

DATED

31st March

2014

- (1) LITTLEHAM 2010 LIMITED
- (2) EAST DEVON DISTRICT COUNCIL
- (3) SOUTH WEST WATER LIMITED

DEED

under Section 106 of the Town and Country Planning Act
1990 Section 111 of the Local Government Act 1972
Section 2 of the Local Government Act 2000 and all other
powers so enabling relating to land south of Littleham
adjoining the built up area boundary of Exmouth and
known as Plumb Park



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THIS DEED is made the 31st day of March

2014

BETWEEN:

- (1) **LITTLEHAM 2010 LIMITED** whose registered office is situated at c/o Francis Clark Vantage Point Woodwater Park Pynes Hill Exeter Devon EX2 5FD (hereinafter called "the Owner" which expression shall include its successors in title and assigns)
- (2) **EAST DEVON DISTRICT COUNCIL** of Knowle Sidmouth Devon EX10 8HL (hereinafter called "the District Council" which expression shall include any successor local planning authority exercising planning powers under the 1990 Act)
- (3) **SOUTH WEST WATER LIMITED** of Peninsula House Rydon Lane Exeter Devon EX2 7HR (hereinafter called "SWW" or any successor body exercising powers as a statutory water and sewerage undertaker under the Water Industry Act 1991)

WHEREAS:

- (1) The Owner is registered at the Land Registry under Title Number DN638354 as freehold owner of land lying to the east of Douglas Avenue Exmouth including the Land
- (2) The District Council is the local planning authority for the purposes of the 1990 Act for the area within which the Land is situated
- (3) SWW is the statutory water and sewerage undertaker under the Water Industry Act 1991 for the area within which the Land is situated
- (4) The Owner wishes to carry out the Development on the Land and accordingly submitted the Planning Application to the District Council
- (5) The Owner has entered into this Deed with the District Council in order to mitigate the impact of the Development on the area surrounding the Land and to contribute generally to enhancing or improving existing facilities and amenities in the vicinity of the Land which are considered to be for the overall benefit of the public in the manner hereinafter set out in this Deed
- (6) The Owner has on the date hereof also entered into a unilateral undertaking under Section 106 of the 1990 Act in favour of the County Council relating to the making of education contributions to the County Council

NOW THIS DEED WITNESSETH as follows:

1. **Section 106 Planning Obligations**
 - 1.1 This Deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and all other powers so enabling
 - 1.2 The covenants on the part of the Owner in this Deed are planning obligations for the purpose of Section 106 of the 1990 Act and so as to bind the Owner's interest in the Land and shall be enforceable by the District Council
 - 1.3 The covenants entered into by the District Council in this Deed are entered into by the District Council pursuant to its functions as a local planning authority

1.4 The covenants entered into by SWW in this Deed are entered into by SWW pursuant to its function as statutory sewerage undertaker under the Water Industry Act 1991

1.5 The planning obligations contained in this Deed shall not be binding upon nor enforceable against:

- (a) any statutory undertaker or other person who acquires any part of the Land or any interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services and
- (b) the purchaser or Occupier of an Open Market Dwelling; and
- (c) A Registered Provider or the Occupier of an Affordable Housing Dwelling
SAVE THAT they shall be bound by the provisions contained in Clause 11 of this Deed

2. Liability after Disposal and Successors in Title

2.1 The covenants herein on the part of the Owner shall be enforceable against the Owner and against any successors in title and assigns of the Owner or any person claiming title through or under the Owner to the Land or any part thereof as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person **PROVIDED THAT** no person shall be liable for any breach of the obligations covenants and restrictions contained in this Deed occurring after he has parted with the whole of his interest in the Land or the part in respect of which such breach occurs but without prejudice to any right of action or remedy that the District Council might have in relation to any subsisting breach of any obligation or covenant or restriction contained in this Deed prior to any person aforesaid parting with such interest

3. Interpretation

3.1 In this Deed the following expressions shall where the context so admits have the following meanings:

1990 Act: the Town and Country Planning Act 1990

Access: such roads footpaths and cycle ways on the Land and in the case of leasehold or development as apartments such pedestrian access over common parts stairs walkways and lifts as may be necessary to facilitate the construction and Occupation of the Affordable Housing Dwellings and their access to the adopted public highway all to be provided to a standard which has Approval together with all rights and easements over them as may be necessary as aforesaid

Affordable Housing: subsidised housing by way of Affordable Rented Housing and Intermediate Housing as defined in the Glossary at Annex 2 to the National Planning Policy Framework document (March 2012) provided to eligible households having regard to

	local incomes and local house prices whose needs are not met by the market
Affordable Housing Details:	details of the location of the Affordable Housing Dwellings to be provided in the Development together with details of the Affordable Housing Mix the Affordable Housing Split and a programme and timetable for the provision of the Affordable Housing Dwellings
Affordable Housing Dwellings:	subject to any adjustment required by Clause 4.7 140 of the Dwellings to be constructed on the Land as Affordable Housing in accordance with the Affordable Housing Details and the expression "Affordable Housing Dwelling" shall be construed accordingly
Affordable Housing Mix:	the proposed mix of accommodation in the Affordable Housing Dwellings
Affordable Housing Split:	subject to Clause 4.7 98 of the Affordable Housing Dwellings to be made available for Affordable Rented Housing and 42 of the Affordable Housing Dwellings to be made available for Intermediate Housing or such other split between Affordable Rented Housing and Intermediate Housing as may be agreed between the Owner and the District Council
Affordable Housing Transfer Terms:	the terms for the freehold transfer of the Affordable Housing Dwellings to a Registered Provider set out in Schedule 1
Affordable Rented Housing:	housing let by local authorities or Registered Providers of social housing to households who are eligible for social rental housing Affordable Rent being subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges where applicable)
Allotment Land:	the areas of land with an overall area of 0.32 hectares shown for indicative purposes only edged in green on Plan 2 (or such other area or areas of land within the Land having the same overall area as may be agreed between the Owner and the District Council) which are to be laid out in Allotment Plots by the Owner in accordance with the Allotment Land Specifications for use as allotments
Allotment Land Specifications:	specifications to be drawn up by the Owner for the provision of allotments on the Allotment Land

	(which shall include the laying out and fencing of the Allotment Land and the provision of a water supply and sheds or communal facilities) which shall include a programme of works and a timetable for completion of the works and details of the proposed maintenance and management of the Allotment Land including details of any reasonable charges to be made for use of the Allotment Plots
Allotment Land Transfer:	the Transfer of the Allotment Land a draft of which is annexed hereto at Appendix 2
Allotment Plot(s):	the allotment plot(s) to be provided in the Allotment Land
Approval:	approval in writing by the District Council's Head of Planning (or other authorised officer) and the expression "Approved" shall be construed accordingly
Chargee's Duty:	means the obligations on any mortgagee or chargee of the Registered Provider's interest contained in Clause 11.15
Clean Condition:	free from any contamination which would prejudice the use of the Land for Affordable Housing purposes
Common Housing Register:	means in the case of Affordable Rented Housing the register or list of applicants maintained by Devon Home Choice and in the case of Intermediate Housing the register or list of applicants maintained by the Regional Homebuy Agent
Community Orchard:	the areas of land with an overall area of 0.21 hectares shown for indicative purposes only edged in yellow on Plan 2 (or such other area or areas of land within the Land having the same overall area as may be agreed between the Owner and the District Council) which are to be planted with fruit trees
Community Orchard Specifications:	specifications drawn up by the Owner for the planting of the Community Orchard during the planting season between November and March in any year and specifications for the management and maintenance of the Community Orchard and details of interpretation boards and leaflets giving details of the fruit being grown in the Community Orchard to enable visitors to understand about the cultivation of different types of fruit

