

<b>"Affordable Housing Provider" or "AHP"</b>	means a registered provider as defined in the Housing & Regeneration Act 2008 who is registered with the Homes and Community Agency or any other provider of Affordable Housing;
<b>"Affordable Housing Units"</b>	means each of the 21 Dwellings (being 35% of the total number of Dwellings) to be constructed as part of the Development to be constructed on plot numbers 9 to 19 inclusive and plot numbers 49 to 60 inclusive (or on such other alternative plots as may be agreed in writing between the Owner and the Council) and delivered as either Affordable Rented Units or Intermediate Units pursuant to this Agreement;
<b>"Affordable Rented Unit"</b>	means 66.6% of the Affordable Housing Units (or such other proportion as may be agreed in writing between the Owners and the Council) which shall be let by an AHP to be offered at a rent of up to 80% of the local market rents and which rent shall not exceed the local housing allowance rate applicable to Blackawton published by the Valuation Office Agency of H.M. Revenue and Customs;
<b>"Application"</b>	means an application for planning permission registered by the Council on 24 April 2014 with the reference number 06/0992/14/F for the erection of 60 no. dwellings, employment floorspace, highway layout, incidental open space, car parking, playspace for Blackawton Primary School and multi-use games area;
<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>"Cavanna"</b>	means Cavanna Homes Limited but does not include its successors in title or assigns;
<b>"Chargee"</b>	means any mortgagee or chargee of the Affordable Housing Provider or of the Affordable Housing Units or any administrator, fixed share receiver (including any receiver appointed pursuant to the Law of Property Act 1925), administrative receiver or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (including the successors in title to such mortgagee or chargee or any administrator, receiver or manager);
<b>"Chargee's Duty"</b>	means the tasks and duties set out in Paragraph 12 of Part 1 to Schedule 1;

## **Schedule 1**

### **OBLIGATIONS IN FAVOUR OF THE COUNCIL AND THE COUNTY COUNCIL**

The Residential Land Owner hereby covenants with the Council and the County Council as follows:

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

- 1 Subject to the provisions of this Schedule the 21 (twenty one) Affordable Housing Units (located on plots 9 to 19 and 49 to 60 or such other alternative plots as may be agreed between the Council and the Owners) are hereby designated as Affordable Housing which shall not be occupied other than as Affordable Housing AND unless otherwise agreed in writing by the Council all Affordable Housing Units shall be constructed to the Code for Sustainable Homes Level 3 (or equivalent) and meet the minimum Design and Quality Standards 2007 of the Homes & Communities Agency for unit size achieving a minimum score of 41%.
- 2 Unless otherwise agreed with the Council, plot numbers 14 to 16, 18 to 19, 49 to 53 and 57-60 of the Affordable Housing Units shall be provided and occupied as Affordable Rented Units and plot numbers 9 to 13, 17 and 54 of the Affordable Housing Units shall be provided and occupied as Intermediate Units.

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

- 3 The Residential Land Owner shall use reasonable endeavours to enter into a contract with a AHP within nine months of Commencement of Development..
- 4 If the Residential Land Owner have not contracted to sell the Affordable Housing Units to a AHP within nine months of the Commencement of Development (despite having used reasonable endeavours to do so) the Owners shall demonstrate to the Council why they were unable to do so and PROVIDED THAT the Council, acting reasonably, is satisfied that all reasonable endeavours have been undertaken to secure a contract with an AHP in respect of the Affordable Housing Units, the Residential Land Owner and the Council shall seek to agree an alternative tenure mix of the Affordable Housing Units within 30 working days, to be agreed in writing, with due consideration to the viability of the Residential Land Owner's development.
- 5 From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing and shall only be occupied by persons with a Local Connection who cannot afford to rent or buy housing generally available on the open market immediately prior to Occupation save that this obligation and the nomination obligations set out in paragraphs 8 to 10 of this Part shall not be binding on:
  - 5.1 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 and chargees; or

**"Commencement of Development"**

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;

**"Commence Marketing"**

means the formal release of a Discount Market Housing Unit for build and the release of the asking prices of the units to the public and **"Commencement of Marketing"** shall be construed accordingly;

**"Community Use Scheme"**

means a scheme to provide for the use of the MUGA and the Equipped Area by members of the public during the following hours:

- Term time weekdays - School closing time to dusk
- Weekends and school holidays 9.00am – dusk

which scheme shall set out the way in which such use will be managed including details of hours of use, access, management and maintenance responsibilities to be prepared by the School Land Owner and approved by the Council and shall include any subsequent variations thereof as may be agreed in writing by the Council

**"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 accommodation owned by local authorities and registered providers or such other successor scheme as may be brought into effect;

**"Discount Market Housing Unit"**

means each Affordable Housing Unit which is to be disposed of to and occupied in accordance with the provisions set out at paragraph 8 and 11 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;

**"Employment"**

means a building of around 290m<sup>2</sup> GIA intended to accommodate 8 no. units of B1 employment space of around 30m<sup>2</sup> each together with

- 5.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty following which the provisions of this Part 1 shall cease to apply to the Affordable Housing Unit(s) in respect of which the Chargee's Duty has been complied with
- 6 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 have been transferred to the Affordable Housing Provider and 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 have been transferred to the Affordable Housing Provider.
- 7 Prior to the first Occupation of any Dwelling the Residential Land Owner shall notify the Council of the name of the Affordable Housing Provider(s) to whom the Affordable Rented Units and the Intermediate Units shall be transferred.

#### **DISCOUNT MARKET HOUSING**

- 8 The Residential Land Owner covenants with the Council as follows:-
  - 8.1 The Residential Land Owner shall not dispose of a Discount Market Housing Unit unless and until the Residential Land Owner has:
    - 8.1.1 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 PROVIDED THAT on the first disposal of a Discount Market Housing Unit the earliest date upon which the said notice may be validly served shall be two calendar months following commencement of construction of the relevant Discount Market Housing Unit(s) and FURTHER PROVIDED THAT commencement of construction shall have been notified to the Council in writing within 5 Working Days
    - 8.1.2 provided 2 Market Value valuations of the Discount Market Housing Units from independent estate agents who are either Members of the Royal Institute of Chartered Surveyors or the National Association of Estate Agents; and
    - 8.1.3 provided the name of the first Estate Agents instructed
  - 8.2 The Residential Land Owner shall Commence Marketing within 10 Working Days of receipt of written approval from the Council of the 2 Market Value valuations referred to in paragraph 8.1 above (in the event that the Council does not respond to the Market Valuations referred to in paragraph 8.1 above within 10 Working Days their approval shall be deemed)
  - 8.3 The selling price of the Discount Market Housing Units shall be the average of the Market Value from the 2 Market Value valuations referred to in paragraph 8.1 of this Schedule with a 35% discount from the average figure

<b>Development"</b>	around 200m2 of amenity space and 16 no. parking spaces as shown on Plan 2 (or such other form of development as may be agreed between the Council and the Owners);
<b>"Employment Development Phase 1"</b>	means 5 of the units of employment space together with a meeting room,(together shown edged red on Plan 3) the amenity space and the 16 no. parking spaces;  comprised in the Employment Development (or such other parts of Employment Development as may be agreed between the Council and the Owners);
<b>"Employment Development Phase 2"</b>	means those elements of the Employment Development not comprised in Employment Development Phase 1 as shown edged yellow ochre on Plan 3
<b>"Employment Land"</b>	means the part of the Land shown edged yellow ochre on Plan 2;
<b>"Employment Land Managing Body"</b>	means a body which has been first approved in writing by the Council designed to hold and manage the Employment Land
<b>"Employment Land Owner"</b>	Means the owner of the Employment Land for the time being
<b>"Equipped Area"</b>	means an equipped play area of approximately 360m2 to be delivered on the School Land
<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 absence of agreement, appointed by the president of the Royal Institute of Chartered Surveyors;
<b>"Highways Contribution"</b>	means the sum of £14,000 (fourteen thousand pounds) (Index Linked) payable by the Owners to the County Council as a contribution towards the cost of surface dressing a 600m section of the lane leading from Drayton Cross A3122 towards Blackawton;
<b>"Homebuy Agent"</b>	shall mean Help to Buy South West (company number 01683645) of Park House, Church Lane, St. George, Bristol BS5 7AG or such other organisation(s) as may be designated by the Homes and Communities Agency or a successor body;
<b>"Index Linked"</b>	means increased in accordance with the indexation formula set out at Schedule 3 to this Deed;
<b>"Interest Rate"</b>	means 4% above the Barclays Bank base rate calculated on a day to day basis from time to time in force;

