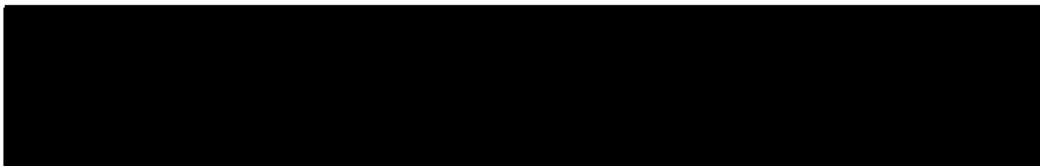


PLANNING OBLIGATION BY DEED OF AGREEMENT UNDER SECTION 106 OF
THE TOWN AND COUNTRY PLANNING ACT 1990

Relating to land at: Land off Pinewood Drive, Woolwell, Plymouth

Dated: 19 June 2019

Parties:

- (1) 
- (2) SOUTH HAMS DISTRICT COUNCIL of Follaton House, Plymouth Road, Totnes Devon TQ9 5NE ("the Council")
- (3) DEVON COUNTY COUNCIL of County Hall, Topsham Road, Exeter EX2 4QD ("the County Council")
- (4) THE COUNCIL OF THE CITY OF PLYMOUTH of Civic Centre, Armada Way, Plymouth PL1 2EW ("the City Council")

Introduction

- 1. The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 2. The City Council is the Highways Authority, the County Council is the Education Authority, and the Council, the City Council and the County Council are the Local Planning Authorities by whom the obligations imposed by this Agreement shall be enforceable.
- 3. The Owner is the registered proprietor with Title Absolute under Title Number DN546341 of the Site subject to the entries disclosed on the Charges Register of the said Title but otherwise free from incumbrances.
- 4. The Owner has submitted the Application to the Council for planning permission for the Development.
- 5. The parties have agreed to enter into this Agreement in order to secure the planning obligations contained in it.
- 6. In exercise of its powers under the 1990 Act, the Council has resolved to grant Planning Permission for the Development subject to completion of this Agreement.

NOW THIS DEED WITNESSES as follows:-

1. Definitions

For the purposes of this Agreement, the following expressions shall have the following meanings, unless the context requires otherwise:

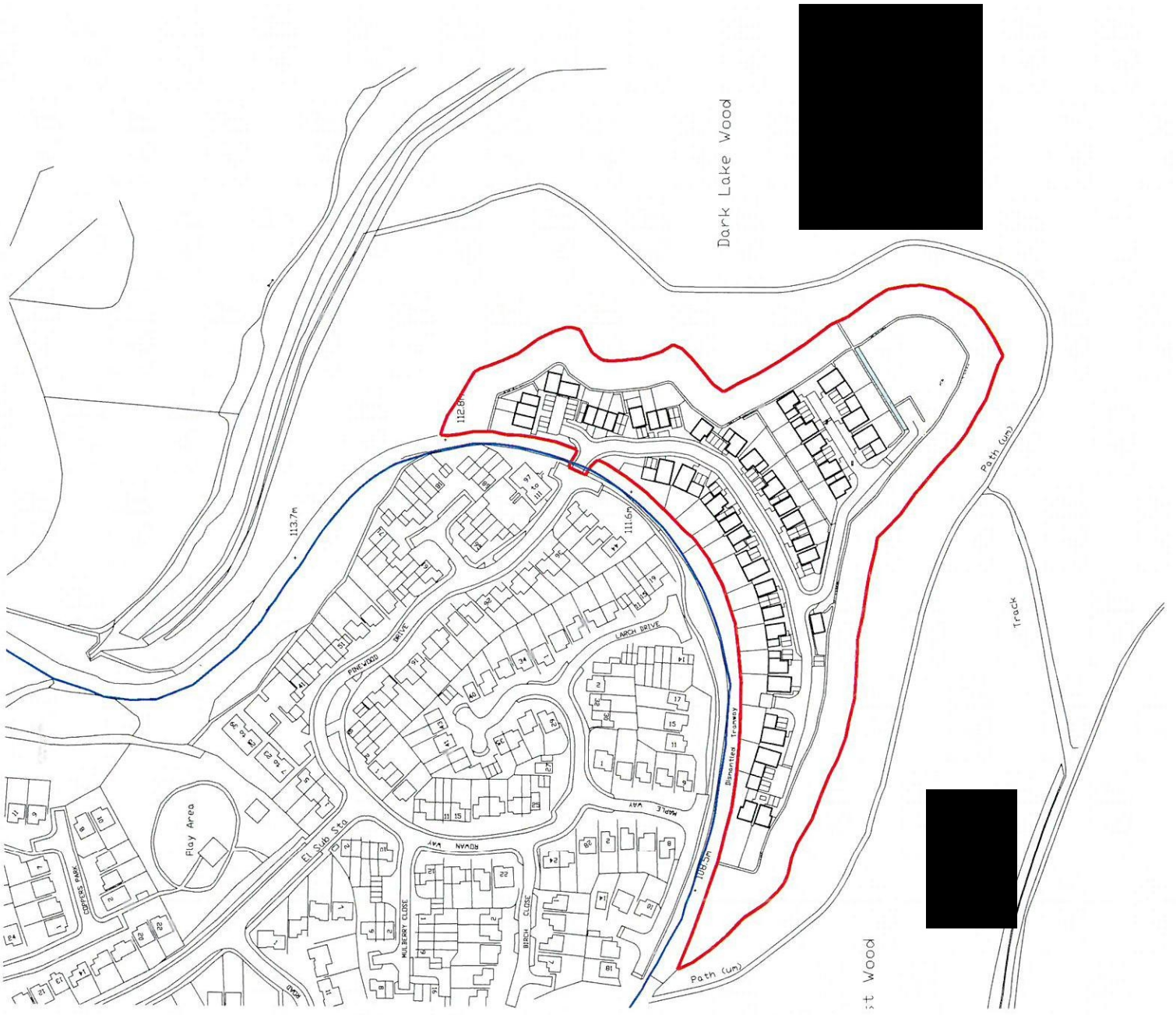
"1990 Act"	the Town and Country Planning Act 1990;
Application" "	the application for outline planning permission submitted to the Council for the Development, registered by the Council on 20 July 2018 and allocated reference number 1954/18/OPA;
"BCIS Index"	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors and for the purposes of this Agreement and the Education Contribution the figure last published in 2015;
"Council", "County Council", "City Council" and "Owner"	respectively include their successors and assigns;
"Commencement of Development"	the date on which any material operation (as defined in section 56(4) of the 1990 Act) forming part of the Development begins to be carried out, other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any ground contamination, erection of any

	temporary means of enclosure, the temporary display of site notices or advertisements, and similar expressions such as "Commence the Development" shall be interpreted in the same way;
"Development"	the development of the Site by the erection of up to 38 dwellings with associated vehicular access from Pinewood Drive and other enabling works, as set out in the Application;
"Dwelling"	a building or part of a building forming part of the Development and designed for residential occupation by a single household;
"Education Contribution"	A financial contribution of £3,413 (three thousand four hundred and thirteen pounds) per Qualifying Dwelling subject to Indexation towards additional education infrastructure at Bickleigh Down Church of England Primary School
"Highway Improvements Contribution"	A financial contribution of £152,532 subject to Indexation towards the costs of improvements along the A386 for the section between Woolwell and The George in accordance with Schedule 3
"Indexation"	The system of index linking in accordance with Part 1 paragraph 8 of this agreement
"LEMP"	A Landscape and Ecology Management Plan" giving details (including a plan) setting out the management and maintenance arrangements for the LEMP Land (to be managed for

