

DATED

2nd March

2016

EAST DEVON DISTRICT COUNCIL

and

PANKHURST FISH LIMITED

and

EXE RIVER VENTURES LLP

and

DEVON COUNTY COUNCIL

SECTION 106 AGREEMENT

relating to

LAND AT PANKHURST CLOSE TRADING ESTATE, EXMOUTH, DEVON, EX8 2RN

THIS AGREEMENT is made the 2nd day of March 2016

BETWEEN

1. **EAST DEVON DISTRICT COUNCIL** of Station Road, Knowle, Sidmouth, Devon, EX10 8HL (the "District Council").
2. **PANKHURST FISH LIMITED** (Co. Regn. No. 07949044) of Sigma House, Oak View Close, Torquay, Devon TQ2 7FF (the "First Owner")
3. **EXE RIVER VENTURES LLP** (Co. Regn. No. OC352860) of Vantage Point Woodwater Park, Paynes Hill, Exeter EX2 5FD (the "Second Owner")
4. **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, EX2 4QD (the "County Council")

WHEREAS:

1. In this Agreement the following definitions shall apply:

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| The 1990 Act | means the Town and Country Planning Act 1990 as amended |
| The Application | means the full planning application under reference number 13/1230/MFUL made to the District Council for the Development |
| Commencement of Development | means the commencement of the Development by the carrying out of any material operation (as defined in Section 56 of the 1990 Act) but for the purposes of this Agreement only shall not include operations consisting of site clearance, demolition works, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial works in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the expressions "Commence", and "Commenced" shall be construed accordingly. |

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| County Council's Legal Costs | means the reasonable and properly incurred legal costs of the County Council in connection with the preparation and completion of this Agreement payable by the Owners to the County Council |
| Dwelling | means any dwelling or dwellings to be constructed on the Site pursuant to the Planning Permission |
| The Development | means the 'redevelopment to provide 50 (fifty) residential units (including 13 (thirteen) affordable units)' as is more fully described in the Application |
| Habitat Mitigation Contribution | means the sum of £17,500 (seventeen thousand five hundred pounds) as a contribution towards non-infrastructure projects to mitigate the impact of the Development on the Exe Estuary and Pebblebed Heaths Special Protection Area |
| Index | means in respect of the Primary Education Contribution and the Secondary Education Contribution the BCIS All in Tender Price Index and in respect of the Habitats Mitigation Contribution and the Open Space Contribution the Retail Price Index (All Items) |
| Interest Rate | means 4% above the Bank of England Base Rate calculated on a day to day basis. |
| Monitoring Fee | means the sum of £2,767.50 (two thousand seven hundred and sixty seven pounds and fifty pence) to be paid to the District Council as a contribution towards the District Council's costs of monitoring the implementation and delivery of this Agreement |
| Occupation | means occupation of a Dwelling (except for the purposes of construction, fitting out security or marketing) on a residential basis and "Occupy" or "Occupied" or "Occupancy" shall where the context so requires have the same meaning |
| Open Space Contribution | means the sum of £124,000 (one hundred and twenty four thousand pounds) to be used towards the improvement of pitch provision and associated facilities at Warren View and/or St Johns Road sites, Exmouth |
| Owners | means together the First Owner and the Second Owner |

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| Plan A | means the plan ref drawing no. 6388-101 rev C annexed to this Agreement showing the extent of the Site |
| Planning Permission | means any planning permission issued pursuant to the Application |
| Primary Education Contribution | means the sum of £105,000 (one hundred and five thousand pounds) to be paid to the County Council towards a contract let or to be let for the provision of a sixth classroom at Littleham Primary School |
| Private Dwelling | means any Dwelling constructed on the Site which is intended for private sale or rent on the open market |
| Secondary Education Contribution | means the sum of £94,754 ^{5, nine} (ninety four thousand seven hundred and fifty four pounds) to be paid to the County Council towards a contract let or to be let for the provision of a phase 1 teaching block at Exmouth Community College |
| Site | means the land shown edged red on Plan A and known as land at Pankhurst Close Trading Estate, Exmouth, Devon, EX8 2RN with such land registered at HM Land Registry under title numbers DN622310 and DN419720 and DN114576 |

Background

- 1.1. The District Council is the Local Planning Authority for the District of East Devon for the purposes of the 1990 Act for the area in which the Site is situated and is the authority by whom the planning obligations in this Agreement shall be enforced except for the obligations relating to the Primary Education Contribution and the Secondary Education Contribution which shall be enforced by the County Council.
- 1.2 The First Owner has submitted the Application to the District Council and the District Council has resolved to grant the Planning Permission subject to the prior completion of this Agreement.
- 1.3 The County Council is the Education Authority for the area in which the Site is situated and a county planning authority and is the authority by whom the planning obligations in

[illegible]

this Agreement relating to the Primary Education Contribution and the Secondary Education Contribution shall be enforced.

