

Dated 12th JUNE 2014

(1) BLUE CEDAR HOMES LIMITED
to
(2) EAST DEVON DISTRICT COUNCIL

UNILATERAL UNDERTAKING

Relating to Land at
Land north of Eastfield, West Hill, Devon EX11 1XN

EAST DEVON DISTRICT COUNCIL ECONOMY			
12 JUN 2014			
ACK	CIRC	SEEN	FILE

THIS UNILATERAL UNDERTAKING is made the 12th day of June two thousand and fourteen

GIVEN BY:

- (1) **BLUE CEDAR HOMES LIMITED** (Registered Company Number 6444180) whose registered office is at Eagle House, 1 Babbage Way, Exeter Science Park, Exeter Devon EX5 2FN ("the Owner")

TO:

- (2) **EAST DEVON DISTRICT COUNCIL** of Knowle, Sidmouth, Devon, EX10 8HL ("the Council")

WHEREAS :-

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated
- (B) The Owner is the owner of the Land registered at HM Land Registry under title number DN446983 and save as set out in the registers thereto free from any encumbrances
- (C) The Council is minded to grant the Permission subject to conditions and subject to the prior completion of this Undertaking together with other planning obligations
- (D) The Owner has entered into this Deed in order to secure the planning obligations contained herein

NOW THIS DEED WITNESSETH as follows:-

- 1 This Undertaking is a planning obligation for the purposes of Section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and any subsequent legislation) and all other enabling powers
- 2 In this Undertaking unless the context otherwise requires:-
- 2.1 "Act" means Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and any subsequent legislation)
- 2.2 "Application" means the application for the construction of up to 25 no. dwellings (circa 10 age restricted, 10 affordable and 5 open market), provision of access, open space and associated works received by the Council on 12 August 2013 and accorded reference number 13/1809/MOUT
- 2.3 "Age Restricted Dwellings" means those Dwellings identified as being age restricted dwellings in the reserved matters approvals granted pursuant to the Permission which Dwellings shall be disposed of subject to the restrictions set out in Clause 4.5 hereto (and the term "Age Restricted Dwelling" shall mean any one of them)
- 2.4 "Commencement of Development" means the carrying out on the Land of any material operation pursuant to the Permission (material operation having the meaning

ascribed to it under section 56(4) of the Act provided that the Development shall not be deemed to have commenced by the carrying out of any site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial or remediation work in respect of any contamination mines or mine workings or other adverse ground conditions, pegging out or marking out operations, construction of the site access, ecological translocation works, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, survey, sampling, inspections or archaeological works or work involving soil investigations or the erection of any boundary fences or hoardings as a preliminary to the commencement of the Development)

- 2.5 **"Development"** means the development of the Land pursuant to the Permission
- 2.6 **"Dwelling"** means each of the dwellings to be constructed on the Land pursuant to the Permission
- 2.7 **"Education Contribution"** means a financial contribution (where required) towards the cost to Devon County Council of providing and/or enhancing primary and secondary education facilities serving the Development necessary to mitigate the impact of the relevant Dwelling becoming unrestricted up to a maximum sum of £5,000 (five thousand pounds) per Dwelling having two or more bedrooms (Index Linked) such sum comprising a sum of up to £3,000 (three thousand pounds) towards primary education and a sum of up to £2,000 (two thousand pounds) towards secondary education as calculated by Devon County Council (acting reasonably) at the date of payment in accordance with the then current policy of Devon County Council PROVIDED THAT in the event that the primary and secondary schools within the catchment area of the development have sufficient spare capacity to accommodate the number of pupils likely to be generated by the relevant Dwelling the payment of the Education Contribution shall not be required or in the event that the primary and secondary schools within the catchment area of the Development have spare capacity which is not sufficient to accommodate the number of pupils likely to be generated by the relevant Dwelling the Education Contribution shall be reduced to take account of the spare capacity
- 2.8 **"Interest Rate"** means interest at 4% above base lending rate from time to time of the Bank of England or such other comparable rate of interest as the Council reasonably specifies calculated on a daily basis from the date payment is due to the date of payment
- 2.9 **"Land"** means land north of Eastfield, West Hill, Devon EX11 1XN shown for identification purposes edged red on the Plan
- 2.10 **"Occupation"** means residential occupation but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

- 2.11 **"Open Market Dwellings"** means those Dwellings which shall not be Age Restricted Dwellings and which are to be sold on the open market (and the term "Open Market Dwelling" shall mean any one of them)
- 2.12 **"Pebblebed Heaths Contribution"** means financial contribution in the sum of £78.73 (seventy eight pounds and seventy three pence) per Dwelling towards the cost to the Council of carrying out measures to mitigate the impact of residential development upon Pebblebed Heaths Special Area of Conservation (SAC) as set out in the document entitled "South East Devon European Site Mitigation Strategy" dated June 2013
- 2.13 **"Permission"** means the planning permission granted pursuant to the Application
- 2.14 **"Plan"** means the plan appended hereto
- 2.15 **"Qualifying Person"** includes people who fall within the following categories:
- 2.15.1 persons aged 55 years or over;
 - 2.15.2 the spouse or partner of 2.15.1 above;
 - 2.15.3 any licensee or invitee residing with any persons specified in 2.15.1 and 2.15.2 above;
 - 2.15.4 a person otherwise approved by the Council in writing such approval not to be unreasonably withheld or delayed in respect of a registered carer providing care to a person falling within 2.15.1 or 2.15.2 above
 - 2.15.5 the widow or widower of any such persons specified in 2.15.1 and 2.15.2 above
- 2.16 **"Solar Panel Contribution"** means a financial contribution towards the cost of installing solar panels on Westhill Village Hall in the sum of £2,500 (two thousand five hundred pounds)
- 2.17 **"Working Day"** means any Monday to Friday (other than Bank or public holidays)
- 2.18 the singular shall include the plural
- 2.19 the male gender shall include the female gender
- 2.20 references to any parties shall include the successors in title of that party
- 2.21 where a party includes more than one person any obligation of that party shall be joint and several
- 2.22 references to clauses and schedules are references to clauses and schedules in this Undertaking

3 Legal Basis

This Undertaking is entered into by the Owner pursuant to Section 106 of the Town and Country Planning Act 1990 and subject to the provisions of Section 106A and 106B of the Act the planning obligations herein contained are intended to run with the Land and to be binding on successive owners of the Land

4 Owner's Covenants

The Owner covenants with the Council as follows:

Contributions

4.1 In the event that Council notifies the Owner in writing any time after the date of this Deed that it accepts the conditions set out in clause 4.2 the Owner shall pay the Pebblebed Heaths Contribution to the Council prior to the Occupation of any Dwelling

4.2 The conditions referred to in clause 4.1 are that, if the Owner shall pay the Pebblebed Heaths Contribution to the Council, the Council agrees with the Owner that:

4.2.1 it shall apply the Pebblebed Heaths Contribution or any part thereof only towards measures to mitigate the impact of residential development upon Pebblebed Heaths Special Area of Conservation (SAC) as set out in the document entitled "South East Devon European Site Mitigation Strategy" dated June 2013

4.2.2 in the event that any part of the Pebblebed Heaths Contribution has not been expended or contractually committed within seven years of the date of its payment to the Council, the unexpended balance shall be repaid (together with accrued interest) to the Owner forthwith.

