

- 1.6 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
- 1.7 References to any statute or statutory provision includes a reference to:
- 1.7.1 that statute or statutory provision as from time to time amended extended re-enacted or consolidated and
- 1.7.2 all statutory instruments or orders made pursuant to it
- 1.8 Unless the context otherwise requires references to any clause sub-clause paragraph schedule appendix drawing or plan (or any part of them) is to a clause sub-clause paragraph schedule appendix drawing or plan (or any part of them) to this Agreement
- 1.9 The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement

2 DEFINITIONS

"Act"	means the Town and Country Planning Act 1990 as amended
"Affordable Dwellings"	means 28% of the Dwellings which shall be used for the purpose of providing accommodation to people whose income does not allow them to rent or to buy at normal market prices within the administrative area of EDDC such housing to be occupied by households in need of affordable housing in the administrative area of EDDC in accordance with this Agreement and "Affordable Dwelling" shall mean any one of them
"Affordable Rent"	means the rent payable for rented housing let by registered providers of social housing to households who are eligible for social rented housing such rent is to be subject to the affordable rent regime defined in the Homes and Communities Agency's Affordable Homes Programme - Framework document published in February 2011 (or any successor document) that requires a rent of no more than 80% of the gross local market rent, including service charges
"Affordable Rented Dwellings"	means 63% of the Affordable Dwellings which shall be let at an Affordable Rent and "Affordable Rented Dwelling" shall mean any one of them
"Allotments"	means the allotments to form part of the Open Space and to be laid out broadly in the location shown shaded pink on Plan 2
"Annual Monitoring Contribution"	means the sum of £999.00 Index Linked per annum

"Services"	means connections to highway mains electricity gas water foul drainage together with telecommunications ducting all of which shall be of sufficient capacity to service the relevant part of the Development
"Shared Ownership Dwellings"	means 30% of the Affordable Dwellings which are to be let under a long leasehold on shared ownership terms and which are to be the equivalent of the Government's Standard New Build HomeBuy Product or any similar or successor product as approved by the HCA and "Shared Ownership Dwelling" shall mean any one of them
"Skypark"	means the Skypark office/industrial development which is intended to include up to 138,167 square metres of net usable floorspace for B1(a) office development and B1(c)/B2 industrial development (with a split of 62% B1 net floorspace and 38% B1(c)/B2 net floorspace); complementary development to support the uses on the site (to include crèches, cafes and A1 retail; hotel (150 bedroom) with associated leisure and conference facilities; relocated football ground (to include clubhouse and associated structures); and strategic open space (to include flood attenuation measures, walking and cycling routes, fitness trails and the creation of new areas of habitat of biodiversity value) on land North of Exeter International Airport Clyst Honiton Exeter Devon EX5 2DS
"Social Rent"	means the target rent as determined through the national rent regime set out as the Three Year Review Restructuring (July 2004) which was implemented as policy in July 2006 or any superseding publication or policy
"Social Rented Dwellings"	means 7% of the Affordable Dwellings which shall be let at a Social Rent and "Social Rented Dwelling" shall mean any one of them
"Sports Pitches"	means the sports pitches to form part of the Open Space and to be laid out in the areas edged blue on Plan 2 and comprising an area of no less than 1.63 hectares of land;
"Statement of Mitigation Intent"	means the statement of mitigation intent contained at Appendix 4 together with any amendments thereto which may be agreed between the Owner and EDDC in writing
"SUDS"	means the Sustainable Urban Drainage Systems to form part of the Open Space and SANGS and to be laid out in the areas shaded blue on Plan 2 or such other areas that may be agreed in writing between the Owner and EDDC in the event that that the route or extent of the link road to be approved pursuant to

Schedule 1

Affordable Housing and Key Worker by Design

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

Provision of the Affordable Housing

- 1 To construct and complete 28% 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.
- 2 To construct and complete 5% of Affordable Dwellings to the Lifetime Homes Standard
- 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
- 5 The Affordable Dwellings shall be provided in groups of no more than 20 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 16% 1 bedroomed Dwellings
 - 5.2 50% 2 bedroomed Dwellings
 - 5.3 30% 3 bedroomed Dwellings
 - 5.4 4% 4 bedroomed Dwellings

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 250 Open Market Dwellings until the Owners have transferred 30% of the Affordable Dwellings to a Registered Provider;
 - 7.2 no more than 300 Open Market Dwellings until the Owners have transferred 65% of the Affordable Dwellings to a Registered Provider
 - 7.3 more than 350 Open Market Dwellings until 100% of the Affordable Dwellings have been transferred to a Registered Provider

Note: A nomination agreement in the form provided below will be required between EDDC and each Registered Provider to which Affordable Dwellings are to be transferred.