	biodiversity, ecology and landscape purposes both on the Land and off-site), SUDS and Open Space in perpetuity.
"LEMP Land"	The Open Space, SUDS, boundary features and buffer zone habitats of the Site identified in the LEMP as land to which the LEMP will apply
"Obligations"	the planning obligations contained in the Schedules;
"Occupation"	occupation of a Dwelling for residential purposes and not including occupation by personnel engaged in construction, security or marketing and "Occupied" shall have the same meaning;
"Open Space"	an area of publicly accessible open space forming part of the Development approved as part of the Reserved Matters Approval and any other area and boundary features and buffer zone habitats of the Site identified as such within the LEMP which are directed by the Council to be managed and maintained
"Open Space Sport and Recreation Contribution"	A contribution subject to Indexation towards improvement of play and recreation facilities at the Woolwell Centre or other identified facility in accordance with Schedule 5, the detail of which to be agreed with the Ward Member and Parish Council
"Plan"	the plan attached to this Agreement;
"Planning Permission"	the outline planning permission subject to conditions to be granted by the

 REGISTERED FOR	Date	Approved
	17th July 2018	
Drawing Status		
APPROVAL		

Notes



C	12/27/18	Contextual data entered	TM
B	10/11/16	Amended blue line boundary	TM
A		Initial Issue	MB
Rev	Date	Notes	By
Drawing File			
Drawing Status			
PLANNING			

			
Spike Charnell Business Centre, 5 Church Street, Stoke, Plymouth, PL3 4DT T 01752 66007 F 01752 66008 E info@mitchell.co.uk www.mitchell.co.uk You should not use this drawing without the written consent of Mitchell Architects Ltd. Dimensions and levels to be checked on site and are approximate reported before work commences - if in doubt - ask. This drawing is © Copyright Mitchell Architects			
Scale 1:12500 @ A4			
Project 7 Acre Field, Roborough			
Client A & M Trust			
Title Site Location Plan			
Drawn	TM	Drawing No.	Revision
Checked		1974 - 001	C

	Council pursuant to the Application substantially in the form of the draft attached to this Agreement as Annex 1, and the expression Planning Permission shall include all approvals (including approval of reserved matters) granted pursuant to it;
"Qualifying Dwelling"	any Dwelling of 2 bed or more;
"Reserved Matters Approval"	means the approval of reserved matters pursuant to an application (or applications) for approval of reserved matters under the Planning Permission;
"Site"	the land off Pinewood Drive, Woolwell, Plymouth more particularly edged red on the Plan, being the land against which this Agreement may be enforced.
"SUDS"	means the sustainable drainage system infrastructure to form part of the Development the detail and specification of which (including size and location) shall be detailed in the LEMP and to form part of the Reserved Matters Approval
"Tramway Interpretation"	a sign, feature or other graphical representation of the former tramway that was located adjacent to the site to be located at or close to the point at which the access road crosses the former line of the tramway

2. Construction of this Agreement

2.1 Where reference is made to any clause, paragraph, schedule or recital, such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Agreement.

- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Where more than one person is obliged to observe or perform an obligation, the obligation can be enforced against all such persons jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validly from it.
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party, and references to any local authority shall include the successors to its various statutory functions.
- 2.7 Any covenant in this Agreement, whereby a party is not to do any act or thing, shall be deemed to include an obligation not to permit or suffer such act or thing to be done.
- 2.8 The clause headings contained in this Agreement are indicative of the meaning and intent of the clauses to which they respectively refer, and are intended to assist in the interpretation of this Agreement and may be taken into account accordingly.
3. Legal basis
- 3.1 This Agreement is made as a Deed 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 Owners' 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 Act shall be planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council and 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 AND it is hereby acknowledged by the Parties that the Obligations contained in this Agreement are:

3.1.1 necessary to make the Development acceptable in planning terms; and

3.1.2 directly related to the Development; and

3.1.3 fairly and reasonably related in scale and kind to the Development

in accordance with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010

3.2 The obligations imposed upon the Owner under this Agreement create planning obligations pursuant to section 106 of the 1990 Act and are enforceable by the Council, the City Council and the County Council as local planning authorities.

4. Conditionality

This Agreement is conditional upon the grant of the Planning Permission.

5. The Owner's and the Councils' covenants

5.1 The Owner covenants with the Council to observe and perform the Obligations contained in the Schedules and otherwise to comply with the provisions of this Agreement.

5.2 The Owner covenants with the Council, the City Council and the County Council to observe and perform the Obligations contained in the Schedules and otherwise to comply with the provisions of this Agreement.

