

This AGREEMENT is made the 27 day of MARCH 2014

BETWEEN

PEARCE CONSTRUCTION (BARNSTAPLE) LIMITED (Company Registration No 00408163)
of Pearce House Branham Crescent Roundswell Business Park Barnstaple Devon EX31 3TD
(referred to as "the Landowner")

AND

TORRIDGE DISTRICT COUNCIL of Riverbank House, Chanters Road, Bideford EX39 2QG
(hereinafter referred to as "the Council")

Introduction

A The Council is the Local Planning Authority for the purposes of the 1990 Act for the area that includes the Land and by whom the obligations imposed by this Agreement shall be enforceable.

B The Application has been made to the Council by the Developer for Planning Permission for the Development

C The Landowner is the registered proprietor of the Land which is registered with Title Absolute at HM Land Registry under Title Number DN643163 subject to entries disclosed on the Charges Register of the said title but otherwise free from encumbrances

D The Council in exercise of its powers under the 1990 Act has resolved to grant the Planning Permission for the Development subject to completion of this Agreement, which the Council considers is necessary for the satisfactory development of the Land; and the terms of which the Council has approved.

E This Agreement is conditional upon the matters hereinafter referred to.

Agreed terms

Definitions and Interpretations

1.1 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

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

Affordable Housing means housing which is available to people 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; and which falls within the definition of 'social housing' in section 68 of the Housing and Regeneration Act 2008

Affordable Rented Dwelling means any of the 6 dwellings on the Land to be used as Affordable Housing and let in accordance with the terms set out in Schedule 2 of this Agreement.

Application means the application for planning permission for the Development registered by the Council under the 1990 Act on the 11th June 2013 and given reference 1/0527/2013/ FUL/M.

Commencement of Development the date upon which a material operation within the meaning of Section 56 of the Act is carried out in relation to the Development, and similar expressions such as "Commence the Development" shall be interpreted the same way;

Development means the erection on the Land of 6 Affordable Rented Dwellings and 4 Open Market Dwellings with ancillary access and parking

Index Linked means the increasing of a sum by reference to the All Items Index of Retail Prices issued by the Office of National Statistics

Land means land registered at HM Land Registry under Title Number DN643163 known as land at Hazeldene House Ashwater Beaworthy Devon EX21 5DT shown edged red on the Plan attached hereto

Layout Plan means the layout plan attached hereto;

Mortgagee means any person who is granted a charge over the Land or any part of it (including over any Affordable Rented Dwelling) or any receiver or manager or administrative receiver appointed by such mortgagee or charge or any other person appointed under any security documentation to enable such mortgagee to raise its security ;

Obligations means the planning obligations contained in the Schedules hereto;

"Occupation" and "occupied" mean the occupation for the purposes permitted by the Planning Permission but does not include occupation by personnel at the time engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly;

Open Market Dwellings means the 4 dwellings in the development to be sold to purchasers on the open market (shown coloured blue on the Layout Plan or in such other location as may be agreed between the Council and the party commencing development)

Plan means the plan attached hereto;

Planning Permission means the planning permission to be granted by the Council pursuant to the Application in a substantially similar form to the Draft attached as Appendix 1 and the expression Planning Permission shall include all approvals granted thereunder;

Proper Officer means the Head of Strategic Planning & Development or any other officer of the Council given the authority and responsibility of that post.

RP means a registered provider of social housing under section 80 the Housing and Regeneration Act 2008.

and additional expressions are defined in the Schedule in which they appear.

1.2 In this Agreement, except where the context requires otherwise:-

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

References to clauses and schedules are to the clauses in and schedules to this Agreement;

Reference to any party having an interest in land affected by this Agreement shall include any successor in title of that party to that land or to any part of it;

Reference to any party having a statutory function referred to in this Agreement shall include any successor to that statutory function;

Reference to any Act or Statutory Instrument shall include any subsequent amendment or re-enactment of it;

Where an Obligation applies to more than one person, their liabilities shall be joint and several;

References to the **Council** and **Landowners** shall include their respective successors and assignees;

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2.1 The obligations in this Agreement (with the exception of Schedule 1) are conditional upon:

- i the Council granting the Planning Permission; and
- ii the Commencement of Development pursuant to the Planning Permission

and shall only come into effect when both such conditions are satisfied

2.2 If the Planning Permission granted pursuant to the Application should expire before the Development is Commenced or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect;

2.3 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission relating to the Development as specified in the Application) granted (whether or not on appeal) after the date of this Agreement;

2.4 This Agreement is a Local Land Charge and shall be registered as such;

2.5 The Council will upon the written request of the Landowner at any time after the obligations of the Landowner under this Agreement have been fulfilled issue written confirmation thereof and such confirmation not to be unreasonably withheld or delayed;

2.6 Nothing in this Agreement is or amounts to or shall be construed as a planning permission or approval;

2.7 The County Court in whose district the Land is situated shall have full jurisdiction to hear and determine proceedings arising from or relating to this Agreement or for the enforcement of its terms or any of them;

SECOND SCHEDULE

Affordable Housing

Part 1

- 1 Unless otherwise agreed in writing by the Proper Officer and the Owner, the Affordable Housing shall be provided in accordance with the following table; and the plot numbers referred to are those shown on the Layout Plan.

