

1 DEFINITIONS

In this Agreement:

"Act"	means the Town and Country Planning Act 1990;
"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 to be let as Affordable Rented Units or disposed of as Intermediate Housing Units pursuant to this Agreement;
"Affordable Housing Provider" or "AHP"	means a registered provider as defined in the Housing and Regeneration Act 2008 who is registered with Homes England or any other provider of Affordable Housing first approved in writing by the Council;
"Affordable Housing Scheme"	means a scheme to be submitted for Phase 1 and Phase 2 of the Development detailing the type, size and location of the Affordable Housing Units to be provided within Phase 1 and Phase 2;
"Affordable Housing Unit"	means 30% of the total number of Dwellings to be delivered as Affordable Housing pursuant to this Agreement delivered as either Affordable Rented Units or Intermediate Housing Units pursuant to this Agreement;
"Affordable Rented Unit"	means 50% of the Affordable Housing Units which shall be let by an AHP to be offered at a rent not exceeding 80% of the local market rents plus service charge;
"Air Quality Contribution"	means the sum of one hundred and seventy three thousand pounds (£173,000.00) Index Linked payable to the County Council and to be used for the provision of a traffic and air quality mitigation scheme to be used in Ivybridge;
"Alternative Highway Scheme"	means the alternative highway scheme as shown on Drawing 173396_G_20 Rev A annexed to this Agreement at Appendix 6 or such other drawing as is agreed between the County Council and the Developer to be laid out in the event that TRO 1 is not approved;
"Alternative Highway Works"	means the highway works to be carried out on the Land in accordance with Drawing 173396_G_20 Rev A annexed to this Agreement at Appendix 6 or such other drawing as is agreed

	between the County Council and the Developer to deliver the Alternative Highway Scheme;
"Application"	means the application for planning permission registered by the Council on 26 November 2018 for the Development and given reference number 3703/18/OPA;
"BCIS Index"	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors;
"Biodiversity Contribution"	means the sum of twenty five thousand seven hundred and twenty nine pounds and twenty five pence (£25,729.25) Index Linked towards off site biodiversity measures to deliver enhancements to or creation of new habitats to mitigate the impact of the Development and secure a net gain in relation to biodiversity;
"Commencement of Development"	means the carrying out of a material operation on the Land pursuant to the Permission as defined in Section 56 (4) 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, the provision of contractors' offices and compounds or the construction of the footpath to be provided from the Land to the public highway and similar phrases such as "Commence Development" and "Commence" shall be construed accordingly;
"Consumer Price Index"	means the rate of consumer price inflation published in the United Kingdom to measure the change in prices of goods and services
"Designated Person"	means any person or persons who immediately prior to the occupation of an Intermediate Housing Unit has a Local Connection with Devon and the expression and the expression "Designated Persons" shall be construed accordingly;
"Development"	means the development of the Land pursuant to the Permission for the hybrid application for the erection of up to 200 dwellings, comprising the following: Phase 1 - detailed application for the erection of 94 dwellings (C3), formation of access with Exeter Road (B2131), new spine road, internal roads and footpaths, surface water infiltration ponds, landscaping, ground and utilities works and associated infrastructure; and Phase 2 - outline application for up to 106 dwellings (C3) with all matters

reserved except for access; strategic landscaping, surface water drainage works, highway works and diversion and associated infrastructure;

"Devon Home Choice"	means the choice based letting scheme introduced in the County of Devon;
"Devon Home Choice Register"	means the register of persons most in need of housing accommodation who have registered to bid for properties made available through Devon Home Choice. Council or housing association homes which become vacant are advertised on this register and applicants can 'bid' for properties they are interested in. Each property is allocated to the bidder in the greatest level of housing need;
"Dwelling"	means a residential unit constructed on the Land pursuant to the Permission being both Affordable Housing Units and Open Market Dwellings;
"Expert"	means a person of not less than 10 (ten) years recent and relevant experience of the matter in dispute as may be appointed by the parties to this Agreement;
"Footway Improvements Contribution"	means the sum of one hundred and twenty seven thousand pounds (£127,000.00) Index Linked payable to the County Council towards footway improvements between the Development access junction/B3213 and the Rutt Lane B3213 junction;
"Grant Funding"	means grant funding provided by Homes England or any successor in function thereof;
"Highway Works"	means the highway works to be carried out on the Land in accordance with the provisions of Schedule 2 of this Agreement and plans annexed to this Agreement at Appendix 5;
"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 Homes England as being responsible in relation to the area in which the Land is situated for the marketing of the Intermediate Housing Units the assessment of the eligibility of those applying to purchase them and the direction of appropriate applicants to local schemes which best meet their needs;
"Index Linked"	means where any provision of this Agreement provides for a sum to be increased in accordance with the index a sum