5.3 The Council covenants to observe and perform the relevant covenants set out in Schedules 2 and 5

5.4 The City Council covenants to observe and perform the relevant covenants set out in Schedule 3

5.5 The County Council covenants to observe and perform the relevant covenants set out in Schedule 4

6. Miscellaneous

6.1 Upon the completion of this Agreement, the Owner shall pay the reasonable legal costs of the Council, the City Council and the County Council incurred in the negotiation, preparation and execution of this Agreement.

6.2 No provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person

who is not named as a party to this Agreement, except that the application of that Act shall not prevent all or any of the future successors in title or to the statutory functions of any of the parties to this Agreement from being able to benefit from or to enforce any of the obligations in this Agreement.

- 6.3 This Agreement shall be registrable as a local land charge by the Council.
- 6.4 Where the agreement, approval, consent or expression of satisfaction is required by one party from another party under the terms of this Agreement, such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed, and (if given) shall be given in writing (and shall be of no effect unless given in writing).
- 6.5 Any such agreement, approval, consent or expression of satisfaction shall unless otherwise stated in this Agreement be given on behalf of:
 - 6.5.1 the Council by the Head of Practice, development Management or equivalent
 - 6.5.2 the City Council by [post holder]
 - 6.5.2 the County Council by [post holder]
- 6.6 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 6.7 The Council will upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation of the same, and thereafter cancel all related entries in the Register of Local Land Charges.
- 6.8 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable, then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 6.9 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.10 No person shall be liable for any breach of any of the Obligations after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.11 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

7. Waiver

No waiver (whether express or implied) by any party to this Agreement of any breach or default in performing or observing any of the provisions of this Agreement by any other party shall constitute a continuing waiver, and no such waiver shall prevent the party granting it (or implied to have done so) from enforcing any of the relevant provisions or from acting upon any subsequent breach or default.

8. Indexation

All sums of money payable to the Council or to the County Council under this Agreement shall be increased (as at the date or dates on which each payment is made) in accordance with the following formula:

$$C = \frac{\text{£Y} \times B}{A}$$

where:

A is the value of the index specified in the provision concerned or, if none is specified, the BCIS Index, published in 2015

B is the value of such index last published before the date on which the payment in question is made;

C is the sum in question after application of this formula; and

£Y is the sum to which this formula is applied;

provided that if the said index shall cease to exist, there shall be substituted such other index of building costs as shall be specified by the Council, or by the County Council where it is the recipient of the payment in question, in either case acting reasonably, and provided further that if the application of this calculation produces a reduction in the sum in question, such sum shall remain unchanged.

9. VAT

All sums payable under this Agreement shall be deemed to be exclusive of Value Added Tax where applicable, and except where otherwise stated, the party liable to make the payment shall also be liable to pay any Value Added Tax due.

10. Jurisdiction

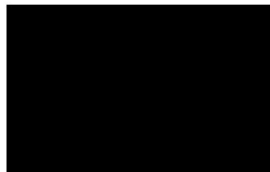
This Agreement is governed by and interpreted in accordance with the law of England and Wales; and (without prejudice to the jurisdiction of the High Court) the County Court in whose district the Site is situated shall have full jurisdiction to hear and determine proceedings arising from or relating to this Agreement or for the enforcement of its terms or any of them.

11. Delivery

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

I N W I T N E S S of which the parties hereto have executed this document as a deed the day and year first before written

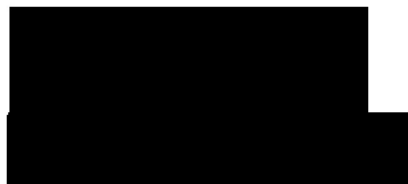
THE RIGHT HONOURABLE MASSEY)
JOHN HENRY LOPES FOURTH)
BARON ROBOROUGH)



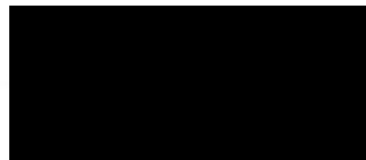
In the presence of

Witness signature

Witness name



THE HONOURABLE ANDREW JAMES)
LOPES)



