

**THIS DEED** is made under section 106 of the Town and Country Planning Act 1990 Section 111 of the Local Government Act 1972 and all other enabling powers.

**Date:** 17<sup>th</sup> December 2012

**Parties:**

- (1) **WEST DEVON BOROUGH COUNCIL** of the Council Offices Kilworthy Park Drake Road Tavistock Devon ("the Council");
- (2) **WESTWARD INVESTMENT MANAGEMENT SERVICES (UK) LIMITED** (Company Registration Number 01709035) whose registered office address is at 19 High Street Totnes Devon TQ9 5NW ("the Owner");
- (3) **DEVON AND CORNWALL HOUSING LIMITED** (Industrial and Provident Society Number 3157312 of The Mount, Paris Street, Exeter, Devon EX1 2JZ ("the Registered Provider").

**1. Definitions**

In this Deed:-

**"the Act"** means the Town and Country Planning Act 1990

**"Affordable Housing Scheme"** means a scheme for the construction and delivery of homes up to the current Homes and Communities Agency Design and Quality Standards and to at least Level 3 of the Code for Sustainable Homes and which complies with the Affordable Housing Code of Practice and the Housing Allocations Policy and which details how the Affordable Housing Units are to be allocated including (but without prejudice to the generality of this definition) the following:

- (a) the Registered Provider which shall manage the rented Affordable Housing Units
- (b) the method of nominating and vetting those to whom an Affordable Housing Unit is to be allocated

(d) the method and terms of allocation of Affordable Housing Units whether to an occupier or to a Registered Provider

(e) provisions relating to the continued use of the Affordable Housing Units for local people as defined in the Council's Affordable Housing Code of Practice;

**"Affordable Housing Unit(s)"** means any unit or units to be constructed on the Land pursuant to the Permission solely for the purpose of residential occupation;

**"the Application"** means an application for full planning permission, registered by the Council on 3<sup>rd</sup> May 2012 with reference number 02603/2012, to develop the Land by the erection of eleven affordable residential units;

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

**"Chargee's Duty"** means the obligations set out at paragraph 1.8 of Schedule 1

**"Close Family Association"** means a spouse, parent, sibling or child who has been resident in the Parish of North Tawton for a minimum of five continuous years;

**"Commencement of Development"** means the carrying out of a material operation pursuant to the Permission as defined in Section 56 of the Act and

**"Commences Development"** shall be construed accordingly;

**"the Council"** means West Devon Borough Council in its capacity as Local Planning Authority for the area in which the Land is situated;

**"the Development"** means development pursuant to the Permission;

**"Exempt Person"** means any person who:

(i) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in

respect of a particular Affordable Housing Unit; or

(ii) has exercised any statutory right to buy (or any equivalent contractual right in respect of a particular Affordable Housing Unit;

“**the Land**” means land in the parish of North Tawton shown edged red on the Site Location Plan namely land adjacent to Barkers Way North Tawton Devon;

“**the Obligations**” means the planning obligations contained in Schedule 1 to this Deed;

“**the Owner**” means Westward Investment Management Services (UK) Limited;

“**the Permission**” means such conditional planning permission as may be granted by the Council in respect of the Application;

“**the Site Location Plan**” means the plan attached to this Deed and which is entitled “Site Location Plan”;

“**the POS**” means the public open space areas and communal landscaping shown coloured green on the POS Plan;

“**the POS Plan**” means the plan attached to this Deed and which is entitled “POS Plan”;

“**SUDS**” means a sustainable drainage system comprising treatment and drainage systems of surface water including any pipework and typical SUDS components such as swales, reed beds, ponds, filter trenches, attenuation tanks and detention basins;

## **2. Interpretation**

In this Deed, except where the context requires otherwise:-

2.1 The singular includes the plural, the masculine includes the feminine and vice versa;

2.2 References to clauses and schedules are to the clauses and schedules to this

Deed;