- 1.4 The parties hereto in accordance with the provisions of section 106 of the 1990 Act as amended, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011, section 2 of the Local Government Act 2000 and any other enabling powers have agreed to enter into a Planning Obligation the terms of which are contained in this Agreement.
- 1.5 The First Owner is the freehold proprietor of that part of the Site registered at the Land Registry under Title Number DN622310 which part of the Site is subject to a lease dated 9th March 1970 (the "Lease") and the Second Owner is the proprietor of the Lease, which leasehold interest is registered at the Land Registry under Title Number DN419720. The Second Owner is also the freehold proprietor of that part of the Site registered at the Land Registry under Title Number DN114576.

IT IS HEREBY AGREED AND DECLARED that:

General

- 2.1 This Agreement is a planning obligation binding the Site made in pursuance of section 106 of the 1990 Act and enforceable by the District Council and separately by the County Council under section 106 of the 1990 Act against the Owners and their successors in title.
- 2.2 Where in this Agreement 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.
- 2.3 The Agreement is conditional on the grant of Planning Permission and Commencement of Development save for any obligation expressed to be required to be complied with prior to the Commencement of Development and the provisions of clause 5 which shall take effect from the date of this Agreement.
- 2.4 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 2.5 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons including companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.6 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.
- 2.7 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 validity from it.
- 2.8 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.
- 2.9 This Agreement shall cease to have effect (insofar 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 Owners) if it is modified by statutory procedure or expires prior to Commencement of Development.
- 2.10 The contents of this Agreement shall be registerable by the District Council as a Local Land Charge pursuant to section 106(11) of the 1990 Act.

3. Service of Notices

- 3.1 Any notices to be served shall be served in writing to the principal address or registered office (as appropriate) of the relevant party.
- 3.2 If the Owners fail to serve any notice required by this Agreement any period within which the District Council is required to give a response to that notice shall not commence before the date that the District Council notifies the Owners in writing that it is in breach of its duty to serve the notice.

4. Liability for future breaches of Agreement

- 4.1 No person shall be liable for any breach of the obligations or covenants contained within this Agreement which occurs after that person has parted with their entire interest in the

Site or the part of it in respect of which the breach occurs but without prejudice to any liability for any subsisting breach arising prior to parting with such interest.

4.2 The covenants and obligations in this Agreement shall not be enforceable against:

- a) the ^{individual}purchaser, lessee, occupier or mortgagee of a ^{individual}Private Dwelling; or
- b) the ^{individual}purchaser, lessee, occupier or mortgagee of an ^{individual}Affordable Housing Unit save for those obligations in Part A of Schedule 1 concerning affordable housing

5. Legal Fees and Monitoring Fee

The Owners shall, prior to the execution hereof, pay the District Council's reasonable legal costs and the Monitoring Fee together with the County Council's Legal Costs in connection with the preparation and completion of this Agreement.

6. Covenants

- 6.1 The Owners covenant with the District Council to observe and perform the obligations in the First Schedule and separately with the County Council to observe and perform the obligations contained in the Second Schedule.
- 6.2 The District Council and the County Council covenant with the Owners to perform the obligations in the First Schedule and the Second Schedule insofar as the covenants in those schedules are expressed so as to be given by the District Council and/or the County Council

7. Miscellaneous

- 7.1 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.
- 7.2 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.

- 7.3 Any such agreement, approval, consent or expression of satisfaction shall unless otherwise stated in this Agreement be given on behalf of the District Council by the Service Lead Planning Strategy and Development Management and on behalf of the County Council by the Head of Planning Transportation & Environment or his appointed representative for the time being of the County Council.
- 7.4 The District Council will upon the written request of the Owners at any time after the obligations of the Owners 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.
- 7.5 Insofar as any clause or clauses in 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.
- 7.6 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 an appeal) after the date of this Agreement.

8. 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.

