

SECOND SCHEDULE
Owner's Covenants
Affordable Housing

1. Type and Tenure

1.1 Thirty per cent (30%) of the Dwellings to be constructed on Site (with fractions of 0.5 or more rounded up to give a whole number of Dwellings) shall be Affordable Dwellings which (save for the provisions of this Deed) for the Perpetuity Period shall not be Occupied other than as Affordable Housing subject to the provisions of this Schedule

1.2 Save as may otherwise be agreed in writing between the parties, the Affordable Housing shall be provided in accordance with the details shown in Table A below and shall comprise a mixture of Dwelling types matching and in proportion to the overall mixture of Dwelling types on the Site and shall be distributed throughout the Site

Table A

				Number based on total scheme of 373 units
Percentage	Housetype	Min Size m	Size ft	
Social Rent				
14.0%	1b2p flat	46	495	15
13.0%	2b4p flat	67	721	15
6.0%	4b6p house	96	1033	7
				37
Affordable Rent				
Percentage	Housetype	Size m	Size ft	
18.0%	2b4p house	76	818	20
15.0%	3b5p house	86	926	17
				37
Shared Ownership				
Percentage	Housetype	Size m	Size ft	
19.0%	2b4p house	76	818	21
15.0%	3b5p house	86	926	17
				38
100.0%				112

1.5 At least five per cent (5%) of the Affordable Dwellings shall be Adapted Dwellings

1.6 Prior to the Commencement of Development of each Phase, the Owner shall agree with the Affordable Housing Manager the following matters with respect to the Affordable Dwellings –

- a. the physical location

- b. layout
- c. specification (including that of any common parts serving the Affordable Dwellings); and
- d. type and tenure of individual Affordable Dwellings

(collectively referred to as “**the Details**”) which shall thereafter be annexed to this Deed and shall be interpreted as having formed part of this Deed from the date hereof subject to changes as may be agreed in writing between the Parties from time to time

2. Specifications for Affordable Dwellings

- 2.1 The Affordable Dwellings shall be constructed either in accordance with the minimum quality and design standards set by the Regulator of Social Housing or to a standard equal to the Market Dwellings so as to be tenure blind; additionally
- 2.2 The Adapted Dwelling(s) shall be constructed to the specification contained in Annex 1 to this Deed (or such amendments to Annex 1 which may be agreed by the Affordable Housing Manager in writing) and shall comprise part of the Details to be agreed by the Affordable Housing Manager pursuant to paragraph 1.6 of this Schedule

3. Delivery of Affordable Housing

- 3.1 The Owner shall not cause or permit Occupation of more than fifty per cent (50%) of the Market Dwellings on any Phase until fifty per cent (50%) of the Affordable Dwellings for that Phase have been:
 - a. constructed to Practical Completion;
 - b. transferred to one or more Registered Provider on such terms as agreed between the Owner and the Registered Provider; and
 - c. made available for Occupationunless otherwise agreed by the Affordable Housing Manager in writing
- 3.2 The Owner shall not cause or permit Occupation of more than seventy five per cent (75%) of the Market Dwellings on any Phase until one hundred per cent (100%) of the Affordable Dwellings for that Phase have been:
 - a. constructed to Practical Completion;
 - b. transferred to one or more Registered Provider on such terms as agreed between the Owner and the Registered Provider; and
 - c. made available for Occupationunless otherwise agreed by the Affordable Housing Manager in writing

4. Social Rent Dwellings

- 4.1 The Social Rent Dwellings shall not be Occupied unless they are
- 4.1.1 let as Social Rent Dwellings; and
 - 4.1.2 Occupied by Eligible Persons
- 4.2 The Social Rent Dwellings shall not be let other than
- 4.2.1 on Social Rent Tenancies unless the resident of any such Social Rent Dwelling exercises their Right to Acquire; or
 - 4.2.2 initially (both on initial lettings of the Dwellings and on subsequent relets), as an assured shorthold tenancy for a period of twelve (12) months, unless otherwise agreed in writing by the Council, (or where the incoming tenant has rights to be issued an assured tenancy due to holding a full assured tenancy immediately prior to occupying the property) to serve as a probationary tenancy. At the expiry of the twelve (12) month period, an assured tenancy shall then be granted to the tenant unless he or a member of his household has breached the terms of the probationary tenancy
- 4.3 The Owner shall give to the Affordable Housing Manager not less than six (6) weeks' notice in writing of the date on which the Social Rent Dwellings will be available for first Occupation