4.3 In the event that Council notifies the Owner in writing any time after the date of this Deed that:

4.3.1 it accepts the conditions set out in clause 4.4;

4.3.2 the Council (or any other person or body) has obtained all necessary consents for the installation of solar panels on the West Hill Village Hall and, a contractor has been appointed to install solar panels on West Hill Village Hall

the Owner shall pay the Solar Panel Contribution to the Council within 20 Working Days of the date of receipt of a valid notice from the Council requesting payment (such notice to include appropriate evidence to demonstrate that the requirements of clause 4.3.2 have been met) PROVIDED THAT this obligation shall cease to apply after the expiration of 6 months from the date of the Occupation of the first Open Market Dwelling

4.4 The conditions referred to in clause 4.3.1 are that, if the Owner shall pay the Solar Panel Contribution to the Council, the Council agrees with the Owner that:

- 4.4.1 it shall apply the Solar Panel Contribution or any part thereof only towards the cost of installing solar panels on the West Hill Village Hall
- 4.4.2 in the event that any part of the Solar Panel Contribution has not been expended within five years of the date of its payment to the Council, the unexpended balance shall be repaid (together with accrued interest) to the Owner forthwith.

Age Restricted Dwellings

- 4.5 Not to cause or permit the Occupation of any Age Restricted Dwelling by any person other than a Qualifying Person unless and until the Owner has given notice to the Council that it intends to allow Occupation of one or more Dwellings by any persons other than a Qualifying Person and until;
 - 4.5.1 the Owner has paid the Education Contribution to Devon County Council in respect of the relevant Age Restricted Dwelling(s) (unless the Council and/or Devon County Council advises the Owner in writing that no Education Contribution is payable)

PROVIDED THAT nothing contained herein shall prevent an Age Restricted Dwelling from being occupied by a person (and their spouse or partner if appropriate) other than a Qualifying Person who by reason of their personal circumstances is suited to the occupation of an Age Restricted Dwelling and who has first been notified in writing to the Council by the Owner together with the names and ages of all other intended occupants of the Age Restricted Dwelling provided that following the cessation of the occupation of the Age Restricted Dwelling by such person and/or their spouse or partner the relevant dwelling shall continue to be bound by the provisions of this clause.

- 4.6 In the event that an Age Restricted Dwelling is Occupied on a permanent basis by a household that includes a child or children of school age (or younger) whose education needs are to be met by Devon County Council the Education Contribution shall become payable to Devon County Council in respect of the relevant Age Restricted Dwelling(s) (unless the Council and/or Devon County Council advises the Owner in writing that no Education Contribution is payable) and shall be paid no later than 3 calendar months following Occupation of the Age Restricted Dwelling by such a household or (if appropriate) with 3 Working Days following the service of a written notice on the Owner and the Occupiers of the relevant Age Restricted Dwelling either by the Council or Devon County Council

5 Protection of certain owners

- 5.1 The residential occupier of a completed Dwelling (other than an Age Restricted Dwelling) or their mortgagee and/or chargees shall not be bound by the terms of this Undertaking once that completed Dwelling has been purchased from the Owner or its successors in title

- 5.2 The provisions of this Undertaking shall not be binding on any statutory undertakers in relation to any part or parts of the Land acquired by them for electricity substations gas governor stations or pumping stations or the provision of other infrastructure as may be required to fulfil their statutory functions

6 Interest

In the event of the Owner failing to settle any account or accounts that may be properly and duly rendered to the Owner within ten Working Days of receipt the sum due shall accrue interest at the Interest Rate

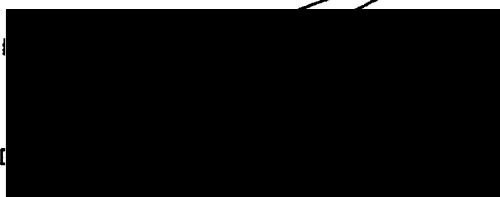
7 General Matters

- 7.1 This Undertaking is conditional upon:-
- 7.1.1 the grant of the Permission; and
 - 7.1.2 the Commencement of Development
- 7.2 This Undertaking shall cease to have effect if the Permission is quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Undertaking after it shall have parted with its entire interest in the Land or its interest in the part of the Land in relation to which the breach subsists but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.4 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Undertaking.
- 7.5 The validity construction and performance of this Deed shall be governed by English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising under this Deed.
- 7.6 A person who is not a party to this Undertaking shall have no rights under the Contract (Rights to Third Parties) Act 1999 (the Act) to enforce any of its terms but for the avoidance of doubt it is agreed that the exclusion of the application of the Act shall not prevent all or any future successors in title to any of the parties to this Undertaking from being able to benefit from or enforce any of the obligations of this Undertaking

IN WITNESS whereof the Owner has executed this Undertaking as a Deed the day and year first before written

EXECUTED as a DEED by
BLUE CEDAR HOMES LIMITED
acting by two Directors

)
)
)



Dated 12th JUNE 2014

(1) EAST DEVON DISTRICT COUNCIL
(2) BLUE CEDAR HOMES LIMITED

PLANNING OBLIGATION BY AGREEMENT

Relating to Land at

Land north of Eastfield, West Hill, Devon EX11 1XN

EAST DEVON DISTRICT COUNCIL ECONOMY			
12 JUN 2014			
ACK	CIRC	SEEN	FILE

THIS AGREEMENT is made the 12th day of JUNE two thousand and fourteen

BETWEEN:

- (1) **EAST DEVON DISTRICT COUNCIL** of Knowle, Sidmouth, Devon, EX10 8HL ("the Council")
- (2) **BLUE CEDAR HOMES LIMITED** (Registered Company Number 6444180) whose registered office is at Eagle House, 1 Babbage Way, Exeter Science Park, Exeter Devon EX5 2FN ("the Owner")

WHEREAS:-

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated
- (B) The Owner is the owner of the Land registered at HM Land Registry under title number DN446983 and save as set out in the registers thereto free from any encumbrances
- (C) The Council is minded to grant the Permission subject to conditions and subject to the prior completion of this Agreement together with other planning obligations
- (D) The parties hereto have agreed to enter into this Deed in order to secure the planning obligations contained herein

NOW THIS DEED WITNESSETH as follows:-

- 1 This Agreement is a planning obligation for the purposes of Section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and any subsequent legislation) and all other enabling powers
- 2 In this Agreement unless the context otherwise requires:-
 - 2.1 "Act" means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and any subsequent legislation)
 - 2.2 "Affordable Dwellings" means 40% of the Dwellings which shall be used for the purpose of providing accommodation to people whose income does not allow them to rent or to buy at normal market prices within the administrative area of the Council such housing to be occupied by households in Housing Need in accordance with this Agreement and "Affordable Dwelling" shall mean any one of them
 - 2.3 "Affordable Rent" means the rent payable for rented housing let by registered providers of social housing to households who are eligible for social rented housing such rent is to be subject to the affordable rent regime defined in the Homes and Communities Agency's Affordable Homes Programme - Framework document published in February 2011 (or any successor document) that requires a rent of no more than 80% of the gross local market rent, including service charges
 - 2.4 "Affordable Rented Dwellings" means 70% of the Affordable Dwellings which shall be let at an Affordable Rent and "Affordable Rented Dwelling" shall mean any one of them

- 2.5 **"Age Restricted Dwellings"** means those Dwellings identified as being age restricted dwellings in the reserved matters approvals granted pursuant to the Permission and which are subject to a separate planning obligation of even date controlling occupation (and the term "Age Restricted Dwelling" shall mean any one of them)
- 2.6 **"Application"** means the application for the construction of up to 25 no. dwellings (circa 10 age restricted, 10 affordable and 5 open market), provision of access, open space and associated works received by the Council on 12 August 2013 and accorded reference number 13/1809/MOUT
- 2.7 **"BCIS Index"** means the BCIS General Building Cost Index of the Royal Institution of Chartered Surveyors (or in the event of the said Index being discontinued the nearest equivalent index)
- 2.8 **"Chargee"** means :
- 2.8.1 any mortgagee or chargee of the Registered Provider to whom the Affordable Dwellings are transferred or the successors in title to any such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925; and/or
- 2.8.2 any mortgagee or chargee of an owner (being the freeholder or leaseholder) for the time being of an Affordable Dwelling or to any successor in title to such mortgagee or chargee or receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
- 2.9 **"Chargee's Duty"** means the obligations set out at clause 10
- 2.10 **"Commencement of Development"** means the carrying out on the Land of any material operation pursuant to the Permission (material operation having the meaning ascribed to it under section 56(4) of the Act provided that the Development shall not be deemed to have commenced by the carrying out of any site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial or remediation work in respect of any contamination mines or mine workings or other adverse ground conditions, pegging out or marking out operations, construction of the site access, ecological translocation works, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, survey, sampling, inspections or archaeological works or work involving soil investigations or the erection of any boundary fences or hoardings as a preliminary to the commencement of the Development)
- 2.11 **"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 Shared Ownership Dwellings the regional HomeBuy agent
- 2.12 **"Development"** means the development of the Land pursuant to the Permission

- 2.13 **"Design and Quality Standards"** means that the Affordable Dwellings shall be constructed:
- (i) strictly in accordance with the plans and elevations deposited and as approved by the Council as part of the Permission
 - (ii) 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 Commencement of Development
 - (iii) a minimum of Code for Sustainable Homes Level 3
 - (iv) tenure blind so that in terms of their external appearance they will be materially indistinguishable from Open Market Dwellings
- 2.14 **"Designated Person"** Means a person or family who is registered on the Common Housing Register or Registered Provider's waiting lists and is in Housing Need
- 2.15 **"Dispose Of"** means a disposal by way of any transfer of a freehold interest or registrable leasehold interest in a Dwelling
- 2.16 **"District"** means the administrative area of the Council
- 2.17 **"Dwelling"** means each of the dwellings to be constructed on the Land pursuant to the Permission
- 2.18 **"Final Certificate"** means the certificate issued by the Head of Service following the Final Maintenance Inspection of the Public Open Space confirming that the Public Open Space has been maintained in accordance with the Public Open Space Specification and that the plants and trees are in good health
- 2.19 **"Final Maintenance Inspection"** means the inspection or inspections of the Public Open Space conducted by the Head of Service to ensure that the Public Open Space has been maintained in accordance with the Public Open Space Specification and that the plants and trees are in good health and to determine whether it is appropriate to issue either a Remedial Notice or the Final Certificate in the Head of Services' discretion acting reasonably
- 2.20 **"Head of Service"** means the Head of Service for Environment or such person in whom the Head of Service for Environment's functions are from time to time vested
- 2.21 **"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
- 2.22 **"Index Linked"** means index linked as calculated in accordance with the indexation formula set out in Schedule 4
- 2.23 **"Interest Rate"** means interest at 4% per annum above the base lending rate from time to time of the Bank of England or such other comparable rate of interest as the

Council reasonably specifies calculated on a daily basis from the date payment is due to the date of payment

2.24 **"Land"** means land north of Eastfield, West Hill, Devon EX11 1XN shown for identification purposes edged red on Plan 1

2.25 **"Local Connection"** means a connection to the Village of West Hill demonstrated by one or more of the following in priority order:

(1) being permanently resident therein for a continuous period of at least 3 years out of the 5 years immediately prior to being offered the Affordable Dwelling; or

(2) being formerly permanently resident therein for a continuous period of 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 12 months immediately prior to being offered the Affordable Dwelling; 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 5 years immediately prior to being offered the Affordable 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 Village of West Hill then the process shall be repeated considering persons from the following areas in the following priority order:

(i) The Parish of Ottery St Mary

(ii) the Neighbouring Parishes

(iii) persons from the District

2.26 **"Maintenance Period"** means the period between the issue of the Practical Completion Certificate and the date the Public Open Space is transferred to the Management Company such period being not less than twelve (12) months (or an alternative time period at the Head of Services' discretion acting reasonably)

2.27 **"Management Company"** means an existing management company to be employed by the Owner or a management company set up by the Owner to manage and maintain the Public Open Space

- 2.28 **"Management Scheme"** means the scheme or schemes to be submitted by the Owners to the Council for the Council's approval as the mechanism for securing the in perpetuity maintenance of the Public Open Space in accordance with the Public Open Space Specification which may include at the Owners' own expense creation or employment of the Management Company
- 2.29 **"Monitoring Costs"** means the sum of £1,633.50 (one thousand six hundred and thirty three pounds and fifty pence) as a contribution towards the Councils costs of monitoring and administering this Deed
- 2.30 **"Neighbouring Parishes"** means the parishes of Sidmouth, Gittisham, Feniton, Talaton, Whimble, Rockbeare, Aylesbeare, and Newton Poppleford & Harpford
- 2.31 **"Nomination Agreement"** means the agreement or an agreement substantially in the form of the one appended to this Agreement in the Fifth Schedule and which governs the ability of the Council to nominate occupiers for the Affordable Dwellings
- 2.32 **"Offsite Leisure Contribution"** means a financial contribution towards the cost to the Council of providing and/or enhancing publicly accessible leisure facilities within a 2km radius of the Land in the sum of £12,739 (twelve thousand seven hundred and thirty nine pounds) (Index Linked)
- 2.33 **"Occupation"** means residential occupation but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be construed accordingly
- 2.34 **"Open Market Dwellings"** means those Dwellings which shall not be Age Restricted Dwellings or Affordable Dwellings and which are to be sold on the open market (and the term "Open Market Dwelling" shall mean any one of them)
- 2.35 **"Permission"** means the planning permission granted pursuant to the Application and includes any planning permission granted pursuant to section 73 of the Act to vary a condition imposed on the Permission
- 2.36 **"Plan 1"** means the plan appended hereto marked Plan 1
- 2.37 **"Practical Completion Certificate"** means the certificate or certificates issued by the Head of Service Services once he is satisfied that the Public Open Space has been completed
- 2.38 **"Public Open Space"** means an area of publicly accessible open space of no less than 450m² to be laid out as a community orchard in accordance with the Public Open Space Specification in the broad location shown hatched red on Plan 1
- 2.39 **"Public Open Space Specification"** means a specification for the provision and maintenance of the Public Open Space including appropriate provision and maintenance of dog bins together with details of the exact location phasing and timing

of delivery of the Public Open Space to be submitted to and approved in writing by the Council

- 2.40 **"Remedial Notice"** means the notice or notices issued by Head of Service either prior to or during the Maintenance Period (if appropriate) requiring the Owner to carry out any works that he considers (at his absolute discretion) to be necessary for the Public Open Space to be provided in accordance with the approved details including (without limitation) re-planting of unhealthy dead diseased or dying plants and trees and a timescale within which those works are to be completed
- 2.41 **"Registered Provider"** means a registered provider being a social housing provider registered under the Housing and Regeneration Act 2008 with the HCA (or any successors in function) which shall include any organisation accredited by the HCA for the purposes of managing Affordable Housing in accordance with the standards of the HCA
- 2.42 **"Shared Ownership Dwellings"** means 30% of the Affordable Dwellings which are to be let under a long leasehold on shared ownership terms and which are to be the equivalent of the Government's Standard New Build HomeBuy Product or any similar or successor product as approved by the HCA where the purchaser purchases an initial share of the equity between 25 – 80% and pays rent on the remaining unsold equity and where additional shares of the equity can be purchased provided that no more than 80% of the equity can be purchased unless and until 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) has been obtained or unless otherwise agreed in writing with the Council and "Shared Ownership Dwelling" shall mean any one of them
- 2.43 **"Staircasing Receipt"** means any monies received by the approved Housing Provider of a 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)
- 2.44 **"Working Day"** means any Monday to Friday (other than Bank or public holidays)
- 2.45 the singular shall include the plural
- 2.46 the male gender shall include the female gender
- 2.47 references to any parties shall include the successors in title of that party
- 2.48 where a party includes more than one person any obligation of that party shall be joint and several
- 2.49 references to clauses and schedules are references to clauses and schedules in this Agreement

3 Legal Basis

This Agreement is entered into by the Owner and the Council pursuant to Section 106 of the Town and Country Planning Act 1990 and subject to the provisions of Section 106A and 106B

Plan 1

KEY

1-10 : AGE RESTRICTED RETIREMENT HOUSING

12-19, 24, 25 : SHARED EQUITY + RENTED AFFORDABLE HOUSING

11, 20 - 23 : OPEN MARKET HOUSING FOR SALE

 BUNGALOW

1.5 STOREY

2 STOREY

Total 25 Units


POSSIBLE SCHOOL EXPANSION LAND

PERRYS
GARDENS

Hydro



PUBLIC OPEN SPACE
(COMMUNITY ORCHARD)
+50 sq m (14' x 14')



Silverdown House
3 Silverdown Park
Fair Oak Close
Clyst Honiton
Exeter EX5 2UX
T: +44(0)1392 363814
F: +44(0)1392 363804

LAND OFF EASTFIELD . WEST HILL
SKETCH ILLUSTRATIVE LAYOUT
FOR USE WITH OUTLINE PLAYING APPLICATION

Scale 1=1000 at A3 June 2013

June 2013

DRAWING No. 427-001

of the Act the planning obligations herein contained are intended to run with the Land and to be binding on successive owners of the Land

4 Owner's Covenants

The Owner covenants with the Council to perform and observe the covenants set out in Schedules 1 and 2 and 6