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 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. Indexation

Any sum to be paid pursuant to the obligations contained in the Schedules hereto shall be increased in accordance with the following formula from the date hereof to the date on which each sum is paid:-

$$C = \frac{\text{£Y} \times B}{A}$$

Where:

A is the value of the relevant Index last published before the date hereof and

B is the value of the Index last published before the said contribution has been paid

C is the contribution to be paid

£Y is the amount of the relevant contribution

PROVIDED that if the application of this formula produces a reduction in the relevant contribution, such contribution shall remain unchanged.

12. Interest

In the event of the Owners failing to make any payment due pursuant to the terms of this Agreement the Owners shall pay interest at the Interest Rate from the date payment was due to the date payment was made.

SCHEDULE 1
COVENANTS WITH THE DISTRICT COUNCIL

Part A: Affordable Housing Provisions

The Owners hereby covenant with the District Council as follows:-

1. Definitions

For the purposes of this Schedule the following words will have the following meanings:

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| "Affordable Housing" | means units of subsidised housing within the meaning of National Planning Policy Framework or any Government Policy Statement or Circular that replaces it |
| "Affordable Rented Dwelling" | means a Dwelling available to those whose needs are not adequately served by the commercial housing market at a rent level of up to 80% of local market rent to include the service charge (where applicable) and which complies with the definition of affordable rented housing in Annex 2 of the National Planning Policy Framework such rent level to be agreed in writing with the District Council |
| "Affordable Shared Ownership Dwelling" | means a Dwelling for sale on a shared ownership basis solely by way of a Shared Ownership Lease |
| "Affordable Housing Units" | means the 13 (thirteen) Dwellings to be provided as Affordable Housing comprising 4 (four) Affordable Shared Ownership Dwellings and 9 (nine) Affordable Rented Dwellings to be provided in accordance with the provisions of this Schedule on the Affordable Housing Site |
| "Affordable Housing Scheme" | means the scheme for securing the provision of the Affordable Housing Units on the Affordable Housing Site as hereinafter defined more particularly the location of and mix of unit types and proposed tenure for those units and the proposed timetable for such provision |
| "Affordable Housing Site" | means the land to accommodate the Affordable Housing Units |
| "Common Housing" | means in the case of Affordable Rental Dwellings the register or list of |

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| Registers" | applicants maintained by "Devon Home Choice" and in the case of Affordable Shared Ownership Dwellings the regional HomeBuy agent |
| "Design and Quality Standards" | <p>means that the Affordable Housing Units shall be constructed;</p> <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) to Code for Sustainable Homes Level 3 or if higher the appropriate level at the time of Commencement of Development (iii) in accordance with the Homes and Community Agency's design and quality standards and the Housing Provider's own design standards applicable at the time of Commencement of Development (iv) tenure blind so as to be indistinguishable from Private Dwellings |
| "Designated Person" | means a person or family who is registered on the Common Housing Register or Housing Provider's waiting lists and is in Housing Need |
| "District" | means the administrative area of the East Devon District Council |
| "Housing Need" | means the circumstances unless provided to the contrary in this Agreement 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 |
| "Housing Provider" | means a housing association or similar organisation or a social landlord in each such case registered with the Housing Corporation under Section 1 of the Housing Act 1996 or such other body or organisation whose main object is the provision of Affordable Housing as agreed by the District Council |
| "Local Connection" | means a connection to the Parish of Exmouth demonstrated by one or more of the following in priority order: |

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| | <p>(1) being permanently resident therein for a continuous period of at least 3 (three) years out of the 5 (five) years immediately prior to being offered the Affordable Housing Unit; or</p> <p>(2) being formerly permanently resident therein for a continuous period of 5 (five) years; or</p> <p>(3) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) therein for a continuous period of at least 12 (twelve) months immediately prior to being offered the Affordable Housing Unit; or</p> <p>(4) 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 5 (five) years immediately prior to being offered the Affordable Housing Unit and where there is independent evidence that the family member is in need of support or can give support</p> <p>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 following areas in the following priority order;</p> <p>(1) the Neighbouring Parishes,</p> <p>(2) persons from the District</p> |
| "Neighbouring Parishes" | means the parishes of Lympstone, East Budleigh and Budleigh Salterton |
| "Nomination Agreement" | means the agreement or an agreement substantially in the form of the one appended to this Agreement in the Third Schedule and which governs the ability of the District Council to nominate occupiers for the Affordable Housing Units |
| "Shared Ownership Lease" | means a long shared ownership lease (as defined in section 622 of the Housing Act 1985 or successor provision) with a Housing Provider substantially in accordance with the Homes and Communities Agency (or successor body) model as at the date of any such lease where the purchaser purchases an initial share of the equity between 25 – 80% and |