The nomination agreement shall provide EDDC with the right to nominate designated persons to the units in accordance with the nomination agreement and the section 106 agreement.

Each nomination agreement shall apply to both Affordable Rented Dwellings and Shared Ownership Dwellings (i.e. all Affordable Dwellings).

TITHEBARN GREEN NOMINATION AGREEMENT

THIS NOMINATION AGREEMENT is made the day of [2013]

BETWEEN:

- (1) EAST DEVON DISTRICT COUNCIL of Knowle, Sidmouth, EX10 8HL ("EDDC"); and
- (2) [] whose registered office is at [] ("the Registered Provider")

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

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

- | | |
|---------------------------------------|---|
| "Affordable Dwellings" | means the Affordable Dwellings which are subject to a transfer to the Registered Provider dated ● and which shall be made available as affordable housing and which shall comprise Social Rented Dwellings Affordable Rented Dwellings and Shared Ownership Dwellings as defined and delivered pursuant to the Section 106 Agreement; |
| "Choice Based Lettings System" | means the Devon Home Choice scheme or such other choice based lettings scheme that may be implemented or used by EDDC to allocate affordable housing; |
| "Designated Person" | means a person or persons who are registered for housing in accordance with EDDC's Choice Based Lettings Scheme and/or the Regions Homebuy Agent who are deemed to be in need of affordable housing; |
| "Devon Home Choice" | means the partnership between Devon local authorities |

"BREEAM Certificate"	means a certificate produced by a BRE licensed assessor certifying the BREEAM standard of the Health Care Facility, Community Facility or Offices (as the case may be)
"BREEAM Standards"	means BRE Environmental Assessment Method Standards produced by the Building Research Establishment and current at the date of the Planning Permission applicable to the Offices, Community Facility and Health Care Facility, or in the event of there being no BREEAM standard for the Offices, Community Facility or Health Care Facility (as the case may be) a bespoke BREEAM standard or an equivalent standard will be developed by the Owner and agreed with EDDC prior to construction
"BREEAM Standard Excellent"	means the relevant term as set out within BREEAM Standards
"BREEAM Standard Very Good"	means the relevant term as set out within BREEAM Standards
"BREEAM Standard Good"	means the relevant term as set out within BREEAM Standards
"CIL Contribution"	means any financial contribution towards physical or social infrastructure which may be payable by the Owners in respect of the Development which may be levied by EDDC pursuant to Part 2 of the Planning Act 2008
"Code"	means the Code for Sustainable Homes and the Code for Sustainable Homes Technical Guidance November 2010 published by the Department for Communities and Local Government current as at the date of this Agreement
"Code for Sustainable Homes Certificate(s)"	means an interim certificate at the design stage and a final certificate at the post construction stage in accordance with the Code and any other certificate required under the Code to ensure compliance with the Code
"Code for Sustainable Homes Level Three"	means level three as set out in the Code
"Code for Sustainable Homes Level Four"	means level four as set out in the Code
"Commencement Notice"	means written notice of the date that Commencement of the Development is to take place in the form at Appendix 2
"Commencement of the Development"	means the date that the Development is begun on the Land within the meaning of Section 56 (4) of the Act pursuant to the Planning Permission provided that for the purposes of this Agreement the following shall not be deemed to constitute

	condition 12 of the Planning Permission impacts on the intended layout of the areas shaded blue on Plan 2
"Trigger Point Notice"	means written notice of the date that a Trigger Point is to take place in the form at Appendix 2 and in accordance with the provisions of clause 11.2
"Trigger Point"	means the date on or by which a covenant or obligation has to be performed or complied with
"Viable"	means commercially viable as assessed by an independent and suitably qualified person whose identity has first been agreed between the Owner and EDDC and who shall prepare a viability appraisal to determine whether: (a) adherence to the BREEAM standards set out in this Agreement would result in buildings being commercially unviable; and/or (b) the cost of connecting the Dwellings or any other building to the District Heating Facility would make the Development (or the relevant part thereof) commercially unviable; Which assessment shall be prepared on the joint instruction of the Owner and EDDC following Red Book Valuation principles or such other model as may agreed between the parties with the cost of such appraisal to be borne by the Owner and the terms "Viability" and "Viably" and "Unviable" shall be construed accordingly. In the event of dispute the Viability of the relevant part of the Development shall be determined by an Expert pursuant to clause 14 hereof
"Working Days"	means any Monday Tuesday Wednesday Thursday and Friday except any public and/ or bank holidays