5. Adapted Dwelling

- 5.1 No Adapted Dwelling shall be Occupied unless it is
- 5.1.1 let as a Social Rent Dwelling (and the provisions of paragraph 4.1 above shall apply); and
 - 5.1.2 Occupied by Eligible Persons who are or are part of a household which includes a person who has a physical disability and/or a need for wheelchair access
- 5.2 The Owner shall give to the Affordable Housing Manager not less than six (6) months' notice in writing of the date on which the Adapted Dwelling will be available for first Occupation

6. Affordable Rent Dwellings

- 6.1 The Affordable Rent Dwellings shall not be Occupied unless they are
- 6.1.1 let as Affordable Rent Dwellings; and
 - 6.1.2 Occupied by Eligible Persons
- 6.2 The Affordable Rent Dwellings shall not be let other than on Affordable Rent Tenancies
- 6.3 The Owner shall give to the Affordable Housing Manager not less than six (6) weeks' notice in writing of the date on which the Affordable Rent Dwellings will be available for first Occupation

7. Equity Share Dwellings

- 7.1 Subject to paragraph 7.5 below the Equity Share Dwellings shall not be Occupied unless they are Occupied by Eligible Persons
- 7.2 The Owner shall give to the Affordable Housing Manager not less than six (6) months' notice in writing of the date on which the Equity Share Dwellings will be available for first Occupation

- 7.3 Subject to paragraphs 7.4 and 9 (Mortgagees and Certain Purchasers) of this Schedule the Equity Share Dwellings shall not be disposed of other than on Equity Sharing Leases or such similar or equivalent means of tenure being of a type approved by the Regulator of Social Housing or the Affordable Housing Manager
- 7.4 Nothing in this Deed shall prevent an Occupier of an Equity Share Dwelling to Staircase to 100% ownership
- 7.5 In the event that the Occupier of an Equity Share Dwelling does Staircase and through this process acquires the whole of the equity, the Dwelling in question shall no longer be Affordable Housing and the provisions of this Schedule shall not apply to that Dwelling

8. Nomination Agreement

- 8.1 The Owner shall procure that
- 8.1.1 the Registered Provider shall enter into a Nomination Agreement at least six (6) months prior to any of the Affordable Dwellings being available for Occupation and at least six (6) months prior to the Adapted Dwellings being available for Occupation and shall not cause or permit any of the Affordable Dwellings to be Occupied until the Nomination Agreement has been entered into; and
- 8.1.2 the Registered Provider pays the Council's reasonable legal costs incurred in the negotiation and preparation of the Nomination Agreement

9. Mortgagees and certain purchasers

- 9.1 The provisions of this Schedule shall not be binding upon a Mortgagee of the Affordable Dwellings or any one of them or of an individual Equity Share Dwelling or any receiver (including an administrative receiver) appointed by a Mortgagee either of whom may manage or sell the Affordable Dwellings free from the terms of this Schedule, provided that:-
- 9.1.1 the Mortgagee or receiver (including an administrative receiver) (as the case may be) first gives written notice to both the Council and the Regulator of Social Housing that it is seeking a purchaser for the Affordable Dwellings; and
- 9.1.2 after a period of sixty (60) days from the date of such notice the Council or a Registered Provider has not exchanged contracts unconditionally with the Mortgagee or receiver for the purchase of the Affordable Dwellings with a completion date no later than one (1) month from exchange of contracts
- 9.2 The purchase price payable by the Council or another Registered Provider shall be limited to:-
- 9.2.1 the Open Market Value of the Affordable Dwellings in question (subject to the provisions of this Deed); or
- 9.2.2 if higher, the amount required to redeem the outstanding borrowing (including interest accrued plus costs and reasonable expenses the Mortgagee is entitled to recover under the terms of its mortgage) secured upon the Affordable Dwellings concerned, up to a maximum amount being the Open Market Value of the Affordable Dwellings as if unencumbered by the provisions of this Deed
- 9.3 If the provisions in paragraph 9.1.1 and 9.1.2 of this Schedule are met, the Council will forthwith

certify to that effect, and the Mortgagee or receiver (including an administrative receiver) and any person deriving title under such Mortgagee or receiver (including an administrative receiver) may manage and/or sell the Dwelling or Dwellings concerned free from the terms of this Schedule

9.4 If the former lessee under an Equity Sharing Lease granted by a Registered Provider exercises his Right to Acquire the whole of the equity in the whole of the Dwelling then upon the transfer of ownership to that person that Dwelling shall, so far as is legally permissible, be subject to a right of pre-emption in favour of the Registered Provider, exercisable within twenty eight (28) days, provided that if such right of pre-emption is not exercised on the first occasion on which it arises, the former lessee shall be entitled to transfer the Dwelling free from the provisions of this Schedule