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| | pays rent on the remaining unsold equity and where additional share of the equity can be purchased |
| "Staircasing Receipts" | means any monies received by the approved Housing Provider of an Affordable Shared Ownership Dwelling as a result of the leaseholder exercising a right to increase their share of the equity (and any part of such monies) |

2. Affordable Housing Provision

- 2.1 Not to carry out or otherwise permit the Commencement of Development unless and until the Affordable Housing Scheme and a plan showing the Affordable Housing Site have been submitted to and approved in writing by the District Council.
- 2.2 To construct and provide the Affordable Housing Units in accordance with the Affordable Housing Scheme approved pursuant to paragraph 2.1 above and in accordance with the Design and Quality Standards.
- 2.3 Notwithstanding the requirements of paragraphs 2.1 and 2.2 above to have transferred the freehold interest or leasehold (of a minimum period of 80 years) interest in the Affordable Housing Site to the Housing Provider and to have completed all of the Affordable Housing Units prior to the Occupation of the 18th (eighteenth) Private Dwelling and not to permit Occupation of the 18th (eighteenth) Private Dwelling until such transfer has occurred and all of the Affordable Housing Units have been completed and are available for Occupation.
- 2.4 The Affordable Housing Units shall only be used for the purpose of providing Affordable Housing and shall be so used in perpetuity (here meaning for a minimum period of 80 years).
- 2.5 The transfer of the Affordable Housing Site and / or the Affordable Housing Units to the Housing Provider shall be in such form as the Owners shall reasonably require to ensure that the Affordable Housing Site and / or the Affordable Housing Units are subject to the same rights and easements and covenants (both restrictive and positive) as are to be granted and reserved in sales of the Private Dwellings.
- 2.6 To ensure that the Affordable Housing Site and / or Affordable Housing Units together with their respective curtilages will abut a publicly adopted highway or roads and footways the

subject of a bonded road making agreement under section 38 of the Highways Act 1980 (or enjoy ready and free access thereto via an intervening private drive) and have ready and free access to all usual domestic services needed for residential occupation of such Affordable Housing Units without the Housing Provider having to make any payment either to the Owners or any third party for any right of way or right to use such services or connect to them.

- 2.7 The transfer of the Affordable Housing Site and the Affordable Housing Units to the Housing Provider will contain a declaration that the Affordable Housing Site is so transferred subject to and with the benefit of the terms of this Agreement.
- 2.8 To give at least 10 (ten) working days written notice to the District Council prior to Occupation of the 18th (eighteenth) Private Dwelling.
- 2.9 To give 1 (one) month's written notice to the District Council of the date when the Affordable Housing Units (or any of them) shall be available for Occupation.

3. Restrictions on Occupation of Affordable Housing Units

- 3.1 Not to permit Occupation of any Affordable Housing Units unless and until the Owners and/or the Housing Provider (as appropriate) has entered into the Nomination Agreement with the District Council.
- 3.2 The Owners and/or Housing Provider as appropriate shall not at any time permit the Affordable Housing Units to be occupied other than as Affordable Housing by a Designated Person (and their dependents) who has a Local Connection.

3 Release

- 3.1 None of the obligations and restrictions referred to in Part A of this Schedule will be enforceable in respect of the Affordable Housing Site or any Affordable Shared Ownership Dwelling and Affordable Rented Dwelling as appropriate against any mortgagee or chargee in possession of any of the Affordable Shared Ownership Dwellings and Affordable Rented Dwellings erected on the Affordable Housing Site (a "Mortgagee") or against any person or body deriving title from such Mortgagee PROVIDED ALWAYS that the Mortgagee has complied with its obligations contained in paragraphs 3.2 below

3.2 The Mortgagee shall prior to seeking to dispose of the Affordable Housing Site or any Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge shall give not less than 3 (three) months' prior notice in writing to the District Council of its intention to dispose and:

- (i) If the District Council responds within 3 (three) months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Site or Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Mortgagee shall cooperate with such arrangements and use its reasonable endeavours to secure such transfer;
- (ii) If the District Council or any other person cannot within 3 (three) months of the date of service of its response under paragraph 3.2 (i) secure such transfer then provided that the Mortgagee shall have complied with its obligations under paragraph 3.2 the Mortgagee shall be entitled to dispose of the Affordable Housing Site or Affordable Housing Unit(s) free of the restriction set out in this First Schedule