	calculated in accordance with the indexation formula set out at Part A of Schedule 5 to this Agreement;
"Interest Rate"	means 4% above the Barclays Bank base rate calculated on a day to day basis from time to time in force;
"Intermediate Housing Unit"	<p>means 50% of the Affordable Housing Units to be disposed of pursuant to a shared ownership lease (of not less than 99 years) in the standard form of the Affordable Housing Provider and in accordance with the requirements of Homes England whereby the Dwelling is let by an Affordable Housing Provider and:</p> <p>(a) the leaseholder acquires an initial equity share in the Affordable Housing Unit; and</p> <p>(b) the purchaser pays to the Affordable Housing Provider a rent in respect of the remaining unsold equity of up to 2.75% of the unsold equity, with the right of the occupier to purchase further percentages of the Dwelling up to 100% or such similar equivalent means of tenure;</p>
"Land"	means the land shown edged red on the Plan 1 namely land at Filham, Ivybridge, Devon;
"Landscape and Ecology Management Plan" or "LEMP"	means details (including a plan) setting out the management and maintenance arrangements for the parts of the Open Space identified in the LEMP for each Phase (to be managed for biodiversity, ecology and landscape purposes both on the Land and off-site);
"Local Allocations Policy"	means the policy adopted by the Council in December 2017 to ensure 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 Units 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);
"Local Equipped Area of Play" or "LEAP"	means a local equipped area of play (with an activity zone of at least 400m ² and at least 5 items of equipment) and a minimum 20m buffer between the activity zone and the habitable room façade of dwellings and 10m buffer between the activity zone and adjacent dwelling boundaries to be delivered in Phase 2 of the Development (unless otherwise agreed with the Council) and shown indicatively in the locations edged green on Plan 2

or such other area of land of a size or location as may be otherwise agreed in writing between the Council and the Owners;

"Local Landscape Area for Play" or "LLAP"

means an area for play (with an activity zone of at least 100m² and at least 3 items of equipment) or a local landscaped area providing natural play features to be delivered in Phase 1 of the Development (unless otherwise agreed with the Council) and shown indicatively in the location edged green on Plan 2 or such other area of land of a size and location as may be otherwise agreed in writing between the Council and the Owners **AND FOR THE AVOIDANCE OF DOUBT** any Local Landscaped Area for Play must be considered to be of play value determined by the Council to equate to or exceed the play value of an equipped activity zone;

"Management Company"

means an existing management company or a management company 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 (including a Town or Parish Council) as may be first approved in writing by the Council;

"Mortgagee"

means the mortgagee or chargee of either:

- (a) an individual Affordable Dwelling where the mortgagor has defaulted on the particular mortgage; or
- (b) the AHP or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator;

"Mortgagee's Duty"

means the tasks and duties set out in Paragraph 10 to Schedule 1;

"NHS Healthcare Contribution"

means the sum of eighty thousand nine hundred and twenty five pounds (£80,925.00) payable towards the cost of increasing the gross internal area (GIA) of the Ivybridge Health Centre and Highland Health Centre as required by NHS Devon Clinical Commissioning Group to adequately serve the estimated increase in patient numbers as a result of the Development;

"Obligations" and "Obligation"

means the planning obligations, covenants, requirements and restrictions on the part of the Owners contained in 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;
"Occupier"	means a person who occupies a Dwelling for the purposes of a residential dwelling/residential use;
"Open Market Dwelling"	means a Dwelling which is for sale on the open market and which is not an Affordable Housing Unit;
"Open Space"	means the areas of the Land to be delivered as public open space shown indicatively in hatching on Plan 2 or of such other size or location as may be otherwise agreed in writing between the Council and the Owners and which shall include the LLAP in Phase 1 (unless otherwise agreed by the Council), LEAP in Phase 2 (unless otherwise agreed by the Council), SUDS for each Phase and any unadopted footpaths through said open space (if applicable) AND FOR THE AVOIDANCE OF DOUBT this term will also include areas of incidental open space falling outside the curtilage or control of any Dwelling;
"Open Space Specification"	means written details and specifications for the laying out and provision of the Open Space for each Phase (including the LLAP in Phase 1 and LEAP in Phase 2) and the SUDS including the standard of the maintenance and management to be undertaken and a timetable for the laying out of the Open Space Works AND 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, Local Equipped Area for Play and or Local Landscape Area for Play and the SUDS in each Phase in accordance with the Open Space Specification;
"Parties"	means the Council, the County Council, the Owners and the Developer and all successors in title thereto;
"Permission"	means such conditional planning permission as may be granted by the Council in respect of the Application;
"Phase"	means Phase 1 or Phase 2 as appropriate;
"Phase 1"	means that part of the Land as shown marked 'Phase 1' on the Phasing Plan;