Community Orchard Transfer:	the Transfer of the Community Orchard a draft of which is annexed hereto at Appendix 3
Completion:	the issue of a certificate of practical completion by the Owner's architect or engineer as the case may be and the expressions Complete and Completed shall be construed accordingly
County Council:	Devon County Council of County Hall Topsham Road Exeter EX2 4AD
Curlew/Winter Stubbles Management Measures:	measures to be carried out arising from the implementation of the Curlew/Winter Stubbles Management Strategy
Curlew/Winter Stubbles Management Strategy:	a strategy being one of the Habitat Mitigation Measures to mitigate the impact resulting from the loss of rotational winter stubbles and ploughed land as a result of the Development to protect the wintering curlew population
Defined Areas:	any or all of the following as determined by Clauses 8.11 9.6 9.14 and 10.6 (as appropriate) <ul style="list-style-type: none"> (i) The SANGS Land (ii) The Allotment Land (iii) The Community Orchard (iv) The Play Areas
Defined Schemes:	any or all of the following as determined by Clauses 8.11 9.6 9.14 and 10.6 (as appropriate) <ul style="list-style-type: none"> (i) The Habitat Mitigation Scheme (ii) The Allotment Land Specifications (iii) The Community Orchard Specifications (iv) The Play Areas Specifications
Designated Persons:	a person or persons who is/are in Housing Need and who is registered on the Common Housing Register and who has a Local Connection
Design and Quality Standards:	means that the Affordable Housing Dwellings shall be constructed <ul style="list-style-type: none"> (i) strictly in accordance with the plans and elevations deposited and as approved by the

	District Council as part of the Planning Permission
	(ii) in accordance with the Code for Sustainable Homes Level 3 or if higher the appropriate level at the time of Implementation of the Development
	(iii) in accordance with the Homes and Community Agency's Design and Quality standards and the Registered Provider's own design standards applicable at the time of Implementation of the Development
	(iv) so as to be indistinguishable from the Open Market Dwellings
	(v) to Building for Life and Lifetime Homes Standards
	(vi) So that at least 5% are constructed so as to be accessible by wheelchairs
Development:	the development of the Land pursuant to the Planning Permission and comprising up to 350 open market and affordable dwellings public open space and associated infrastructure including access off Buckingham Close
Devon Home Choice:	the partnership between Devon local authorities and housing associations working in Devon as described in the Devon Home Choice policy
District:	the administrative area of East Devon District Council
Dwellings:	any units of residential accommodation within Class C3 of the Town and Country Planning (Use Classes) Order 1987 or any bedroom comprised within a sui generis house in multiple occupation provided as part of the Development and the expression "Dwelling" shall be construed accordingly
Expert:	an independent person appointed in accordance with the provisions of Clause 14 to determine a dispute
Financial Contributions:	subject to Clause 4.7 the Outdoor Sports Contribution and the Habitat Mitigation Contribution and the expression Financial Contribution shall be construed accordingly

First Occupation Date: the date of first Occupation of the Development and the expression "First Occupation" and "First Occupy" shall be construed accordingly

Habitat Mitigation Contribution: subject to Clause 4.7 the sum of **TWENTY SEVEN THOUSAND POUNDS (£27,000)** Index Linked (if payable)

Habitat Mitigation Contribution Purpose to avoid "in combination" with disturbance impacts upon the Exe Estuary SPA and Dawlish Warren SAC resulting from new housing in the District and in the areas of Teignbridge District Council and Exeter City Council.

Habitat Mitigation Measures: means:

- a) the provision of the SANGS Land to be managed by the Owner to deliver long term informal public recreation as well as benefits for wildlife
- b) the provision of the Off Site SANGS Land to be managed by the Owner to deliver long term informal public recreation as well as benefits for wildlife or the payment of the Habitat Mitigation Contribution in lieu
- c) the provision of a management plan for the establishment and long term management of the SANGS Land and the Off Site SANGS Land (if relevant) setting out how the new and enhanced habitats and public access will be created and managed in the future including the identification within the SANGS Land and the Off Site SANGS Land (if relevant) of areas of limited or no public access
- d) the Curlew/Winter Stubbles Management Measures

Habitat Mitigation Objective: to ensure that the Development will be unlikely to have a significant effect on the interest or features for which the Exe Estuary SPA the East Devon Pebblebed Heath SAC and the East Devon Heaths SPA have been classified

Habitat Mitigation Scheme: a written scheme incorporating full details of the Habitat Mitigation Measures together with the timing for their provision for the purpose of securing the Habitat Mitigation Objective

Habitat Mitigation Scheme Date: the date in accordance with the implementation strategy that the Habitat Mitigation Scheme is first put into effect

Housing Need: means the circumstances unless provided to the contrary in this Deed where a household is currently Occupying accommodation that is sub standard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the Open Market demonstrated by being a person or family being registered on the Common Housing Register

Implementation Date: means the date that the Planning Permission is Implemented

Implemented: means implemented by the carrying out of a material operation in accordance with Section 56(4)(a)-(d) of the 1990 Act pursuant to the Planning Permission provided that for the purposes of this Deed the following shall be deemed not to be implementation:

- (i) works of demolition or site clearance
- (ii) ground investigation and site survey work
- (iii) site reclamation works
- (iv) construction of temporary boundary fencing or hoardings
- (v) archaeological investigations
- (vi) works of decontamination or remediation
- (vii) the laying of services
- (viii) the carrying out of services diversion works and
- (ix) any work to or in respect of statutory utilities

and the expressions **Implementation** and **Implement** shall be construed accordingly

Index

means the All Items of Retail Prices Index excluding mortgage interest payments (RPIX) contained in the Monthly Bulletin of Indices published by the Office for National Statistics

Index Linked:

means the recalculation of any of the Financial Contributions by applying the following formula:

$$A \times \frac{B}{C} = D$$

Where:

A = the payment specified in this Deed in pounds sterling

B = the figure shown in the Index for the period last published prior to the date of the payment made under this Deed

C = the figure shown in the Index for the period immediately prior to the date of this Deed

D = the resultant sum in pounds sterling payable under this Deed

or if the Index shall cease to be compiled such other publication as may from time to time supersede the same or if the formula shall otherwise be incapable of operation then such other equivalent means as shall be reasonably agreed by the Owner and the District Council to recalculate such payment with the intent that it shall have like effect

Intermediate Housing:

homes for sale and rent provided at a cost above social rent but below market levels subject to the criteria set out in the definition of Affordable Housing and these can include shared equity (shared ownership and equity loans) other low cost homes for sale and intermediate rent

Land:

land south of Littleham adjoining the built up boundary of Exmouth and known as Plumb Park the boundaries whereof are delineated for the purposes of identification only shown edged in red on Plan 1

Local Connection:

a connection to the Parish of Exmouth demonstrated by one or more of the following in priority order:

- (i) being permanently resident therein for a continuous period of at least three years out of the five years immediately prior to being offered an Affordable Housing Dwelling; or

- (ii) being formerly permanently resident therein for a continuous period of five years; or
- (iii) having his or her place of permanent work (normally regarded as sixteen hours or more a week and not including seasonal employment) therein for a continuous period of at least twelve months immediately prior to being offered the Affordable Housing Dwelling; or
- (iv) having a connection through a close family member (normally mother father brother sister son or daughter) where the family member is currently resident therein and has been so for a continuous period of at least five years immediately prior to being offered the Affordable Housing Dwelling and where there is independent evidence that the family member is in need of support or can give support

and in the event that no-one satisfying the above requirements can be found within the Parish of Exmouth then the process shall be repeated considering persons from the Neighbouring Parishes and in the event that no-one satisfying the above requirements can be found from the Neighbouring Parishes then the process shall be repeated considering persons from the District

Management and Maintenance Period:

the period of 80 years from the date of this Deed

Management Company:

the private limited company to be established by the Owner (and registered at Companies House) in accordance with the provisions of Schedule 2 the purpose of which will be (amongst other things) to manage and maintain any or all of the Defined Areas at the expense of the Occupiers of the Development

Monitoring Fee:

the sum of **THREE THOUSAND TWO HUNDRED AND SIXTY SEVEN POUNDS** (£3,267) payable to the District Council towards the costs of monitoring and administering the carrying out of the planning obligations in this Deed