In the presence of

Witness signature

Witness name



EXECUTED AS A DEED by)
affixing THE COMMON SEAL of)
SOUTH HAMS DISTRICT COUNCIL)
in the presence of)



EXECUTED AS A DEED by)
affixing THE COMMON SEAL of)
DEVON COUNTY COUNCIL)
in the presence of:)



~~Assistant County Solicitor~~

Document no: 49892

A Duly Authorised Officer

THE COMMON SEAL of)
THE COUNCIL OF THE CITY OF)
PLYMOUTH)

Was hereunto affixed in the presence of:



Plymouth City Council Authorised Signatory



The Obligations

Schedule 1

Affordable Housing

Part A - Definitions:

For the purposes of this Agreement the following expressions shall have the following meanings:

"Affordable Dwelling"	means a Dwelling which is part of the Affordable Housing within the Development, together with its curtilage and any parking space or garage allocated to it;
"Affordable Housing"	means affordable housing available to specific eligible households whose needs are not met by the market as set out within the glossary at Annex 2 of the National Planning Policy Framework and being permanent dwellings to be let as Affordable Rented Units or disposed of as Intermediate Housing Units through an Affordable Housing Provider pursuant to this Agreement;
"Affordable Housing Provider" or "AHP"	means a registered provider as defined in the Housing and Regeneration Act 2008 who is registered with Homes England or any other provider of Affordable Housing first approved in writing by the Council;
"Affordable Housing Scheme"	means a scheme to be submitted in writing to and approved by the Council in writing setting out details of the provision of the Affordable Housing Units such scheme to identify the tenure, size, location, layout and specification of each

	of the Affordable Housing Units and which will specify that all of the Affordable Housing Units shall be let through the Devon Home Choice Register or Help to Buy South West or any such scheme which may subsequently be adopted by the Council and which supersedes the Devon Home Choice Register;
"Affordable Housing Unit"	means each of those Dwellings to be specified in the Affordable Housing Scheme as Dwellings to be delivered as Affordable Housing;
"Designated Person"	means any person or persons who immediately prior to the occupation of an Intermediate Housing Unit has a Local Connection with the Parish of Bickleigh in the first instance and then the Administrative Area of the Council and then the County of Devon and the expression "Designated Persons" shall be construed accordingly
"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 registered providers
"Help to Buy Agent"	means Help to Buy South West Limited (Company Number 01683645) whose registered office is at Park House, Church Lane, St. George, Bristol BS5 7AG or such other organisation(s) as may be designated by Homes England as being responsible in relation to the area in which the Land is situated for the marketing of Shared Ownership Housing

	Units the assessment of the eligibility of those applying to purchase them, and the direction of an appropriate applicants to the local schemes which best meet their needs
"Intermediate Housing Unit"	means those Dwellings to be constructed on the Plots to be specified in the Affordable Housing Scheme and to be let under a lease (of not less than 99 (ninety-nine) years in the standard form of the AHP and in accordance with the requirements of Homes England whereby the Dwelling is let by an AHP and: (a) the leaseholder acquires an initial 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 England (in cases where financial assistance has been given to an AHP) has agreed the intermediate lease shall be granted on the basis of a higher percentage of value being transferred to the purchaser; and (b) the purchaser pays to the AHP a rent in respect of the remaining equity of up to 2.75% of the unsold equity; or disposed of as a Shared Ownership Housing Unit;
"Local Allocations Policy"	means the policy adopted by the Council in December 2017 to ensure locally based allocations for Affordable Housing Units pursuant to section 167(2E) of the Housing Act 1996 together with any

	revisions thereof;
“Local Connection”	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);
“NPPF”	means the National Planning Policy Framework published in February 2019 or any other document amending or replacing the same;
“Open Market Dwelling”	means a Dwelling comprised in the Development other than an Affordable Housing Unit
“Practical Completion”	means the issue of a 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;
“Rented Units”	means units to be delivered as a Social Rented property or an Affordable Dwelling at least 20% below local market rent (including service charges where applicable)
“Shared Ownership Housing Unit”	means an Affordable Housing Unit which is disposed of pursuant to a Shared Ownership Lease;