9.5 Subject to paragraph 9.4 above the provisions of this Schedule shall not be binding upon

9.5.1 a tenant (or their mortgagee or successors in title) of the Registered Provider or an occupier of an Affordable Dwelling who has exercised a Right to Acquire or a Right to Buy in respect of an Affordable Dwelling; and/or

9.5.2 a tenant (or their mortgagee or successors in title) of an Equity Share Dwelling where the tenant has Staircased out and acquired one hundred per cent (100%) of the equity of the Dwelling

Annex 3
Local Connection Criteria

(please note – the terms of this annex are not negotiable)

1. The applicant (or member of the applicant's household) must have lived within Torbay for 5 years.
2. Applicants who are not currently resident in the district/area but who can demonstrate a strong association to the local area will be able to qualify (e.g. through family association or employment). This is defined as:
 - 2.1 Need to work in Devon. The Local Government Association guidelines define this as employment other than of a casual nature. For the purposes of this policy this will be defined as having had permanent work with a minimum of a 16 hour contract per week for the previous 6 months, and without a break in the period of employment for more than three months.
 - 2.2 Have family connections in Devon. The Local Government Association guidelines define this as immediate family members (parents, siblings and nondependent children) who have themselves lived in the area for 5 years
3. Exceptions to the 5 year residency test will be:
 - 3.1 Existing Social Housing tenants, in Devon
 - 3.2 Members of the Armed Forces and former Service personnel, where the application is made within five years of discharge
 - 3.3 Bereaved spouses and civil partners of members of the Armed Forces leaving Services Family Accommodation following the death of their spouse or partner
 - 3.4 Serving or former members of the Reserve Forces who need to move because of a serious injury, medical condition or disability sustained as a result of their service
 - 3.5 People who are assessed as being within the reasonable preference categories – Bands A, B, Emergency and High Housing Need, as per the DHC Policy
 - 3.6 Applicants requiring Sheltered Housing.

THIS AGREEMENT is made on 20th January 2021

BETWEEN:

- (1) **THE COUNCIL OF THE BOROUGH OF TORBAY** of Town Hall Castle Circus Torquay Devon TQ1 3DR ("the Council")
- (2) **ABACUS PROJECTS LIMITED** (Co. Regn. No. 1460919) of Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR ("the Owner")

WHEREAS:-

1. The Council is the Local Planning Authority for the purposes of the 1990 Act for the area which includes the Site
2. The Owner has by the Application applied to the Council for planning permission for the Development
3. The Owner is the registered proprietor of the Site and the Farmland with title absolute under Title Numbers DN346107, DN562334, DN690151, DN523013 and DN577590 subject to the entries disclosed on the Charges Register of the said titles but otherwise free from incumbrances
4. The Council has not determined the Application and the Owner has appealed under reference APP/X1165/W/20/3245011
5. This Deed is conditional upon the matters hereinafter referred to

NOW THIS DEED WITNESSETH as follows:

1 Definitions

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

- 1.1 "the 1990 Act" means the Town & Country Planning Act 1990
- 1.2 "Adapted Dwelling" means Affordable Dwelling(s) constructed to be suitable for occupation by households which include a person who has a physical disability and/or a need for wheelchair access
- 1.3 "Administration Charge" means the sum of five thousand eight hundred and fifty pounds (£5,850) Index Linked towards the Council's costs incurred in monitoring and administering the Ecological Mitigation provided pursuant to Paragraph 9 of the First Schedule
- 1.4 "Affordable Dwellings" means the Dwellings on the Site that are to be used as Affordable Housing
- 1.5 "Affordable Housing" means affordable housing within the meaning of Annex 2 of the NPPF being Dwellings on the Site:
 - (a) to be let on Social Rent Tenancies or Affordable Rent Tenancies through a Registered Provider (or alternative approved by Torbay Council); or
 - (b) disposed of on the basis of Equity Sharing Leases; or