3 STATUTORY POWERS

- 3.1 This Agreement is made pursuant to section 106 of the Act section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers

4 CONDITIONALITY

- 4.1 Clauses 4, 7.1, 11, 13, 14, 16 and 17 shall take effect on the date of this Agreement and any other provisions needed to interpret and give effect to those clauses shall take effect upon the date of this Agreement

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

Key worker by design

- 11 Prior to the commencement of construction of any Dwelling comprised in the Science Park Worker Dwelling Phase the Owner shall:
 - 11.1 investigate the demand for the provision of accommodation for occupation by Science Park Workers (and, if so, the nature of that demand) and provide a written report summarising those investigations (and their results) to EDDC
 - 11.2 submit the Science Park Worker Dwelling Details to the EDDC
- 12 The Owner shall not cause or permit the Occupation of any Dwelling comprised in the Science Park Worker Dwelling Phase unless and until EDDC has approved the Science Park Worker Dwelling Details PROVIDED THAT in the event that EDDC does not approve or reject the submitted Science Park Worker Dwelling Details within 20 Working Days of the date of submission the Science Park Worker Dwelling Details shall be deemed to have been approved
- 13 The Owner shall construct and complete the Science Park Worker Dwellings in accordance with the approved Science Park Worker Dwelling Details prior to the Occupation of more than 90% of the Dwellings on the Development or prior to the Occupation of 90% of the Dwellings (excluding the Science Park Worker Dwellings) on the Science Park Worker Dwelling Phase whichever is the later
- 14 The Owner shall use reasonable endeavours to advertise the availability of the Science Park Worker Dwellings to Science Park Workers for a period of up to 2 years from commencement of construction of the Science Park Worker Dwellings PROVIDED THAT this obligation shall cease once the Science Park Worker Dwellings have been sold or let

	and housing associations working in Devon as described in the Devon home choice policy;
"EDDC"	means East Devon District Council;
"Expert"	means an expert independent arbitrator to be appointed in accordance with clause [10.1] of this Agreement;
"First Occupation"	means First Occupation as defined in the Section 106 Agreement;
"Local Connection"	means any person who is in need of affordable housing and who has a strong local connection with the administrative area of EDDC and for the purposes of this Agreement a person shall be taken to have a strong local connection if they are currently resident in the area or are currently employed in the area or need to live in the area to take up firmly committed employment or if they have close family living in the area or if they have been resident in the area 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 by 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 Devon Home Choice during the Nomination Period;
"Parties"	means [<i>the registered provider</i>] and EDDC and "Party" shall be construed accordingly;
"Registered Provider"	means a Registered Provider as defined in the Section 106 Agreement which is a Party to this agreement;
"Section 106 Agreement"	means the agreement dated ● and made pursuant to Section 106 Town and Country Planning Act 1990 between (1) East Devon District Council and (2) Eagle

Commencement of the Development

- (a) any construction of access and service roads and service diversions or service infrastructure
- (b) site surveys and investigations including archaeological investigations
- (c) demolition of existing buildings and site clearance (including tree and hedgerow works)
- (d) assessments of ground conditions and contamination (including excavation) and remedial action in respect of any contamination
- (e) ecological attenuation works flood and noise attenuation
- (f) marking out and pegging out operations and the erection of temporary hoardings and fences or other means of enclosure for site security
- (g) earth moving works that take place for the sole purpose of achieving the correct ground levels across the Land

and "Commence the Development" shall be construed accordingly

"Community Facility"

means a building of no less than 200 m2 gross external area to be provided as part of the Local Centre which shall be used to accommodate community uses including (without limitation) uses falling within class D1 or D2 of the Use Classes Order 1987 provided that such uses are ancillary to and associated with the Development

"Community Facility Specification"

means a specification to be submitted to EDDC for approval in accordance with paragraph 5 of Schedule 3 which shall include details of the approved use(s) for that facility