- 8.4 The price at which the Discount Market Housing Units shall be sold shall be no more than 65% of Market Value in perpetuity
- 8.5 If no person has purchased the Discount Market Housing Unit pursuant to paragraph 8.3 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 65% of Market Value to an AHP and/or the Council
- 8.6 If the Residential Land Owner has 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 Residential Land Owner shall notify the Council in writing that it has not exchanged contracts for the sale of the Discount Market Housing Unit and shall request written consent from the Council the Owners shall be free to sell the Discount Market Housing Unit at no more than 65% of Market Value to any person PROVIDED THAT the provisions of paragraph 8 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
- 8.7 Prior to exchange of any sale contract the Residential Land Owner shall provide the Council with evidence that the proposed purchaser of the Discount Market Housing Unit meets the criteria set out in paragraphs 8.3 8.5 or 8.6 above
- 8.8 The transfer of each Discount Market Housing Unit (save for any transfer made to the Council or an AHP pursuant to paragraph 8.7 above) shall contain the following covenants and provisions:
- 8.8.1 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)
- 8.8.2 On any sale and all subsequent resales of the Discount Market Housing Unit(s) the owner of the Discount Market Housing Unit ("the Seller") covenants:-
- (a) Not to transfer the dwelling at a price greater than 65% of the Market Value of the dwelling in perpetuity
- (b) Not to let the whole or part of the dwelling for a period of 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)

<b>"Intermediate Unit"</b>	<p>means 33.4% of the Affordable Housing Units (or such other proportion as may be agreed in writing between the Owner and the Council) to be disposed of as a Discount Market Housing Unit or 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 the Homes and Communities Agency whereby the Dwelling is let by an Affordable Housing Provider and;</p> <p>(a) the leaseholder acquires an initial equity share in the Affordable Housing Unit the value of which is not more than 40% (forty per cent) of the Market Value except in cases where the Homes and Communities Agency (in cases where financial assistance has been given to an Affordable Housing Provider) has agreed the shared equity leases shall be granted on the basis of a higher percentage of value being transferred to purchaser; and</p> <p>(b) the purchaser pays to the Affordable Housing Provider a rent in respect of the remaining equity of up to 2.75% of the unsold equity;</p> <p>or such similar or equivalent means of tenure;</p>
<b>"Land"</b>	<p>means land at SX805 510, Town Farm, Blackawton shown for illustration purposes edged red on Plan 1;</p>
<b>"Landscape and Ecology Management Plan"</b>	<p>means details (including a plan) setting out the maintenance arrangements for the Open Space to be managed for biodiversity, open space, play and landscape purposes in accordance with a plan to be submitted and approved by the Council pursuant to the Permission (such approval not to be unreasonably withheld or delayed);</p>
<b>"Local Allocations Policy "</b>	<p>means the policy adopted by the Council in May 2013 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 and together with any site specific variations as may be agreed between the Council and the AHP;</p>
<b>"Local Connection"</b>	<p>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);</p>
<b>"Management Company"</b>	<p>means a management company set up by the Owners to manage</p>

- (c) to notify the Council in writing of the intention to sell and to provide the Council with two independent valuations from estate agents who are either members of the Royal Institute of Chartered Surveyors or the National Association of Estate Agents for the Market Value of the dwelling. The selling price for the dwelling will be the average of the Market Value from the two valuations with a 35% discount from the average figure.
  - (d) to contract to sell only to those persons and in the timescales set out in Paragraphs 8.3 and 8.5 to 8.7 (inclusive) of Schedule 1 of the Section 106 Agreement entered into between (1) the Council (2) the County Council (3) the Owners and (4) the Developer dated the day of \_\_\_\_\_ 2014 and prior to exchange of contracts to supply to the Council with evidence of the proposed purchaser's residence, employment and income provided that if a person cannot be identified who satisfies the requirements of the said paragraphs within four months from first marketing the dwelling the Seller may ask the Council in writing to consent to the sale of the Discount Market Housing Unit on such other terms as may be proposed by the seller (such consent not to be unreasonably withheld)
- 8.9 The Council shall within 10 Working Days of receipt of such notification referred to in paragraph 8.8.2(c) of this Schedule confirm to the seller:
- 8.9.1 the agreed Market Value valuation for the dwelling (being the average of the two valuations referred to in paragraph 8.8 (c)); and
  - 8.9.2 the discount to be applied
- 8.10 On completion of the sale of the Discount Market Housing Unit a fee of £50 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**