- (c) such Intermediate Housing tenure as may be approved in writing by the Council where all the resulting homes are let sold or disposed of to Eligible Persons and are covered by a Local Authority Building Control New Home Warranty or other suitable warranty provider
- 1.6 **"Affordable Housing Manager"** means the Council's Affordable Housing Manager or similar post-holder carrying out the Council's housing functions from time to time
- 1.7 **"Affordable Rent Dwelling"** means a Dwelling that may only be occupied under an Affordable Rent Tenancy
- 1.8 **"Affordable Rent Tenancy"** means a tenancy regulated by the Regulator of Social Housing for a minimum term of two years at a rent of up to 80% of gross Market Rent (including service charges and Rentcharge) whereby an Affordable Rent Dwelling is let to an Eligible Person and provided by a Registered Provider
- 1.9 **"Allotments"** means an area of allotment plots of at least 5,700 sq metres as identified indicatively on Plan 2 to be used for the purpose of producing flowers fruit and/or vegetables for personal use
- 1.10 **"Appeal"** means the appeal lodged in respect of the non-determination by the Council of the Application and given the appeal reference APP/X1165/W/20/3245011
- 1.11 **"the Application"** means an outline planning application for the Development with details of access to be determined with all other matters reserved by the Owner and validated by the Council on 13th November 2017 with number P/2017/1133
- 1.12 **"Assistant Director"** means the Council's Assistant Director of Planning, Housing and Climate Emergency or similar post holder, responsible for the Council's spatial planning functions, employed by the Council from time to time.
- 1.13 **"Bat House"** means a bat house to be provided on the Farmland in accordance with details to be approved by the Council in writing prior to the commencement of its construction and in accordance with the principles set out in section 8 of the Ecological Addendum or as otherwise agreed in writing by the Council
- 1.14 **"Berry Head Grassland Contribution"** means the sum of £49.50 per Dwelling (Index Linked) paid in accordance with paragraph 3.1 of the First Schedule to be used towards the mitigation of the effects of the recreational use of Berry Head by occupants of the Development on calcareous grassland at Berry Head. The mitigation provided at Berry Head shall consist of habitat management and increased visitor engagement work
- 1.15 **"Bidding Period"** means the period from 12:00am on a given Wednesday to 11:59pm the following Monday being the time within which Devon Home Choice will advertise available Affordable Dwellings
- 1.16 **"Bus Service"** means a bus service operated to serve the Development in accordance with the Bus Service Operational Plan
- 1.17 **"Bus Service Agreement"** means a contractual arrangement between the Owner or Management Entity and a bus service operator for the provision of the Bus Service in accordance with the Bus Service Operational Plan
- 1.18 **"Bus Service Operational Plan"** means the operational plan approved by the Council in accordance with paragraph 8 of the First Schedule and shall include, inter alia, details of the route(s), frequency of service and type of vehicles to be provided and shall provide

that the Bus Service shall be operational prior to the earlier of Occupation of the fiftieth (50th) Dwelling to be Occupied or first opening of the School

- 1.19 **“Ceiling Rent”** means in respect of Social Rented Dwellings, the total weekly sum payable in rent which sum shall be limited to the Regulator of Social Housing’s rent standard for social rented accommodation in Torbay or successor regime approved by the Affordable Housing Manager
- 1.20 **“Commencement of Development”** means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) 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, diversion and laying of services, landscaping works and the erection of any temporary means of enclosure, the temporary display of site notices or advertisements, the laying out or construction of any construction access to the Site, offsite highway works, the erection and installation of site compound/welfare facilities, and the carrying out of any environmental or ecological works including construction of the Bat House SAVE in respect of paragraph 9 of the First Schedule where such operations, save for the carrying out of environmental or ecological works including construction of the Bat House, shall not be excluded in relation to the use of the term “Commencement of Development” and “Commence Development” shall be construed accordingly
- 1.21 **“Community Orchard”** means the area of Open Space to be set aside and used as an orchard for the benefit of the community as shown indicatively on Plan 2
- 1.22 **“Countryside Access Route”** means the route identified indicatively as “Countryside access route” on Plan 2
- 1.23 **“Delivered”** means in respect of the Sports Pitches laid out, equipped and the relevant facilities built in accordance with the Sports Pitches Specification and **“Deliver”** shall be construed accordingly
- 1.24 **“the Details”** means with respect to individual Affordable Dwellings:
- 1.24.1 the physical location
 - 1.24.2 layout
 - 1.24.3 specification (including that of any common parts serving the Affordable Dwellings);
and
 - 1.24.4 the type and tenure
- 1.25 **“the Development”** means the development of the Site of up to 373 dwellings (C3) together with the means of vehicular and pedestrian/cycle access together with the principle of a public house (A3/A4 use), primary school with nursery (D1), internal access roads and the provision of public open space (formal and informal) and strategic mitigation
- 1.26 **“Dispute Notice”** means notice in writing which shall set out the matters which the party giving the Dispute Notice disagrees with and the detailed reasons for that disagreement

