Dwellings to be delivered as Affordable Housing and "Affordable Housing Units" shall be construed accordingly;

"Affordable Rent Unit" means approximately 40% of the Affordable Housing Units to be constructed on the plots to be specified in the Affordable Housing Scheme which shall be let on an assured tenancy as defined by Section 1 of the Housing Act 1988 (or any statutory extension re-enactment or modification thereof) by an AHP to be offered at a rent of up to 80% of the local

market rents and which rent shall not exceed the local housing allowance rate applicable to Brixton published by the Valuation Office Agency of HM Revenue and Customs;

"Application" means the application for outline planning permission registered by the Council on 8th July 2016 and given reference number 1825/16/OPA to develop the land by way of Outline application (with some matters reserved) for residential development of up to 29 dwellings, with associated means of access;

"BCIS Index" means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors;

"Chargee" means any mortgagee or chargee of the Affordable Housing Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

"Chargee's Duty" means the tasks and duties set out in Paragraph 1.9 to Schedule 1;

"Commencement of Development" means the carrying out of a material operation on the Land pursuant to the permission as defined in Section 56 of the Act other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and similar phrases such as **"Commence Development"** and **"Commence"** shall be construed accordingly;

"Contributions" and "Contribution" means all or any of the Index Linked Education Contribution; School Transport Contribution; Sport and Recreation Contribution; and, Tamar and Yealm Estuary SAC Management Contribution;

"Designated Person" means any person or persons who immediately prior to the occupation of an Affordable Housing Unit has a Local Connection with Devon and the expression **"Designated Persons"** shall be construed accordingly;

"Development" means the development of the Land pursuant to the Permission;

"Devon Home Choice" means the choice based letting scheme introduced in the County of Devon with a view to allocating those most in need of housing accommodation owned by local authorities and registered providers;

"Dwelling" means a residential unit constructed on the Land pursuant to the Permission and being either an Affordable Housing Unit or an Open Market Dwelling and **"Dwellings"** shall be construed accordingly;

"Education Contribution" means the Index Linked sum of £79,348 (seventy nine thousand three hundred and forty eight pounds) payable by the Owner to the County Council in accordance with the terms of this Deed and to be used towards increased outdoor sports provision at Ivybridge Community College;

"Expert" means a person of not less than 10 (ten) years recent and relevant experience in the matter in dispute as may be appointed by the Parties to this Agreement;

"Homebuy Agent" means Help to Buy South West Limited (Company Number 01683645) whose registered office is at Park House, Church Lane, St George, Bristol BS5 7AG or such other organisation(s) as may be designated by the Homes and Communities Agency as being responsible in relation to the area in which the Land is situated for the marketing of Intermediate Housing Units the assessment of the eligibility of those applying to purchase them and the direction of appropriate applicants to the local schemes which best suit their needs;

"Index Linked" means increased in accordance with the indexation formula set out at Paragraph 1 of Schedule 3 to this Agreement;

"Intermediate Housing Unit" means approximately 60% of the Affordable Housing Units to be constructed on the plots to be specified in the Affordable Housing Scheme and then to be let under a lease (of not less than 99 years) in the standard form of the AHP and in accordance with the requirements of the Homes and Communities Agency whereby the Dwelling is let by and AHP and:

- (a) the leaseholder acquires an initial share in the Affordable Housing Unit the value of which is not more than 40% (forty percent) of the Open Market Value except in cases where the Homes and Communities Agency (in cases where financial assistance has been given to the AHP) has agreed the intermediate lease shall be granted on the basis of a higher percentage of value being transferred to the purchaser; and
- (b) the purchaser pays to the AHP a rent in respect of the remaining equity up to 2.75% of the unsold equity;

or such similar equivalent means of tenure;

"Land" means that land shown edged red on the Plan namely land adjacent to Venn Farm, Brixton, Plymouth, Devon and which is registered at HM Land Registry forming part of Title Number DN511646;

"Local Allocations Policy" means the policy adopted by the Council in May 2013 to ensure the locally based allocations for Affordable Housing Units pursuant to section 167 (2E) of the Housing Act 1996 together with any revisions thereof;

"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);

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

"Obligations" and **"Obligation"** means the planning obligations, covenants, requirements and restrictions on the part of the Owner contained in Schedules 1 to 3 of this Agreement;

"Occupation" or **"Occupy"** means occupation for residential use permitted by the Permission but not including occupation by personnel engaged in construction, fitting out, decoration, marketing, display or security operations and **"Occupied"** and **"Occupier"** shall be construed accordingly;

"Open Market Dwelling" means a Dwelling that is for sale on the open market and which is not an Affordable Housing Unit;

"Open Market Value" means the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;