"Completion Standard"

means completion of the Health Care Facility and/or the Community Facility and/or the Local Centre (as the case may be) to shell standard so that the relevant building meets the following criteria:

The facility is wind and water tight which may include temporary provision/arrangement pending finally agreed fit out works

All Services have been provided to the boundary and/or the external envelope of the building and there is proper and safe

One MM III Ltd which makes provision for affordable housing on land at Tithebarn Green, Redhayes, Devon;

"Working Days"

means any Monday Tuesday Wednesday Thursday and Friday except any public and/ or bank holidays

- 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 includes 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 Choice Based Lettings System operated by EDDC and if any conflict arises between this Nomination Agreement and the Choice Based Lettings System then the Choice Based Lettings System 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

2 NOTICES

- 2.1 Unless provided for otherwise in this Agreement any notice or other communication shall be given by letter, email or facsimile transmission for that notice or communication to be effective.

access to the facility

In respect of those parts of the facility which are to be fitted by a tenant the relevant parts of the facility are ready for the tenant to fit out

In respect of those parts of the facility which are not to be fitted out by a tenant the relevant parts of the facility are ready for beneficial use and occupation

The facility has been constructed and substantially completed in all respects to shell standard in accordance with the Community Facility Specification and/or the Health Care Facility Specification and/or the Local Centre Specification (as appropriate)

The Health and Safety File pursuant to the Construction Design and Management Regulations 1995 (as may be amended and in force at the date of construction) and the operating and maintenance manual (in so far as they relate to the works which have been completed to the relevant stage) are available to occupiers

and the "Date of Completion Standard" shall be construed accordingly

"Country Park"

means the country park to be delivered pursuant to condition 6 of the Planning Permission and intended to occupy the area shown edged and hatched green on Plan 2

"DCC"

means Devon County Council or its successor in title or successor in function

"Designated Person(s)"

means a person or persons who 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 the Regions Homebuy Agent who are deemed to be in need of affordable housing;

"Development"

means the proposed development of the Land (and adjoining land in ECC's administrative area) to provide up to 930 dwellings (of which up to 580 are to be provided on the Land and up to 350 are to be on adjoining land in ECC's administrative area), a new link road, employment area (B1a Use Class), park and ride facility, local centre/square, health and fitness centre, crèche, public and private open space and

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.

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] after the date on which the Affordable Dwelling becomes available for First Occupation that it is available.
- 5.2 Where an Affordable Dwelling becomes or is to become available for any reason after the First Occupation or any subsequent occupation the Registered Provider shall provide notice in writing of the availability of that Affordable Dwelling to EDDC no less than [four weeks] prior to that Affordable Dwelling becoming available.

Nomination of Designated Persons

- 5.3 Where EDDC receives notice of the availability of an Affordable Dwelling in accordance with clause [5.1] 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.
- 5.4 Where EDDC receives notice of the availability of an Affordable Dwelling in accordance with clause [5.2] above it shall within two weeks nominate to the Registered Provider in

	car and cycle parking, together with landscaping and associated servicing (all matter reserved except point of access) pursuant to the Planning Permission
"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
"ECC"	means Exeter City Council or successor in title or successor in function
"Exe Estuary SPA Contribution"	means the sum of £350 per Dwelling as a contribution towards measures to mitigate the impact of residential development upon the Exe Estuary Special Protection Area (SPA)
"First Occupation"	means first occupation of any building constructed on the Land for the purposes for which it was intended but does not include temporary occupation for the purposes of construction fitting out or marketing or security and "First Occupier" and "First Occupy" shall be construed accordingly
"Gateway Policy"	means the policy attached at Appendix 5 and referred to as such in the Science Park Section 106 Agreement and as may be agreed from time to time by the HCA (or any successor body) DCC and the Science Park Management Company
"HCA"	means the Homes and Communities Agency being the national Government agency responsible for (among other things) funding new affordable housing and shall include any successor body or bodies

priority order up to three prospective Designated Persons to occupy the Affordable Dwelling.

Offer of accommodation to Designated Persons

5.5 The Registered Provider shall within [ten Working Days] of receipt of the names of the three Designated Persons pursuant to clauses [5.3 or 5.4] above have the right to interview and (on reasonable grounds) reject any prospective Designated Person so nominated by EDDC.

5.6 Where the Registered Provider:

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

(b) where it does reject 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.

5.7 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.

5.8 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.

5.9 On receipt of a notice of rejection EDDC shall consider the reasons for rejection and if it determines 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.

5.10 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

5.11 This clause applies where either:

"Health Care Facility"

means a facility of at least 300sqm gross external area (which may be comprised in one or more buildings) for the provision of health care services, including any one or more of the following: clinics, doctor's offices, urgent care centres, ambulatory surgery centres and associated pharmacy which serve as a first point of contact with a health professional and provides outpatient medical, dental and other types of care services to be provided within the land shown for illustrative purposes shaded green on Plan 2

"Health Care Facility Specification"

means a specification to be submitted to EDDC for approval in accordance with paragraph 12 of Schedule 3 which shall include details of the approved use(s) for that facility

"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 edged red on Plan 1

"LEAP"

means a local equipped area for play according with the details approved by EDDC in the Open Space Specification and to contain an enclosed activity zone of at least 400 square metres and containing at least 5 different types of play equipment and such LEAP shall be positioned so that the nearest Dwelling is at least 10 metres from the LEAP

"Leisure Area"

means the part of the Development for leisure uses shown for illustrative purposes edged and cross hatched brown on Plan 2

"Lifetime Homes Standard"

means the standards for residential accommodation set out in the Joseph Rowntree Foundation Lifetime Homes Standard (or any superseding standard) and contained at Appendix 6

"Local Centre"

means a local centre of a minimum of 0.65 hectares (which calculation includes all associated infrastructure including roads and service areas and also includes all public realm) for the provision of the Local Centre in the broad location shown shaded green of Plan 2 and the mix of uses comprising the

- (a) all Designated Persons nominated to an Affordable Dwelling by EDDC are rejected by the Registered Provider and such reasons are considered reasonable by EDDC; 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.
- 5.12 Where clause [5.11] applies, the Registered Provider shall notify EDDC and invite further nominations within [ten working days].
- 5.13 Within [ten working days] of receipt of a notification received in accordance with clause [5.12] EDDC shall nominate to the Registered Provider a further three prospective Designated Persons in priority order for the purposes of occupying that Affordable Dwelling. Clauses [5.5 to 5.10] shall apply in respect of those nominations as if they were made under clause 5.3 or 5.4.

Local Connections

- 5.14 If within [four weeks] of the expiration of a notice served upon EDDC pursuant to clause [5.1, 5.2 or 5.12] above EDDC have failed to nominate a Designated Person the Registered Provider may let the Affordable Dwelling free from the Nomination Rights to a person or persons with a Local Connection and in accordance with Devon Home Choice without prejudice to the Nomination Rights of EDDC which shall arise upon the expiry of that person's occupation of the Affordable Dwelling.

Fit for occupation

- 5.15 Where the Registered Provider gives notice to EDDC under clauses 5.1, 5.2 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 in respect of any single Affordable Dwelling provided always that such variation is agreed in writing by the Parties and that no such variation shall constitute a waiver of EDDC's 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.

local centre shall (unless a different mix or different proportions of the following uses is agreed in writing between the Owner and EDDC) reflect the following:

- 1) at least 400sqm gross external area local convenience store/post office;
- 2) at least 350sqm gross external area as a Public House;
- 3) at least 100sqm gross external area restaurant/café;
- 4) the Health Care Facility;
- 5) a public square which shall be landscaped and contain public art and street furniture;
- 6) bus stop;
- 7) vehicular, pedestrian, cycle routes to the boundary of the Science Park;
- 8) service areas;
- 9) residential (first floor and above);
- 10) public on-street car parking; and
- 11) the Community Facility

"Local Centre Buildings"

means the buildings comprised in the Local Centre (excluding the Community Facility and the Health Care Facility)

"Local Centre Specification"

means a specification to be submitted to EDDC for approval in accordance with paragraph 1 of Schedule 3 which shall include details of the Local Centre Buildings and a timetable for the delivery of the Community Facility and the Health Care Facility

"Management Company"

means an existing management company or a management company set up by the Owner to fund manage and maintain the Open Space and SANGS the objects of which will include:

- (i) the management and ongoing maintenance of the Open Space and SANGS
- (ii) the ecological management of the Open Space and SANGS
- (iii) responsibility for applying the Management Company Contribution paid to it pursuant to this Deed for the purposes stated herein
- (iv) the carrying out of its duties and responsibilities as specified in the Management Company Plan unless otherwise agreed by EDDC

- 7.2 EDDC may request such further information from the Registered Provider concerning the occupation of the Affordable Dwelling 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.