PROVIDED THAT at all times the rights and obligations in paragraph 3.2 shall not require the Mortgagee 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 Mortgagee in respect of monies outstanding under the charge or mortgage

3.3 In relation to any Affordable Housing Units the Affordable Housing obligations in this Deed shall not apply to:

- 3.3.1 any sale to a tenant in exercising their right to acquire or purchase under a statutory power or to the successors in title to any such persons;
- 3.3.2 in relation to any Affordable Shared Ownership Dwelling where the owner of the said unit has acquired such percentage that will take their ownership to 100% of the said unit or to the successors in title to any such persons.

3.4 In the event of any Affordable Shared Ownership Dwelling being released from the Affordable Housing restrictions herein contained by virtue of the operation of paragraph 3.3.2 above the Owners shall provide the District Council with details of Staircasing Receipts from the Affordable Shared Ownership Dwellings and in co-operation with the District Council reach agreement to invest 100% of the Staircasing Receipts, if any, arising from the Affordable Shared Ownership Dwellings in the provision of new build Affordable

Housing or to invest in measures to enhance the provision of Affordable Housing within the administrative area of the District Council including facilitating the acquisition of market housing or the conversion or refurbishment of existing housing to bring such housing back into beneficial use to enable it to be occupied provided that the use of the Staircasing Receipts is limited to the provision within District.

4. Provision of Information

- 4.1 The Housing Provider will on request from the District Council allow the District Council to inspect or provide to the District Council such information as is necessary in order to enable the District Council to verify that the Housing Provider has sold or let of the Affordable Housing in accordance with the terms of this Schedule.

Part B: Contributions

The Owner hereby covenants with the District Council as follows:-

- 5.1 Prior to the Commencement of Development to pay the Habitat Mitigation Contribution and not to permit or cause Commencement of Development until the Habitat Mitigation Contribution has been paid to the District Council together with any additional sum due pursuant to Clause 12 hereof.
- 5.2 To pay 50% of the Open Space Contribution on or before Occupation of the first (1st) Dwelling and not to permit or cause Occupation of the first (1st) Dwelling until 50% of the Open Space Contribution has been paid to the District Council together with any additional sum due pursuant to Clause 12 hereof.
- 5.3 To pay 50% of the Open Space Contribution on or before Occupation of the 25th (twenty fifth) Dwelling and not to permit or cause Occupation of the 25th (twenty fifth) Dwelling until 50% of the Open Space Contribution has been paid to the District Council together with any additional sum due pursuant to Clause 12 hereof.

Part C: Repayment of Contributions

- 6.1 In the event that either of the Habitat Mitigation Contribution or the Open Space Contribution or any part thereof has not been spent or committed to be spent by the District Council within 10 (ten) years of Completion of the Development, the District Council shall


upon request of the Owner (or such person who made the payment) repay the Habitat Mitigation Contribution or the Open Space Contribution or the unspent or uncommitted part thereof to the original paying party together with interest from the date of original payment to the date of repayment at the rate of the higher of either 0% or one per cent (1%) below the Bank of England base rate for the time being in force.

**SCHEDULE 2
COVENANTS WITH THE COUNTY COUNCIL**

1. Primary Education Contribution & Secondary Education Contribution

1.1 The Owners shall pay both the Primary Education Contribution and the Secondary Education Contribution to the County Council in accordance with the following:

- (a) 50% of the Primary Education Contribution and 50% of the Secondary Education Contribution prior to Occupation of the 5th (fifth) Dwelling forming part of the Development; and
- (b) The remaining 50% of the Primary Education Contribution and the remaining 50% of the Secondary Education Contribution prior to Occupation of the 25th (twenty fifth) Dwelling forming part of the Development, OR within 2 (two) years of payment of the first instalment of the Primary Education Contribution and Secondary Education Contribution as per sub-paragraph 1.1(a) hereof, whichever is the earlier

together with any additional sum calculated in accordance with Clauses ¹¹~~12~~ and ¹²~~13~~ hereof. 