"Open Space" means the publicly accessible open space and play areas as shown on Drawing Number Rev B annexed to this Agreement and which is to be provided in accordance with the details of the Open Space Specification and which will remain accessible by the public in perpetuity;

"Open Space Specification" means details and specifications for 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 the 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 Works” means the works required to lay out and deliver the Open Space and SUDS in accordance with the Open Space Specification;

“Owner” means the Owner and their successors in title and assigns;

“Parties” means the Council, the County Council, the Owner and all successors in title and assigns;

“Permission” means the planning permission (whether outline or full) as maybe granted by the Council in respect of the Application;

“Plan” means the plan attached to this Agreement and marked “Site Location Plan”;

“Practical Completion” means the issue of a certificate of practical completion by the Owner’s qualified agent or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s qualified agent;

“Protected Tenant” means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (c) has been granted an Intermediate Housing Unit lease by an AHP (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the AHP) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the AHP all the remaining shares so that the tenant owns the entire Affordable Housing Unit;

“School Transport Contribution” means the Index Linked sum of £14,797 (fourteen thousand seven hundred and ninety seven pounds) payable by the Owner to the County Council in accordance with the terms of this Agreement and to be used towards the provision and/or enhancement of the transportation of pupils from the Development to Ivybridge Community College in Ivybridge BUT for the avoidance of doubt this contribution will not be used towards the purchase of any infrastructure or capital item;

“Sport and Recreation Contribution” means the Index Linked sum of £595 (five hundred and ninety five pounds) per Occupier calculated in accordance with the formula set out in the Council’s Open Space Sport and Recreation Supplementary Planning Document dated June 2006 (or such other document as may be in force at the date when the Contribution becomes due) and which will be payable by the Owner to the Council in accordance with the terms of this Agreement and to be used by the Council towards improvements to the sport and recreation facilities at Horsham Playing Fields, Brixton and/or the football pitch at Frankfort Park, Brixton and/or access improvements to these named facilities;

“SUDS” means the sustainable drainage system infrastructure to form part of the Development the detail and specification of which (including extent size and location) shall be detailed in the Open Space Specification and shall include all soakaways within the site that are not wholly within private gardens, whether or not they form part of a green open space;

“Tamar and Yealm Estuary SAC Management Contribution” means the Index Linked sum of £17.16 (seventeen pounds sixteen pence) per one bedroom dwelling, £23.99 (twenty three pounds ninety nine pence) per one bedroom flat, £31.60 (thirty one pounds sixty pence) per two bedroom dwelling, £33.93 (thirty three pounds ninety three pence) per three bedroom dwelling, £36.76

SCHEDULE 1

Owner's Covenants with the Council

1. AFFORDABLE HOUSING

1.1 Subject to the provisions of this Schedule, the greater of:

- (a) 30% of the total number of Dwellings (rounded to the nearest whole number); and
- (b) 9 (nine);

of the Dwellings shall be provided as Affordable Housing Units and shall not be Occupied other than as Affordable Housing Units in accordance with the terms of paragraph 1.4 of this Schedule.

1.2 Not to Commence Development unless and until the Affordable Housing Scheme has first been submitted to and approved in writing by the Council.

1.3 To construct and provide the Affordable Housing Units:

- (a) in accordance with the approved Affordable Housing Scheme; and
- (b) in accordance with the Homes & Communities Agency's Design and Quality Standards 2007 or any other standards which supersede it for grant funding purposes regardless of whether the Affordable Housing Units will receive grant funding or not.

1.4 The Affordable Housing Units shall only be Occupied by Designated Persons who cannot afford to rent or buy housing generally available on the open market immediately prior to Occupation save that this Obligation shall not be binding on:

- (a) any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
- (b) any Chargee provided that the Chargee shall have first complied with the Chargee's Duty set out in this Agreement.

1.5 The Owner shall give not less than 3 (three) months' notice in writing to the Council of the date on which each Intermediate Housing Unit will be available for first Occupation.

1.6 No more than 9 (nine) of the Open Market Dwellings shall be Occupied until 100% (one hundred per cent) of the Affordable Housing Units have been constructed to Practical Completion and are ready for Occupation and have been transferred to the AHP.

1.7 Prior to the first Occupation of any Dwelling the Owner shall notify the Council of the name of the AHP(s) to whom the Affordable Housing Units shall be transferred.