- 1.27 **“Dwelling”** means a dwelling (including a house, flat or maisonette) designed for residential occupation by a single household and to be constructed pursuant to the Planning Permission and shall include the Affordable Dwellings
- 1.28 **“Ecological Mitigation”** means the carrying out of the Ecological Mitigation Works and the ongoing management and maintenance of both the Farmland in accordance with the Farmland Management Scheme and the Open Space for the purposes of providing and protecting suitable habitat and fly paths for cirr buntings and greater horseshoe bats
- 1.29 **“Ecological Addendum”** means the document titled Ecological Addendum dated February 2018 annexed hereto at Part 3 of Annex 6
- 1.30 **“Ecological Mitigation Works”** means those works detailed in Part 1 of Annex 6
- 1.31 **“Education Contribution”** means an Index Linked sum calculated and paid in accordance with paragraphs 7 and 8 of the Third Schedule to be used towards the provision of additional primary school places in Paignton based on the following figures:

Floorspace	Contribution per Market Dwelling
37- 58 sq m	0
59 - 70 sq m	£3,170
71- 79 sq m	£4,750
80-109 sq m	£6,330
110+ sqm	£7,920

- 1.32 **“Eligible Person”** means any person or persons who immediately prior to the occupation of an Affordable Dwelling satisfies the criteria below:
- (a) is on the 'Devon Home Choice' waiting list or 'South West Homes' waiting list (or such waiting lists allocation or policies adopted by the Council in their replacement) managed by or on behalf of the Council, or is eligible for an allocation of housing accommodation pursuant to Section 16 of the Homelessness Act 2002 in Torbay; or
- (b) is identified by the Council as being:
- (i) on a low income and/or on housing and/or other welfare benefits or in low paid employment and having low capital and not being entitled to housing or other welfare benefits; and
- (ii) would be given reasonable preference for an offer of accommodation under Torbay Council's allocation scheme under Section 167 of the Housing Act 1996, provided that if in relation to any proposed person the Council fails to indicate whether or not that person would be given preference under the said allocation scheme within fifteen (15) Working Days of receiving a request for such information (or if the said allocation scheme shall be discontinued without replacement), that element of the test as to whether the person is an Eligible Person shall be deemed to have been satisfied and the expression "Eligible Persons" shall be construed accordingly;
- and in the case of both (a) and (b):
- (c) satisfy the requirements of policy BH2 of the Brixham Peninsula Neighbourhood Plan in that they

- (i) have had a minimum period of five (5) years in the last ten (10) years of permanent and continuous residence in the area of the Brixham Peninsula Neighbourhood Plan ('the Peninsula'); or
- (ii) have lived in the Peninsula for at least five (5) years and whose parents or children are currently living in the Peninsula and have at least ten (10) years continuous residency; or
- (iii) are a key worker as defined by the UK Government and are working within the Peninsula

and where no persons who meet the criteria in all of (a) (b) and (c) have bid for an Affordable Dwelling within the relevant Bidding Period

- (d) satisfy both (a) and (b) and the Local Connection Criteria unless otherwise agreed in writing by the Affordable Housing Manager (not to be unreasonably withheld or delayed)

1.33 **"Employment Contribution"** means the sum of five hundred thousand pounds (£500,000) paid in accordance with paragraph 3.1 of the First Schedule to be used towards the delivery of the Claylands Industrial Park, Paignton and/or the creation of B1/B2/B8 jobs in the Borough of Torbay

1.34 **"Equity Share Dwelling"** means a Dwelling that may only be let under an Equity Sharing Lease or such similar or equivalent means of tenure being of a type approved by the Regulator of Social Housing or by the Council

1.35 **"Equity Sharing Lease"** means a lease (of not less than ninety nine (99) years) of an Equity Share Dwelling substantially in the form of the model form shared equity lease published from time to time by the Regulator of Social Housing whereby:

- (a) the leaseholder acquires an initial equity share in an Affordable Dwelling the value of which is not more than fifty per cent (50%) of the market value except in cases where the Regulator of Social Housing (in cases where financial assistance has been given to a Registered Provider) has agreed the Equity Sharing Leases shall be granted on the basis of a higher percentage of value being transferred to purchasers; and
- (b) the purchaser pays to the Registered Provider a rent in respect of the remaining equity of up to 2.75% of unsold equity

1.36 **"the Farmland"** means those areas of land edged green and edged pink on Plan 3

1.37 **"Farmland Management Entity"** means the Management Entity or such alternative organisation as may be approved in writing by the Council to own and manage the Farmland in accordance with the Farmland Management Scheme and if the Council does not approve or reject a proposed Farmland Management Entity within thirty (30) Working Days of its receipt of a written request for approval such failure to do so shall be treated as the Council's deemed approval to the proposed Farmland Management Entity