1.2 Not more than 4 (four) of the Dwellings forming part of the Development may be Occupied until 50% of both the Primary Education Contribution and the Secondary Education Contribution has been paid to the County Council and no more than 24 (twenty four) of the Dwellings forming part of the Development may be Occupied until all of the Primary Education Contribution and all of the Secondary Education Contribution has been paid to the County Council.

1.3 If either the Primary Education Contribution or the Secondary Education Contribution or any part thereof has not been spent or committed to be spent by the County Council within 10 (ten) years of completion of the Development, the County Council shall repay the Primary Education Contribution or Secondary Education Contribution (as relevant) or the unspent or uncommitted part thereof to the original paying party together with interest from the date of original payment to the County Council to the date of repayment at the rate of the higher of either 0% or one per cent (1%) below the Bank of England base rate for the time being in force.

SCHEDULE 3
Draft Nomination Agreement

NOMINATION AGREEMENT IN RESPECT OF LAND AT PANKHURST CLOSE TRADING ESTATE, EXMOUTH, DEVON, EX8 2RN

THIS NOMINATION AGREEMENT is made the day of 2016

BETWEEN:

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

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

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

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| "Affordable Housing Units" | means the 13 units which are subject to the Transfer to the Registered Provider dated [XX XX 2016] and which shall be made available as Affordable Housing (as defined in the Section 106 Agreement) and which shall comprise Affordable Rented Dwellings and Affordable Shared Ownership Dwellings as defined and delivered pursuant to the Section 106 Agreement and Affordable Housing Unit shall be construed accordingly; |
| "Common Housing Register" | means in the case of Affordable Rented Dwellings the register or list of applicants maintained by Devon Home Choice and in the case of Affordable Shared Ownership Dwellings the register or list of applicants maintained by the Regional HomeBuy Agent; |
| "Designated Person" | means a person who is in Housing Need within the District and who is registered on the Common Housing Register |
| "District" | means the administrative area of EDDC |
| "EDDC" | means East Devon District Council |
| "Eligible Person" | means a person who is a Designated Person who has a Local Connection |
| "Expert" | means an expert independent arbitrator to be appointed in accordance with clause 10.1 of |

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| | this Agreement; |
| "First Occupation" | means first Occupation (as defined in the Section 106 Agreement); |
| "Housing Need" | where a household is currently occupying accommodation that is sub standard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the open market |
| "Local Connection" | <p>means a connection to the Parish of Exmouth demonstrated by one or more of the following in the following priority order;</p> <ul style="list-style-type: none"> (1) being permanently resident therein for a continuous period of at least three (3) years out of the five (5) years immediately prior to being offered the Affordable Housing Unit; or (2) being formerly permanently resident therein for a continuous period of five (5) years; or (3) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) therein for a continuous period of at least twelve (12) months immediately prior to being offered the Affordable Housing Unit; or (4) 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 (5) years immediately prior to being offered the Affordable Housing Unit and where there is independent evidence that the family member is in need of support or can give support <p>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</p> |

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| | can be found from the Neighbouring Parishes then the process shall be repeated considering persons from the District of East Devon |
| "Neighbouring Parishes" | means the parishes of Lympstone, East Budleigh and Budleigh Salterton |
| "Nomination Period" | means the period of eighty (80) years from the date of this Agreement; |
| "Nomination Right" | means the right referred to in the Section 106 Agreement and conferred in clause 5 of this Nomination Agreement for EDDC to: (a) nominate Eligible Persons to occupy the Affordable Housing Units during the Nomination Period; or (b) allow a Registered Provider to allocate Eligible Persons to occupy the Affordable Housing Units in accordance with Devon Home Choice or Regional Homebuy Agent during the Nomination Period; |
| "Parties" | means [insert RP name] and EDDC and "Party" shall be construed accordingly; |
| "Section 106 Agreement" | means the Agreement dated [insert date] and entered into pursuant to Section 106 Town and Country Planning Act 1990 between (1) East Devon District Council (2) Pankhurst Fish Limited (3) Exe River Ventures LLP (4) Devon County Council and which makes provision for affordable housing on land at Pankhurst Close Trading Estate, Exmouth, Devon, EX8 2RN; |

- 1.2 Words denoting the singular only shall include the plural and vice versa
- 1.3 Words denoting one gender shall include all genders and words denoting persons shall include firms and corporations and vice versa
- 1.4 References to any statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as from time to time amended extended re-enacted or consolidated; and
 - (b) all statutory instruments or orders made pursuant to it.
- 1.5 References to any party in this Agreement shall include that party's successors in title and assigns
- 1.6 References to a body exercising statutory powers and/or functions in this Agreement shall unless otherwise specified include any successor in function

- 1.7 Every covenant in this Agreement not to do a particular thing shall be deemed to include (a covenant not to cause authorise or permit that thing to be done by another person
- 1.8 Where there is conflict between any of the provisions of this Nomination Agreement and the provisions of the Section 106 Agreement the provisions of the Section 106 Agreement shall be taken to prevail for all purposes.
- 1.9 Nothing in this Nomination Agreement shall be taken to override the Devon Home Choice or Homebuy Scheme and if any conflict arises between this Nomination Agreement and the Devon Home Choice or Homebuy Scheme then the Devon Home Choice or Homebuy Scheme shall prevail
- 1.10 The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement

2 NOTICES

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

3 PROVISION OF AFFORDABLE HOUSING

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

4 NOMINATION RIGHTS

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

5 NOMINATION PROCEDURE

Notice of availability

- 5.1 Where an Affordable Dwelling is available for First Occupation the Registered

Provider shall provide notice in writing to EDDC no later than two weeks after the date on which the Affordable Dwelling becomes available for First Occupation that it is available.

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

Nomination of Eligible Persons

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

Offer of accommodation to Eligible Persons

- 5.5 The Registered Provider shall within ten working days of receipt of the names of the three Eligible Persons pursuant to clauses 5.3 or 5.4 above have the reasonable right of interview and (on reasonable grounds) rejection of any prospective Eligible Person so nominated by EDDC.
- 5.6 Where the Registered Provider:
- (a) does not reject all of the prospective Eligible Persons nominated by EDDC;
 - or
 - (b) where it does reject a Eligible Person and it is later determined that the rejection was unreasonable,
- it shall make an offer to purchase or offer to lease (as appropriate) to the highest priority Eligible Person
- 5.7 Where EDDC has nominated a Eligible Person(s) the Registered Provider shall as soon as practicable notify EDDC if:
- (a) the Registered Provider rejects any Eligible Person(s) nominated by EDDC;
 - or
 - (b) if any Eligible Person nominated in respect of a particular Affordable Housing Unit fails to accept or refuses an offer of a lease or an offer to purchase which is made by the Registered Provider.
- 5.8 Where the Registered Provider rejects a Eligible Person and provides notice to EDDC of that rejection in accordance with clause 5.7(a) above that notice shall include the Registered Provider's reasons for that rejection.
- 5.9 On receipt of a notice of rejection EDDC shall consider the reasons for rejection and if it determines that a rejection was not reasonable it shall set out its reasons for so doing in writing and immediately notify the Registered Provider of those reasons.
- 5.10 In the event of a dispute between the Registered Provider and EDDC relating to whether a rejection is reasonable or not the matter may be referred by either party for resolution under the terms of clause 10.

Further nominations

5.11 This clause applies where either:

(a) all Eligible Persons nominated to an Affordable Housing Unit by EDDC are rejected by the Registered Provider and such reasons are considered reasonable by EDDC;

or

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

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

5.13 Within ten working days of receipt of a notification received in accordance with clause 5.12 EDDC may nominate to the Registered Provider a further three prospective Eligible Persons in priority order for the purposes of occupying that Affordable Housing Unit. Clauses 5.5 to 5.10 shall apply in respect of those nominations as if they were made under clause 5.3 or 5.4.

Local Connections

5.14 If within four weeks of the expiration of a notice served upon EDDC pursuant to clause 5.1, 5.2 or 5.12 above EDDC have failed to nominate a Eligible Person the Registered Provider may let the Affordable Housing Unit free from the Nomination Rights to any Eligible Persons in accordance with Devon Home Choice without prejudice to the Nomination Rights which shall arise upon the expiry of that person's occupation of the Affordable Housing Unit.

Fit for occupation

5.15 Where the Registered Provider gives notice to EDDC under clauses 5.3, 5.4 or 5.12 the Registered Provider shall certify to EDDC that the Affordable Housing Unit to which the notice relates is fit for occupation.

6 VARIATION AND WAIVER

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

7 INFORMATION

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

7.2 EDDC may request such further information from the Registered Provider concerning the occupation of the Affordable Housing Unit as it may reasonably require and such

information shall be provided by the Registered Provider within twenty-eight days of receipt of a request.

8 ENFORCEABILITY OF COVENANTS

- 8.1 This Agreement is made pursuant to the Local Government (Miscellaneous Provisions) Act 1982 Section 33 and the Localism Act 2011 Section 1 and the covenants on the part of the Registered Provider shall be enforceable without any limit of time against any person deriving title from the Registered Provider in respect of its interest in the Affordable Housing Units and any person deriving title under it in respect of any lesser interest in the Affordable Housing Units as if that person had also been an original covenanting party in respect of the interest for the time being held by him provided always that the obligations contained or referred to in this Nomination Agreement shall not apply in so far as is provided for in the Section 106 Agreement.

9 COSTS

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

10 DISPUTES

- 10.1 In the event of a dispute or question arising between the Registered Provider and EDDC in relation to any of the provisions of this Agreement it is agreed that:

- (a) in the absence of agreement the dispute or question shall be referred to an Expert to be agreed by EDDC and the Registered Provider;
- (b) in the absence of agreement between the Registered Provider and EDDC the Expert shall be determined upon the application of either EDDC or the Registered Provider by the President of the Royal Institution of Chartered Surveyors;
- (c) any such reference is to be treated as a submission to arbitration within the means of the Arbitration Act 1996; and
- (d) in the event of a reference to arbitration arising out of the unreasonable withholding of any approval required or sought under this Agreement the timescale for carrying out any required steps under this Agreement may be extended either by written agreement between the parties to the procedure or failing such agreement in accordance with such extended timescale as the Expert may deem fit.

- 10.2 In the event of such election made in clause 10.1 then any resulting finding decision or determination of the Expert shall be binding on the Registered Provider and EDDC.

11 EXCLUSIONS

- 11.1 Nothing in this Agreement shall bind

- 11.1.2 a mortgagee in possession or chargee (or to a receiver appointed thereby) of an Affordable Housing Provider to whom the freehold or long leasehold of the Affordable Housing Dwellings has been transferred,
- 11.1.2 any sale to a tenant in exercising their right to acquire or purchase under a statutory power or to the successors in title to any such persons
- 11.1.3 In relation to any Shared Ownership Dwelling (as defined in the S106 Agreement) where the owner of the said unit has been granted a waiver to the requirements of the Designated Protected Area Order (SI 2009/2098) (or such other regulations restricting the ability to achieve 100% staircasing) the owner subsequently acquires

such percentage that will take their ownership to 100% of the said unit or to the successors in title to any such persons

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

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

.....
Authorised Signatory

EXECUTED as a DEED by)
affixing the common seal of)
)
)
in the presence of:)

Authorised Signatory

.....
Authorised Signatory / Secretary

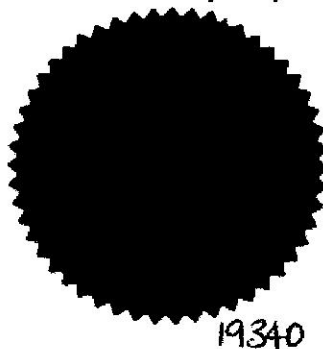
IN WITNESS whereof the parties have executed this document as a Deed the day and year first before written

EXECUTED AS A DEED
by affixing the Common Seal of
EAST DEVON DISTRICT COUNCIL

in the presence of :-

[Redacted Signature]

Authorised Signatory



EXECUTED AS A DEED by
PANKHURST FISH LIMITED

Acting by two directors or one director
and the secretary

[Redacted Signature]

Director

[Redacted Signature]

Director/secretary

Executed as a deed by EXE RIVER
VENTURES LLP acting by
JOHN C. VARLEY..... duly authorised by
YJSM DEVELOPMENTS LTD to sign on its behalf as
member of EXE RIVER VENTURES LLP, in
the presence of:

[Redacted Signature]

[Redacted Signature]

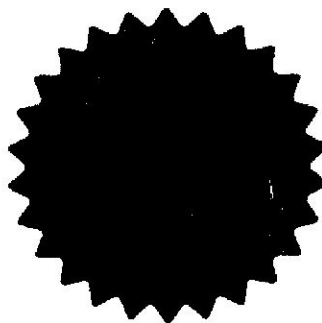
On behalf of Member

ANDREW R. DE GRUCHY

HARLEYARD, SOUTHWORTH, O.S.A.

ACCOUNTANT

EXECUTED AS A DEED
by affixing the Common Seal of
DEVON COUNTY COUNCIL
in the presence of :-



Authorised Signatory

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