

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

**Date:** 05<sup>th</sup> OCTOBER 2021

**Parties:**

- (1) **SOUTH HAMS DISTRICT COUNCIL** of Follaton House, Plymouth Road, Totnes, Devon, TQ9 5NE ("**the Council**");
- (2) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, Devon, EX2 4QD ("**the County Council**");
- (3) **BAKER ESTATES LAND HOLDINGS (D1) LTD** (Company number 12451698) of Green Tree House 12 Silverhills Road, Silverhills Road, Newton Abbot, Devon, England, TQ12 5LZ ("**the Owner**")

**RECITALS**

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (B) The County Council is a local planning authority, highway authority and education authority for the purposes of the Act for the area in which the Land is situated.
- (C) The Owner owns the freehold estate in the Land with absolute title
- (D) This Deed is entered into by the Parties to secure the planning obligations set out below.
- (E) The Council is minded to grant the Permission provided that all persons with an interest in the Land enter into this Deed.

**1 Definitions**

In this Deed:-

<b>"Act"</b>	means the Town and Country Planning Act 1990 (as amended);
<b>"Administrative Area"</b>	means the District of South Hams;
<b>"Affordable Housing"</b>	Has the meaning given within the glossary at Annex 2 of the National Planning Policy Framework (or any such guidance document that may replace or supersede it)
<b>"Affordable Housing Provider" or "AHP"</b>	means a registered provider as defined in the Housing & Regeneration Act 2008 who is registered with Homes England or any other provider of Affordable Housing as defined within the glossary at Annex 2 of the National Planning Policy Framework (or any such guidance document

	that may replace or supersede it) or any other provider of affordable housing as approved by the Council
<b>"Affordable Housing Unit"</b>	means those Dwellings to be constructed as part of the Development which are to be delivered as Affordable Housing pursuant to paragraph 1 of Schedule 1 to this Deed;
<b>"Allotments Contribution"</b>	Means together the Allotments Capital Contribution and the Allotments Maintenance Contribution as calculated in accordance with Schedule 6
<b>"Application"</b>	means an outline application for up to 40 residential units and associated public open space and infrastructure registered on 3 December 2020 and given the reference number 3841/20/OPA
<b>"Appropriate Assessment"</b>	means the appropriate assessment of the likely significant effects of the Development carried out by the Council pursuant to the Conservation of Habitats and Species Regulations 2017 entitled "Habitats Regulations Assessment" and dated 8th April 2021 and annexed at Schedule 8
<b>"BCIS Index"</b>	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors;
<b>"Blue Land"</b>	means the area of land shown edged blue on Plan 1
<b>"Broom Park Development"</b>	Means the development of land known as Broom Park, Dartington pursuant to planning permission reference 3842/20/OPA (or any s.73 permission which may be granted in respect thereof)
<b>"CCG"</b>	means the NHS Devon Clinical Commissioning Group (including any successor in statutory function)
<b>"Chargee"</b>	means any mortgagee or chargee (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 of (a) the Land or any part thereof; or (b) the AHP or (c) of the Affordable Housing Units
<b>"Commencement of Development"</b>	means the carrying out of a material operation on the Land pursuant to the Permission as defined in Section 56 of the Act other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, any laying out or pegging out operations, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, ecological investigation, translocation

and mitigation works and similar phrases such as **"Commence Development"** shall be construed accordingly;

**"Construction Ecological Management Plan" or "CECoMP"**

Means a document setting out details of ecological avoidance, mitigation, compensation and enhancement measures required during the pre-construction and construction phase as set out in section 4.1 of the EcIA, the Appropriate Assessment and the Ecological Measures Table

**"Contribution"**

means all or any of the Allotments Contribution, Equipped Play Contribution, or the Sports Facilities Contribution, as the context requires;

**"Designated Person"**

means any person or persons who immediately prior to the Occupation of an Affordable Housing Unit has a Local Connection with:

- (a) the Parish of Dartington or the town of Totnes; or
- (b) if no person satisfying the criteria set out in (a) above has been identified within one month of the relevant Affordable Housing Unit being first marketed, a person with a Local Connection to the Administrative Area; or
- (c) if no person satisfying the criteria set out in (a) or (b) above has been identified within two months of the relevant Affordable Housing Unit being first marketed, a person with a Local Connection to the County of Devon;

and the expression "Designated Persons" shall be construed accordingly;

**"Development"**

means the development of the Land pursuant to the Permission

**"Devon Home Choice"**

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

**"Discount Market Housing Unit"**

means each Affordable Housing Unit which is to be disposed of and Occupied in accordance with the provisions set out at paragraphs 7 to 15 of Schedule 1

**"Dwelling"**

means a residential unit to be constructed on the Land pursuant to the Permission being either an Affordable Housing Unit or a Market Housing Unit;



<b>"EcIA"</b>	Means the Ecological Impact Assessment prepared by EAD Ecology relating to the Development dated October 2020
<b>"Ecological Measures Table"</b>	Means a table set out at Appendix 1 together with such revisions as may be agreed in writing between the Owner and the Council
<b>"Equipped Play Contribution"</b>	Means together the Equipped Play Capital Contribution and the Equipped Play Maintenance Contribution in accordance with the terms of this Agreement
<b>"Equipped Play Capital Contribution"</b>	means an Index Linked financial contribution calculated in accordance with the formula set out in Schedule 6 and that forms that element of the Equipped Play Contribution and which represents the amount to be paid to the Council by the Owner towards the cost of improving equipped play provision at Meadowbrook, Dartington
<b>"Equipped Play Maintenance Contribution"</b>	means an Index Linked financial contribution calculated in accordance with the formula set out in Schedule 6 and which represents the amount to be paid to the Council by the Owner for the maintenance of the equipped play provision at Meadowbrook, Dartington in accordance with the terms of this Deed in the Parish of Dartington
<b>"Estate Agent"</b>	means an independent estate agent who is either a member of the Royal Institute of Chartered Surveyors or the National Association of Estate Agents
<b>"Expert"</b>	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 Deed or in the event that the parties cannot agree the identity of the expert within 20 working days, such person as may be appointed by the President of the RICS;
<b>"Health care Contribution"</b>	<sup>Index Linked</sup> Means a financial contribution in the sum of £528 (five hundred and twenty eight pounds) per Dwelling towards the cost of increasing the physical space at the combined surgeries of Leatside and Catherine House in order to increase capacity so as to accommodate the demand generated by the Development
<b>"Help to Buy Agent"</b>	means Help to Buy for the South of England of Collins House, Bishopstoke Road, Eastleigh, Hampshire SO50 6AD or such other organisation(s) as may be designated by the Homes England or a successor body
<b>"Homes England"</b>	includes any successor body undertaking the existing functions of the Homes England
<b>"Index Linked"</b>	means increased in accordance with the Indexation Formula set out at Schedule 7 to this Deed;

<b>"Interest Rate"</b>	means 4% above the National Westminster Bank Plc base rate calculated on a day to day basis from time to time in force;
<b>"Intermediate Units"</b>	means the Affordable Housing Units to be disposed of as Discount Market Housing Units or Shared Ownership Units or such similar or equivalent means of tenure which fulfils the definition of affordable housing in Annex 2 of the National Planning Policy Framework (or any such guidance document that may replace or supersede it) and/or as may be agreed in writing with the Council
<b>"Land"</b>	means land at Sawmills north of A385 Dartington, Devon shown for illustration purposes edged red on Plan 1;
<b>"LAP"</b>	Means a local area of play of no less than 100m2 with a minimum of 3 play experiences to be located either on the Land or the Blue Land the precise location of which shall be agreed in writing between the Owner and the Council or in such other location as may be agreed between the Owner and the Council
<b>"LEMP" or "Landscape and Ecological Management Plan"</b>	<p>means details (including a plan) setting out the management and maintenance arrangements for the LEMP Land and the Open Space to be managed for biodiversity, open space, ecology, play landscape and surface water drainage purposes in accordance with the plan to be submitted and approved by the Council pursuant to the Permission (such approval not to be unreasonably withheld or delayed). For the avoidance of doubt the plan shall include all areas of Open Space, and incidental open space which falls outside the curtilage of any Dwelling;</p> <p>In particular, the LEMP shall:</p> <ul style="list-style-type: none"> <li>(a) cover the Land and such parts of the Blue Land necessary to achieve the dark corridors and woodland areas identified in section 4.2 of the EcIA, the Appropriate Assessment and the Ecological Measures Table;</li> <li>(b) Contain the Woodland Management Plan</li> <li>(c) include full details of the provision (and subsequent monitoring) of the measures set out in section 4.3 of the EcIA and Appropriate Assessment</li> <li>(d) demonstrate how the Development will deliver a 10% Biodiversity Net Gain as set out in JLP Policy DEV26</li> </ul>

<b>"LEMP Land"</b>	means an area of land identified in the LEMP to be managed for biodiversity, open space, play, landscape and/or surface water drainage purposes
<b>"Local Allocations Policy"</b>	means the policy adopted by the Council in September 2015 (Revised November 2017) to ensure locally based allocation policies for Affordable Housing Units pursuant to section 167(2E) of the Housing Act 1996 together with any revisions thereof;
<b>"Local Connection"</b>	means a local connection to the Administrative Area of the Council having regard to the local connection criteria set out in the Local Allocations Policy applicable at the date when the relevant Affordable Housing Unit(s) are being allocated (or in the event of there being no Local Allocations Policy in force such other criteria as may be agreed by the Council in writing acting reasonably);
<b>"Management Company"</b>	means a management company set up by the Owner to manage and maintain the Open Space the LEMP Land or such other management entity or body as may be first approved in writing by the Council acting reasonably;
<b>"Market Housing Units"</b>	means those Dwellings which are market housing for disposal on the open market and which are not Affordable Housing Units;
<b>"Market Valuation"</b>	Means an estimate of the Open Market Value of a Discount Market Housing Unit prepared by an Estate Agent
<b>"Obligations" and "Obligation"</b>	means the planning obligations, covenants, requirements and restrictions on the part of the Owner contained in this Deed;
<b>"Occupation" or "Occupy"</b>	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;
<b>"Open Market Value"</b>	means the price which 100% of the freehold or long leasehold interest in the relevant Affordable Housing Unit would fetch if sold on the open market by a willing vendor and disregarding the obligations and restrictions contained in this Deed
<b>"Open Space"</b>	means (unless otherwise agreed in writing between the Council and the Owner) an area of no less than 19.1m <sup>2</sup> multiplied by the Predicted Number of Residents of publicly accessible natural greenspace including the LAP (if appropriate) to be accommodated on the Land and/or the Blue Land or in such other location as may be agreed between the Owner and the Council
<b>"Open Space Specification"</b>	means the details and specifications to be agreed in writing between the Owner and the Council prior to Commencement of Development for



the laying out and provision of the Open Space Works including the standard of the maintenance and management to be undertaken including details of the way in which the long term management and maintenance of the Open Space shall be secured and triggers for delivery; for the avoidance of doubt this shall include all Open Space and play areas and any areas of incidental open space which fall outside the curtilage of any Dwelling;

**"Open Space Works"**

means the works required to lay out and deliver the Open Space in accordance with the Open Space Specification;

**"Owner"**

means the Owner and their successors in title and assigns;

**"Ownership Interest"**

means an interest in the relevant part of the Land for the purposes of s.106 of the Act provided that no person will be deemed to have retained any interest in the Land for the purposes of this Deed by virtue of the reservation of any rights over the Land or enjoying the benefit of any covenants or rights to claim overage affecting the Land

**"Permission"**

means such conditional planning permission as may be granted in respect of the Application whether on appeal or otherwise

and the term "Permission" includes all approvals granted together with any planning permission granted under section 73 or 73A of the 1990 Act which permits non-compliance with any of the conditions attached to the Permission ("the Subsequent Permission") and the Permission shall be construed to include the development described in the Subsequent Permission

**"Plan 1"**

means the plan marked "Plan 1" attached to this Deed;

**"Practical Completion"**

means the issue of a CML certificate of practical completion by the Owner's qualified agent or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's qualified agent;

**"Predicted Number of Residents"**

means the predicted number of residents to be accommodated in the development calculated in accordance with the following table:

Dwelling size	1 bed	2 bed flat	2 bed house	3 bed	4 bed	5 bed
Average household size	1.33	1.86	2.45	2.63	2.85	3.13

<b>“Protected Tenant”</b>	<p>means any tenant who:</p> <ul style="list-style-type: none"> <li>a. has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provisions for the time being in force (or any equivalent statutory or contractual right) in respect of a particular Affordable Housing Unit;</li> <li>b. has exercised any statutory right to buy (or any equivalent statutory or contractual right) in respect of a particular Affordable Housing Unit;</li> <li>c. has been granted a Shared Ownership lease by an AHP (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the AHP) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire interest in an Affordable Housing Unit;</li> <li>d. has acquired an Affordable Housing Unit through Social Homebuy funded pursuant to s.19(3) of the Housing and Regeneration Act 2008 or pursuant to a voluntary grant scheme under s.21 of the Housing Act 1996 or any amendment or replacement thereof;</li> </ul>
<b>“Reserved Matters”</b>	means the matters reserved for later determination pursuant to the Permission
<b>“Shared Ownership Units”</b>	means the Intermediate Units to be let under a 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 the purchaser pays to the AHP a rent in respect of the remaining equity of up to 2.75% of the unsold equity or such similar equivalent means of tenure
<b>“Social Rented Unit”</b>	means an Affordable Housing Unit let at a rent which meets guideline target rents determined through the national rent regime. Rent levels should not exceed target rent levels recommended for the area and the type of accommodation by Homes England.
<b>“Sports Facilities Contribution”</b>	Means together the Sports Facilities Capital Contribution and the Sports Facilities Maintenance Contribution Index Linked in accordance with the terms of this Agreement
<b>“Sports Facilities Improvements”</b>	<p>Means one or more of the following projects:</p> <ul style="list-style-type: none"> <li>o drainage improvements at Dorothy Elmhirst football pitch</li> </ul>



- o repair and improvement of Meadowbrook outdoor community swimming pool
  - o fencing and resurfacing Meadowbrook tennis courts
  - o Refurbishment of Meadowbrook Community Centre
- or such other projects as may be agreed between the Owner and the Council;

**“Sports Facilities Capital Contribution”**

means an Index Linked financial contribution calculated in accordance with the formula set out in Schedule 6 and that forms that element of the Sports Facilities Contribution which represents the amount to be paid to the Council by the Owner towards the cost of providing the Sports Facilities Improvements in accordance with the terms of this Deed

**“Sports Facilities Maintenance Contribution”**

means an Index Linked financial contribution calculated in accordance with the formula set out in Schedule 6 and that forms that element of the Sports Facilities Contribution which represents the amount to be paid to the Council by the Owner for the maintenance of the Sports Facilities Improvements in accordance with the terms of this Deed in the Parish of Dartington

**“Woodland”**

Means the existing woodland shown hatched green on Plan 1

**“Woodland Management Plan”**

Means details of the long-term management of the Woodland

**“Working Days”**

means any Monday to Friday (other than any statutory or bank or public holidays or a day on which clearing banks are not open for normal business and does not include the days between 23 December and the immediately following 2 January in each year);

## 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 in 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 Owner of the Land (or part thereof) comprises more than one person, their liabilities shall be joint and several.
- 2.7 The clause and paragraph headings herein are for ease of reference only and shall not affect the interpretation of this Deed.

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act and all other enabling powers and enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Owner's interest in the Land and to the intent that the Obligations on the part of the Owner herein contained falling within the provisions of Section 106 of the 1990 Act shall be planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and (in respect of the Obligations given in Schedule 4 only) separately by the County Council as local planning authorities against the Owner and their respective successors and assigns of each and every part of the Land but subject as hereinafter provided.
- 3.2 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 the Obligations shall not be enforceable by anyone who is not a party to this Deed or successor in title to any party to this Deed or any person or body succeeding to any of the statutory functions of any party to this Deed.
- 3.3 The Obligations are Land Charges and shall be registered as such by the Council.
- 3.4 Nothing in this Deed is or amounts to or shall be construed as a planning permission within the meaning of Section 336 of the Act.
- 3.5 For the avoidance of doubt save as lawfully permitted nothing herein contained or implied shall prejudice or affect the Council's or the County 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.
- 3.6 Where under this Deed any notice, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction is required to be given or reached or taken by any party or any response is requested, then any such notice, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction shall not be unreasonable or unreasonably withheld or delayed provided that nothing herein shall fetter the statutory rights, powers or duties of the Council or of the County Council.

### **4 OWNER'S COVENANTS**

- 4.1 Subject to clause 7 the Owner covenants on behalf of themselves and their successors in title to the Land to bind the Land and to observe and perform the Obligations contained in the Schedules as planning obligations under section 106 of the Act;
- 4.2 The Obligations contained in Schedules 1,2 and 3 shall be enforceable by the Council
- 4.3 The Obligations contained in Schedule 4 shall be enforceable by the County Council.

**5 COUNCIL'S COVENANTS**

- 5.1 The Council covenants to observe and perform the relevant covenants contained in Schedule 5.

**6 COUNTY COUNCIL'S COVENANTS**

- 6.1 The County Council covenants to observe and perform its obligations contained in Schedule 4.

**7 SCOPE OF THE OBLIGATIONS**

- 7.1 This Deed shall come into effect on the date hereof save for the Schedules hereto which shall be conditional upon:

7.1.1 The grant of the Permission; and

7.1.2 The Commencement of Development

- 7.2 No person shall be liable for breach of a covenant contained in this Deed after he shall have parted with all Ownership Interest in the Land or its Ownership Interest in the part of the Land in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenants prior to parting with such Ownership Interest) and shall only be liable in respect of those Obligations which relate to such part of the Land in which it has an Ownership Interest (but without prejudice to liability for any subsisting breach of covenants prior to parting with such Ownership Interest)

- 7.3 This Deed shall cease to have effect if the Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure or expires prior to the Commencement of Development.

- 7.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission other than the Permission granted after the date of this Deed.

- 7.5 The Obligations shall not be binding on nor enforceable against any statutory undertaker or other person who acquires any part of the Land or any interest in it for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.

- 7.6 Save for the provisions of Schedule 1, the Obligations shall not be binding on nor enforceable against an AHP or other registered provider who acquires the Affordable Housing Units or any person deriving title therefrom including any Chargee.

- 7.7 In the event that the Obligations are fulfilled or discharged or this Deed ceases to have effect the Council shall cancel all entries in the Land Charges register relating to this Deed as soon as reasonably practicable following receipt of a written request from the Owner to do so

- 7.8 The Obligations will not be enforceable against any mortgagee or chargee acquiring an interest in the Land after the date of this Deed unless or until the said mortgagee or chargee takes possession of the Land (or part thereof) or unless or until the said mortgagee or chargee sells the Land or any part thereof under a power of sale. For the avoidance of doubt, the said



mortgagee or chargee shall not be liable for any of the obligations in this Deed after parting with its interest in the Land or part thereof.

## **8 FINANCIAL MATTERS**

- 8.1 The Owner agrees to pay upon completion of this Deed the reasonable legal costs of the Council and the County Council in respect of the negotiation, preparation, execution and completion of this Deed.
- 8.2 If the Owner fails to settle any account that may be properly and duly rendered to the Owner within 14 (fourteen) days of receipt by the Owner the sum due shall accrue interest at the Interest Rate from the date payment is due until the date of actual payment.

## **9 MONITORING FEE**

- 9.1 The Owner acknowledges that the Council shall be entitled to charge £4,002 (four thousand and two pounds) towards the costs to be reasonably and properly incurred by the Council in monitoring compliance with this Agreement and in assessing the details to be submitted to the Council for approval pursuant to this Agreement

## **10 Warranty**

- 10.1 The Owner hereby warrants to the Council and to the County Council that as at the date of this Deed apart from the Parties hereto there are no other persons with any Ownership Interest in the Land (save as set out in the recitals hereto) and that the Owner has not leased mortgaged charged or otherwise created any other interest in the Land.

## **11 DISPUTE RESOLUTION**

- 11.1 If there is any dispute or difference between the Owner, the Council or the County Council or any of them arising out of this Deed (other than a dispute or difference relating to a question of law or in relation to the interpretation of this Deed) the matter in dispute may be referred to the Expert in which case it is agreed that:
- 11.2 the determination of the Expert will be final and binding on the parties hereto save in the case of manifest error or fraud;
- 11.3 the parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert directs;
- 11.4 the Expert's costs will be borne in such proportions as he/she may direct failing which the parties will each bear their own costs of the reference and determination and the Expert's costs calculated by dividing the Expert's costs by the number of sides to the reference; and
- 11.5 the Expert may be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function and such fresh appointee will be appointed in the same manner as the Expert;

PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to the Deed by the Courts and/or in accordance with Section

106(6) of the 1990 Act and the referral of any matter to the Expert shall not prejudice prevent or delay the recourse of any party to the Courts or to the provisions of Section 106(6) of the 1990 Act for the resolution of any matter arising from the Deed.

## **12 Service of Notices and written communications**

12.1 Any notice or other written communication to be served upon a Party or given by one party to any other under the terms of this Agreement shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT delivery by hand will only be effective upon the delivering Party receiving a written receipt.

12.2 The address for any notice or other written communication shall be within the United Kingdom.

12.3 A written notice or communication shall be served or given:

(a) on the Owner

(b) on the Applicant

(c ) on the Council

(d) on the County Council

(e ) on the Bank

at the addresses set out above or such other address as shall be notified in writing to all Parties from time to time **AND** any notice or other written communication served on the Council shall be headed "For the attention of the Development Management Community of Practice Lead Specialist" **AND** any notice or other written communication served on the County Council shall be headed "For the attention of the County Solicitor

## **13 Interest on late payment**

13.1 If any payment due to be paid by the Owner under the terms of this Agreement is paid late or the Owner fails to settle any account that may be properly and duly rendered to the Owner within 15 (fifteen) Working Days of dispatch the sum due shall accrue interest at the Interest Rate from the date payment is due to the actual date of the payment.

#### **14 Notice of Commencement of Development**

- 14.1 The Owner shall give to the Council and/or the County Council ten Working Days prior written notice of its intention to Commence the Development pursuant to the Planning Permission.

#### **15 Severance**

- 15.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 15.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **16 Jurisdiction**

- 16.1 This Agreement is governed and interpreted in accordance with the law of England

The parties have executed this agreement as a Deed and it is delivered on the date set out at the front of this Deed.



## **Schedule 1 - OBLIGATIONS IN FAVOUR OF THE COUNCIL**

The Owners hereby covenant with the Council as follows:

### **PART ONE - AFFORDABLE HOUSING**

- 12 Unless otherwise agreed in writing between the Council and the Owner and subject to the provisions of this Schedule, 30% of the Dwellings shall be delivered as Affordable Housing Units with:
  - 12.1 65% of the Affordable Housing Units being delivered as Social Rented Units; and
  - 12.2 35% of the Affordable Housing Units being delivered as Intermediate Unitsor such other tenure mix as may be agreed in writing between the Owners and the Council
- 13 Subject to the provisions of this Schedule the Affordable Housing Units to be delivered pursuant to paragraph 1 hereof shall be designated as Affordable Housing which shall not be Occupied other than as Affordable Housing
- 14 Which of the Dwellings shall be delivered as Affordable Housing Units pursuant to paragraph 1 hereof shall be agreed between the Owners and the Council prior to the approval of the final Reserved Matters application PROVIDED THAT (unless otherwise agreed in writing with the Council) and the Affordable Dwellings shall not be located in clusters of more than 12 Dwellings and the mix of Affordable Housing Units shall reflect the indicative mix and the indicative sizes below:
  - 14.1 80% x 1 and 2 bed units
  - 14.2 15% x 3 bed units
  - 14.3 5% x 4 bed units

### **Mechanism For Provision Of Affordable Housing**

- 15 From the date of Practical Completion of the Affordable Housing Units:
  - 15.1 they shall not be used other than for Affordable Housing and shall only be Occupied by persons with a Local Connection in accordance with the Council's Local Allocations Policy; and
  - 15.2 The Intermediate 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 Occupationsave that this Obligation shall not be binding on:
  - 15.3 any Protected Tenant or any mortgagee or Chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees or Chargees; or
  - 15.4 Any Chargee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any purchaser from such Chargee; or

- 15.5 any successor in title or any person deriving title or any person claiming by title paramount to any persons listed in sub-paragraphs 4.1 to 4.2 above or their respective Chargees
- 16 Unless otherwise agreed in writing with the Council:
- 16.1 no more than 50% of the Market Housing Units shall be Occupied until 50% of the Affordable Housing Units have been constructed to Practical Completion and are ready for Occupation and (save for any Discount Market Housing Units) have been transferred to the Affordable Housing Provider; and
- 16.2 no more than 75% of the Market Housing Units shall be Occupied until 100% of the Affordable Housing Units have been constructed to Practical Completion and are ready for Occupation and (save for any Discount Market Housing Units) have been transferred to the Affordable Housing Provider
- 17 Subject to paragraph 4, prior to the first Occupation of any Dwelling the Owners shall notify the Council of the name of the Affordable Housing Provider(s) to whom the Social Rented Units and the Intermediate Units (save for any Discount Market Housing Units) shall be transferred

#### **DISCOUNT MARKET HOUSING**

- 18 The Owner shall not dispose of a Discount Market Housing Unit unless and until the Owner has given not less than 14 Working Days prior written notice to the Council of their intention to market the Discount Market Housing Unit(s) for sale which notice shall be accompanied by 2 Market Valuations
- 19 On the first and subsequent sale of any Discount Market Housing Unit, the Owner shall market and dispose of the Discount Market Housing Unit through the Help to Buy Agent (at the Owner's cost and at no cost to the Council)
- 20 The selling price of the Discount Market Housing Units shall be the average of the Open Market Value from the 2 Market Valuations referred to in paragraph 7 of this Schedule with a 40% discount from the average figure
- 21 The Owner shall not cause or permit the sale of a Discount Market Housing Unit for more than 60% of Open Market Value in perpetuity
- 22 To use reasonable endeavours to dispose of each Discount Market Housing Unit to a Designated Person
- 23 The Owners shall provide such information as the Council may reasonably require to satisfy itself that the buyer is a Designated Person and that the sale price offered by the Owner does not exceed the 60% of the Open Market Value of the Discount Market Housing Unit
- 24 If no Designated Person has purchased the relevant Discount Market Housing Unit within 4 months of the commencement of marketing the owner of the relevant Discount Market Housing Unit shall use reasonable endeavours to sell the Discount Market Housing Unit(s) at no more than 60% of Open Market Value to an AHP and/or the Council

- 25 If the Owner have not exchanged contracts for the sale of the Discount Market Housing Unit with an AHP and/or the Council within 6 months of the commencement of marketing the Owner shall notify the Council in writing that it has not exchanged contracts for the sale of the Discount Market Housing Unit after which point the Owner shall be free to sell the relevant Discount Market Housing Unit at no more than 60% of Open Market Value to any person PROVIDED THAT the provisions of paragraphs 7 to 15 of this Schedule shall (unless otherwise agreed in writing by the Council) apply in full in respect of any subsequent disposals of the said Discount Market Housing Unit
- 26 The transfer of each Discount Market Housing Unit (save for any transfer made to the Council or an AHP pursuant to paragraph 14 above) shall contain the following covenants and provisions:
- 26.1 Not to let the whole or part of the dwelling for a period in excess of six months in any period of ownership and not without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed but for the avoidance of doubt it shall be reasonable for the Council to refuse to give consent if the proposed rent payable does not reflect the discounted sale price of the dwelling)
- 26.2 Not to transfer the dwelling at a price greater than 60% of the Open Market Value of the Dwelling in perpetuity
- 26.3 To notify the Council in writing of the intention to sell
- 26.4 To contract to sell only to those persons and in the timescales set out in this Deed using the Help to Buy Agent
- 26.5 On completion of the sale of the Discount Market Housing Unit a fee of £100 (one hundred pounds) shall be payable to the Council by the person selling the Dwelling to cover reasonable administration costs incurred by the Council such sum to be reviewed every five years from the date of this Deed in line with inflation

#### **Nominations– Social Rented Units**

- 27 Not to allocate the Social Rented Units except in accordance with Devon Home Choice subject to the Local Allocations Policy and each Social Rented Unit shall only be let to a Designated Person:
- 27.1 who falls within the selection and allocations criteria set out in Devon Home Choice; and
- 27.2 who is considered by the AHP to be in need of the accommodation; and
- PROVIDED THAT in the event that the Council has been unable to nominate a Designated Person within 1 month of being notified of the vacancy the Affordable Housing Provider shall be entitled to allocate the relevant Social Rented Unit to any person who falls within the selection and allocations criteria set out in Devon Home Choice and is considered by the AHP to be in need of the accommodation
- 28 In the event that Devon Home Choice ceases to operate or the register is discontinued an alternative allocation method shall be agreed with the Council prior to any further allocations.



### **Nominations – Intermediate Units**

- 29 In so far as it is lawfully able to do so (and subject to the provisions of paragraph 19 hereof) the Owners shall ensure that the Intermediate Units are disposed of only to:
- 29.1 Designated Persons chosen by the Affordable Housing Provider from the list of eligible applicants which the Affordable Housing Provider shall request from the Help to Buy Agent provided that if there shall not be sufficient suitable applicants on such list or if any suitable applicants fail to proceed with the purchase within 3 (three) months of being made an offer by the Affordable Housing Provider then the Affordable Housing Provider shall be entitled to dispose of the Intermediate Unit to a person of its own choosing who is unable to afford suitable accommodation on the open market provided that the Affordable Housing Provider shall use all reasonable endeavours to dispose of the Intermediate Unit to persons from such list of eligible applicants.

### **Chargee's Release Clause**

- 30 The affordable housing provisions set out in Schedule 1 to this Agreement shall not be binding on a Chargee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee PROVIDED THAT:
- 30.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 30.2 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the relevant Affordable Housing Units free from the this Agreement which provisions shall determine absolutely in respect of those Units