1.38 **"Farmland Management Scheme"** means the scheme for the management of the Farmland set out at Part 2 of Annex 6 or as may otherwise be approved in writing by the Council

1.39 **"the Financial Contributions"** means

- (a) the Berry Head Grassland Contribution
- (b) the Employment Contribution
- (c) the Lifelong Learning Contribution

- (d) the Sports Contribution
- (e) the Sustainable Transport Contribution
- (f) the Waste Management Contribution

Index Linked and payable in accordance with the First Schedule

- 1.40 **“Forward Fund”** means the sum of one hundred and forty six thousand three hundred and sixty seven pounds (£146,367.00) or as otherwise agreed via the Management and Maintenance Scheme payable by the Owner to the Management Entity for maintenance of the Northern Access Route, Open Space and SUDS until such time as the Rentcharge received from the owners and occupiers of the Dwellings pursuant to the Rentcharge Agreement is sufficient to fund the continued management and maintenance of such items
- 1.41 **“Growing Season”** means the part of the year when conditions are warm enough for plants and crops to grow which, save as may otherwise be agreed in writing by the Council taking account of the actual conditions for the year in question, for the purposes of this Deed shall be taken to commence on 1 March and end on 31 October in any year and the following shall apply in respect of each habitat type:
- (a) spring barley shall have at least four (4) months’ growth (from the date of sowing) and be sown by 30 April
 - (b) grass and wildflower seeding shall have at least six (6) months’ growth (from the date of sowing) within the Growing Season in any twelve (12) month period
 - (c) pond creation shall mean that the pond has been dug and there has been at least six (6) months’ growth (from the date of planting/creation) within the Growing Season in any twelve (12) month period
 - (d) trees, hedge plants and shrub planting shall have at least seven (7) months’ growth (from the date of planting) within the Growing Season in any twelve (12) month period
- 1.42 **“Health CCG Contribution”** means the sum of three hundred and ninety nine pounds (£399) per Dwelling to be spent on a new extension at the Compass House Medical Centre at Galmpton to serve residents of the Development
- 1.43 **“Health FT Contribution”** means the sum of seven hundred and seventy five pounds and thirty pence (£775.30) per Dwelling to be spent on a new health and wellbeing centre to serve the local community including the Development
- 1.44 **“Homes England”** means the executive non-departmental public body, sponsored by the Ministry of Housing, Communities & Local Government, national agency for funding housing regeneration in England being the successor to the Homes and Communities Agency which definition shall include any statutory successor to that function
- 1.45 **“Inspector”** means the inspector appointed by the Secretary of State for Housing Communities and Local Government to preside over the Appeal
- 1.46 **“Intermediate Housing”** means Affordable Housing which is within the definition of intermediate housing contained in Annex 2 of the NPPF
- 1.47 **“Index Linked”** means an adjustment in the amount of any sums paid under this Deed in accordance with the provisions set out in the [Sixth] Schedule
- 1.48 **“Lifelong Learning Contribution”** means a sum calculated and paid in accordance with paragraph 3.1 of the First Schedule to be used towards the provision of adult community

learning centres or museums or libraries in the vicinity of the Development based on the following figures:

£125 per 37-60 sqm Market Dwelling

£170 per 61-79 sqm Market Dwelling

£232 per 80-108 sqm Market Dwelling

£267 per 109+ sqm Market Dwelling

- 1.49 **"Local Connection Criteria"** means the criteria set out in Annex 3 or such other criteria adopted from time to time by the Council (including, inter alia a residency test) which ensures that prospective occupants of Affordable Housing have an established connection with Torbay
- 1.50 **"Management and Maintenance Scheme"** shall mean a scheme setting out:
- 1.50.1 a framework for the Management Entity including its purpose, powers, responsibilities and internal procedures
- 1.50.2 the detailed specification for the upkeep and future maintenance and management of the Open Space, the Farmland (save where the Farmland is transferred to an alternative body with the Council's written approval), the SUDS (save where the SUDS are transferred to a statutory undertaker), the Countryside Access Route and the Northern Access Route following the satisfactory laying out and provision of the same in accordance with this Deed and the Planning Permission and
- 1.50.3 shall include the details set out in Annex 5
- 1.51 **"Management Entity"** means any organisation approved in writing by the Council pursuant to paragraph 6 of the First Schedule whose responsibilities shall include the ownership management and maintenance of the Farmland (save where the Farmland is transferred to an alternative body with the Council's written approval), Open Space, the Countryside Access Route, the Northern Access Route and the SUDS (save to the extent that the SUDS are transferred to a statutory undertaker)
- 1.52 **"Market Dwellings"** means any Dwellings that are not Affordable Dwellings
- 1.53 **"Market Rent"** means the rent that a willing tenant at arm's length would be willing to pay to rent a Dwelling on an assured shorthold tenancy if this Deed had not been made
- 1.54 **"Mortgagee"** means a bone fide arm's length
- 1.54.1 mortgagee
- 1.54.2 chargee
- 1.54.3 a security trustee; or
- 1.54.4 other person
- regulated under the Financial Services and Markets Act 2000 (as amended) and who holds a charge over the Site or any part thereof
- 1.55 **"NEAP"** means the Neighbourhood Equipped Area for Play to be located within an area of Open Space as identified indicatively on Plan 2 and which is to be no smaller than 1000 sq metres