1.8 Nominations - Affordable Housing Units

(a) Intermediate Housing Units

Insofar as it is lawfully able to do so the Owner shall ensure that the Intermediate Housing Units are disposed of only to: either an AHP; or persons who:

- (i) are Designated Persons; and
- (ii) have been chosen by the AHP from the list of eligible applicants which the AHP shall request from the Homebuy Agent

provided that if there shall not be sufficient suitable applicants on such list or if any suitable applicants fail to proceed with the purchase within 3 (three) months of being made an offer by the AHP then the AHP shall be entitled to dispose of the Intermediate Housing Unit to a person of its own choosing who is unable to afford the purchase of suitable accommodation on the open market PROVIDED THAT the AHP shall use reasonable endeavours to dispose of the Intermediate Housing Units to persons from such list of eligible applicants.

(b) Affordable Rent Units

Insofar as it is lawfully able to do so the Owner shall ensure that the Affordable Rent Units are disposed of only to: either an AHP; or persons who:

- (i) are Designated Persons; and
- (ii) falls within the selection and allocations criteria set out in Devon Home Choice Register subject to such Local Allocations Policy and who is considered by the AHP to be in need of accommodation;

provided that in the event that Devon Home Choice ceases to operate or the register is discontinued an alternative allocation method shall be approved by the Council prior to any further allocations and further provided that if there shall not be sufficient suitable aforesaid persons or if any suitable persons fail to proceed with the letting within 4 (four) weeks of being made an offer by the AHP then the AHP shall be entitled to dispose of the Affordable Rent Unit to a person of its own choosing who is unable to afford the renting of suitable accommodation on the open market PROVIDED THAT the AHP shall use reasonable endeavours to dispose of the Affordable Rent Units to eligible persons.

Chargee's Duty

1.9 The Chargee shall prior to seeking to dispose of an Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge give not less than 8 (eight) weeks prior notice to the Council of its intentions to dispose and:

- (a) in the event that the Council responds within 8 (eight) weeks from receipt of the notice indicating that arrangements for the transfer of the said unit(s) 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 secure such transfer;

- (b) If the Council does not serve its response to the notice served under Paragraph 1.9(a) within 8 (eight) weeks then the Chargee shall be entitled to dispose free of the restrictions set out in this Part of Schedule 1;
- (c) If the Council or any other person cannot within 12 (twelve) weeks of the date on which the Chargee served its notice under Paragraph 1.9 secure such transfer then provided that the Chargee shall have complied with its obligations under Paragraph 1.9 the Chargee shall be entitled to dispose free of the restrictions set out in this Part of Schedule 1;

PROVIDED THAT at all times the rights and obligations in this paragraph 1.9 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 Chargee in respect of monies outstanding under the charge or mortgage.

2. CONTRIBUTIONS PAYABLE TO THE COUNCIL

- 2.1 The Owner shall pay the Sport and Recreation Contribution to the Council in the following instalments:
 - (a) 50% of the Sport and Recreation Contribution prior to the Occupation of any Dwelling; and
 - (b) the remaining 50% of the Sport and Recreation Contribution on the earlier of:
 - (i) the Occupation of 12 (twelve) of the Dwellings forming part of the Development; or
 - (ii) within 24 (twenty four) months of the payment of the first instalment pursuant to paragraph 2.1(a) above.
- 2.2 Not to cause or permit the Occupation of more than 12 (twelve) of the Dwellings unless and until all of the Sport and Recreation Contribution has been paid to the Council.
- 2.3 The Owner shall pay the Tamar and Yealm Estuary SAC Management Contribution to the Council prior to Occupation of the first Dwelling.

3. OPEN SPACE AND SUDS

- 3.1 Not to cause or permit the Commencement of Development unless or until the Open Space Specification has been submitted to and approved by the Council.
- 3.2 To implement the approved Open Space Specification in accordance with the details and timescales set out therein.
- 3.3 Not to cause or permit the Occupation of more than 15 (fifteen) 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.

- 3.4 Once the Open Space Works have been completed pursuant to paragraph 3.3 above to:
- (a) maintain and manage (or procure the maintenance and management of) the Open Space and the SUDS in accordance with the Open Space Specification to the reasonable satisfaction of the Council; and
 - (b) keep the Open Space available for public use (free of charge) in perpetuity.

4. **MANAGEMENT COMPANY**

Prior to parting with the ownership or possession of any part of the Open Space or SUDS the Owner shall establish or identify a Management Company (which shall first be approved in writing by the Council) to manage the Open Space and SUDS in accordance with the Open Space Specification and thereafter without delay to transfer the Open Space and SUDs to the said Management Company or to put in place any alternative management regime as may have been first approved by the Council pursuant to the Open Space Specification in accordance with the timescales set out therein and to the reasonable satisfaction of the Council.

5. **COMMENCEMENT OF DEVELOPMENT**

Commencement of Development shall not take place until a Commencement Notice in the form attached at Schedule 4 has been served on the Council 10 working days before the Commencement of Development.