Plot Number	Number of Bedrooms/Persons	Tenure
1	2b/4p	Affordable Rented Dwelling
2	2b/4p	Affordable Rented Dwelling
3	2b/4p	Affordable Rented Dwelling
4	2b/4p	Affordable Rented Dwelling
5	3b/5p	Affordable Rented Dwelling
6	2b/4p	Affordable Rented Dwelling

- 2 The Affordable Rented Dwellings shall be provided and managed in accordance with Schedule 2 Part 2 below;
- 3 All nominations of proposed occupiers of Affordable Housing shall be made in accordance with "Choice Based Lettings" (DCLG Guidance – Allocation of Accommodation: Choice Based Lettings: August 2008 and subsequent guidance) or any subsequent replacement scheme agreed to by the Council and Landowners. In the event that Choice Based Lettings has ceased to operate and a replacement scheme has not been agreed or has ceased to operate the Council shall have 100% nomination rights

Schedule 2 Part 2:

Affordable Rented Dwellings

Part A - Definitions

In this Schedule unless the context otherwise requires the following expressions shall have the following meanings:-

Affordable Rent a rent which does not exceed 80% of open market rent (including service charge) for the relevant dwelling in accordance with guidance published by the Regulator from time to time.

Exempt Person means any person who in relation to an Affordable Rented Dwelling has:

exercised the right to acquire an 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 Rented Dwelling; or

exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right).

Housing Need where a person does not have available to him or her and cannot afford (personally or jointly with other members of his or her household) to acquire or rent a home suitable for his or her needs and the needs of their household at normal market values prevailing in the Parish.

Local Requirement

Either:

a minimum continuous residence by a prospective occupier of five years in the Parish immediately prior to the Offer Date; or

residence by a prospective occupier in the Parish for five years within the ten years preceding the Offer Date; or

where one or both parents or guardians of a prospective occupier have resided in the Parish for a minimum period of ten years prior to the Offer Date; or

where a prospective owner or occupier has had continuous employment in the Parish for the past five years prior to the Offer Date; or

a key worker under a scheme approved by the Council.

Offer Date the date an Affordable Rented Dwelling is offered to a prospective occupier

Parish the Parish of Ashwater

Regulator means the Homes and Communities Agency acting through the Regulation Committee established by it pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions.

Part B

Planning Obligations - provision of Affordable Housing

Subject to the Exemptions set out in clause 4 of this Deed:

2.1 Six of the dwellings to be constructed on the Land are hereby designated as Affordable Housing which shall not be occupied other than as Affordable Housing subject to the provisions of this Schedule

2.2 The Landowner shall make available Affordable Rented Dwellings for rent (as specified in this Schedule) and will not permit more than two of the Open Market Dwellings to be occupied prior to the issue of a Building Regulation final certificate in respect of the Affordable Rented Dwellings

2.3 The Landowner shall use reasonable endeavours and commercially sensible endeavours to enter into a contract for the disposal of the Affordable Houses to an RP

2.4 If the Landowner (having complied with its obligations in the preceding sub-clause) has not exchanged contracts for the sale/purchase of the Affordable Housing within 26 weeks of the date of the later of

- (i) the Commencement of the Development and
- (ii) the Offer Date to an RP

the Landowner may make a written request to the Council to nominate an alternative RP and shall use reasonable and commercially sensible endeavours to enter into a contract for the transfer of the Affordable Houses to the nominated RP at a price agreed between the parties and approved by the Council (such approval not to be unreasonably withheld or delayed)

2.5 A contract for sale to an RP may provide either for the sale of completed dwellings or for the sale of land and the construction of dwellings under a contemporaneous building contract between the Landowner and the RP

2.6 If within 10 months of the Commencement of the Development the Landowner has not exchanged contracts to sell the Affordable Houses to an RP the Landowner may give written notice to the Council that it intends to provide the Affordable Houses for Social Rent by a private landlord or for sale (hereinafter referred to as a "Private Rental Notice") and on the giving of such notice the following paragraphs of this Schedule shall apply

Affordable Housing where there is no transfer to a Registered Provider

2.7 If a Private Rental Notice is given (under paragraph 2.6 above) the Landowners covenant:

- (i) to provide the Affordable Houses as Social Rented Dwellings to let at a rent not exceeding a Social Rent

(ii) to make available dwellings for rent by completing them with a Building Regulations Certificate issued (as specified in the following clause of this Schedule) prior to the occupation of any further unoccupied Open Market Dwellings

2.8 The service of a Private Rental Notice:

(i) shall include the Landowners' proposal regarding the form of tenancy for such lettings and procedures for social renting by the first and future tenants and incorporate the Council's reasonable nomination procedure for the future tenants

(ii) is acknowledged by the Landowner to constitute an undertaking by them that all nominations of proposed occupiers of Affordable Housing shall be made in accordance with "Choice Based Lettings" (DCLG Guidance – Allocation of Accommodation: Choice Based Lettings: August 2008 and subsequent guidance) or any subsequent replacement scheme agreed to by the Council and Landowners. In the event that Choice Based Lettings has ceased to operate and a replacement scheme has not been agreed or has ceased to operate the Council shall have 100% nomination rights

2.9 The Proper Officer may approve the proposals in the Private Rental Notice or may seek to agree amendments to them and if agreement cannot be reached either party may refer the matter under the dispute procedure