- 9 Not to allocate the Affordable Rented Units except in accordance with the Devon Home Choice Register subject to the Local Allocations Policy and each Affordable Rented Unit shall only be let to a person:
- 9.1 who falls within the selection and allocations criteria set out in Devon Home Choice; and
  - 9.2 who is considered by the AHP to be in need of the accommodation; and
  - 9.3 who has a Local Connection



	and maintain the Open Space or such other management entity or body as may be approved in writing by the Council;
<b>"Market Housing Units"</b>	means those Dwellings which are market housing for sale on the open market and which are not Affordable Housing Units;
<b>"Market Value"</b>	means the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;
<b>"MUGA"</b>	means a multi-use games area of approximately 465m2 to be delivered on the School Land
<b>"Obligations" and "Obligation"</b>	means the planning obligations, covenants, requirements and restrictions contained in the relevant Schedules of this Deed;
<b>"Occupation" or "Occupy"</b>	means the residential occupation of any Dwelling save for fitting out and/or marketing purposes;
<b>"Open Space"</b>	means the parts of the Land shown edged green on Plan 2 which fall outside of the curtilage or control of any Dwelling which shall be delivered as public open space and which term shall include the SUDS and the LPG tank and any unadopted footpaths through the said open space (if appropriate);
<b>"Open Space Specification"</b>	means details and specifications for the laying out and provision of the Open Space including the standard of the maintenance and management to be undertaken;
<b>"Open Space Works"</b>	means the works required to lay out and deliver the Open Space in accordance with the Open Space Specification;
<b>"Permission"</b>	means the conditional planning permission to be granted by the Council in respect of the Application;
<b>"Plan 1"</b>	means the plan marked Plan 1 attached to this Deed;
<b>"Plan 2"</b>	means the plan marked Plan 2 attached to this Deed;
<b>"Plan 3"</b>	means the plan marked Plan 3 attached to this Deed;
<b>"Practical Completion"</b>	means the issue of a CML certificate of practical completion;
<b>"Primary School Contribution"</b>	means a financial contribution in the sum of £2,500 (two thousand five hundred pounds) (Index Linked) per Dwelling having two or more bedrooms to be used towards the provision of education facilities at Blackawton Primary School required as a result of the Development

- 9.3.1 PROVIDED THAT in the event that the Council has been unable to nominate a person who has a Local Connection within 2 months of being notified of the vacancy the Affordable Housing Provider shall be entitled to allocate the relevant Affordable 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
- 9.3.2 AND FURTHER PROVIDED THAT the AHP may allocate an Affordable Rented Unit to a person with a Local Connection to Blackawton who falls within housing need band E notwithstanding paragraph 5.11 of the Local Allocations Policy
- 10 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.
- 11 In so far as it is lawfully able to do so the Residential Land Owner shall ensure that the Intermediate Units are disposed of only to:
- 11.1 those persons who have lived or worked in the County of Devon for 3 (three) years immediately prior to their acquisition of an interest in the Intermediate Unit; and
- 11.2 persons chosen by the Affordable Housing Provider from the list of eligible applicants which the Affordable Housing Provider shall request from the Homebuy Agent provided that if there shall not be sufficient suitable applicants on such list or if any suitable applicants fail to proceed with the purchase within 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 the Intermediate Unit to persons from such list of eligible applicants.

#### **Chargee's Duty**

- 12 The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give prior written notice to the Council of its intentions to dispose and:
- 12.1 In the event that the Council responds within 6 (six) weeks from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as affordable housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer.
- 12.2 If the Council does not serve its response to the notice served by the Chargee pursuant to Paragraph 12 within 6 (six) weeks of the said notice then the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Schedule 1 and the provisions of this Part 1 shall cease to apply to any unit(s) so disposed.