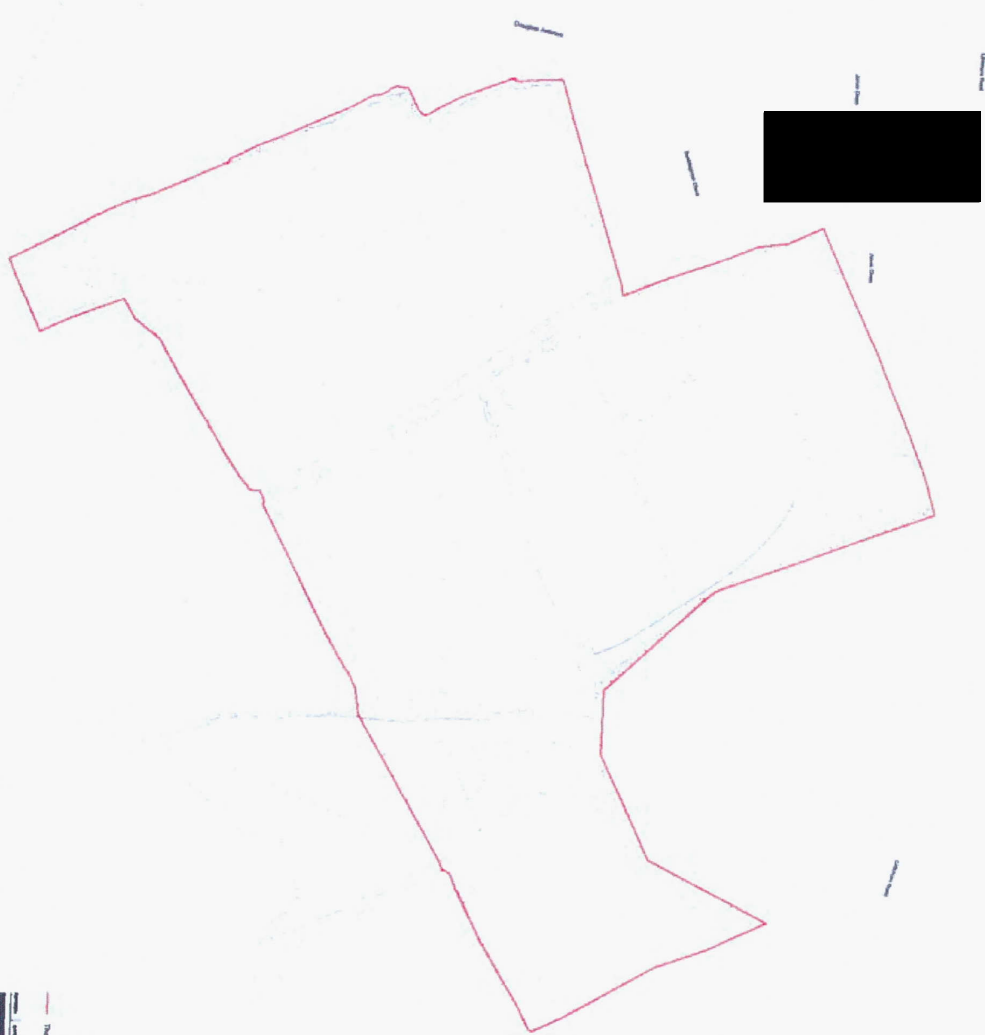
NEAP:

a neighbourhood equipped area for play of not less than 800 square metres with Play Equipment provided in accordance with the Play Areas Specifications

NEAP Commuted Sum:	the sum of SIX POUNDS (£6) per square metre of NEAP being Transferred as part of the Play Area Transfer in accordance with Clause 10.6 such sum to have been agreed with the District Council in writing prior to the Play Areas Transfer being completed and to be provided for the ongoing maintenance and repair (being FIVE POUNDS (£5) for general maintenance and ONE POUND (£1) for repair) of the NEAP
Neighbouring Parishes:	the parishes of Lympstone East Budleigh and Budleigh Salterton
Nominations Agreement:	an agreement to be entered into in substantially the form attached at Appendix 6 between the District Council and any Registered Provider to which Affordable Housing Dwellings are transferred such agreement to contain the procedures for nominating Designated Persons to the Affordable Housing Dwellings
Occupation:	occupation for any purpose permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for advertising or marketing or display or occupation in relation to security operations and management of the Land and the expression " Occupy " " Occupier " and " Occupiers " shall be construed accordingly
Off Site SANGS Land:	(if relevant) sustainable alternative natural green space within the vicinity of the Land with an area of 1.5 hectares which shall only be used by pedestrians
Open Market:	the private housing market
Open Market Dwellings:	subject to Clause 4.7 the 210 Dwellings comprised in the Development which are intended for sale on the Open Market and which are not Affordable Housing Dwellings and the expression " Open Market Dwelling " shall be construed accordingly
Outdoor Sports Contribution:	subject to Clause 4.7 the sum of ONE HUNDRED AND SIX THOUSAND AND SIXTY ONE POUNDS (£106,061) Index Linked
Outdoor Sports Purposes:	the provision of or the making of a contribution towards an outdoor sports pitch within the vicinity of the Development together with maintenance of that sports pitch
Pell Frischmann Report:	means the report by Pell Frischmann to SWW entitled "Plumb Park, Exmouth Developer

	Evaluation "dated June 2013 a copy of which is annexed hereto at Appendix 5
Plan 1:	the plan annexed hereto and marked "Plan 1"
Plan 2:	the plan annexed hereto and marked "Plan 2"
Planning Application:	the application for outline planning permission submitted on behalf of the Owner to the District Council and registered by the District Council on 6 th February 2013 and which was given reference number 13/0297/MOUT for the Development of the Land
Planning Permission:	the outline planning permission for the Development pursuant to the Planning Application to be issued as soon as reasonably practicable after the date hereof an agreed draft of which is annexed hereto at Appendix 7
Play Areas:	the children's play areas (including a NEAP) with an overall area of 0.16 hectares shown for indicative purposes only edged in red on Plan 2 or such area(s) of land within the Land having the same overall area as may be agreed between the Owner and the District Council provided in accordance with the Play Areas Specifications
Play Areas Specifications:	specifications to be drawn up by the Owner for the provision (including boundary treatment type and location of the Play Equipment surfacing benches and bins) management and maintenance of the Play Areas within the Land which is to be agreed in writing between the Owner and the District Council
Play Areas Transfer:	the Transfer of the Play Areas (including the NEAP) a draft of which is annexed hereto at Appendix 4
Play Equipment:	the play equipment to be provided in the NEAP with a capital expenditure of not less than ONE HUNDRED AND THIRTY TWO THOUSAND POUNDS (£132,000) (or such other sum as is determined in accordance with Clause 4.7)
Projections:	eaves gutters spouts downpipes chimney cappings foundations supporting pillars architraves pediments ornaments and stanchions chutes cellar lights and gratings and any similar structures
Public Consultation:	means the consultation exercise to be carried out by the Owner to determine residents' views as to the Play Equipment and its layout to be installed in the

Plan 1



lhc	
urbandesign	
Project: Dunlop Park, Dunlop	
Section: 100 / Plan: 1	
Date: 2011	Drawn: 2011
17775-007-02-01	17775-007-02-01
17775-007-02-01	17775-007-02-01
17775-007-02-01	17775-007-02-01

SOUTH WEST WATER LIMITED
acknowledges that this
drawing forms part of the
attached Agreement



Play Areas such exercise as a minimum to include writing to all residents in Occupation of the Development inviting their views and holding at least one public meeting at which residents may express their views

Public Sewerage Improvement Works:

means the provision of new off-site public sewerage works required to upgrade the public sewerage network to ensure adequate hydraulic capacity to serve the Development of the Land as recommended in Option 1 of the Pell Frischmann Report

Public Sewerage Improvement Works Costs:

means the sum of **FIVE HUNDRED AND TWO THOUSAND POUNDS (£502,000)** referred to in the Pell Frischmann Report with a breakdown as follows:

Contractors Construction Cost (Inc Prelims, Fees and Risk)	£372,000
Non Contractor Costs (Design, Fees, CDMC, SWW OH and Land & Comp)	£96,000
COP1 Adjustment to 2Q 2014	£10,000
Scope/Price Contingency	£24,000
Total	£502,000

Or such amended sum as shall be notified to the Owner through the formal sewerage requisition process within Sections 98-101 of the Water Industry Act 1991

Public Sewerage Improvement Works Sum:

means the amount of the Public Sewerage Improvement Works Costs

Reasonable Endeavours:

the party under such an obligation shall be bound to attempt to fulfil the relevant obligation by the necessary and proportionate expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances (including the importance to the other party of the fulfilment of the relevant obligation) are/is likely to be sufficient for the objective to which the endeavour relates

Registered Provider:

a body which is from time to time included in the District Council's list of preferred Registered Providers of social housing and any other body

registered by the Homes and Communities Agency as a Registered Provider of social housing pursuant to the Housing and Regeneration Act 2008 and which may also include the District Council and **Registered Providers** shall be construed accordingly