8 ENFORCEABILITY OF COVENANTS

- 8.1 This Agreement is made pursuant to the Local Government (Miscellaneous Provisions) Act 1982 Section 33 and the covenants on the part of the Registered Provider shall be enforceable without any limit of time against any person deriving title from the Registered Provider in respect of its interest in the Affordable Dwellings and any person deriving title under it in respect of any lesser interest in the Affordable Dwellings as if that person had also been an original covenanting party in respect of the interest for the time being held by him provided always that the obligations contained or referred to in this Nomination Agreement shall not apply in so far as is provided for in the Section 106 Agreement.

9 COSTS

- 9.1 On completion of this Agreement the Registered Provider shall pay EDDC's legal costs in preparing amending and completing this Agreement.

10 DISPUTES

- 10.1 In the event of a dispute or question arising between the Registered Provider and EDDC in relation to any of the provisions of this Agreement it is agreed that the dispute will be referred for Expert Determination in accordance with the provisions of clause 14 of the S106 Agreement

IN WITNESS whereof this Agreement has been executed by the parties hereto the day and year first before written

THE COMMON SEAL of EAST DEVON)
DISTRICT COUNCIL was affixed to this)
Agreement in the presence of)

Seal

"Management Company Contribution"

means the sum of Twenty Thousand Pounds (£20,000) (Index Linked) to be paid by the Owner to the Management Company as a contribution to the Management Company's costs of maintaining the Management Company, the Open Space and SANGS

"Management Company Plan"

a written scheme or schemes demonstrating the way in which the Management Company will be set up and be maintained for the community interests of the Development and the way in which it will fulfil its ongoing permanent objectives and functions (and which will include plans and illustrations as appropriate) and which shall include provisions outlining

- (i) its objects (to be reflected in the memorandum of incorporation and articles of association) as referred to in paragraphs (i)-(iv) (inclusive) of the definition of Management Company above
- (ii) governance of the Management Company including how it will be incorporated, how key office appointments will be made (initially and thereafter) how shares in the Management Company will be issued and to whom and when, how the Management Company will appoint professional advisors and what appointments will be made and when and how those appointments will be funded (including for example the Company Secretary) and how meetings of members will be covered and how regularly
- (iii) how the assets for which the Company will be responsible for maintaining will be safeguarded and asset locked for use by occupiers of the Development to ensure that they may only be used to carry out its duties and responsibilities as specified in this Deed and in relation to the Management Company Contribution paid to it pursuant to this Deed and for no other purpose
- (iv) how the Open Space and SANGS will be managed and maintained
- (v) how adequate public liability insurance will be effected and permanently maintained by a reputable insurance company to cover all public liability claims arising in relation to the Open Space and SANGS

"Market"

means to market land and / or buildings in accordance with the provisions of clause 19 and "Marketing" shall be construed accordingly

"Market Value"

means the open market value of any part of the Land as determined by the RICS Red Book or in default of a relevant provision in the RICS Red Book by agreement between the Owner and EDDC

"MUGA"

means a multi-use games area according with the details

	approved by EDDC in the Open Space Specification
"NEAP"	means a neighbourhood equipped area for play according with the details approved by EDDC in the Open Space Specification and to contain an enclosed activity zone of at least 1,000 square metres and containing at least 8 different types of play equipment and such NEAP shall be positioned so that the nearest Dwelling is at least 30 metres from the NEAP
"Nominations Agreement"	means an agreement to be entered into in the form attached at Appendix 3 between EDDC and any Registered Provider to which Affordable Dwellings are transferred such agreement to contain the procedures for nominating Designated Persons to the Affordable Dwellings
"Office"	means any building which is intended to be used and is capable of being used for a use within class B1 (a) office use of the Use Classes Order 1987 pursuant to the Planning Permission
"Open Market Dwellings"	shall mean those Dwellings which are not Affordable Dwellings
"Open Space"	means the areas of formal and informal open space to be provided within the Development in the broad locations identified edged green and edged and cross hatched green and edged blue and shaded blue on Plan 2 and in accordance with the approved Open Space Specification and shall include the SUDS, the Sports Pitches, the Allotments, the NEAP, the LEAP, the Playtrail and the MUGA. Save for the Playtrail the formal areas of Open Space may not be located in the Country Park.
"Open Space Commuted Sum"	Means the sum to be notified to the Owner pursuant to paragraph 9 of Schedule 2 to be paid by the Owner to EDDC as a contribution to cost of maintaining the relevant part of the Open Space and SANGS
"Open Space Specification"	means a specification for the provision and maintenance of the Open Space together with details of the exact location phasing and timing of delivery of the Open Space to be submitted to and approved in writing by EDDC in accordance with paragraph 2 of Schedule 2 and shall include the details of the standards to which the SUDS, MUGA, NEAP, LEAP, Allotments and Sports Pitches shall be constructed

"Park and Ride"	Means a park and ride facility or a park and change facility or a public car park
"Park and Ride Interim Landscaping Specification"	means a specification for the provision and maintenance of interim landscaping measures on the Park and Ride Land to be submitted to and approved in writing by EDDC in accordance with paragraphs 1 or 2 of Schedule 6
"Park and Ride Land"	means the land shown for illustrative purposes edged orange on Plan 2
"Phase"	means a phase of the Development as shown on the phasing plan to be submitted and approved pursuant to [condition 23] of the Planning Permission including any revisions thereto as may be agreed between the Council and the Owner such phasing plan to include details of the Science Park Worker Dwelling Phase
"Plan 1"	means the plan which shows the Land annexed hereto and marked "Plan 1"
"Plan 2"	means the plan showing the indicative masterplan for the Development annexed hereto marked "Plan 2"
"Planning Application"	means the outline planning application for the Development submitted to EDDC and given reference number 12/1291/MOUT
"Planning Permission"	means planning permission for that part of the Development on the Land in the form contained in Appendix 1 and shall include any permission granted pursuant to an application made under S73 of the Act or any other provisions to similar effect
"Playtrail"	means a play trail containing at least 8 different activity areas according with the details approved by EDDC in the Open Space Specification
"Red Book Valuation"	means a valuation undertaken pursuant to the guidance contained in the latest version of the Valuation Standards published the Royal Institution of Chartered Surveyors at the date of the valuation
"Registered Provider"	means a registered provider being a social housing provider registered under the Housing and Regeneration Act 2008 with the HCA (or any successors in function) which shall include any organisation accredited by the HCA for the purposes of managing Affordable Housing in accordance with the standards of the HCA and shall be selected by the Owners and approved

	of by EDDC
"Reserved Matters Application"	means the application(s) for approval of matters reserved under the conditions of the Planning Permission for subsequent approval in accordance with s92(2) of the Act
"Reserved Matters Approval"	means either approval of reserved matters or a planning permission granting approval of the details required in respect of the Development to allow it to proceed
"SANGS"	means a Suitable Alternative Natural Green Space as defined in Natural England's <i>Guidelines for the creation of Suitable Accessible Natural Green Space</i> (2008) to be accommodated on the Land including the Country Park and the SUDS
"SANGS Management Plan"	means a plan for the phasing, laying out and management of the SANGS to be submitted to EDDC for approval in accordance with paragraph 10 of Schedule 2 and such plan shall include any amendments agreed between EDDC and the Owner in writing
"Science Park"	means the science park development which is intended to provide 76,450 square metres of B1 (A-C) uses including a 150 bed hotel and conference facility and ancillary uses (A1, A3, D1 and D2), plus associated infrastructure including new highways access on land North East of M5 Junction 29 and A30 Clyst Honiton Devon
"Science Park Workers"	means workers employed in the Science Park
"Science Park Worker Dwellings"	means the 12 Dwellings to be constructed in accordance with paragraphs 11 to 14 of Schedule 1
"Science Park Worker Dwelling Details"	means details of the location and design of the Science Park Worker Dwellings which details shall respond to the results of the investigation into the demand for the provision of accommodation for occupation by Science Park Workers required pursuant to paragraph 11 of Schedule 1
"Science Park Worker Dwelling Phase"	means a the Phase which has contiguous boundaries with the Science Park and which includes the Science Park Worker Dwellings
"Science Park Section 106 Agreement"	means the agreement dated 11 March 2010 relating to the Science Park on land on the North and South sides of Blackhorse Land Clyst Honiton, Devon and made between (1) East Devon District Council (2) Devon County Council and (3) Eagle One MMIII Limited