- 2.3 Reference to any party having an interest in land affected by this Deed shall include any successor in title of that party to that land or to any part of it;
- 2.4 Reference to any party having a statutory function referred to in this Deed shall include any successor to that statutory function;
- 2.5 Reference to any Act or Statutory Instrument shall include any subsequent amendment or re-enactment of it;
- 2.6 Where an Obligation applies to more than one person, their liabilities shall be joint and several;
- 2.7 For the avoidance of doubt save as lawfully permitted nothing herein contained or implied shall prejudice or affect the Council's rights powers duties or obligations in relation to its functions pursuant to all public and private statutes bye-laws orders and regulations which may be as fully and effectively exercised in relation to the Land as if this Deed had not been exercised;
- 2.8 The County Court in whose district the Land is situate shall have full jurisdiction to hear and determine any proceedings arising from or relating to this Deed or for the enforcement of its terms or any of them.

### **3. Land to be subject to Planning Obligations**

- 3.1 The Owner owns the registered freehold estate in the land absolutely free from any charge or mortgage under Title Number DN 386297.
- 3.2 The Council is minded to grant the Permission for the Development provided that all persons with an interest in the Land enter into this Deed.
- 3.3 Subject to clause 4, the Owner and the Registered Provider covenant to observe and perform the Obligations contained in Schedule 1, which shall

bind the Land (and every part of it) as planning obligations under section 106 of the Act.

3.5 The Council covenants to observe and perform the Obligations contained in Schedule 2.

3.6 The Obligations shall be enforceable by the Council.

3.7 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 the Obligations shall not be enforceable by anyone not a party to this Deed.

3.8 The Obligations are Land Charges and shall be registered as such.

3.9 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval within the meaning of Section 336 of the Act.

#### **4. Scope of the Obligations**

4.1 The Obligations shall take effect upon Commencement of Development.

4.2 No person shall be liable for any breach of an Obligation occurring after he has parted with all interest in the Land.

#### **5. Financial Matters**

5.1 The Owner shall not seek from the Council any payment of compensation under the Act in respect of the Land except in the event of the acquisition of the Land or any part of it under Part IX or Part X of the Act.

5.2 The Owner agrees to pay upon completion of this Deed the reasonable legal costs of the Council in respect of the preparation and execution of this Deed.

#### **5.3 Monitoring Fees**

The Owner acknowledges that the Council shall be entitled to charge them the sum of £2000 (for Developments of 10 or more dwellings) towards the costs to be reasonably and properly incurred by the Council in monitoring

compliance with this Deed and in assessing the details submitted to the Council for approval pursuant to this Deed.

**IN WITNESS OF WHICH** the Council the Owner and the Registered Provider have affixed their respective Common Seals to this Deed on the above date.

## **SCHEDULE 1**

### **The Obligations**

The Owner hereby covenants with the Council as follows:

#### **1. Affordable Housing**

- 1.1 The Affordable Housing shall comprise eleven (11) rental units, which shall consist of eight (8) two (2) bedroom houses and three (3) three (3) bedroom houses;
- 1.2 The Affordable Housing Units shall be used and occupied only as Affordable Housing Units for rent;
- 1.3 The Registered Provider shall upon completion of the Development and at all times subsequently allocate each of the rented Affordable Housing Units in accordance with the Council's Local Allocations Policy, the Council's Affordable Housing Code of Practice and in accordance with the following criteria:
  - 1.3.1 to an applicant who has lived in the Parish of North Tawton for a continuous period of six of the preceding twelve months (or three of the preceding five years where this has been through choice); **OR**



*R. L. Jewell*  
 Authorised Signatory/Secretary

*R. Candy*  
 Authorised Signatory

7150

01626 331678

*R. Jewell*  
 APPLICATION SITE

*R. Candy*  
 ACCESS

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*R. Candy*

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**SITE LOCATION PLAN**  
**LAND AT BARKERS WAY, NORTH TAWTON**  
**DEVON**