SCHEDULE 1

Owners' Covenants with the Council

The Owners hereby covenant with the Council as follows:

PART 1 - AFFORDABLE HOUSING

- 1 Subject to the provisions of this Schedule the Affordable Housing Units are hereby designated as Affordable Housing and shall not be occupied other than as Affordable Housing.
- 2 To submit an Affordable Housing Scheme in respect of a Phase (if different to that agreed at reserved matters approval) to the Council for approval (such approval not to be unreasonably withheld and to be deemed approved if no response is received twenty (20) Working Days from receipt by the Council of the Affordable Housing Scheme) before Commencement of Development within that Phase.
- 3 To construct and provide the Affordable Housing Units in accordance with the minimum requirements of Homes England's Design and Quality Standards 2007 for unit size achieving a minimum score of 41% (forty one per cent) for unit size.
- 4 Unless otherwise agreed in writing with the Council the Affordable Housing Units in Phase 1 shall be provided and occupied as:

Affordable Rent (50%) 14 units	No.	SQFT	Size Standard	Build Standard
1 bed 2 person Maisonette GF	2	538	NDSS	M4 (3) Cat 3
1 bed 2 person Maisonette FF	2	647	NDSS	M4 (1) Cat 1
2 bed 4 person House	6	850	NDSS	M4 (2) Cat 2
3 bed 5 person House	4	1001	NDSS	M4 (2) Cat 2
Total	14			

Intermediate Housing Units (Shared Ownership) (50%) 14 units	No.	SQFT	Size Standard	Build Standard
2 bed 4 person House	7	850	NDSS	M4 (2) Cat 2
3 bed 5 person House	2	1001	NDSS	M4 (2) Cat 2
3 bed 5 person House	5	1001	NDSS	M4 (1) Cat 1
Total	14			

The Phase 2 Affordable Housing Scheme will be confirmed at reserved matters application but will follow the Affordable Housing Units as detailed below (unless otherwise agreed in writing by the Council). Should the overall numbers of Affordable Housing Units increase or decrease, the number of each unit type to be provided will be amended in accordance with the percentage proportion by unit type for each tenure, unless otherwise agreed with the Council.

Affordable Rent (50%) 16 units	No.	SQFT	Size Standard	Build Standard	Percentage
1 bed 2 person Maisonette GF	2	538	NDSS	M4 (3) Cat 3	12.5%
1 bed 2 person Maisonette FF	2	647	NDSS	M4 (1) Cat 1	12.5%
1 bed 2 person Maisonette GF	2	538	NDSS	M4 (1) Cat 1	12.5%

1 bed 2 person Maisonette FF	2	647	NDSS	M4 (1) Cat 1	12.5%
2 bed 4 person House	3	850	NDSS	M4 (2) Cat 2	19%
3 bed 5 person House	5	1001	NDSS	M4 (2) Cat 2	31%
Total	16				100%

Intermediate Housing Units (Shared Ownership) (50%) 16 units	No.	SQFT	Size Standard	Build Standard	Percentage
2 bed 4 person House	8	850	NDSS	M4 (2) Cat 2	50%
3 bed 5 person House	5	1001	NDSS	M4 (2) Cat 2	31%
3 bed 5 person House	3	1001	NDSS	M4 (1) Cat 1	19%
Total	16				100%

MECHANISM OR PROVISION OF AFFORDABLE HOUSING

- 5 The Owners shall use their reasonable endeavours enter into a contract for the sale of the Affordable Housing Units with an AHP within six (6) months of the date of this Agreement.
- 6 If the Owners have not contracted to sell the Affordable Housing Units to an AHP within six (6) months of the date of this Agreement (despite having used their reasonable endeavours to do so) the Owners shall demonstrate to the Council in writing why it was unable to do so and **PROVIDED THAT** the Council (acting reasonably) is satisfied that reasonable endeavours have been undertaken by the Owners to secure a contract with an AHP in respect of the Affordable Housing Units the Owners and the Council shall use reasonable endeavors to seek to agree an alternative mix or tenure of the Affordable Housing Units within twenty (20) Working Days to be agreed in writing with due consideration to the viability of the Development.
- 7 From the date of Practical Completion of the Affordable Housing Units those units shall not be used other than for Affordable Housing and shall only be occupied by persons with a Local Connection in accordance with the Local Allocations Policy.
- 8 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.
- 9 The Affordable Housing Units shall be provided as follows:
 - 9.1 No more than 50% (fifty per cent) of the Open Market Dwellings in a Phase shall be Occupied until 50% of the Affordable Housing Units in a Phase have been transferred to an AHP;
 - 9.2 No more than 70% (seventy per cent) of the Open Market Dwellings in a Phase shall be Occupied until 70% of the Affordable Housing Units in a Phase have been transferred to an AHP; and
 - 9.3 No more than 80% (eighty per cent) of the Open Market Dwellings in a Phase shall be Occupied until all of the Affordable Housing Units in a Phase have been transferred to an AHP.