Rentcharge:	means the perpetual yearly variable estate rentcharge imposed on each Dwelling to cover the annual costs of complying with the obligations under and or all of the Defined Schemes such rentcharge to include the administrative and management costs of the Management Company once established in consideration of the Management Company covenanting to perform its obligations under any or all of the Defined Schemes PROVIDED ALWAYS that the rentcharge on each individual Dwelling shall be an equal proportion of the total number of Dwellings in the completed Development
Reserved Matters Application(s):	an application(s) for approval of matters reserved under the conditions of the Planning Permission for subsequent approval in accordance with Section 92(2) of the 1990 Act
Reserved Matters Approval:	approval of any Reserved Matters Application
SANGS Land:	sustainable alternative natural green spaces within the Land with an overall area of 5.03 hectares shown for indicative purposes only edged in blue on Plan 2 (or such other areas or area of land within the Land having the same overall area as may be agreed between the Owner and the District Council) which shall only be used by pedestrians
SANGS Land Transfer:	the Transfer of the SANGS Land a draft of which is annexed hereto at Appendix 1
Service Installations:	sewers drains culverts channels outlets mains wire cables ducts flues soakaways and other conducting media for the supply of Services substations regulator valves and all other infrastructure whatsoever for Services all of which shall be laid by the Owner in on over or under the Land
Services:	electricity telephone gas water foul drainage surface water drainage cable television and other services running through the Service Installations
Transfer:	a freehold transfer of land and the word "Transferred" shall be construed accordingly

- 3.2 Where in this Deed reference is made to a Recital Clause Paragraph Schedule or Plan such reference (unless the context otherwise requires) is a reference to a Recital Clause Paragraph or Schedule in this Deed or in the case of a Plan a plan annexed to this Deed
- 3.3 Words in this Deed importing the singular meaning where the context so admits include the plural meaning and vice versa
- 3.4 Words in this Deed of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies Councils and firms and all such words shall be construed interchangeably in that manner
- 3.5 Words in this Deed imposing an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not knowingly to cause permit or suffer any infringement of the restriction
- 3.6 Any reference in this Deed to an Act of Parliament shall include any modification extension re-enactment or substitution thereof 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 thereunder or deriving validity therefrom
- 3.7 Where any approval consent agreement confirmation expression of satisfaction or any other act of co-operation is required under the terms of this Deed from the District Council that approval consent agreement confirmation expression of satisfaction or other act of co-operation shall be given in writing and shall not be unreasonably withheld or delayed
- 3.8 Headings contained in this Deed are for reference purposes only and shall not affect the construction of this Deed
- 3.9 For the avoidance of doubt the provisions of this Deed shall not have any effect until this Deed has been dated
4. **General Provisions**
- 4.1 In the event of the Planning Permission expiring before the Implementation Date or in the event of the revocation or modification of the Planning Permission by the District Council or any other authority having power so to do without the consent of the Owner or in the event of the quashing of the Planning Permission the planning obligations entered into by the Owner under this Deed shall thereupon cease and determine absolutely
- 4.2 It is hereby agreed between the parties hereto for the avoidance of doubt that nothing in this Deed shall prohibit or limit the right of the Owner to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) that may be granted whether or not on appeal either before or after the date of this Deed
- 4.3 Where any of the planning obligations in this Deed has been performed and discharged the District Council will if so requested by the Owner issue a certificate or letter to that effect
- 4.4 If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired

- 4.5 Nothing contained or implied in the Deed shall prejudice or affect the rights powers duties and obligations of the District Council in the exercise of its functions as local planning authority and its rights powers and obligations under all public and private statutes by laws and regulations may be as fully and effectually exercised as if the District Council were not a party to this Deed
- 4.6 No waiver (whether express or implied) by the District Council of any breach or default by the Owner in performing or observing any of the terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner
- 4.7 It is hereby agreed between the Owner and the District Council that if as a result of Reserved Matters Approval obtained pursuant to the Planning Permission the number of Dwellings to be provided at the Land is different from the 350 Dwellings proposed in the Planning Application then the amount of the Financial Contributions and the number of Affordable Housing Dwellings to be provided and the amount of Play Equipment which are all based on the provision of 350 Dwellings shall be adjusted pro rata to equate to the total number of Dwellings approved by the District Council
- 4.8 The District Council hereby covenants with the Owner that it shall use Reasonable Endeavours to obtain best value for any money that is reasonably obtainable by the expenditure of the individual Financial Contributions that are paid to the District Council for the District Council's own use

5. Conditionality

It is hereby agreed between the parties hereto that this Deed is conditional:

- (a) upon the Planning Permission being granted by the District Council and
- (b) upon the Planning Permission being Implemented save in relation to the provisions of Clauses 1-6 (inclusive) 8 and 13-19 (inclusive) which shall take effect on the date hereof

6. Prior Notice

The Owner hereby covenants with the District Council that it will give not less than twenty eight days prior notice in writing to the District Council of:

- (a) the proposed Implementation Date
- (b) the proposed First Occupation Date
- (c) the proposed date of Occupation of more than 84 Open Market Dwellings
- (d) the proposed date no earlier than Occupation of 100 Dwellings
- (e) the proposed date of Occupation of more than 100 Open Market Dwellings
- (f) the proposed date of Occupation of more than 126 Open Market Dwellings
- (g) the proposed date of Occupation of more than 168 Open Market Dwellings

- (h) the proposed date of Occupation of the 175th Dwelling
- (i) the proposed date of Occupation of more than 175 Dwellings

7. Public Sewerage

- 7.1 The Owner hereby covenants with the District Council that it will not Implement the Development until such time as it has submitted an application to SWW for a public foul sewer requisition under Section 98 of the Water Industry Act 1991 (which shall include the Public Sewerage Improvement Works)
- 7.2 The Owner hereby covenants with the District Council that it will not Implement the Development until it has paid the Public Sewerage Improvement Works Sum to SWW to enable SWW to carry out the Public Sewerage Improvement Works
- 7.3 SWW hereby covenants with the Owner and separately with the District Council that it shall use the Public Sewerage Improvement Works Sum solely for the Public Sewerage Improvement Works and shall provide a written account of the use of all payments made to it under this Agreement within twenty one days of a written request from the Owner or the District Council
- 7.4 It is hereby agreed between the Owner SWW and the District Council that in the event that not all of the Public Sewerage Improvement Works Sum is required for the Public Sewerage Improvement Works or within a period of five years from receipt of the Public Sewerage Improvement Works Sum any part of the Public Sewerage Improvement Works Sum remains in the possession of SWW and has not been committed to the Public Sewerage Improvement Works SWW shall repay any unrequired sum and any uncommitted sum to the person from whom it was originally received together with any interest which shall have accrued from time to time as soon as reasonably practicable

8. Habitat Mitigation Scheme

- 8.1 The Owner hereby covenants with the District Council that subject to Clause 8.13 it will not Implement the Development until a Habitat Mitigation Scheme has been submitted to and approved in writing by the District Council who shall consult with Natural England before granting any approval
- 8.2 It is hereby agreed between the Owner and the District Council that subject to Clause 8.13 in the event that the District Council having consulted with Natural England and in the event that the Habitat Mitigation Scheme is considered acceptable to both the District Council and Natural England the District Council shall notify the Owner in writing that the Habitat Mitigation Scheme is approved as soon as reasonably practicable following the consultation with Natural England
- 8.3 It is hereby agreed between the Owner and the District Council that subject to Clause 8.13 in the event that the District Council having consulted with Natural England decides to refuse to approve the Habitat Mitigation Scheme the District Council shall specify the reasons why the Habitat Mitigation Scheme is unacceptable and may suggest how the Habitat Mitigation Scheme might be amended to make it acceptable to the District Council and Natural England following which the Owner shall resubmit the Habitat Mitigation Scheme for approval which may incorporate some or all of any suggested amendments to the District Council and Natural England and in the event that the Habitat Mitigation Scheme is acceptable to both the District Council and Natural

England then the District Council shall notify the Owner of that approval in writing but in the event that the Habitat Mitigation Scheme is still unacceptable to the District Council and Natural England the process set out in this Clause 8.3 shall be repeated until an acceptable Habitat Mitigation Scheme is submitted by the Owner and approved by the District Council and the Habitat Mitigation Scheme as so submitted and approved shall then be the approved Habitat Management Scheme **PROVIDED THAT** if the Owner does not accept the reasons given by the District Council after the first resubmission or after any other subsequent resubmission the Owner may refer the matter to an Expert in accordance with the disputes resolution procedures in Clause 14 and any determination by the Expert shall be taken to be the approved Habitat Mitigation Scheme