Client <b>WIMS(UK) LTD</b>	
Scale <b>1:1250</b>	Date <b>March 12</b>
Drw. No. <b>MGR/011/100C3/OA</b>	

- 1.3.2 to an applicant who is permanently employed in the Parish of North Tawton; **OR**
- 1.3.3 to an applicant who has a close family association in the Parish of North Tawton;
- 1.4 If the Registered Provider is unable to allocate a rented Affordable Housing Unit in accordance with the requirements specified in Clause 1.3 above then the Registered Provider shall allocate the Affordable Housing Unit(s) by applying the requirements specified in Clause 1.3 above to the adjoining Parishes of Bondleigh, Sampford Courtenay and South Tawton;
- 1.5 If the Registered provider is unable to allocate a rented Affordable Housing Unit in accordance with the requirements specified in Clauses 1.3 and 1.4 above then the Registered Provider shall allocate any such Affordable Housing Unit by applying the procedures specified in Clause 1.3 above to the Borough of West Devon;
- 1.6 The rented Affordable Housing Units shall be occupied on the basis of an Assured Tenancy (or such other form of periodic tenancy as shall from time to time be permissible at law in the case of a Registered Provider landlord);
- 1.7 The Affordable Housing Units shall at all times be managed in accordance with the Objects of the Registered Provider and in accordance with the permission;
- 1.8 The restrictions and obligations in this Schedule shall not be binding upon:
- 1.8.1 Any Chargee provided that the Chargee shall have complied with the Chargee's Duty; or
- 1.8.2 any Exempt Person or any mortgagee or charge of an Exempt Person

or any person deriving title from an Exempt Person or any successor in title thereto or their respective mortgagees and charges;

1.9 The Chargee shall:

1.9.1 prior to seeking to dispose of any Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge shall give not less than 1 (one) month prior notice to the Council of its intentions to dispose; and

1.9.2 in the event that the Council responds within 1 (one) month of receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit can be made in such a way as to safeguard them as affordable housing units then the Chargee shall co-operate with such arrangements so far as is reasonable and shall use reasonable endeavours to secure such transfer PROVIDED THAT the Chargee shall not be obliged to transfer the Affordable Housing Units for a consideration which is less than a consideration which disregards the restrictions and obligations in this Schedule and, for the avoidance of doubt, the mortgagee, chargee or other lender shall be repaid the full amount secured on the relevant Affordable Housing Units;

1.9.3 if the Council does not serve its response to the Notice served under paragraph 1.9.1 within 1 (one) month then the Chargee shall be entitled to dispose free of the restrictions set out in this Deed relating to the Affordable Housing Units and such restrictions shall at all times cease to apply to the Affordable Housing Units;

1.9.4 if the Council or any other person cannot within 3 (three) months of the date of service of its response under paragraph 1.9.2 secure such transfer

then provided that the Chargee shall have complied with the Chargee's Duty the Chargee shall be entitle to dispose free of the restrictions set out in this Agreement relating to the Affordable Housing Units and such restrictions shall at all times cease to apply to the Affordable Housing Units;

PROVIDED THAT at all times the rights and obligations in this paragraph 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 PROVIDED FURTHER THAT where the Chargee's Duty has been complied with or where the Council fails to respond or to complete the transfer in accordance with paragraphs 1.9.1 to 1.9.4 the Council will issue a Certificate to confirm that the Chargee's duty has been complied with.

## **2. Sustainable Drainage System**

2.1 Not to allow the occupation of any Affordable Housing Unit before written details of the management and future maintenance of the SUDS Scheme which shall serve the Development have been submitted to the Council and approved in writing by it (such approval not to be unreasonably withheld or delayed).

2.2 To manage and maintain the SUDS Scheme in accordance with the written details approved pursuant to paragraph 2.1 above or such other details as may from time to time be approved in writing by the Council (such approval not to be unreasonably withheld or delayed).

## **3. Public Open Space**

3.1 Not to cause or permit Commencement of Development until written details of the management and future maintenance of the POS areas shown coloured