“Shared Ownership Lease”	means an Affordable Housing Unit in which the occupier owns a percentage of the freehold and the remainder is owned by an AHP but with the right of the occupier to purchase further percentages of the Affordable Housing Unit up to 100%
“Social Rented”	means a Rented Unit property tenure owned and managed by an Affordable Housing Provider as defined in the Housing and regeneration Act 2008 and registered with Homes England;
“Statutory Housing Body”	means the Homes England; and this definition shall include any statutory successors to that body;

Part B - Affordable Housing Obligations

AFFORDABLE HOUSING

1. The Owner hereby covenants to the Council:

1.1 30% of the Dwellings shall be provided as Affordable Housing Units of which 70% shall be Rented Units and the remainder shall be Intermediate Housing Units

1.2 Not to commence the Development unless and until the Affordable Housing Scheme has first been submitted to and approved in writing by the Council.

1.3 To construct and provide the Affordable Housing Units in accordance with the approved Affordable Housing Scheme and any other standards which supersede it

1.4 The Owner shall:

1.4.1 give not less than 8 (eight) weeks' notice in writing to the Council of the date on which each Rented Units will be available for first Occupation; and

1.4.2 give not less than 3 (three) months' notice in writing to the Council of the date on which each Intermediate Housing Units will be available for first Occupation.

1.5 Not to cause or permit the Occupation of the Affordable Housing Units other than as Rented Units as set out in the Affordable Housing Scheme and Intermediate

Housing 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 Occupation save that this obligation shall not be binding on:

1.5.1 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 charges;

1.5.2 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 shall have first complied with the provisions of paragraph 1.8 of Schedule 1 set out in this Agreement.

1.6 Unless otherwise agreed in writing with the Council, no more than 50% of the Open Market Dwellings shall be Occupied until 75% of the Affordable Housing Units have been constructed to Practical Completion and are ready for Occupation and have been transferred to the AHP and no more than 75% of the Open Market Dwellings 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 AHP.

1.7 Prior to the first Occupation of any Dwelling the Owner shall notify the Council of the name of the AHP(s) to whom the Affordable Housing Units and the Intermediate Housing Units shall be transferred.

Chargee's Duty

1.8 The affordable housing provisions set out in this Part of Schedule 1 shall not be binding on a 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 (each a receiver)) of the whole or any part of the Affordable Housing Unit and/or Intermediate Housing Unit or any persons or bodies deriving title through such mortgagee or chargee or receiver PROVIDED THAT:

1.8.1 such mortgagee or chargee or receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Unit and/or Intermediate Housing Unit 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 Unit and/or Intermediate Housing Unit 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

1.8.2 if such disposal has not completed within the three-month period, the mortgagee, chargee or receiver shall be entitled to dispose of the Affordable Housing Unit and/or Intermediate Housing Unit free from the affordable housing provisions in this in this Part of Schedule 1 which provisions shall determine absolutely.

Nominations: Intermediate Housing Units

1.9 Insofar as it is lawfully able to do so the Owner shall ensure that the Intermediate Housing Units are disposed of only to persons who:

1.9.1 are Designated Persons; and

1.9.2 have been chosen by the AHP from the list of eligible applicants which the AHP 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 AHP then the AHP shall be entitled to dispose of the Intermediate Housing Unit to a person of its own choosing who is unable to afford the purchase of suitable accommodation on the open market PROVIDED THAT the AHP shall use reasonable endeavours to dispose of the Intermediate Housing Unit to persons from such list of eligible applicants.

Schedule 2

The Tramway Interpretation

1. The Owner hereby covenants:
 - a. To consult with the Council as to the form and type of the Tramway Interpretation,
 - b. To submit to the Council the proposed design of the Tramway Interpretation for their approval, such approval not to be unreasonably withheld.
 - c. Subject to paragraph 2 of this Schedule, to erect the Tramway Interpretation in accordance with the approved design before the Occupation of the 20th Dwelling approved by the Planning Permission.
2. In the event that the Council do not give their approval within three months of receipt of the proposed design the approved design shall be the one submitted for approval in accordance with paragraph 1 b. of this Schedule.
3. The Owner and the Council hereby agree that the cost of the creation and erection of the Tramway Interpretation shall not exceed £5,000 plus VAT.

Schedule 3

Highway Improvements Contribution

1. The Owner hereby covenants to the City Council to pay the Highway Improvements Contribution to the City Council before the first Dwelling is Occupied.
2. The City Council hereby covenants that If expenditure of the Highway Improvements Contribution required to be made pursuant to this Agreement has not been made or committed within ten years of the date of its receipt by the City Council then the relevant contribution or any uncommitted balances shall be repaid to the person making the Contribution together with all interest at the rate of the current National Westminster Bank Plc basic rate that shall have accrued thereon.

Schedule 4

Education Contribution

1. The Owner hereby covenants to the County Council to pay the Education Contribution to the County Council before Commencement of Development
2. The County Council hereby covenants that If expenditure of the Education Contribution required to be made pursuant to this Agreement has not been made or committed within ten years of the date of its receipt by the County Council then the relevant contribution or any uncommitted balances shall be repaid to the person making the Contribution together with all interest at the rate of the current National Westminster Bank Plc basic rate that shall have accrued thereon.

Schedule 5

Open Space Sport and Recreation Contribution

1. The Owner hereby covenants with the Council to pay the Open Space Sport and Recreation Contribution before the first Dwelling is Occupied
2. The amount of the Open Space Sport and Recreation Contribution shall be calculated in accordance with the Council's Open Space, Sports and Recreation SPD adopted June 2006 by multiplying £975 by the number of persons yielded by the number and size of Dwellings approved by the Reserved Matters Approval based on Table 3 (Average Household Occupancy) of the SPD.
3. The Council hereby covenants that it shall spend or commit to spend the Open Space Sport and Recreation Contribution on the improvement of play and recreation facilities at the Woolwell Centre or other identified facility, the detail of which to be agreed with the Ward Member and Parish Council.
4. The Council hereby covenants that If expenditure of the Open Space Sport and Recreation Contribution required to be made pursuant to this Agreement has not been made or committed within ten years of the date of its receipt by the Council then the relevant contribution or any uncommitted balances shall be repaid to the person making the Contribution together with all interest at the rate of the current National Westminster Bank Plc basic rate that shall have accrued thereon.

Schedule 6

LEMP Land

1. The Owner covenants with the Council in accordance with this Schedule 6.
2. No Dwelling shall be sold or Occupied until the Owner has:
 - (a) set up, constituted or otherwise incorporated the Management Company or engaged a pre-existing Management Company;
 - (b) entered into a contract with the Management Company to Transfer the LEMP Land to the Management Company in accordance with the provisions of Paragraph 4 of this Schedule,
 - (c) submitted to the Council in accordance with the relevant condition on the Planning Permission a specification for the continuing maintenance of the LEMP Land including the maintenance of any on-site play and recreation equipment or facilities identified and required by the LEMP, and
 - (d) received the approval of the said specification, such approval not to be unreasonably delayed or withheld.
3. The Owner shall not sell or otherwise dispose of any Dwelling without requiring the purchaser of that Dwelling and its successors in title to:
 - (a) become a member of the Management Company (should the Management Company be newly incorporated for the purposes of the Development); and
 - (b) enter into a covenant to contribute a service charge towards the costs of the Management Company discharging its functions towards the management of the LEMP Land including the maintenance of any on-site play and recreation equipment or facilities identified and required by the LEMP, together with provisions for recovery of those contributions.
4. Prior to Occupation of 50% of the Dwellings on the Development the Owner shall Transfer the freehold of the LEMP Land to the Management Company for £1.00 consideration (if demanded), subject to a covenant by the Management Company to maintain the LEMP Land in accordance with the LEMP in perpetuity.
5. The Open Space which is designated by the Council as public open space within the LEMP shall be used only as an area of open space for free public recreation and enjoyment and in perpetuity.