5 Protection Of Registered Providers Mortgagees And Certain Purchasers

- 5.1 Notwithstanding any other provision of this Agreement the covenants and obligations on the part of the Owner contained in this Agreement shall not be binding upon any mortgagee or chargee in possession of any Affordable Dwelling or any receiver appointed by any such mortgagee to the intent that any such mortgagee or chargee or receiver may deal with or dispose of the Affordable Dwelling(s) free from the covenants and obligations set out in this Agreement and that any successors in title shall not be bound by it PROVIDED ALWAYS that the said mortgagee chargee or receiver of any mortgagee shall have first complied with the Chargee's Duty
- 5.2 The residential occupier of a completed Open Market Dwelling or as appropriate landlord and/or end user/operator shall not be bound by the terms of this Agreement once that completed Dwelling has been purchased from the Owner or its successors in title
- 5.3 The residential occupier of a completed Age Restricted Dwelling or as appropriate landlord and/or end user/operator shall not be bound by the terms of this Agreement once that completed Dwelling has been purchased from the Owner or its successors in title
- 5.4 The residential occupier of a completed Affordable Dwelling or their mortgagee and/or chargees shall not be bound by the terms of this Agreement (save for the obligations contained in Schedule 1 which shall continue to apply in respect of the Affordable Dwellings or any of them save as provided for therein) once that completed Dwelling has been purchased from the Owner or its successors in title save that such residential occupier shall supply such details to the Council of the Occupation of the Affordable Dwelling as the Council shall request in writing from time to time
- 5.5 The provisions of this Agreement shall not be binding on any statutory undertakers in relation to any part or parts of the Land acquired by them for electricity substations gas governor stations or pumping stations or the provision of other infrastructure as may be required to fulfil their statutory functions

6 Council's Covenants

The Council hereby covenants with the Owner to observe and comply with the covenants contained in Schedule 3

7 Interest

In the event of the Owner failing to settle any account or accounts that may be properly and duly rendered to the Owner within ten Working Days of receipt the sum due shall accrue interest at the Interest Rate

8 General Matters

8.1 This Agreement is conditional upon:-

8.1.1 the grant of the Permission; and

8.1.2 the Commencement of Development

8.2 This Agreement shall cease to have effect if the Permission is quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

8.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Land or its interest in the part of the Land in relation to which the breach subsists but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

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

8.5 The validity construction and performance of this Deed shall be governed by English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising under this Deed.

8.6 A person who is not a party to this Agreement shall have no rights under the Contract (Rights to Third Parties) Act 1999 to enforce any of its terms but for the avoidance of doubt it is agreed that the exclusion of the application of the said Act shall not prevent all or any future successors in title to any of the parties to this Agreement from being able to benefit from or enforce any of the obligations of this Agreement

9 Council's legal costs and Monitoring Costs

9.1 The Owner hereby agrees to pay the Council's reasonable legal costs incurred in connection with the preparation of this Deed and other deeds on the date hereof together with the Monitoring Costs

10 Chargee's Duty

10.1 The Chargee prior to seeking to dispose of any Affordable Dwelling pursuant to any default under the terms of its mortgage or charge shall give prior notice to the Council of its intentions to dispose and:

- 10.1.1 In the event that the Council responds within 4 weeks from receipt of the notice indicating that arrangements for the transfer of the Affordable Dwellings can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements so far as is reasonable and shall use reasonable endeavours to secure such transfer PROVIDED THAT the Chargee shall not be obliged to transfer the Affordable Dwellings for a consideration which is less than a consideration which disregards the restrictions and obligations in this Schedule and, for the avoidance of doubt, the mortgagee, Chargee or other lender shall be repaid the full amount secured on the relevant Affordable Dwelling(s) including all accrued principal monies, interest and reasonable and proper costs and expenses in connection with the charge or mortgage
- 10.1.2 If the Council does not serve its response to the notice served under clause 10.1.1 within 4 weeks then the Chargee shall be entitled to dispose free of the restrictions set out in this Agreement relating to Affordable Housing and such restrictions shall at all times cease to apply to the Affordable Dwellings which are subject to the Chargee's charge
- 10.1.3 If the Council or any other person cannot within 4 weeks of the date of service of its response under clause 10.1.2 secure such transfer then provided that the Chargee shall have complied with the Chargee's Duty the Chargee shall be entitled to dispose free of the restrictions set out in this Agreement relating to Affordable Housing and such restrictions shall at all times cease to apply to the Affordable Dwellings which are subject to the Chargee's charge

PROVIDED THAT at all times the rights and obligations in this Clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage and FURTHER PROVIDED THAT the Chargee shall not be compelled to dispose of the Affordable Dwellings for less than the amount required to redeem the outstanding borrowing secured upon the Affordable Dwelling(s) concerned including all accrued principal monies, interest and reasonable and proper costs and expenses in connection with the charge or mortgage

IN WITNESS whereof the Council and the Owner have set their hands the day and year first before written

Schedule 1

Affordable Housing

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

Provision of the Affordable Housing

- 1 To construct and complete 40% of the Dwellings as Affordable Dwellings of which:
 - 1.1 70% shall be provided as Affordable Rented Dwellings; and
 - 1.2 30% shall be Shared Ownership Dwellings.
- 2 To provide for approval by the Council as part of the reserved matters application (or reserved matters applications as the case may be) submitted pursuant to the Permission details of the location, tenure, property types and mix of the Affordable Dwellings and to thereafter deliver the Affordable Dwellings in accordance with the approved details

Restriction on Occupation of Open Market Dwellings

- 3 The Owner shall not cause or permit the Occupation of:
 - 3.1 more than 50% of the Open Market Dwellings until the Owners have transferred 50% of the Affordable Dwellings to a Registered Provider;
 - 3.2 no more than 75% of the Open Market Dwellings until the Owners have transferred all of the Affordable Dwellings to a Registered Provider

Provision of the Affordable Dwellings

- 4 The Affordable Dwellings shall be constructed in accordance with the Design and Quality Standards
- 5 Subject to clause 5 the Affordable Dwellings shall be maintained as Affordable Dwellings in perpetuity and shall not be used other than for the provision of Affordable Dwellings and in particular:
 - 5.1 The Affordable Rented Dwellings shall not be let at a rent in excess of Affordable Rent
 - 5.2 The rental element of the Shared Ownership Dwellings shall not be let at a rent in excess of two point seven five per cent (2.75%) of the Open Market Value of the retained equity, which rent may be increased no more than annually and by not more than the corresponding increase in the Retail Price Index plus 0.5% or at such other rent as may be set out in subsequent guidance issued by the HCA

Occupation of Affordable Dwellings

- 6 Not to permit Occupation of any Affordable Dwelling unless and until the Owners and/or the Registered Provider (as appropriate) has entered into the Nomination Agreement with the Council.