- 8.4 The Owner hereby covenants with the District Council that it will not Implement the Development or any part thereof until such time as the Habitat Mitigation Scheme has been approved by the District Council pursuant to Clause 8.2 or until the Habitat Mitigation Scheme has been approved in either manner contemplated by Clause 8.3
- 8.5 The Owner hereby covenants with the District Council that it will carry out the Habitat Mitigation Measures in accordance with the approved Habitat Mitigation Scheme to the satisfaction of the District Council and it shall notify the District Council in writing of the Habitat Mitigation Scheme Date as soon as reasonably practicable thereafter
- 8.6 It is hereby agreed between the Owner and the District Council that subject to Clause 8.13 and Clause 8.15 they will in consultation with Natural England review the Habitat Mitigation Scheme as put into effect annually beginning on the date one year after the Habitat Mitigation Scheme Date and continuing annually thereafter for a minimum period of ten years from the Habitat Mitigation Scheme Date and they will thereafter carry out such periodic reviews as shall be agreed between the Owner and the District Council in consultation with Natural England (provided that such periodic reviews shall take place no more than once every three years) to assess whether the Habitat Mitigation Scheme has been effective in meeting the Habitat Mitigation Objective and at any review in the event that the Owner and the District Council in consultation with Natural England consider that the Habitat Mitigation Scheme could be improved or made more effective in meeting the Habitat Mitigation Objective they shall jointly consider any reasonable amendments to the Habitat Mitigation Scheme suggested by either of them to improve it or to make it more effective within a timescale to be agreed between them
- 8.7 Subject to Clause 8.13 in the event that the Owner and the District Council in consultation with Natural England cannot agree suggested improvements or amendments to the Habitat Mitigation Scheme as part of any review within the agreed timescale or cannot agree the timescale or cannot agree whether or not to carry out any periodic review referred to in Clause 8.6 a dispute shall be deemed to have arisen which shall be dealt with under the disputes resolution procedures in Clause 14
- 8.8 In the event that the approved Habitat Mitigation Scheme provides for the payment of the Habitat Mitigation Contribution the Owner shall not First Occupy any Dwelling within the Development until the Habitat Mitigation Contribution has been paid to the District Council and the District Council shall immediately place the Habitat Mitigation Contribution in an interest bearing bank account and shall only utilise the Habitat Mitigation Contribution for the Habitat Mitigation Contribution Purpose.
- 8.9 In the event that the Habitat Mitigation Contribution is paid to the District Council pursuant to Clause 8.8 it is hereby agreed between the Owner and the District Council that the Owner may from time to time issue but not more than on two occasions per

annum a written request to the District Council asking for written details to be supplied by the District Council such details to be supplied within a period of twenty eight days or within such further period as may be agreed between the Owner and the District Council of any such request explaining precisely how all or any of the Habitat Mitigation Contribution has been spent or spent since any previous request and/or giving details of the unexpended balance remaining of the Habitat Mitigation Contribution

- 8.10 In the event that the Habitat Mitigation Contribution is paid to the District Council it is hereby agreed between the Owner and the District Council that if the Habitat Mitigation Contribution or any part thereof has not been expended or contracted to be expended by the District Council within a period of five years from the date of payment the District Council shall upon receipt of written notice from the Owner at the expiry of the period of five years aforesaid return the Habitat Mitigation Contribution or such part of the Habitat Mitigation Contribution that is unexpended and not contracted to be spent to the party that paid the said contribution within a period of twenty eight days from the date of the written notices together with all interest accrued
- 8.11 On Completion by the Owner of the carrying out of the Habitat Mitigation Measures in accordance with the approved Habitat Mitigation Scheme and following written confirmation from the District Council that it is satisfied that the SANGS Land has been laid out and maintained (to the extent required) in accordance with the approved Habitat Mitigation Scheme and notifies the Owner accordingly the Owner shall Transfer the SANGS Land to the Management Company in accordance with the SANGS Land Transfer with such additional provisions as may be required in order to reflect the location of the SANGS Land including (where necessary) the grant or reservation of rights of access and rights to lay and use service media including any necessary rights of entry for the purposes of maintaining renewing or repairing such service media and the Management Company shall then have the responsibility to maintain the SANGS Land as if it were the Owner in accordance with the approved Habitat Mitigation Scheme and it will procure that any Management Company acquiring the SANGS Land or any part thereof pursuant to this Clause shall not Transfer the SANGS Land or any part thereof to any third party without the written consent of the District Council
- 8.12 It is hereby agreed between the Owner and the District Council that it shall be at the Owner's sole election and discretion as to whether in seeking approval for the Habitat Mitigation Scheme in so far as it relates to a choice between providing Off-Site SANGS Land or paying a Habitat Mitigation Contribution as to which one it choses and the District Council shall not be entitled to withhold approval of the Habitat Mitigation Scheme in so far as it relates to the provision of the Off-Site SANGS Land or the provision of the Habitat Mitigation Contribution in lieu on the basis of the Owner's choice.
- 8.13 It is hereby agreed between the Owner and the District Council that there shall be no consultation by the District Council with Natural England in relation to any application by the Owner to satisfy the Habitat Mitigation Scheme pursuant to Clause 8.1 in so far as it relates to the provision of the Off-Site SANGS Land or the payment of the Habitat Mitigation Contribution in lieu.
- 8.14 It is hereby agreed between the Owner and the District Council that in the event that the Owner has agreed to pay or has paid the Habitat Mitigation Contribution as one of the Habitat Mitigation Measures that decision shall not be subject to the review mechanism in relation to the Habitat Mitigation Scheme under the provisions of Clause 8.6.

9. **Allotment Land Community Orchard and Outdoor Sports Contribution**

Allotment Land

The Owner hereby covenants with the District Council that:

- 9.1 prior to the First Occupation Date the Owner shall submit to the District Council for its written approval the Allotment Land Specifications
- 9.2 it will not Occupy more than 175 Dwellings until the Allotment Land has been laid out and Completed to the District Council's satisfaction in accordance with the approved Allotment Land Specifications and in accordance with any planning permission that might be required and has been made available for use by Occupiers of the Development in accordance with any planning permission for the use that might be required
- 9.3 it shall provide and thereafter manage and maintain during the Management and Maintenance Period the Allotment Land in accordance with the approved Allotment Land Specifications to the satisfaction of the District Council until such time as the provisions of Clause 9.6 may apply
- 9.4 if it fails to maintain the Allotment Land to the District Council's satisfaction as required by Clause 9.3 the District Council may after giving the Owner twenty working days written notice of the works required to be carried out and if the Owner fails to remedy the position within the said period of twenty working days the District Council may enter upon the Allotment Land and itself carry out those works and recover the reasonable cost of the works from the Owner
- 9.5 the approved Allotment Land Specifications shall not be amended other than by written agreement between the Owner and the District Council
- 9.6 On Completion of the laying out of the Allotment Land in accordance with the approved Allotment Land Specifications and following written confirmation from the District Council that it is satisfied that the Allotment Land has been laid out and maintained (to the extent required) in accordance with the Allotment Land Specifications and notifies the Owner accordingly the Owner shall either
- (a) Transfer the Allotment Land to the Management Company in accordance with the Allotment Land Transfer with such additional provisions as may be required in order to reflect the location of the Allotment Land including (where necessary) the grant or reservation of rights of access and rights to lay and use service media including any necessary rights of entry for the purposes of maintaining renewing or repairing such service media and the Management Company shall then have the responsibility to maintain the Allotment Land as if it were the Owner and that it will procure that any Management Company acquiring the Allotment Land pursuant to this Clause shall not Transfer the Allotment Land or any part thereof to any third party without the written consent of the District Council or
 - (b) Transfer the Allotment Land to Exmouth Town Council in accordance with the terms of the Allotment Land Transfer with such additional provisions as may be required in order to reflect the location of the Allotment Land including (where necessary) the grant or reservation of rights of access and rights to lay and use service media including any necessary rights of entry for the purposes

of renting renewing or repairing such service media which if it elects to take a Transfer of such land (upon whatever terms it may agree with the Owner) it will thereafter be responsible for the management and maintenance of the Allotment Land during the Management and Maintenance Period

- 9.7 It is hereby agreed between the Owner and the District Council that following the Allotment Land Transfer to the Management Company or to the Exmouth Town Council as the case may be the Management Company or Exmouth Town Council as the case may be shall offer the Allotment Plots to residents of the Development for their use **PROVIDED THAT** in the event that two months after the offer aforesaid the residents of the Development have not taken up the offer of use of the Allotment Plots or they have only taken up the offer of some of the Allotment Plots then any Allotment Plots not in use shall be offered by the Management Company or Exmouth Town Council as the case may be to residents living in the administrative area of Exmouth Town Council **AND FURTHER PROVIDED THAT** in the event that two months after the offer of vacant Allotment Plots to residents living in the administrative area of Exmouth Town Council those said residents have not taken up the offer of the Allotment Plots they shall be offered by the Management Company or to Exmouth Town Council as the case may be to residents within the District.
- 9.8 It is hereby agreed between the Owner and the District Council that in the event that an Allotment Plot having been used by a resident of the Development or a resident of the administrative area of Exmouth Town Council or a resident of the District becomes vacant the Owner shall procure that the Management Company or Exmouth Town Council as the case may be shall offer any vacant Allotment Plot for re-use in accordance with the mechanism set out in Clause 9.7.
- 9.9 It is hereby agreed between the Owner and the District Council that in the event that after a period of 12 months from the Allotment Plots being offered for use there has been little or no use of the said Allotment Plots then it shall be open to the Owner to seek an alternative use (subject to obtaining any necessary planning permission for such alternative use) for the Allotment Plots in discussion with the District Council **PROVIDED THAT** the Management Company and Exmouth Town Council shall use Reasonable Endeavours to find Occupiers for the Allotment Plots whilst these discussions are taking place.

Community Orchard

The Owner hereby covenants with the District Council;

- 9.10 Not to Occupy more than 175 Dwellings until it has provided a Community Orchard in accordance with the Community Orchard Specifications to be submitted to and approved by the District Council prior to the First Occupation Date
- 9.11 To provide and thereafter manage and maintain the Community Orchard during the Management and Maintenance Period in accordance with the approved Community Orchard Specifications to the satisfaction of the District Council until such time as the provisions of Clause 9.14 may apply
- 9.12 If the Owner fails to maintain the Community Orchard to the District Council's satisfaction as required by Clause 9.11 the District Council may after giving the Owner twenty working days written notice specify the works required to be carried out and if the Owner fails to remedy the position within the period of twenty working days the

District Council may enter upon the Community Orchard and itself carry out those works and recover the reasonable cost of the works from the Owner

- 9.13 The approved Community Orchard Specifications shall not be amended other than by written agreement between the Owner and the District Council
- 9.14 On Completion of the laying out of the Community Orchard in accordance with the Community Orchard Specifications and following written confirmation from the District Council that it is satisfied that the Community Orchard has been laid out and maintained (to the extent required) in accordance with the Community Orchard Specifications and notifies the Owner accordingly the Owner shall either ;
- (a) Transfer the Community Orchard to the Management Company in accordance with the Community Orchard Transfer with such additional provisions as may be required in order to reflect the location of the Community Orchard including (where necessary) the grant or reservation of rights of access and rights to lay and use service media including any necessary rights of entry for the purpose of maintaining renewing or repairing such service media and Exmouth Town Council shall and the Management Company which shall then have the responsibility to maintain the Community Orchard as if it were the Owner and that it will procure that any Management Company acquiring the Community Orchard pursuant to this Clause shall not Transfer or otherwise dispose of the Community Orchard or any part thereof to any third party without the written consent of the District Council or
 - (b) Transfer the Community Orchard to Exmouth Town Council in accordance with the Community Orchard Transfer with such additional provisions as may be required in order to reflect the location of the Community Orchard including (where necessary) the grant or reservation of rights of access and rights to lay and use service media including any necessary rights of entry for the purpose of maintaining renewing or repairing such service media and Exmouth Town Council shall if it elects to take a Transfer of the Community Orchard it will thereafter be responsible for the management and maintenance of the Community Orchard during the Management and Maintenance Period
- 9.15 *Outdoor Sports Contribution*
- The Owner hereby covenants with the District Council:
- (a) to pay half of the Outdoor Sports Contribution to the District Council prior to the First Occupation of any Dwelling permitted by the Development and not to permit First Occupation of any Dwelling until the said half of the Outdoor Sports Contribution has been paid to the District Council;
 - (b) to pay the balance of the Outdoor Sports Contribution to the District Council prior to the Occupation of the 175th Dwelling and not to permit Occupation of more than 175 Dwellings until the balance of the Outdoor Sports Contribution has been paid to the District Council
- 9.16 It is hereby agreed that the District Council shall immediately on receipt place both halves of the Outdoor Sports Contribution in an interest bearing bank account and shall only utilise the Outdoor Sports Contributions for Outdoor Sports Purposes

- 9.17 It is hereby agreed between the Owner and the District Council that if the Outdoor Sports Contribution or any part thereof has not been expended within a period of seven years from the date of payment the District Council shall upon written notice from the Owner at the expiry of the period of seven years aforesaid return the unexpended sum with all interest accrued to the Owner within a period of twenty eight days from the date of the written notice and
- 9.18 It is hereby agreed between the Owner and the District Council that the District Council will if required in writing by the Owner submit written returns to the Owner such written returns to be supplied by the District Council within a period of twenty one days of any such request explaining precisely how all or any of the Outdoor Sports Contribution has been spent or spent since any previous request and giving details of the unexpended balance remaining of the Outdoor Sports Contribution at the date of each written return provided that the District Council shall not be required to submit more than two written returns per annum
10. **Children's Play Areas**
- The Owner hereby covenants with the District Council that
- 10.1 As part of the Reserved Matters Application(s) it shall submit to the District Council for written approval a plan showing the precise location and boundaries of the Play Areas within the Land
- 10.2 It will no earlier than Occupation of 100 Dwellings carry out the Public Consultation following which the Owner shall submit to the District Council for its written approval the Play Areas Specifications
- 10.3 It will at its own cost construct and provide the Play Areas within the Land in accordance with the Reserved Matters Approval and approved Play Areas Specifications and will not Occupy more than 100 Open Market Dwellings until the Play Areas have been provided in accordance with the Reserved Matters Approval and approved Play Areas Specifications
- 10.4 It will ensure that equipment in the Play Areas meets requisite national safety standards agreed by the District Council and in force from time to time and provide copies of the RoSPA certificates upon Completion of each and every Play Area
- 10.5 It will manage and maintain the Play Areas during the Management and Maintenance Period in a proper and safe state of repair in accordance with current best practice standards and in accordance with the approved Play Area Specifications until such time as the provisions of Clause 10.6 may apply
- 10.6 On Completion of the laying out of the Play Areas (including the NEAP) in accordance with the Play Area Specifications and following written confirmation from the District Council that it is satisfied that the Play Areas (including the NEAP) have been laid out and maintained (to the extent required) in accordance with the Play Areas Specifications the Owner shall either
- (a) in the event that the District Council or Exmouth Town Council notifies the Owner in writing that it wishes to adopt or maintain the Play Areas (including the NEAP) then subject to the NPFA and the District Council being reasonably satisfied with the state of the NEAP the Owner shall (subject to carrying out

any necessary remedial work) Transfer the freehold of the relevant Play Areas and NEAP to the District Council or Exmouth Town Council (as appropriate) in accordance with the Play Areas Transfer with such additional provisions as may be required in order to reflect the location of the Play Areas including (where necessary) the grant or resolution of rights of access and rights to lay and use service media including any necessary rights of entry for the purposes of maintaining renewing or repairing such service media and on the date of completion of the Transfer of the Play Areas and NEAP shall pay to the District Council or Exmouth Town Council (as appropriate) the NEAP Commuted Sum (such sum to have been agreed between the District Council and the Owner in writing prior to any Transfer) as the case may be which shall thereafter manage and maintain the Play Areas and NEAP during the Management and Maintenance Period or

- (b) Transfer the Play Areas (including the NEAP) to the Management Company in accordance with the Play Areas Transfer with such additional provisions as may be required in order to reflect the location of the Play Areas including (where necessary) the grant or reservation of rights of access and rights to lay and use service media including any necessary rights of entry for the purpose of maintaining renewing or repairing such service media which shall have the responsibility of maintaining the Play Areas and the NEAP as if it were the Owner and that it will procure that any Management Company acquiring the Play Areas (including the NEAP) pursuant to this Clause shall not Transfer or otherwise dispose of the Play Areas and NEAP or any part thereof to any third party without the written approval of the District Council

11. Affordable Housing

The Owner hereby covenants with the District Council that

- 11.1 as part of the Reserved Matters Application(s) it shall submit to the District Council for written approval the Affordable Housing Details
- 11.2 the Owner shall
 - (a) construct and Complete 40% of the total number of Dwellings approved as part of the Reserved Matters Approval as Affordable Housing which shall be to a tenure mix of 70% Affordable Rented Housing and 30% Intermediate Housing (unless otherwise agreed in writing with the District Council) and
 - (b) construct and Complete the Affordable Housing Dwellings in accordance with the approved Affordable Housing Details and the Design and Quality Standards and
 - (c) make the Affordable Housing Dwellings available for Occupation by Designated Persons in accordance with the Nominations Agreement
- 11.3 The Owner shall subject to any adjustment required by Clause 4.7 not Occupy:
 - (a) more than 84 of the Open Market Dwellings permitted as part of the Development until the Owner has Transferred 40 of the Affordable Housing Dwellings to a Registered Provider

- (b) more than 126 of the Open Market Dwellings permitted as part of the Development until the Owner has Transferred 90 of the Affordable Housing Dwellings to a Registered Provider; and
 - (c) more than 168 of the Open Market Dwellings permitted as part of the Development until the Owner has Transferred all of the Affordable Housing Dwellings to a Registered Provider
- 11.4 Simultaneously with making an offer to Transfer the Affordable Housing Dwellings to a Registered Provider the Owner shall serve written notice on the District Council that it has made an offer to Transfer the Affordable Housing Dwellings to a Registered Provider
- 11.5 An offer to Transfer the Affordable Housing Dwellings to the Registered Provider by the Owner shall remain open for acceptance by the Registered Provider for a period of three months or such extended period as may be agreed between them in writing ("the Acceptance Period") from the date of the offer to Transfer and such offer shall be deemed to be accepted if the Registered Provider serves written notice on the Owner advising of such acceptance ("the Affordable Housing Acceptance") within the Acceptance Period
- 11.6 Where under the provisions of this Clause 11 there is an obligation on the Owner to Transfer the Affordable Housing Dwellings to a Registered Provider such Transfer shall be subject to the condition that the Nominations Agreement (or such other agreement as may be agreed between the District Council and the Registered Provider) shall apply in respect of the Affordable Housing Dwellings and nomination of the Designated Persons to the Affordable Housing Dwellings shall be in accordance with the Nominations Agreement(s)
- 11.7 Upon the receipt of an Affordable Housing Acceptance the Owner shall Transfer the Affordable Housing Dwellings to the Registered Provider in accordance with the Affordable Housing Transfer Terms which shall be directly enforceable by the District Council against the Owner in accordance with the Contract (Rights of Third Parties) Act 1999
- 11.8 Within 14 days of the completion of the Transfer of the Affordable Housing Dwellings to a Registered Provider the Owner shall notify the District Council of the date on which the Transfer occurred
- 11.9 If the Registered Provider fails to serve the Affordable Housing Acceptance within the Acceptance Period then Clause 11.10 shall apply
- 11.10 It is hereby agreed between the Owner and the District Council that if despite the use of Reasonable Endeavours to effect the Transfer the Owner has been unable to Transfer the Affordable Housing Dwellings to a Registered Provider (pursuant to Clause 11.5) the Owner shall undertake negotiations with alternative Registered Providers and shall notify the District Council accordingly and offer the same to the District Council
- 11.11 If after using Reasonable Endeavours to Transfer the Affordable Housing Units to at least three Registered Providers and such negotiations have proved unsuccessful then the Owner shall be entitled to approach the District Council together with the evidence to demonstrate the negotiations undertaken to alter the Affordable Housing Split to increase the amount of Intermediate Housing which the District Council can acting reasonably

alter taking into account the Owner's previous negotiations and circumstances generally
PROVIDED THAT in the event that the Owner and the District Council cannot agree a revised Affordable Housing Split a dispute shall be deemed to have arisen and the matter shall be dealt with in accordance with the provisions of Clause 14

- 11.12 The Affordable Housing Dwellings shall be constructed such that in terms of their external appearance they are materially indistinguishable from the Open Market Dwellings
- 11.13 Subject to Clause 11.14 the Affordable Housing Dwellings shall be maintained as Affordable Housing for a period of eighty years from their Completion and shall not be used other than for the provision of Affordable Housing
- 11.14 After the date of the Transfer of any Affordable Housing Dwelling or Dwellings to a Registered Provider as provided for in this Deed the covenants contained in this Clause shall:
- (a) subject to the Chargee's Duty first being complied with not bind any mortgagee of a Registered Provider holding a charge on such Affordable Housing Dwelling or Dwellings nor any receiver appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Provider any of whom may deal with or dispose of any Affordable Housing Dwelling or Dwellings free from the covenants and obligations set out in this Clause 11
 - (b) subject to the Chargee's Duty being complied with first cease to apply to any Affordable Housing Dwelling or Dwellings which are managed transferred leased or otherwise disposed of by any mortgagee referred to in Clause 11.14 (a) or by any receiver appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Provider to the intent (for the avoidance of doubt) that any person deriving title through under or from such mortgagee or receiver and all successors in title thereafter shall not be bound by the covenants and obligations set out in Clause 11 of this Deed
 - (c) cease to apply to any Affordable Housing Dwelling or Dwellings which a Registered Provider disposes of pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 16 of the Housing Act 1996 or any similar or substitute right as applies to the Affordable Housing Dwellings or any of them from time to time
 - (d) cease to apply to any Affordable Housing Dwelling or Dwellings which a Registered Provider sells to a tenant pursuant to a voluntary grant scheme under Section 21 of the Housing Act 1996 or any amendment or replacement thereof
 - (e) cease to apply to any Affordable Housing Dwelling or Dwellings in respect of which a shared ownership lease has been granted or where any other shared ownership arrangements equity percentage arrangements or shared ownership trust (as the same are defined in Section 70 of the Housing and Regeneration Act 2008) have been entered into but only where a Registered Provider has disposed of 100% of the equity in such Affordable Housing Dwellings under the terms of such lease arrangements or trust

Chargee's Duty

- 11.15 Any mortgagee or chargee of the Registered Provider's interest ("the Chargee") shall prior to seeking to dispose of any Affordable Housing Dwelling(s) pursuant to any default under the terms of its mortgage or charge shall give not less than three months' prior notice in writing to the District Council of its intention to dispose and
- (a) In the event that the District Council responds within three months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Dwelling(s) can be made in such a way as to safeguard them as Affordable Housing Dwelling(s) then the Chargee shall cooperate with such arrangements and use its reasonable endeavours to secure such transfer
 - (b) If the District Council or any other person cannot within three months of the date of service of its response under Clause 11.15(a) secure such transfer then provided that the Chargee shall have complied with its obligations under this Clause 11.15 the Chargee shall be entitled to dispose of the Affordable Housing Dwelling(s) as Open Market Dwellings free of the restriction set out in this Clause 11

PROVIDED THAT at all times the rights and obligations in this Clause 11.15 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the District Council must give full consideration to protecting the interests of the Chargee in respect of monies outstanding under the charge or mortgage

12. **Management Company**

- 12.1 The Owner hereby covenants with the District Council to comply with the provisions of Schedule 2

13. **Service Provisions**

- 13.1 Any notice or other written communication to be served upon or given by one party to any other under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing
- 13.2 The address for any notice or other written communication shall be:
- (a) For the Owner as specified above marked for the attention of the Estates Manager or such other person as the Owner shall notify to the District Council and SWW in writing
 - (b) For the District Council as specified above marked for the attention of the Head of Planning Services or such other person as the District Council shall notify to the Owner and SWW in writing
 - (c) For SWW as specified above marked for the attention of the Waste Water Supply Demand Manager or such other person as SWW shall notify to the Owner and the District Council in writing
- 13.3 Any notice or other written communication to be given by the District Council shall be deemed valid and effectual if on its face it is signed on behalf of the said District Council

by an officer who ostensibly would normally handle matters to which the communication relates or signatory duly authorised to handle matters to which the communication relates

14. Resolution of Disputes

- 14.1 In the event of any dispute arising between the parties hereto in respect of any matter contained in this Deed the parties shall use Reasonable Endeavours between them to seek to settle the dispute as quickly as possible **PROVIDED THAT** if the dispute has not been settled satisfactorily within a period of twenty eight days of the dispute arising then the parties shall refer the dispute to an Expert to be agreed between them who shall be a person having not less than ten years experience of the type of dispute in question (and no party shall unreasonably refuse to have the matter determined by an Expert) but in the event that the parties cannot agree an Expert between them within a period of fourteen days of a request by one party to the other parties to refer the dispute to an Expert the dispute shall be referred to an Expert to be nominated by or on behalf of the President for the time being of the professional body most appropriate to deal with the dispute or in default of agreement by the President of the Law Society who shall appoint an Expert whose qualifications or professional experience is appropriate for determining the matter in dispute
- 14.2 If the nominated Expert shall die or decline to act another Expert may be appointed in his place as agreed between the parties or by the President of the professional body most appropriate to deal with the dispute or in default of agreement by the President for the time being of the Law Society
- 14.3 The Expert shall act as an expert and not as an arbitrator and the Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than forty six working days from the date of his appointment to act
- 14.4 Each party shall bear its own costs save that the fees of the Expert and of the President of the relevant professional body or the Law Society for the time being shall be in the Expert's award **PROVIDED THAT** if the Expert finds that one party has acted unreasonably such that dispute resolution was the only remedy then the unreasonable party shall duly be required to pay the other parties costs incurred
- 14.5 The Expert shall be required to give notice to each of the said parties (which shall include Natural England in the event of a dispute arising under Clause 8) inviting each of them to submit to him within ten working days of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further fifteen working days in respect of any such submission and material and the Expert's decision shall be given in writing within twenty-one working days from receipt of any counter submissions or in the event that there are no counter submissions within twenty-one working days of receipt of the written submissions and supporting material with reasons for his decision and in the absence of manifest error the Expert's decision shall be final and binding on the said parties
- 14.6 If for any reason the Expert shall fail to make a decision and gives notice thereof within the time and in the manner hereinbefore provided the parties may apply to the President of the relevant professional body or the President for the time being of the Law Society

as appropriate for a substitute to be appointed in his place which procedure may be repeated as many times as necessary

- 14.7 It is hereby agreed between the parties hereto that nothing in this Clause 14 shall be taken to fetter the ability of the District Council to seek legal redress for any breach of any of the obligations entered into by the Owner in this Deed

15. Contracts (Rights of Third Parties) Act 1999

It is hereby agreed between the parties hereto that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person other than the parties to this Deed (and any successors in title or successor bodies) shall have any rights under or be able to enforce the provisions of this Deed **SAVE THAT** Clause 11.7 and the Affordable Housing Transfer Terms shall be directly enforceable by the District Council against the Owner

16. Local Land Charge

- 16.1 The covenants and obligations contained in this Deed shall be treated as local land charges and registered at the Local Land Charges Registry for the purposes of the Local Land Charges Act 1975

- 16.2 Upon satisfaction of the obligations upon the Owner in this Deed the District Council will at the request of the Owner cancel all entries in relation to this Deed in the Register of Local Land Charges

17. Regulation 122

The parties hereto agree that the planning obligations herein satisfy the requirements of Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended)

18. Costs

The Owner hereby covenants with the District Council that it will no later than a period of seven days from the date hereof pay the District Council's and SWW's reasonable legal costs in connection with the negotiation and completion of this Deed together with the Monitoring Fee

19. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable and where any VAT shall be payable a properly completed VAT invoice shall be provided with information of any election that may be necessary and a copy of the registration number for VAT

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

SCHEDULE 1

Affordable Housing Transfer Terms

1. Title to the Affordable Housing Dwellings shall be deduced in accordance with the provisions of Section 44 of the Law of Property Act 1925 as amended or Section 67 of the Land Registration Act 2002 whichever is applicable and the land to be Transferred will be Transferred with full title guarantee
2. The Affordable Housing Dwellings shall be Transferred **SUBJECT TO:**
 - 2.1 as to unregistered land all matters of title except charges to secure money
 - 2.2 as to registered land all matters of title referred to in the Title Number under which the Land is registered at the Land Registry except charges to secure money
 - 2.3 all Local Land Charges whether registered or not
3. the Standard Conditions of Sale (Fourth Edition) shall apply insofar as they are not inconsistent with the terms of this Deed
4. The Affordable Housing Dwellings shall be Transferred together with all such rights or easements whatsoever as are required to enable the use of the Affordable Housing Dwellings Land for the purpose for which it is being Transferred
5. The terms of the contract shall provide for the following:
 - (a) that the Owner shall Transfer the Affordable Housing Dwellings together with all Services and Service Installations and Access and that they be Transferred together with the following rights:
 - (i) all necessary rights to enter the land upon which the Affordable Housing Dwellings are constructed to carry out any development on the remainder of the Land or any part of it (subject to making good any damage caused)
 - (ii) a right to pass and repass on foot and/or with or without vehicles (as appropriate) for the purpose of access to and egress from the Affordable Housing Dwellings
 - (iii) a right of taking passage and running (as appropriate) of Services
 - (iv) a right to maintain enjoy and use any Services and any Projections over on or under the remainder of the Land so far as may be necessary for any purpose connected with the Affordable Housing Dwellings
 - (v) a right to enter upon the remainder of the Land including any Access so far as may be necessary for any purpose connected with the Affordable Housing Dwellings the Service Installations and the Projections
 - (vi) such necessary rights of support shelter and protection from the Land

(b) that the Owner shall Transfer the Affordable Housing Dwellings in a Clean Condition

that the Affordable Housing Dwellings shall be constructed to the Design and Quality Standards and shall meet the Building for Life and Lifetime Homes standards unless otherwise agreed with the District Council

SCHEDULE 2

Management Company provisions

1. Not to use or First Occupy any of the Dwellings until such time as the Owner has at its own expense:
 - 1.1 set up and registered the Management Company as a private limited company incorporated and registered in England at Companies House
 - 1.2 ensured that the Management Company has at least two named persons as Directors and one Company Secretary that are eligible to be appointed and (if required) removed and replaced by the Members of the Management Company;
 - 1.3 procured that the Management Company appoints a named manager ("the MC Manager") responsible for liaising with the District Council and owners and occupiers of the Dwellings
 - 1.4 procured through the Management Company documentation (as set out in paragraph 2.1.2 below) that the Management Company will hold at least one (1) public meeting per year
 - 1.5 procured that the Management Company will be responsible at the expense of the Occupiers of the Development for the upkeep and on-going maintenance of the Defined Areas in accordance with the Defined Schemes and the planning obligations under this Deed should the Defined Areas or any one or more of them be Transferred to the Management Company

Management Company Documents

2. Not to use or First Occupy of any of the Dwellings until such time as the Owner has provided the District Council with the following information and documents relating to the Management Company:
 - 2.1 a copy of the company Certificate of Incorporation and Articles of Memorandum;
 - 2.2 a copy of its Rules (including the holding of at least one (1) public meeting per year and the giving of a minimum of seven (7) days written notice of each meeting to the District Council and all Company Members and any other interested parties and to provide suitable facilities for the meetings of the Management Company) and Regulations and operational manuals
 - 2.3 any other relevant documentation relating to the Defined Areas
 - 2.4 details of the names and addresses of all Directors Members and the Company Secretary
 - 2.5 full and sufficient details of the financial resources available to the Management Company including evidence that there are adequate resources in place to undertake the maintenance of the Defined Areas during the Management and Maintenance Period in accordance with the Defined Schemes

Operation of the Management Company

3. The Owner hereby covenants to:
 - 3.1 ensure that upon the Transfer of any Dwellings that all freehold and registerable leasehold owners of the Dwellings are Members of the Management Company and eligible to vote at any Annual General and Special Company Meetings
 - 3.2 ensure that the Registered Provider is a Member of the Management Company
 - 3.3 the MC Manager will ensure that their contact details including his name address and telephone number are regularly updated and distributed to the owners and occupiers of all of the Dwellings on the Site
 - 3.4 ensure that the Rentcharge is secured on the first transfer or disposal of any Dwelling and that covenants are contained on the transfer to procure that on any subsequent transfer or disposal the Rentcharge is secured in favour of the Management Company

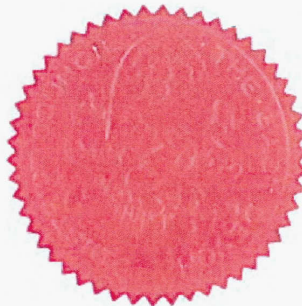
EXECUTED AS A DEED by)
LITTLEHAM 2010 LIMITED)
acting by)

Director

Director / Secretary

THE COMMON SEAL OF)
EAST DEVON DISTRICT)
COUNCIL was hereunto affixed)
in the presence of)

Authorised Signatory



18965

EXECUTED AS A DEED by)
SOUTH WEST WATER LIMITED)
acting by)

Authorised Signatory

Authorised Signatory

R C ZHUDA
JOINT SECRETARY