- 1.56 **"Nomination Agreement"** means an agreement to be entered into between the Council and the Registered Provider which sets the terms of the letting protocol for Occupation of the Affordable Dwellings during the Perpetuity Period whether vacant by reason of first availability for Occupation or after initial Occupation
- 1.57 **"Northern Access Route"** means the pedestrian/cycle link to enable access to the White Rock site to the north of the Site as shown indicatively marked dashed blue on Plan 4
- 1.58 **"NPPF"** means the Government's National Planning Policy Framework dated February 2019 or any amendment or replacement thereof
- 1.59 **"Occupation" "Occupy" and "Occupied"** means occupation for the purposes 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
- 1.60 **"Open Market Value"** means the price that a willing purchaser at arm's length would be willing to pay for a Dwelling if this Deed had not been made
- 1.61 **"Open Space"** means those parts of the Site to be set aside for public recreation or amenity including:
- (a) the NEAP
 - (b) the Phase A LEAP
 - (c) the Phase B LEAP
 - (d) the Allotments and
 - (e) incidental green space of circa 25,000 sq metres including the Community Orchard
- all as indicatively shown on Plan 2
- 1.62 **"the Parties"** means the parties to this Deed being the Owner and the Council as defined
- 1.63 **"Perpetuity Period"** means the period of one hundred and twenty five (125) years from the date of this Deed and **"in Perpetuity"** shall be construed accordingly
- 1.64 **"Phase"** a distinct part of the Development as described in any Phasing Plan submitted to and agreed in writing by the Assistant Director
- 1.65 **"Phase A LEAP"** means the Local Equipped Area for Play to be located within an area of Open Space as identified indicatively on Plan 2 and which is to be no smaller than 400 sq metres
- 1.66 **"Phase B"** means that area marked 'Phase B' and coloured pink on the drawing titled Proposed Phasing Plan annexed to the Ecological Addendum
- 1.67 **"Phase B LEAP"** means the Local Equipped Area for Play to be located within an area of Open Space as identified indicatively on Plan 2 and which is to be no smaller than 400 sq metres
- 1.68 **"Phasing Plan"** means a plan or plans setting out details for the implementation of the Development in distinct sections
- 1.69 **"Plan 1"** means the plan at Annex 2 and marked "Plan 1" (showing the Site edged red)
- 1.70 **"Plan 2"** means the plan at Annex 2 and marked "Plan 2" (titled Green Infrastructure Plan and showing the indicative location of features of the Development)
- 1.71 **"Plan 3"** means the plan at Annex 2 marked "Plan 3" (titled Proposed Farming Practices Plan and showing the Farmland)