- 7 The Owners and/or Registered Provider (as appropriate) shall not at any time permit the Affordable Dwellings to be occupied other than as Affordable Dwellings by a Designated Person (and their dependents) who has a Local Connection PROVIDED THAT in the event of having initially applied the Local Connection without being able to let an Affordable Dwelling the same process is repeated without being able to let an Affordable Dwelling to a Designated Person (and their dependents) who has a Local Connection then the Owners and/or Registered Provider (as appropriate) shall work with the Council to find a suitable occupier being someone who is a Designated Person (and their dependants) FURTHER PROVIDED ALWAYS that upon any subsequent re-let the occupier of any Affordable Dwelling shall be a Designated Person (and their dependents) who has a Local Connection.

Release

- 8 In relation to any Affordable Dwellings the affordable housing obligations in this Deed shall not apply to;
- 8.1 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
- 8.2 in relation to any Shared Ownership Dwelling 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
- 9 In the event of any Shared Ownership Dwelling being released from the affordable housing restrictions herein contained by virtue of the operation of paragraph 8.2 above the Owner shall provide the Council with details of Staircasing Receipts from the Shared Ownership Dwellings and in co-operation with the Council use reasonable endeavours to invest 100% of the Staircasing Receipts, if any, arising from the 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 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

Schedule 2

Public Open Space

Off Site Leisure Contribution

- 1 The Owner covenants with the Council not to cause or permit the Occupation of any Open Market Dwelling unless and until the Offsite Leisure Contribution has been paid to the Council in full

On Site Public Open Space

- 2 Prior to the construction of any Dwelling the Owner shall submit the Public Open Space Specification to the Council
- 3 The Owner shall lay out and equip the Public Open Space in accordance with the approved Public Open Space Specification and in any event prior to the Occupation of more than 70% of the Dwellings
- 4 Within 7 days of completion of the Public Open Space pursuant to paragraph 3 above the Owner shall notify the Head of Service in writing of details of their designated contact for queries regarding the Public Open Space and requesting an inspection following which the Head of Service shall issue either the Practical Completion Certificate or a Remedial Notice which shall be complied with within 28 days (or such other timescale as may be agreed with both parties acting reasonably) following which the Owner shall request a further inspection by the Head of Service (to which the Head of Service must respond within 14 days) following which the Head of Service shall issue a Practical Completion Certificate or a Remedial Notice and such process is to be repeated until the Practical Completion Certificate is issued.
- 5 Following the issue of the Practical Completion Certificate the Owner shall maintain the Public Open Space in accordance with the Public Open Space Specification to the satisfaction of the Council for the Maintenance Period (or such shorter period as may be agreed to by the Head of Service) and during that time shall comply with any Remedial Notice reasonably served by the Council provided that for the avoidance of doubt in the event that the Public Open Space is transferred to a Management Company before the expiry of the Maintenance Period, the Management Company will be responsible for the unexpired remainder of the Maintenance Period.
- 6 If the Owner or the Management Company (as appropriate) does not comply with the requirements of any Remedial Notice to the Council's satisfaction as required by this paragraphs 4 or 5 of this Schedule the Council may after giving the Owner 14 days' written notice of the works it intends to carry out and the Owner failing to carry out the works within that period enter upon the Site and themselves carry out those works and the cost of these works shall be paid by the Owner or the Management Company (as appropriate) to the Council.
- 7 One month prior to the expiry of the Maintenance Period (or such shorter period as agreed to pursuant to paragraph 5 above) the Head of Service will carry out the Final Maintenance Inspection following which the Head of Service shall either issue the Final Certificate for the

Open Space or a Remedial Notice which shall be complied with within 28 days (or such other timescale as may be agreed with both parties acting reasonably) following which the Owner shall request a further inspection by the Head of Service (to which the Head of Service must respond within 14 days) following which the Head of Service shall issue the Final Certificate or a Remedial Notice and such process is to be repeated until the Final Certificate is issued.

- 8 Prior to Occupation of the last Dwelling to transfer the Public Open Space to the Management Company (if this has not already taken place) and thereafter the Public Open Space shall be maintained in perpetuity in accordance with the maintenance regime set out in the Public Open Space Specification.
- 9 Not to permit Occupation of the last Dwelling unless and until the Public Open Space has been transferred to the Management Company in accordance with paragraph 8 above.
- 10 Following completion of the works referred to in paragraph 3 above to allow members of the public unfettered access to the Public Open Space at all times (or in accordance with the Public Open Space Specification if limited access to the Public Open Space is otherwise specified) PROVIDED THAT the Owner shall be entitled to restrict access to the Public Open Space or to part or parts thereof from time to time in so far as is reasonably necessary for the following purposes:
 - 10.1 maintenance or repair of any part of the Public Open Space or equipment installed thereon
 - 10.2 maintenance or repair of any part of the Land or any building constructed thereon
 - 10.3 the development or redevelopment of any part of the Land or adjoining in accordance with a planning permission
 - 10.4 for the purpose of laying service installations or to maintain repair renew replace inspect and cleanse the same.
 - 10.5 for one day a year to prevent the accrual of third party rights
 - 10.6 any other purpose which is first approved by the Council in writing

Schedule 3

Council's Covenants

- 1** **The Council hereby covenants with the Owner as follows:**
 - 1.1** it shall apply the Offsite Leisure Contribution or any part thereof only towards the cost of increasing or improving publicly accessible leisure facilities within a 2km radius of the Land;
 - 1.2** Upon receipt of the Offsite Leisure Contribution the Council shall hold the contributions in a separately identifiable account within the Council's financial accounting system to which interest will be applied
 - 1.3** in the event that any part of the Offsite Leisure Contribution has not been expended or contractually committed within five years of the date of its payment to the Council, the unexpended balance shall be repaid (together with any accrued interest) to the person who made the payment together with any interest that has accrued forthwith.
 - 1.4** Following the fifth anniversary of the payment of the Offsite Leisure Contribution, the Council shall at the Owner's request provide a certificate showing all payments made during the previous five (5) years and the purposes to which they have been applied
 - 1.5** Having regard to the covenants on the part of the Owner herein contained to grant the Permission substantially in the form and format annexed hereto at Appendix 1 as soon as is reasonably practicable after this Agreement is completed

Schedule 4

The Indexation Formula

- 1 The financial contributions payable under this Agreement shall be indexed linked in accordance with the following formula:-

$$C = \text{£Y} \times \frac{B}{A}$$

where:

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

B is the value of the BCIS 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 as stated herein

SCHEDULE 5
Draft Nomination Agreement

**NOMINATION AGREEMENT IN RESPECT OF LAND NORTH OF EASTFIELD, WEST HILL,
DEVON EX11 1XN**

THIS NOMINATION AGREEMENT is made the day of 2014

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:

"Affordable Dwellings"	means the 10 units which are subject to the Transfer to the Registered Provider dated [XX XX 2014] and which shall be made available as Affordable Housing (as defined in the Section 106 Agreement) and which shall comprise Affordable Rented Dwellings and Shared Ownership Dwellings as defined and delivered pursuant to the Section 106 Agreement and Affordable Dwelling 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 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 and who has a Local Connection
"Expert"	means an expert independent arbitrator to be appointed in accordance with clause 10.1 of this Agreement;

"First Occupation"	means first Occupation (as defined in the Section 106 Agreement);
"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 Village of West Hill demonstrated by one or more of the following in the following priority order;</p> <ol 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 Dwelling; 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 Dwelling; 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 Dwelling 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 from the Village of West Hill then the process shall be repeated considering persons from the Parish of Ottery St Mary and in the event that no-one satisfying the above requirements can be found from the Village of West Hill 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 of East Devon</p>

"Neighbouring Parishes"	means the parishes of Sidmouth, Gittisham, Feniton, Talaton, Whimple, Rockbeare, Aylesbeare, and Newton Poppleford & Harpford
"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 4 of this Nomination Agreement for EDDC to: (a) nominate Eligible Persons to occupy the Affordable Dwellings during the Nomination Period; or (b) allow a Registered Provider to allocate Eligible Persons to occupy the Affordable Dwellings 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 and (2) Blue Cedar Homes Limited which makes provision for affordable housing on land north of Eastfield, West Hill, Devon, EX11 1XN

- 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 email and must (unless the receipt of the initial email has been confirmed) 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 Dwellings 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 programme for the nomination of Eligible Persons to purchase or rent the Affordable Dwellings.

4 NOMINATION RIGHTS

- 4.1 The Registered Provider grants to EDDC the Nomination Rights in respect of the Affordable Dwellings throughout the Nomination Period and the Registered Provider covenants that it shall not allow the occupation of the Affordable Dwellings other than in accordance with this Agreement.
- 4.2 The Nomination Rights may be exercised by EDDC where an Affordable Dwelling becomes available for occupation by reason of availability for First Occupation or arising upon any subsequent resale, re-let or assignment after the expiry of the First Occupation or any subsequent occupation of that Affordable Dwelling.
- 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 Dwelling 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 Dwelling. Clauses 5.5 to 5.10 shall apply in respect of those nominations as if they were made under clause 5.3 or 5.4.

Local Connections

- 5.14 If within four weeks of the expiration of a notice served upon EDDC pursuant to clause 5.1, 5.2 or 5.12 above EDDC have failed to nominate a Eligible Person the Registered Provider may let the Affordable Dwelling 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 Dwelling.

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 Dwelling to which the notice relates is fit for occupation.

6 VARIATION AND WAIVER

- 6.1 The nomination procedure described in clause 5 above may be varied in respect of any single Affordable Dwelling provided always that such variation is agreed in writing by the Parties and that no such variation shall constitute a waiver of 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 Dwellings on each anniversary of the date of this Agreement throughout the Nomination Period such information to include evidence concerning voids, sales, re-sales, lets and re-lets.
- 7.2 EDDC may request such further information from the Registered Provider concerning the occupation of the Affordable Dwelling as it may reasonably require and such information shall be provided by the Registered Provider within twenty-eight days of receipt of a request.

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 Dwellings and any person deriving title under it in respect of any lesser interest in the Affordable Dwellings as if that person had also been an original covenanting party in respect of the interest for the time being held by him provided always that the obligations contained or referred to in this Nomination Agreement shall not apply in so far as is provided for in the Section 106 Agreement.

9 COSTS

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

10 DISPUTES

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

- (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

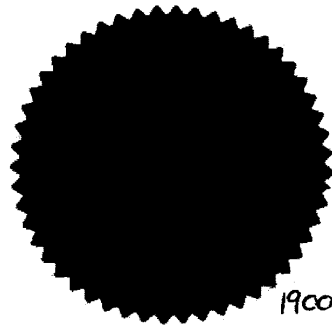
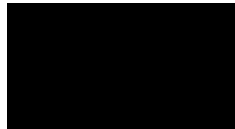
11.1 Nothing in this Agreement shall bind:

- 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

SCHEDULE 6
Management Company Provisions

1. Not to Dispose Of any Dwelling or Occupy or permit the Occupation of any of the Dwellings until such time as the Owner has obtained the Council's approval to the Management Scheme and following the Council's approval of the Management Scheme the approved Management Scheme shall be implemented in accordance with its terms and adhered to at all times unless otherwise agreed in writing with the Council.

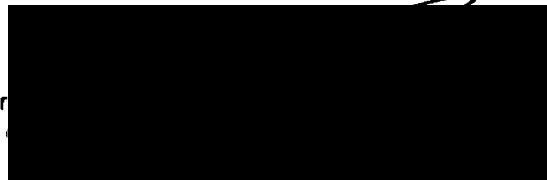
EXECUTED as a DEED by)
EAST DEVON DISTRICT COUNCIL)
In the presence of:)



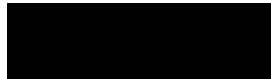
19001

EXECUTED as a DEED by)
BLUE CEDAR HOMES LIMITED)
acting by two Directors)

Director



Director



Appendix 1
Draft Planning Permission

DRAFT DECISION

EAST DEVON DISTRICT COUNCIL
Council Offices, Knowle
Sidmouth, Devon EX10 8HL



TOWN AND COUNTRY PLANNING ACT 1990

GRANT OF PLANNING PERMISSION

Applicant:	Blue Cedar Homes	Application No:	13/1809/MOUT
Address:	C/o Agent	Date of Registration:	12 August 2013
Agent:	PCL Planning	Date of Decision:	
Address:	(Mr Alex Graves) 1st Floor 3 Silverdown Office Park Fair Oak Close Clyst Honiton Exeter EX5 2UX		
Proposal:	Construction of up to 25no dwellings (circa 10 age restricted, 10 affordable and 5 open market), provision of access, open space and associated works (outline application with details of access only)		
Location:	Land North Of Eastfield West Hill		

The Council hereby grants permission to carry out the development described in the application and the plans attached thereto:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.
(Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. Approval of the details of the layout, scale and appearance of the buildings, and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.
(Reason - The application is in outline with one or more matters reserved.)
3. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
(Reason - For the avoidance of doubt.)
4. The proposed estate road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road

DRAFT DECISION

maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections indicating, as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

(Reason - To ensure that adequate information is available for the proper consideration of the detailed proposals in accordance with Policy TA7 (Adequacy of Road Network and Site Access) of the adopted East Devon Local Plan)

5. No part of the development hereby approved shall be commenced until:-

(a) The access road has been laid out, kerbed, drained and constructed up to base course level for the first 20 metres back from its junction with the public highway.

(b) The ironwork has been set to base course level and the visibility splays required by this permission laid out.

(c) A site compound and car park have been constructed to the written satisfaction of the Local Planning Authority.

(Reason - To ensure that adequate on site facilities are available for all traffic attracted to the site during the construction period, in the interest of the safety of all users of the adjoining public highway and to protect the amenities of the adjoining residents in accordance with Policies D1 (Design and Local Distinctiveness) and TA7 (Adequacy of Road Network and Site Access) of the adopted East Devon Local Plan).

6. The occupation of any dwelling in an agreed phase of the development shall not take place until the following works have been carried out to the written satisfaction of the Local Planning Authority.

(a) The spine road and cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed.

(b) The spine road and cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintainable at public expense have been constructed up to and including base course level.

(c) The cul-de-sac visibility splays have been laid out to their final level.

(d) The street lighting for the spine road and cul-de-sac and footpaths has been erected and is operational.

(e) The car parking and any other vehicular access facility required for the dwelling by this permission has/have been completed.

(f) The verge and service margin and vehicle crossing on the road frontage of the dwelling have been completed with the highway boundary properly defined.

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(Reason - To ensure that adequate access and associated facilities are available for the traffic attracted to the site in accordance with Policy TA7 (Adequacy of Road Network and Site Access) of the adopted East Devon Local Plan).

7. When once constructed and provided in accordance with condition 2 above, the carriageway, vehicle turning head, footways and footpaths shall be maintained free of obstruction to the free movement of vehicular traffic and pedestrians and the street lighting and nameplates maintained to the satisfaction of the Local Planning Authority (Reason: To ensure that these highway provisions remain available in accordance with Policy TA7 (Adequacy of Road Network and Site Access) of the adopted East Devon Local Plan).
8. The development hereby permitted shall be undertaken in accordance with the submitted Flood Risk Assessment Revision P02 dated 24 July 2013.
(Reason - To protect the local environment and water courses and ensure that suitable means of controlling surface water drainage exists in accordance with guidance in the NPPF).
9. Foul drainage shall be kept separate from clean surface and roof water
(Reason - To protect the local environment and water courses and ensure that suitable means of controlling surface water drainage exists in accordance with guidance in the NPPF).
10. The development hereby permitted shall be undertaken in accordance with all mitigation measures and the conclusions contained within the submitted ecological reports dated September 2013 (Bat Activity Survey Report - Richard Green Ecology) and the Preliminary Ecological Appraisal and Extended Phase 1 Habitat Survey by Sunflower Ecology dated May 2013.
(Reason - To ensure that the ecological status of the site is maintained in accordance with EN6 (Wildlife and Habitats) of the adopted East Devon Local Plan and guidance in the NPPF).
11. No work shall commence on site pursuant to the Reserved Matters until details of any remedial works necessary (including timescale for any works) together with an Arboricultural Method Statement (AMS) for the protection of the retained trees, has been submitted to and approved in writing by the Local Planning Authority. The AMS shall accord with the principles and recommendations of BS 5837:2012 and must include: details of the methods of protection; a site plan showing the location of protective fencing and ground protection as well as materials storage areas, mixing and washing out areas, site huts, welfare facilities; how the tree protection is to be monitored (Site Monitoring Log) and how problems or departures from the agreed method statement are to be reported and resolved. At no time shall storage of materials or ground works take place within the fenced areas as agreed as part of the submitted AMS.
(Reason - To ensure the safety and ensure suitable protection for trees of high amenity value in accordance with guidance contained in BS 5837 (2012) and Policy D5 (Trees of development sites) of the adopted East Devon Local Plan).
12. A Construction and Environment Management Plan must be submitted and approved by the Local Planning Authority prior to any works commencing on site, and shall be implemented and remain in place throughout the development. The CEMP shall include at least the following matters : Air Quality, Dust, Water Quality, Lighting, Noise

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and Vibration, Pollution Prevention and Control, and Monitoring Arrangements. Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site. There shall be no high frequency audible reversing alarms used on the site. (Reason - To protect the amenities of existing and future residents in the vicinity of the site from noise, air, water and light pollution and in accordance with Policy EN15 (Control of Pollution) of the East Devon Local Plan).

13. The landscaping scheme shall be carried out in the first planting season after commencement of the development unless otherwise agreed in writing by the Local Planning Authority and shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the Local Planning Authority.
(Reason - In the interests of amenity and to preserve and enhance the character and appearance of the area in accordance with Policies D1 (Design and Local Distinctiveness) and D4 (Landscape Requirements) of the East Devon Local Plan.)
14. Lighting of public areas on site shall only be provided in accordance with a detailed scheme which shall be submitted to and agreed in writing by the Local Planning Authority prior to its first installation. The development shall only take place in accordance with the agreed details:
(Reason - In the interests of the character and appearance of the area and the ecological status of the site in accordance with Policy D1 (Design and Local Distinctiveness) and EN6 (Wildlife and Habitats) of the adopted East Devon Local Plan).

NOTE FOR APPLICANT

Informative:

In accordance with the requirements of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 in determining this application, East Devon District Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved.

The planning application be Approved subject to a Legal Agreement securing 40% affordable housing (split 70:30 in favour of affordable rent), off site contributions to public transport, primary education and secondary school transport, and mitigation toward identified to the pebblebed heaths together.

The plans relating to this application are listed below:

Location Plan

13.08.13



Development Manager (Economy)

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THIS DECISION IS NOT A DECISION UNDER BUILDING REGULATIONS AND THE APPLICANT SHOULD ENSURE THAT ALL NECESSARY APPROVALS FOR THE SAME PROPOSAL AND THE SAME PLANS ARE OBTAINED BEFORE COMMENCING ANY WORK ON THE SITE.

Please refer to the accompanying notes which form part of this decision notice.