- 9.4 Prior to the first Occupation of any Dwelling the Owners shall notify the Council in writing of the name of the Affordable Housing Provider to whom the Affordable Rented Units and the Intermediate Housing Units shall be transferred,

PROVIDED THAT the requirements of this paragraph 9 shall only apply where the Owners have entered into a contract with an Affordable Housing Provider for the purchase of the Affordable Housing Units.

MORTGAGEE'S DUTY

- 10 The Mortgagee shall prior to seeking to dispose of any Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge give prior written notice ("Mortgagee's Notice") to the Council of its intention it dispose and:
- 10.1 in the event that the Council responds within two (2) months from receipt of the Mortgagee's Notice indicating that arrangements for the transfer of the Affordable Dwellings can be made in such a way as to safeguard them as Affordable Housing and to secure repayment of all sums outstanding under the terms of the relevant security documentation (including all accrued principal monies, interest and reasonable and proper costs and expenses) then the Mortgagee shall cooperate with such arrangements and use his reasonable endeavours to secure such transfer;
- 10.2 if the Council does not serve its response to the Mortgagee's Notice served under paragraph 10.1 within the two (2) months then the Mortgagee shall be entitled to dispose of the Affordable Dwellings free from the restriction set out in this Part 1 of Schedule 1 which provisions shall determine absolutely;
- 10.3 if the Council or any other person cannot within three (3) months of the date of receipt of the Mortgagee's Notice secure such transfer then provided that the Mortgagee shall have complied with its obligations under this paragraph 10 the Mortgagee shall be entitled to dispose of the Affordable Dwelling free from the restrictions set out in this Part 1 of Schedule 1 which provisions shall determine absolutely provided that at all times the rights and obligations in this paragraph 10 shall not require the Mortgagee to act contrary to its duties under the mortgage or charge and that the Council must give full consideration to protecting the interest of the Mortgagee in respect of monies outstanding under the mortgage or charge.

NOMINATIONS – AFFORDABLE RENTED UNITS

- 11 Not to allocate the Affordable Rented Units except in accordance with Devon Home Choice Register subject to the Local Allocations Policy and each Affordable Rented Unit shall only be let to a person:
- 11.1 who falls within Bands A to D of the selection and allocations criteria set out in Devon Home Choice; and
- 11.2 who is considered by the AHP to be in need of the accommodation; and
- 11.3 who has a Local Connection with the Administrative Area of the Council with first preference to applicants with a Local Connection to the parish of Ugborough, with second preference to

applicants with a Local Connection to the parish of Ivybridge with third preference to applicants with a Local Connection to South Hams.

- 12 In the event of a conflict between the Local Allocations Policy and Devon Home Choice the Local Allocations Policy shall take precedence.
- 13 In the event that Devon Home Choice or the Devon Home Choice Register ceases to operate an alternative allocation method shall be approved by the Council in writing prior to any further allocations.

NOMINATIONS – INTERMEDIATE HOUSING UNITS

- 14 In so far as it is lawfully able to do so the Owners shall ensure that the Intermediate Housing Units are disposed of only to persons who:
 - 14.1 are Designated Persons; and
 - 14.2 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 three (3) 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 its reasonable endeavours to dispose of the Intermediate Housing Unit to persons from such list of eligible applicants.

PART 2 – OTHER OBLIGATIONS

15 OPEN SPACE AND SUDS

- 15.1 Not to cause or permit the Commencement of Development in a Phase unless or until the Open Space Specification has been submitted to and approved by the Council such approval not to be unreasonably withheld or delayed and to be deemed approved if no response is received sixty (60)days from submission.
- 15.2 To carry out the Open Space Works in accordance with the Open Space Specification.
- 15.3 Not to part with the ownership or possession of any part of the Open Space or SUDS unless and until the ongoing maintenance and management of the Open Space and SUDS has been secured and provided for in accordance with the terms of the Open Space Specification.
- 15.4 Not to cause or permit the Occupation of more than 50% (fifty per cent) of the Dwellings in any Phase unless or until the Open Space Works for that Phase have been completed in accordance with the Open Space Specification to the reasonable satisfaction of the Council
- 15.5 Once the Open Space Works have been completed in accordance with the Open Space Specification to: