

"Scheme Land"	the location shown edged and hatched black on Plan 2 or in such other locations as may be agreed in writing with EDDC
"Country Park"	means the country park to be delivered pursuant to condition 8 of the Planning Permission and intended to occupy the area shown coloured green and marked 'Country Park' on Plan 2 and which shall have a link to the boundary of the country park provided as part of the Tithebarn Development
"Designated Person(s)"	means a person or persons who have a Local Connection and are registered for housing in accordance with EDDC's Choice Based Lettings Scheme (or such other choice based lettings scheme that may be implemented or used by EDDC to allocate affordable housing) and includes individuals registered on Devon Home Choice and/or with the Regional Homebuy Agent who are deemed to be in Housing Need;
"Development"	means the development of the Land pursuant to the Planning Permission
"Developer"	Means Eagle One MMIII Limited (Co. Regn. No. 4614207) of Eagle House, 1 Babbage Way, Exeter Science Park, Exeter, Devon, EX5 2FN
"Devon Home Choice"	means the partnership between Devon local authorities and housing associations working in Devon as described in the Devon home choice policy;
"District Heating Facility"	means a district heating facility that is capable of providing a constant supply of hot water and space heating to the Development and shall include any subsequent replacement or addition to such a facility
"District Heating Network"	means a network used to supply hot water and space heating from a District Heating Facility
"Dwelling"	means a dwelling constructed or to be constructed on the Land pursuant to the Planning Permission
"Dual Use"	to enable the land to be used for both community sports and Primary School sports pursuant to a Dual Use Agreement or as otherwise agreed between the Owner, the Management Company and/or the Parish Council (as applicable) and the school operator
"Dual Use Agreement"	Means an agreement in respect of 0.4ha of the Sports Pitches in a form agreed with EDDC which shall include details of pricing policy, hours of use, access by non-educational establishment users and non-members, management

	successor body or bodies
"Housing Need"	means the circumstances where a household is currently occupying accommodation that is substandard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the open market
"Index"	means the BCIS All In Tender Price Index or in the event of the said index being discontinued the nearest equivalent index (which shall be first agreed between the Owner and EDDC)
"Index Linked"	means increased to keep pace with the Index by applying the percentage increase (if any) in the relevant Index between the date of this Agreement and the quarterly Index figure for the quarter immediately preceding the date of actual payment of the said sum
"In Perpetuity"	means a period of eighty (80) years from the date of this Agreement
"Land"	means the land known as Mosshayne, north of Tithebarn Lane, Clyst Honiton as shown edged red on Plan 1
"LEAPS"	means two local equipped areas for play each containing an enclosed activity zone of no less than 400 square metres and at least 5 different types of play equipment with a capital expenditure of not less than £60,000 per LEAP and which shall be constructed in accordance with the approved Open Space Specification and the requirements of paragraphs 6 to 11 (inclusive) of Schedule 2 and each LEAP shall be positioned so that the nearest Dwelling is at least 10 metres from the LEAP
"Local Connection"	means any person who has a strong local connection with the District and for the purposes of this Agreement a person shall be taken to have a strong local connection if: (a) they are currently resident in the District; or (b) they have been formerly permanently resident in the District for a continuous period of five (5) years; or (c) they are currently employed in the District or; (c) need to live in the District to take up a written offer of permanent employment; or (d) if they have close family living in the District who have lived in the District for at least five of the last ten years.

Schedule 1

Affordable Housing

The Owner covenants with EDDC for itself and its successors in title:-

Provision of the Affordable Housing

- 1 To construct and complete 25% of the Dwellings as Affordable Dwellings of which:
 - 1.1 63% shall be provided as Affordable Rented Dwellings; and
 - 1.2 7% shall be Social Rented Dwellings; and
 - 1.3 30% shall be Shared Ownership Dwellings.

Or such other mix of tenures as may be agreed in writing by EDDC
- 2 To construct and complete all of Affordable Dwellings to the Accessible and Adaptable Homes Standards and to any relevant standards required by the Homes and Community Agency applicable at the time of Reserved Matters Approval.
- 3 All Affordable Dwellings shall be made available for Occupation in accordance with the Nominations Agreement
- 4 To provide for approval by EDDC as part of the Reserved Matters Application (or Reserved Matters Applications as the case may be) submitted pursuant to the Planning Permission details of the location, tenure, property types and mix of the Affordable Dwellings within a particular Phase provided that (unless otherwise agreed in writing with EDDC) the percentage of Affordable Dwellings to be provided in any Phase shall not be less than 25% and shall be in accordance with the mix and tenure set out in paragraphs 1.1 – 1.3 above and 5.1 – 5.4 below
- 5 The Affordable Dwellings shall be provided in groups of no more than 25 Dwellings and shall (unless otherwise agreed with EDDC) be dispersed evenly throughout the Development in accordance with the following mix (unless otherwise agreed with EDDC):
 - 5.1 45% 1 bedroomed Dwellings
 - 5.2 40% 2 bedroomed Dwellings
 - 5.3 10% 3 bedroomed Dwellings
 - 5.4 5% 4 bedroomed Dwellings

Appendix 3

NOTE: A nomination agreement in the form provided below is required between EDDC and each Registered Provider to whom Affordable Dwellings are to be transferred pursuant to paragraph 3 of Schedule 1 of the s106 Agreement.

The nomination agreement shall provide EDDC with the right to nominate designated persons to the Affordable Dwellings in accordance with the nomination agreement and the S106 Agreement

There may be more than one nomination agreement but there shall be a nomination agreement in respect of all Affordable Rented Dwellings, Social Rented Dwellings and Shared Ownership Dwellings (being Affordable Dwellings)

MOSSHAYNE NOMINATION AGREEMENT

THIS NOMINATION AGREEMENT is made the day of 2017

BETWEEN:

- (1) EAST DEVON DISTRICT COUNCIL of Knowle, Sidmouth, EX10 8HL ("EDDC"); and**
- (2) *[Insert RP details]* an industrial and provident society (IPS Number XXXXX) whose registered office is at *[Insert address]* ("the Registered Provider")**

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions shall (unless the context otherwise requires) have the following meaning:

"Affordable Dwellings"	means the Affordable Dwellings as defined and delivered pursuant to the Section 106 Agreement which have been transferred to the Registered Provider and the term "Affordable Dwelling" shall be construed accordingly;
"Common Housing Register"	means in the case of Affordable Rented Dwellings and Social Rented Dwellings the register or list of applicants maintained by Devon Home Choice and in the case of Shared Ownership Dwellings the register or list of applicants maintained by the Regional HomeBuy Agent;
"Designated Person"	means a person who has a Local Connection and is in Housing Need and who is registered on the Common Housing Register

Restriction on Occupation of Open Market Dwellings

- 6 The Owner shall transfer the freehold estates of the completed Affordable Dwellings to a Registered Provider in accordance with paragraph 7 below.
- 7 The Owner shall not cause or permit the First Occupation of:
 - 7.1 more than 50% of the Open Market Dwellings comprised in a particular Phase until the Owner has transferred 50% of the Affordable Dwellings comprised in that Phase to a Registered Provider;
 - 7.2 no more than 70% of the Open Market Dwellings comprised in a particular Phase until the Owner has transferred 100% of the Affordable Dwellings comprised in that Phase to a Registered Provider

Provision of the Affordable Dwellings

- 8 The Affordable Dwellings shall be constructed such that in terms of their external appearance they are materially indistinguishable from the Open Market Dwellings
- 9 Subject to clause 9 the Affordable Dwellings shall be maintained as Affordable Dwellings In Perpetuity and shall not be used other than for the provision of Affordable Dwellings and in particular:
 - 9.1 The Affordable Rented Dwellings shall not be let at a rent in excess of Affordable Rent
 - 9.2 The Social Rented Dwellings shall not be let at a rent in excess of Social Rent
- 10 The rental element of the Shared Ownership Dwellings shall not be let at a rent in excess of two point seven five per cent (2.75%) of the Open Market Value of the retained equity, which rent may be increased no more than annually and by not more than the corresponding increase in the Retail Price Index plus 0.5% or at such other rent as may be set out in subsequent guidance issued by the HCA

"Devon Home Choice"	means a choice based scheme developed and operated in partnership between EDDC and local Registered Providers or such other scheme as may replace it
"District"	means the administrative area of EDDC
"First Occupation"	means first Occupation (as defined in the Section 106 Agreement);
"Homebuy Scheme"	Means the Government's affordable home ownership scheme for which South West Homes is the appointed HomeBuy Agent
"Housing Need"	where a household is currently occupying accommodation that is sub standard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the open market
"Local Connection"	means any person who has a strong local connection with the District and for the purposes of this Agreement a person shall be taken to have a strong local connection if: (a) they are currently resident in the District; or (b) they have been formerly permanently resident in the District for a continuous period of five (5) years; or (c) they are currently employed in the District or; (c) need to live in the District to take up a written offer of permanent employment; or (d) if they have close family living in the District who have lived in the District for at least five of the last ten years.;
"Nomination Period"	means the period of eighty (80) years from the date of this Agreement;
"Nomination Right"	means the right referred to in the Section 106 Agreement and conferred in clause 4 of this Nomination Agreement for EDDC to: (a) nominate Designated Persons to occupy the Affordable Dwellings during the Nomination Period; or (b) allow a Registered Provider to allocate Designated Persons to occupy the Affordable Dwellings in accordance with the Common Housing Register during the

	Nomination Period;
"Parties"	means [insert RP name] and EDDC and "Party" shall be construed accordingly;
"Section 106 Agreement"	means the Agreement dated [insert date] and entered into pursuant to Section 106 Town and Country Planning Act 1990 between (1) East Devon District Council (2) Henry Frederick Gent and Kirsten Gent (3) Eagle One MMIII Limited which makes provision for affordable housing on land known as Mosshayne North of Tithbarn Lane Clyst Honiton;
"Working Day"	means a weekday (not a Saturday or a Sunday) which is neither a public and/or statutory bank holiday, nor Good Friday, nor any day falling between 22 December in any year and 2 January in the following year (both dated inclusive)

- 1.2 Words denoting the singular only shall include the plural and vice versa
- 1.3 Words denoting one gender shall include all genders and words denoting persons shall include firms and corporations and vice versa
- 1.4 References to any statute or statutory provision include a reference to:
- (a) that statute or statutory provision as from time to time amended extended re-enacted or consolidated; and
 - (b) all statutory instruments or orders made pursuant to it.
- 1.5 References to any Party in this Agreement shall include that Party's successors in title and assigns
- 1.6 References to a body exercising statutory powers and/or functions in this Agreement shall unless otherwise specified include any successor in function
- 1.7 Every covenant in this Agreement not to do a particular thing shall be deemed to include a covenant not to cause authorise or permit that thing to be done by another person
- 1.8 Where there is conflict between any of the provisions of this Nomination Agreement and the provisions of the Section 106 Agreement the provisions of the Section 106 Agreement shall be taken to prevail for all purposes.
- 1.9 Nothing in this Nomination Agreement shall be taken to override the Devon Home Choice or Homebuy Scheme and if any conflict arises between this Nomination Agreement and the Devon Home Choice or Homebuy Scheme then the Devon Home Choice or Homebuy Scheme shall prevail

- 1.10 The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement
- 1.11 This Agreement ceases to apply to any Affordable Dwelling in the circumstances set out in clauses 9.1 and 9.4 of the Section 106 Agreement

2 NOTICES

- 2.1 Unless provided for otherwise in this Agreement any notice or other communication shall be given by telephone and must be confirmed within two Working Days by letter for that notice or communication to be effective.

3 PROVISION OF AFFORDABLE HOUSING

- 3.1 The Registered Provider agrees to make the Affordable Dwellings available for sale to or rent by (as appropriate) Designated Persons for the duration of the Nomination Period.
- 3.2 In accordance with EDDC's obligations under Parts II Housing Act 1985 and Parts VI and VII Housing Act 1996 EDDC and the Registered Provider have agreed to enter into a programme for the nomination of Designated Persons to purchase or rent the Affordable Dwellings.

4 NOMINATION RIGHTS

- 4.1 The Registered Provider grants to EDDC the Nomination Rights in respect of the Affordable Dwellings throughout the Nomination Period and the Registered Provider covenants that it shall not allow the occupation of the Affordable Dwellings other than in accordance with this Agreement.
- 4.2 The Nomination Rights may be exercised by EDDC where an Affordable Dwelling becomes available for occupation by reason of availability for First Occupation or arising upon any subsequent resale, re-let or assignment after the expiry of the First Occupation or any subsequent occupation of that Affordable Dwelling.
- 4.3 EDDC may appoint the Registered Provider to act on its behalf in relation to this Agreement on such terms as to be agreed in writing from time to time

5 NOMINATION PROCEDURE

Notice of availability

- 5.1 Where an Affordable Dwelling is available for First Occupation the Registered Provider shall provide notice in writing to EDDC no later than two weeks before the Affordable Dwelling is due to become available for First Occupation.
- 5.2 Where a Registered Provider becomes aware that an Affordable Dwelling is to become available for any reason after the expiry of the First Occupation or any subsequent occupation the Registered Provider shall provide notice in writing of the availability of that Affordable Dwelling to EDDC four weeks prior to the Affordable Dwelling becoming available or, if this is not possible, as soon as reasonably

practicable from the date when the Registered Provider becomes aware than an Affordable Dwelling is to become available.

Nomination of Designated Persons

- 5.3 Where EDDC receives notice of the availability of an Affordable Dwelling in accordance with clause 5.1 and 5.2 above it shall within two weeks nominate to the Registered Provider in priority order up to three prospective Designated Persons to occupy the Affordable Dwelling.

Offer of accommodation to Designated Persons

- 5.4 The Registered Provider shall within ten working days of receipt of the names of the three Designated Persons pursuant to clause 5.3 above have the reasonable right of interview and (on reasonable grounds) rejection of any prospective Designated Person so nominated by EDDC.

- 5.5 Where the Registered Provider:

(a) does not reject all of the prospective Designated Persons nominated by EDDC;

or

(b) where the Registered Provider rejects a Designated Person and it is later determined that the rejection was unreasonable,

it shall make an offer to purchase or offer to lease (as appropriate) to the highest priority Designated Person who has not been reasonably rejected by the Registered Provider

- 5.6 Where EDDC has nominated a Designated Person(s) the Registered Provider shall as soon as practicable notify EDDC if:

(a) the Registered Provider rejects any Designated Person(s) nominated by EDDC;

or

(b) if any Designated Person nominated in respect of a particular Affordable Dwelling fails to accept or refuses an offer of a lease or an offer to purchase which is made by the Registered Provider.

- 5.7 Where the Registered Provider rejects a Designated Person and provides notice to EDDC of that rejection in accordance with clause 5.7(a) above that notice shall include the Registered Provider's reasons for that rejection.

- 5.8 On receipt of a notice of rejection EDDC shall consider the reasons for rejection and if EDDC considers that a rejection was not reasonable it shall set out its reasons for so doing in writing and immediately notify the Registered Provider of those reasons.

- 5.9 In the event of a dispute between the Registered Provider and EDDC relating to whether a rejection is reasonable or not the matter may be referred by either party for resolution under the terms of clause 10.

Further nominations

- 5.10 This clause applies where either:

(a) all Designated Persons nominated to an Affordable Dwelling by EDDC are

reasonably rejected by the Registered Provider;

or

(b) a Designated Person refuses to accept an offer to lease or offer to sale made by the Registered Provider within four weeks of the date of that offer.

5.11 Where clause 5.10 applies, the Registered Provider shall notify EDDC and invite further nominations within ten working days.

5.12 Within ten working days of receipt of a notification received in accordance with clause 5.12 EDDC may nominate to the Registered Provider a further three prospective Designated Persons in priority order for the purposes of occupying that Affordable Dwelling. Clauses 5.4 to 5.9 shall apply in respect of those nominations as if they were made under clause 5.3.

Allocation by Registered Provider

5.13 If within four weeks of the expiration of a notice served upon EDDC pursuant to clause 5.1, 5.2 or 5.11 above either:
(a) EDDC have failed to nominate a Designated Person; or
(b) all Designated Persons nominated to an Affordable Dwelling by EDDC are reasonably rejected by the Registered Provider
the Registered Provider may let the Affordable Dwelling free from the Nomination Rights to any Designated Persons in accordance with Devon Home Choice and/or Homebuy Scheme without prejudice to the Nomination Rights which shall arise upon the expiry of that person's occupation of the Affordable Dwelling pursuant to this Agreement.

Fit for occupation

5.14 Where the Registered Provider gives notice to EDDC under clauses 5.1, 5.2, 5.3 or 5.12 the Registered Provider shall certify to EDDC that the Affordable Dwelling to which the notice relates is fit for occupation.

6 VARIATION AND WAIVER

6.1 The nomination procedure described in clause 5 above may be varied provided always that such variation is agreed in writing by the Parties and that no such variation shall constitute a waiver of the Nomination Rights as described in this Agreement.

7 INFORMATION

7.1 The Registered Provider shall provide EDDC with information concerning the occupation of the Affordable Dwellings on each anniversary of the date of this Agreement throughout the Nomination Period such information to include evidence concerning voids, sales, re-sales, lets and re-lets.

7.2 EDDC may request such further information from the Registered Provider concerning the occupation of the Affordable Dwellings as it may reasonably require and such information shall be provided by the Registered Provider within twenty-eight days of receipt of a request PROVIDED THAT any such requests are not made more than once in any 6 month period.