- 1.72 **"Plan 4"** means the plan at Annex 2 and marked "Plan 4" (showing the Northern Access Route dashed blue)
- 1.73 **"the Planning Permission"** means a planning permission issued pursuant to the Application and the expression Planning Permission shall include all approvals granted thereunder or such other permission as may be granted in respect of the Site pursuant to an application for planning permission to amend such permission made pursuant to Section 73 of the 1990 Act
- 1.74 **"Practical Completion"** means the date of issue of a certificate of practical completion by the Owner's architect or contract administrator or, if the Development is constructed by a party other than the Owner, by that other party's architect or contract administrator or a CML Professional Consultant Certificate or the production of the warranty provider cover note
- 1.75 **"Registered Provider"** means a social landlord registered pursuant to the Housing Act 1996 and/or a non-profit registered provider of social housing pursuant to Section 80 of the Housing and Regeneration Act 2008 and/or a 'for profit' registered provider of Affordable Housing to whom Affordable Housing on the Site is transferred
- 1.76 **"Regulator of Social Housing"** means the executive non-departmental public body, sponsored by the Ministry of Housing, Communities & Local Government, as national agency for regulating registered providers of social housing and publishing rent standards which definition shall include any statutory successor to that function or Homes England (as the context so requires)
- 1.77 **"Rentcharge"** means the perpetual yearly estate rentcharge (whether variable or fixed) imposed on each Dwelling to be paid to the Management Entity to cover the costs of complying with its obligations under the Management and Maintenance Scheme PROVIDED ALWAYS THAT the rentcharge on each individual Dwelling shall be a fair and proportionate share of the total costs incurred and budgeted by the Management Entity in relation to its obligations under the Management and Maintenance Scheme
- 1.78 **"Rentcharge Agreement"** means an agreement to be entered into between the Management Entity and each owner and/or occupier of each Dwelling and with the Registered Provider detailing the services that the Management Entity will provide and the Rentcharge that may be levied by the Management Entity and which shall include a disputes mechanism and the specification for the management and maintenance of the SUDS, the Open Space, the Countryside Access Route, the Northern Access Route and the Farmland
- 1.79 **"Reserved Matters Approval"** means approval by the Council of those aspects (specified in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015) of the Development which the Owner has through the Application reserved for later determination
- 1.80 **"Right to Acquire"** means the right pursuant to Section 180 of the Housing & Regeneration Act 2008 as amended of a tenant of a Registered Provider to acquire the dwelling of which he is a tenant
- 1.81 **"School Land"** means the land shown indicatively edged yellow on Plan 2 or such other part of the Site as may be agreed between the Owner and the Council PROVIDED THAT wherever it is located on the Site such land shall consist of a single area of not less than 1.4694 hectares in area and shall be free of ecological and archaeological constraints

- 1.82 **"Serviced Land"** means an area of land which has vehicular and pedestrian access completed to an adoptable standard which is connected to an adoptable highway with foul and surface water sewers connected to adoptable sewers and with pipes and cables which are connected to mains services so as to be suitable for the supply of gas water electricity and telephone (consisting of the provision of ducting from a suitable telecommunications distribution point up to the boundary of the School Land to facilitate the provision of broadband)
- 1.83 **"the Site"** means the land to the south of White Rock, adjacent to Brixham Road, Paignton, Devon shown edged red on Plan 1
- 1.84 **"Social Rent Dwelling"** means a Dwelling that may only be Occupied under a Social Rent Tenancy
- 1.85 **"Social Rent Tenancy"** means a tenancy regulated by the Regulator of Social Housing being either a weekly or monthly periodic assured or secure tenancy or an assured shorthold tenancy used solely to serve the purpose of a probationary or introductory tenancy in accordance with paragraph 4.2.2 of the Second Schedule at a Ceiling Rent whereby the Dwelling is let to an Eligible Person and provided by a Registered Provider
- 1.86 **"Sports Pitches"** means a grassed sports pitch and hard standing physical education courts of 4,694 square metres in total to be incorporated within the School Land together with ancillary facilities, including changing facilities for referees and two teams, and surface water infrastructure required to serve these facilities for dual use by the school and the community
- 1.87 **"Sports Pitches Specification"** means the detailed specification for the Sports Pitches approved in writing by the Council in accordance with paragraph 9.1.1 of the Third Schedule
- 1.88 **"Sports Contribution"** means the sum of seventy three thousand five hundred and ninety pounds (£73,590) to be spent on the provision or improvement of sports facilities in Torbay
- 1.89 **"Staircase"** means where a tenant under an Equity Sharing Lease purchases an increased share of the equity up to and including the whole of the equity and accordingly becomes the freehold owner and **"Staircased"** shall be construed accordingly
- 1.90 **"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
- 1.91 **"Supplementary Sustainable Transport Contribution"** means the sum of seven hundred and twenty five thousand pounds (£725,000) to be spent on a bus service or alternative sustainable transport measures to service the Development
- 1.92 **"Sustainable Transport Contribution"** means the sum of two hundred and twenty two thousand pounds (£222,000) and paid in accordance with paragraph 3.1 of the First Schedule to be used towards the provision of walking and cycling routes between the Site and Paignton Town Centre
- 1.93 **"the Waste Management Contribution"** means the sum of eighty five pounds (£85) (Index Linked) per Dwelling to be used towards the provision of waste collection/recycling bins for each Dwelling
- 1.94 **"Working Day"** means any day Monday to Friday (other than bank or public holidays)